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Planning Proposal 18/003

» Attached Dual Occupancy Wardell

Feb 2020 (V4 – Altered Gateway) 20/2907

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1. Introduction

1.1 Summary of Planning Proposal

This planning proposal seeks to amend the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) to permit attached dual occupancy development upon certain land at Wardell that is:

- located within the R2 Low Density Residential zone,
- not located within a Flood Planning Area as shown on the Ballina LEP2012 Flood Planning Map,
- has a minimum lot size of 450m², and
- meets the requirements of the NSW Rural Fire Service publication *Planning for Bush Fire Protection 2006*.

The planning proposal has been prepared in response to the outcomes of the Wardell Planning and Environmental Study and the adopted Strategic Action No. 23 within the Wardell Strategic Plan 2015 - 2035.

1.2 Background

The Council adopted the Wardell Strategic Plan 2015 - 2035 (WSP) at its Ordinary meeting on 28 January 2016. This strategic plan is informed by the outcomes of the Wardell Planning and Environmental Study 2015.

The WSP is intended to guide Council's strategic planning decision-making relating to Wardell and surrounds within the period 2015 to 2035. The plan details 29 strategies to guide the future development of Wardell to 2035.

The Wardell Planning and Environmental Study supports the concept of permitting attached dual occupancy development in the R2 zoned areas in the non-flood prone area of Wardell village. Opportunities for small scale development within the existing village are considered to make more efficient use of existing infrastructure such as water and sewerage services and road networks.

Strategic Action No. 23 of the WSP provides for Council to:

'consider the desirability, and an appropriate mechanism, for permitting attached dual occupancy development within the R2 zoned, non-flood prone areas of Wardell Village.'

The flood planning standard adopted to define the lands suitability for attached dual occupancy development is land not subject to the 1:100 year ARI Flood for 2100 climate change conditions. This is also land located outside of the Flood Planning Area as shown on the Ballina LEP 2012 Flood Planning Map.

Council subsequently resolved to prepare a planning proposal, to permit attached dual occupancy development on non - flood prone R2 zoned lots within Wardell village, in December 2018. Some 87 lots were initially shown to be affected by this planning proposal.

Following the issue of a Gateway determination on 6 March 2019, the planning proposal was publically exhibited from 10 April 2019 to 17 May 2019.

In accordance with the requirements of the March 2019 Gateway determination consultation was undertaken with the NSW Rural Fire Service (NSWRFS).

The NSWRFs advised council in May 2019 that it could not support the planning proposal in its then form for reasons related to bush fire risk impacts. The response from the NSWRFs is contained within Appendix 6.

The issues raised by the NSWRFs were examined in a Bush Fire Hazard Assessment Report (BFHAR). The BFHAR is contained within Appendix 5.

The BFHAR concluded that some 27 properties, of the 87 properties originally considered as potentially suitable for attached dual occupancy development, were now considered to be unsuitable based on bush fire risk criteria.

The BFHAR was forwarded to the NSWRFs in September 2019. The NSWRFs advised council in December 2019 that based on the submitted information (BFHAR), no objection to the planning proposal is raised. This is subject to the amendment of the planning proposal to reflect the results of the Bushfire Results Brief (BFHAR) prepared by Bushfire Risk and dated 9 September 2019. The December 2019 response from the NSWRFs is contained within Appendix 6.

Compliance with the requirements of the NSWRFs has resulted in this planning proposal being amended to remove reference to the 27 properties, which were found unable to meet the 'aims and objectives' of *Planning for Bushfire Protection 2006*.

An additional 2 properties have also been removed from this amended planning proposal due to their small lot size. These properties respectively have a lot area of 256m² and 284m², which is considered to be too small to support attached dual occupancy development.

The diagram below shows the lots affected by the original planning proposal outlined in blue.

Diagram showing location of lots subject to original planning proposal



The lots removed from the planning proposal due to bush fire risk (red) and small lot size (yellow) are shown in the diagram below together with those lots to which the amended planning proposal applies (dark blue).

Diagram showing lots subject to attached dual occupancy site evaluation



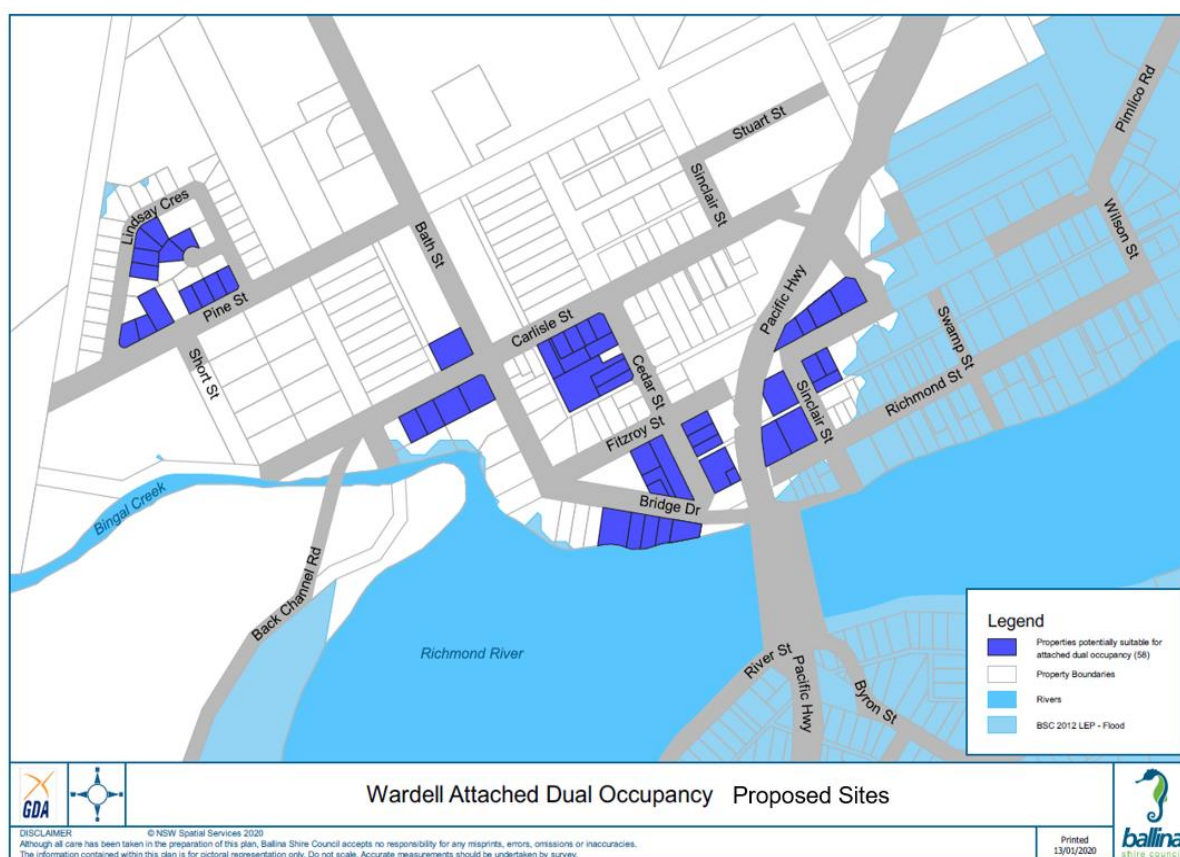
1.3 Land to Which the Planning Proposal Applies

This planning proposal relates certain land located at Wardell which is:

- located within the R2 Low Density Residential zone,
- not located within a Flood Planning Area as shown on the Ballina LEP2012 Flood Planning Map,
- has a minimum lot size of 450m², and
- meets the requirements of the NSW Rural Fire Service publication *Planning for Bush Fire Protection 2006*.

Lots affected by this amended planning proposal are shown by the dark blue colour in the diagram below.

Diagram showing location of lots subject to amended planning proposal



1.4 Council Resolutions

Council considered the original planning proposal at its Ordinary Meeting held on 13 December 2018. The Council resolved as follows:

1. That Council endorses the Wardell Attached Dual Occupancy Planning Proposal (BSCPP 18/003 – Attached Dual Occupancy Wardell), as contained in Attachment 2 to this report.
2. That Council submit this planning proposal to the NSW Department of Planning and Environment for Gateway determination.

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3. *That the Department of Planning and Environment be advised that Council is seeking to exercise its delegated plan making functions for this LEP amendment.*
4. *That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.*
5. *That the planning proposal be reported to the Council for further consideration following the completion of the community consultation phase.*

A copy of the reports considered by the Council are contained in Appendix 2.

Council considered the amended planning proposal at its Ordinary Meeting held on 27 February 2020 and resolved as follows:

1.5 Gateway Determination

A Gateway determination allowing the original planning proposal to proceed to public exhibition, subject to conditions, was issued on 6 March 2019.

An altered Gateway determination was issued on 11 September 2019, which extended the time to complete the planning proposal until 6 March 2020.

Copies of Gateway determinations are contained within Appendix 4.

2. Objectives & Intended Outcomes

The objective and intended outcome of this planning proposal is to amend the Ballina LEP 2012 to enable attached dual occupancy development to be carried out on certain land at Wardell that:

- is located within the R2 Low Density Residential zone,
- is not located within a Flood Planning Area as shown on the Ballina LEP2012 Flood Planning Map,
- has a minimum lot size of 450m², and
- meets the requirements of the NSW Rural Fire Service publication *Planning for Bush Fire Protection 2006*.

3. Explanation of Provisions

3.1 The Proposal

Dual occupancy development is currently prohibited within the R2 Low Density Residential zone. The planning proposal seeks to permit with consent, attached dual occupancy development, on certain R2 zoned land at Wardell that is not located within a Flood Planning Area, has a minimum lot area of 450m², and meets the requirements contain in *Planning for Bush Fire Protection 2006*.

Land with a Bushfire Attack Level (BAL) of less than 29 is considered to be potentially suitable for increased residential density such as dual occupancy under the provision of *Planning for Bush Fire Protection 2006*.

The manner in which the LEP amendment will be drafted will be a matter for the NSW Parliamentary Counsel to consider following the exhibition of the amended planning proposal.

There are a number of drafting options available, which includes a local clause, an additional permitted use or a planning overlay specifically for dual occupancy lots. Ballina LEP Amendment No 43, which permitted attached dual occupancy upon certain lots within the Alstonville urban area, was drafted as an additional permitted use amendment.

3.2 Relationship to the Low Rise Medium Density Housing Code

The Low Rise Medium Density Housing Code (the Code) has applied to Ballina Shire since 1 July 2019. It is a Code made under the provisions of the NSW Government's State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The Code contains the development standards applicable to dual occupancy development, which is complying development.

Development that is not complying development is subject to the provisions of Ballina Shire Development Control Plan 2012 – Chapter 4 – Residential and Tourist Development.

Council has previously exhibited and adopted a range of development controls applicable to attached dual occupancy development proposed for Wardell and Alstonville. The controls as

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they apply to Wardell will only become operative upon the proposed LEP amendment being published on the NSW Government web site.

Council will review the impact of the *Low Rise Medium Density Housing Code (the Code)* on residential development in Ballina Shire after 1 July 2020. A decision will then be made as to whether Council supports the continued application of the Code to development within the shire or whether Council will seek to be exempt from the Code.

Appendix 7 contains details of the various DCP amendments which have been prepared to support the attached dual occupancy planning proposals for Wardell and Alstonville. These amendments have already been exhibited and adopted by Council.

3.3 Mapping Overview

The map contained within Appendix 1 shows 58 R2 Low Density residential zoned lots. These lots are not within a Flood Planning Area as shown on the Ballina LEP 2012 Flood Planning Map, meet the bush fire risk criteria (below BAL29) nominated in *Planning for Bushfire Protection 2006*, and have a lot area of at least 450m². These lots are considered potentially suitable for attached dual occupancy development.

Subject to advice being obtained from the NSW Parliamentary Counsel's Office an Additional Permitted Use Map (APU) under the provisions of Ballina LEP 2012 may be prepared to support this planning proposal. The APU Map, if required, may show each lot upon which it is proposed to permit attached dual occupancy development.

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of any strategic study or report?

Yes. The planning proposal has been prepared in response to the outcomes of the Wardell Planning and Environment Study 2015 (WPES) and the Wardell Strategic Plan 2035. Strategic Action No. 23 within the plan provides that Council ‘*Consider the desirability, and an appropriate mechanism, for permitting attached dual occupancy development within the R2 zoned, non-flood prone areas of Wardell Village*’.

Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the appropriate mechanism for achieving the intended development outcomes for the subject land.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal is consistent with the North Coast Regional Plan 2036 (NCRP), which provides the regional framework for the consideration of policy development.

The NCRP encourages housing diversity through an action which stipulates that 40 per cent of new housing is to be delivered in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400 square metres by 2036. The proposal is consistent with the following directions of the NCRP:

- *Direction 20: Maintain the region’s distinctive built character*
- *Direction 22: Deliver greater housing supply*
- *Direction 23: Increase housing diversity and choice*

Q4 Is the planning proposal consistent with a council’s local strategy or other local strategic plan?

The planning proposal is consistent with the following key local plans:

Ballina Shire Council Community Strategic Plan 2017 – 2027

The planning proposal is consistent with the elements and specified outcomes contained within Council’s Community Strategic Plan 2017-2027 as indicated in the table below:

Element and Reference	Outcomes	Benefits
PE3 Prosperous Economy	Improve liveability in the shire	
PE3.1	Support residential development that delivers services close to home	Lower cost of living
PE3.2	Facilitate and provide affordable infrastructure	More affordable housing
PE3.3	Improve connectivity within the shire	Reduced transport costs
HE3 Healthy Environment	Our built environment blends with the natural environment	
HE3.1	Develop and implement plans that balance the built environment with the natural environment	More people are satisfied with our management of development

Ballina Shire Growth Management Strategy 2012 (BSGMS)

The planning proposal is consistent with the following growth management principles for future urban development within the shire as outlined in the BSGMS:

- Support the desired identity, character and amenity of the shire and its communities;
- Facilitate greater housing choice through an adequate mixture of dwelling types;
- Support the regional settlement hierarchy of cities and towns surrounded by villages and smaller rural hamlets;
- Minimise the exposure of new and existing residential areas to environmental hazards;
- Integrate urban development with key infrastructure and services;
- Provide for a functional urban environment that is compatible with environmental characteristics and community expectations; and
- Provide for affordable housing stock.

Ballina Local Environmental Plan 2012 (BLEP 2012)

The BLEP 2012 provides for the following residential zones:

- R2 Low Density Residential Zone – for low density residential development forms including dwellings and secondary dwellings (and other compatible uses); and
- R3 Medium Density Residential Zone – for a broad range of residential development forms including dual occupancies, residential flat buildings, multi dwelling housing and the like (and other compatible uses).

This planning proposal relates to part of the R2 Low Density Residential zone under the provisions of BLEP 2012 located within Wardell Village.

Lots affected by this planning proposal have a minimum area of at least 450m² and are not located within a Flood Planning Area as shown on the BLEP 2012 Flood Planning Map.

These lots also have an assessed acceptable bush fire risk using the criteria nominated in the publication *Planning for Bushfire Protection 2006*.

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The planning proposal is generally consistent with applicable State Environmental Planning Policies (SEPPs).

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?

A Section 9.1 Direction checklist for the planning proposal is contained in Appendix 3.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The subject land is currently zoned for low density residential development (single detached dwellings and secondary dwellings) and is located within an established residential area. The planning proposal will enable development for attached dual occupancy development to occur with development consent. The planning proposal is unlikely to have any greater environmental impact than is anticipated from the development of the land under the current zoning arrangement.

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No significant adverse environmental impacts are likely to arise as a result of the planning proposal.

Q9 Has the planning proposal adequately addressed any social and economic effects?

The social and economic impacts of the planning proposal are considered to be generally positive and were addressed in the Wardell Planning and Environmental Study 2015.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

The planning proposal is not considered to create a demand for additional public infrastructure. Existing infrastructure such as water and sewerage are considered to have adequate capacity to cater for future development generated by this planning proposal.

Q11 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation has been undertaken with the NSWRFSS as required by the March 2019 Gateway determination.

The NSWRFSS raised no objection to the original planning proposal subject to it being amended to reflect the recommendations of the Bushfire Results Brief, prepared by

Ballina Shire Council

Bushfire Risk, dated 9 September 2019. This amended planning proposal has removed lots assessed as not meeting the applicable bush fire risk criteria as identified in the report by Bushfire Risk, dated 9 September 2019.

Correspondence received from the NSWRFSS is contained within Appendix 6

5. Mapping

At this stage, an Additional Permitted Use Map may be prepared to support the planning proposal. This is subject to advice from the NSW Parliamentary Counsel following public exhibition.

The map contained within Appendix 1 shows the lots affected by this planning proposal.

6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. It is anticipated that a minimum public notification period of 28 days will be applied to the amended planning proposal.

7. Timeline

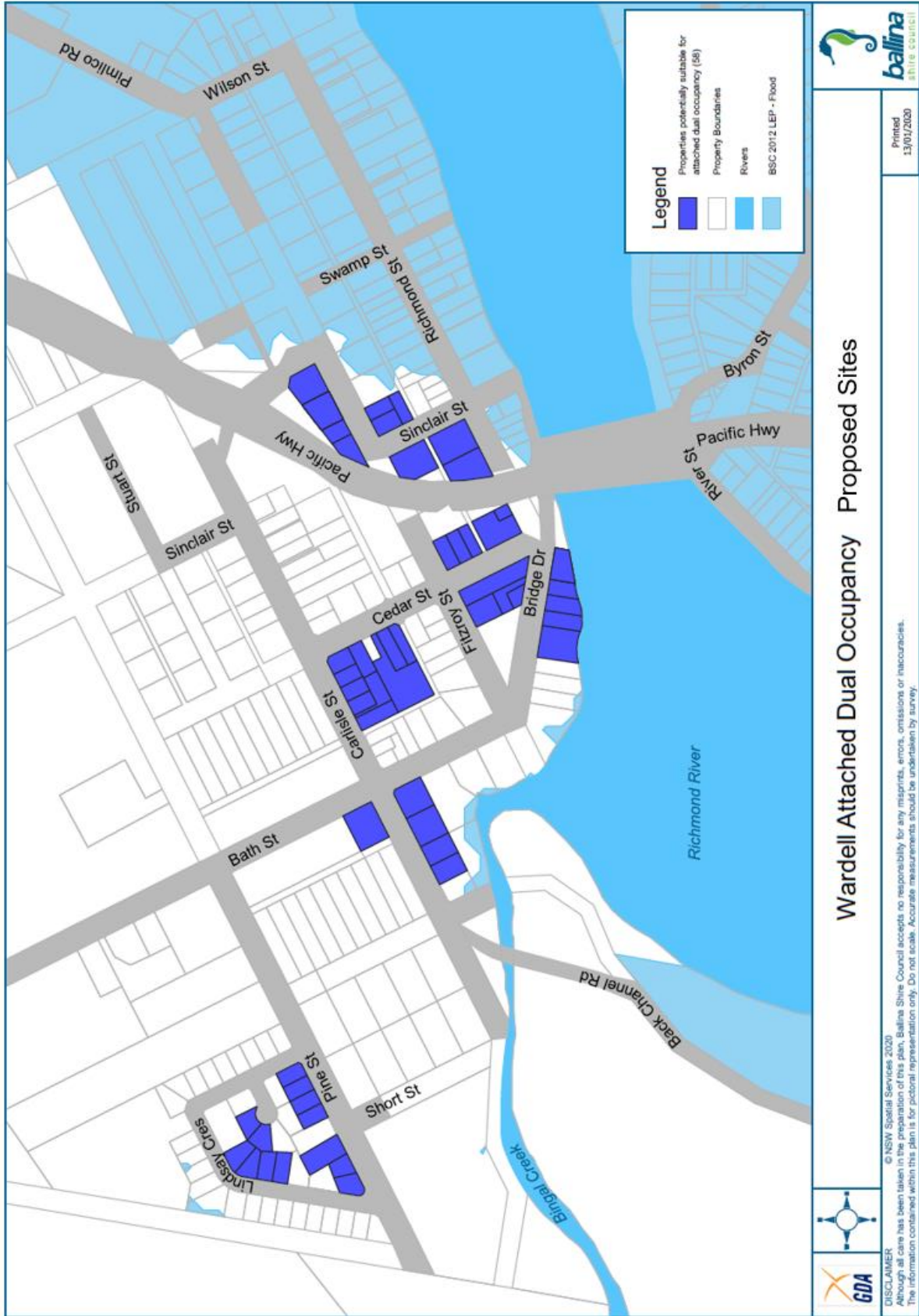
The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	March 2020
Government Agency Consultation	Not Required
Public Exhibition Period	March 2020
Public Hearing	Not Required
Submissions Assessment	May 2020
Local Plan Making Authority (LPMA) Assessment of Planning Proposal and Exhibition Outcomes	June 2020
LPMA Decision to Make the LEP Amendment (if delegated)	June 2020
Submission of Endorsed LEP to DPI&E for Finalisation	June 2020

Council is seeking to exercise plan finalisation functions under delegation.

8. Appendices

Appendix 1 – Maps



Appendix 2 – Council Reports

9.3 Planning Proposal - Attached Dual Occupancy, Wardell

Delivery Program	Strategic Planning
Objective	To invite the Council to initiate a planning proposal to permit attached dual occupancy development upon certain land in Wardell.

Background

Council, at its Ordinary Meeting held on 28 January 2016 resolved to adopt the Wardell Strategic Plan 2015-2035 [Minute No. 280116/10]. The recommendations and strategic actions identified in the strategic plan reflect the Wardell community's vision for the future development of their township to 2035.

A copy of the Wardell Strategic Plan 2035 (WSP 2035) is contained within Attachment 1 to this report.

Ensuring that future development is staged, progressive and affordable is one of five locality objectives contained within the WSP 2035.

Strategic Action No. 23 provides for Council to consider the desirability, and an appropriate mechanism, for permitting attached dual occupancy development on land within the R2 Low Density Residential zone under the Ballina Local Environmental Plan 2012, and that is not identified as being flood prone.

This action aims to provide opportunities for small scale residential development within the existing township.

The purpose of this report is to seek the Council's authorisation to initiate a planning proposal to enable attached dual occupancy residential development to be considered, with development consent, on allotments of land that meet these criteria.

A draft planning proposal has been prepared for the Council's consideration and is contained within Attachment 2 to this report.

Key Issues

- Implementing Wardell Strategic Plan 2035
- Urban consolidation
- Residential development potential and housing affordability

Information

Subject Land

Staff has assessed that this planning proposal would apply to approximately 78 allotments which are zoned R2 Low Density Residential and which have been identified as not being affected by the 2100 1:100 year ARI flood level.

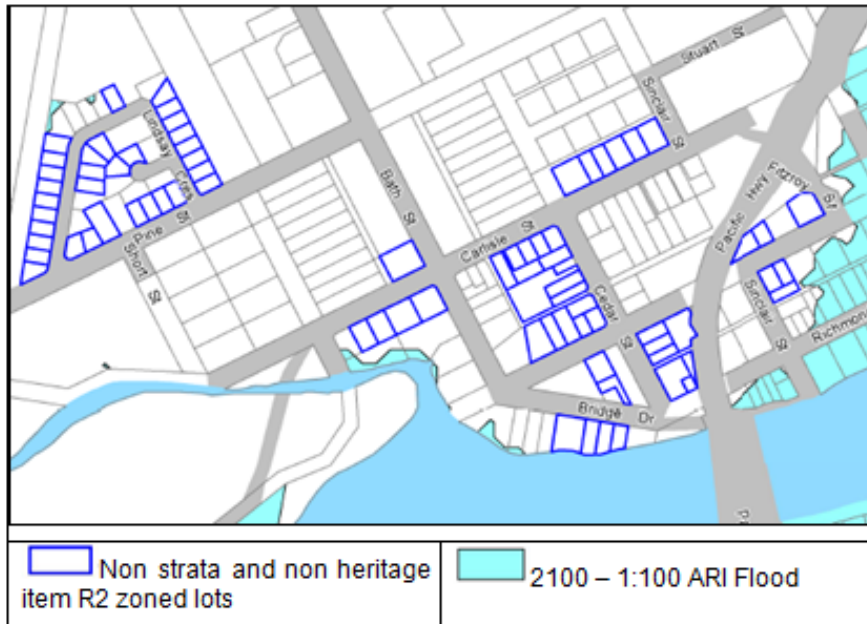
These lots are outlined in blue on the map contained within Diagram One as follows

9.3 Planning Proposal - Attached Dual Occupancy, Wardell

Lots that have already been developed for dual occupancy or multi-unit housing purposes under Council's prior planning instrument (Ballina LEP 1987 zone 2(b) Village), as well as lots containing heritage items have not been shown on the map.

Such lots will, however, also be incorporated within the proposed LEP amendment if zoned R2 and not impacted by the flooding constraint.

Diagram One – Location of Non Strata / Non Heritage Lots Affected by Planning Proposal



Strategic Planning Context

The planning proposal contained in Attachment 2 has been prepared as a result of an adopted action within the Wardell Strategic Plan 2015-2035.

Strategic Action No. 23 within the Plan provides for Council to 'consider the desirability, and an appropriate mechanism, for permitting attached dual occupancy development within the R2 zoned, non-flood prone areas of Wardell Village.'

The Flood Planning Standard adopted to acknowledge a general suitability for attached dual occupancy development is land not subject to the 2100 1:100 year ARI flood level.

The locality objectives for Wardell, as outlined in the Ballina Shire Growth Management Strategy 2012, support the maintenance of the heritage and low-scale character of the township, and the facilitation of further development opportunities consistent with the desired future character of the township, as identified in the strategic plan.

9.3 Planning Proposal - Attached Dual Occupancy, Wardell

The North Coast Regional Plan 2036, which provides the regional framework for the consideration of policy development and the overall vision for the future, encourages housing diversity by specifying that 40 per cent of new housing is to be delivered in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400m² in area by 2036.

Providing for future development as outlined in the planning proposal contained in Attachment 2 is consistent with the strategic objectives of the Wardell Strategic Plan, Council's Growth Management Strategy and the North Coast Regional Plan 2036.

Ballina LEP 2012 and Development Control Plan 2012

The R2 Low Density Residential zone located in Wardell does not currently permit dual occupancy development.

The manner in which an LEP amendment is required to be drafted so as to permit, with consent, attached dual occupancy development on land within that part of the R2 zone not affected by the 2100 1:100 year ARI flood level will be a matter for the NSW Parliamentary Counsel to consider following the exhibition of the planning proposal.

There are a number of options available to secure the desired outcome.

These include the insertion of a new local clause in Council's LEP, an additional permitted use or a planning overlay applying to specific dual occupancy lots.

Unlike the Alstonville Attached Dual Occupancy Planning Proposal (reported elsewhere in this Business Agenda) which seeks to limit attached dual occupancy development to lots 900m² in area or larger, and incorporates DCP controls to restrict development on slope affected sites, no such provisions are proposed for Wardell.

This is because there was broader community acceptance in Wardell, during the community consultation phases associated with the draft planning and environmental study and strategic plan, for broader application of attached dual occupancy permissibility.

There are also fewer significant slope constraints within Wardell township.

Ballina DCP 2012 - Chapter 4 Residential and Tourist Development (DCP Chapter 4) contains provisions related to dual occupancy development, including a minimum lot size of 450m² for attached dual occupancy development, which will apply to Wardell following the LEP amendment being finalised.

DCP Chapter 4 is proposed to be amended to clarify that the existing provisions for attached dual occupancy development (450m² minimum lot size and 12 metre minimum frontage) will also apply to the R2 zone at Wardell.

This matter will be dealt with as part of the DCP Chapter 4 amendments associated with the Alstonville planning proposal which is reported separately to this meeting.

9.3 Planning Proposal - Attached Dual Occupancy, Wardell

Council is invited to endorse the attached planning proposal for referral to NSW Department of Planning and Environment for Gateway determination.

Following the Gateway determination, the planning proposal is proposed to be placed on public exhibition in accordance with the Gateway requirements and then reported back to the Council for further consideration and/or endorsement.

Sustainability Considerations

- **Environment**
The proposal is not likely to have any significant implications from an environmental perspective as it is confined to existing zoned and largely already developed residential lots.
- **Social**
The proposal is considered to have overall positive social impacts resulting from the provision of additional housing.
- **Economic**
The proposal has the potential to result in a number of positive economic impacts associated with construction and occupation of additional dwellings.

Legal / Resource / Financial Implications

Initiating and processing a planning proposal to permit attached dual occupancy development in the circumstances outlined can be managed within existing resources.

This matter is included in the current Strategic and Community Facilities Group work program.

It is also proposed to seek delegation from the Department of Planning and Environment to enable the processing of the proposed LEP amendment to finalisation.

Consultation

It is envisaged that following referral to the NSW Department of Planning and Environment the planning proposal, if allowed to advance, will be placed on exhibition for community feedback in accordance with the Gateway determination. The period of public exhibition proposed is not less than 28 days.

Options

The following options are presented for the Council's consideration.

1. Council may resolve to proceed to submit the planning proposal to the NSW Department of Planning and Environment for Gateway determination.

9.3 Planning Proposal - Attached Dual Occupancy, Wardell

This is the preferred and recommended option as it will enable the planning proposal to progress to the next step in the LEP amendment process which is to enable a review 'in principle' by the NSW Department of Planning and Environment. Taking this action is consistent with Council's adopted planning strategy for Wardell.

2. Council may resolve to defer consideration of the planning proposal.

It is open to Council to request additional information should there be matters that require additional investigation or clarification. This could then be referred back to the Council in a subsequent report or take the form of a Councillor briefing.

3. Council may resolve to decline to support the planning proposal and take no further action.

This option is not recommended at this stage of the process as the consideration of a mechanism for permitting attached dual occupancy development, within the R2 zoned, non-flood prone areas of Wardell is an adopted strategy of the Wardell Strategic Plan 2035.

RECOMMENDATIONS

1. That Council endorses the Wardell Attached Dual Occupancy Planning Proposal (BSCPP 18/003 – Attached Dual Occupancy Wardell), as contained in Attachment 2 to this report.
2. That Council submit this planning proposal to the NSW Department of Planning and Environment for Gateway determination.
3. That the Department of Planning and Environment be advised that Council is seeking to exercise its delegated plan making functions for this LEP amendment.
4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That the planning proposal be reported to the Council for further consideration following the completion of the community consultation phase.

Attachment(s)

1. Wardell Strategic Plan 2035
2. BSCPP 18/003 - Draft Planning Proposal - Attached Dual Occupancy Wardell

9.3	<u>Planning Proposal - Attached Dual Occupancy, Wardell</u>
	<p>131218/1 RESOLVED</p> <p>(Cr Sharon Cadwallader/Cr Ben Smith)</p> <ol style="list-style-type: none">1. That Council endorses the Wardell Attached Dual Occupancy Planning Proposal (BSCPP 18/003 – Attached Dual Occupancy Wardell), as contained in Attachment 2 to this report.2. That Council submit this planning proposal to the NSW Department of Planning and Environment for Gateway determination.3. That the Department of Planning and Environment be advised that Council is seeking to exercise its delegated plan making functions for this LEP amendment.4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.5. That the planning proposal be reported to the Council for further consideration following the completion of the community consultation phase. <p>FOR VOTE - Cr David Wright, Cr Phillip Meehan, Cr Sharon Parry, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Nathan Willis, Cr Keith Williams, Cr Sharon Cadwallader and Cr Ben Smith AGAINST VOTE - Cr Jeff Johnson</p>

Appendix 3 – Section 9.1 Direction Checklist

Section 9.1 Direction Checklist	
Planning Proposal – Attached Dual Occupancy, Wardell	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Does not apply to planning proposal.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural lands	Consistent. The planning proposal does not affect land within an existing rural or environmental protection zone.
2. Environment and Heritage	
2.1 Environment Protection Zones	Justifiably Inconsistent. The planning proposal does not involve the development of land identified as being of environmental significance. However, some lots impacted by this planning proposal are located within areas identified as Koala habitat areas under the adopted Ballina Shire Koala Management Strategy 2016. The delegate for the Secretary Department of Planning has previously determined that this inconsistency is justifiable in accordance with the terms of the direction (Refer letter dated 6/3/2019).
2.2 Coastal Protection	Consistent. The lots affected by this planning proposal are located within the coastal zone. The proposal is considered to be consistent with the objects of the <i>Coastal Management Act 2016</i> , NSW Coastal Management Manual, NSW Coastal Design Guidelines and the SEPP (Coastal Management) 2018. The planning proposal is considered to be of overall minor significance.
2.3 Heritage Conservation	Justifiably inconsistent. The following sites within Wardell are of local heritage significance (Ballina LEP 2012), are located within the R2 zone and are impacted by this planning proposal: <ul style="list-style-type: none"> • 186 – Wardell Post Office • 187 – Police Station • 191 – Catholic Precinct: Church, Convent/ Mercy Centre, Presbytery, St Patrick's School Clause 5.10 of Ballina LEP 2012 contains provisions which require consideration of heritage matters at the DA stage. The delegate for the Secretary Department of Planning has previously determined that this inconsistency is justifiable in accordance with the terms of the direction (Refer letter dated 6/3/2019).
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	

Section 9.1 Direction Checklist	
Planning Proposal – Attached Dual Occupancy, Wardell	
Direction No.	Compliance of Planning Proposal
3.1 Residential Zones	<p>Consistent.</p> <p>The planning proposal that proposes to permit attached dual occupancy development upon certain R2 zoned land at Wardell is considered to be consistent with this direction. The proposal will increase housing choice and make more efficient use of existing infrastructure and services whilst minimising the impacts on the environment and resource lands.</p>
3.2 Caravan Parks and Manufactured Home Estates	<p>Consistent.</p> <p>The planning proposal will not result in any reduction in the existing availability of land for caravan parks of manufactured home estates.</p>
3.3 Home Occupation	<p>Consistent.</p> <p>The proposal will not affect any existing permissibility or exemptions for home occupations.</p>
3.4 Integrating Land Use and Transport	<p>Consistent.</p> <p>The planning proposal which proposes to permit attached dual occupancy development upon certain R2 zone land at Wardell is considered to be of minor significance.</p>
3.5 Development near Licensed Aerodromes	<p>Does not apply to planning proposal.</p> <p>The land is not located within the Obstacle Limitation Surface (OLS) and the Australian Noise Exposure Forecast (ANEF) for the Ballina Byron Gateway Airport.</p>
3.6 Shooting Ranges	Does not apply to this planning proposal.
3.7 Reduction in non-hosted short term rental accommodation period	Does not apply to this planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	<p>Justifiably inconsistent.</p> <p>The subject land is identified as being affected by acid sulfate soils (Class 4) on the Ballina LEP 2012 Acid Sulfate Soil Map. Clause 7.1 of Ballina LEP 2012 contains provisions which require the consideration of Acid Sulfate Soil impact at the DA stage.</p> <p>The delegate for the Secretary Department of Planning has previously determined that this inconsistency is justifiable in accordance with the terms of the direction (Refer letter dated 6/3/2019).</p>
4.2 Mine subsidence and Unstable Land	<p>Does not apply to this planning proposal.</p> <p>The subject lands are not identified as being unstable land.</p>
4.3 Flood Prone Land	<p>Consistent.</p> <p>The planning proposal does not apply to flood prone land.</p>
4.4 Planning for Bushfire Protection	<p>Justifiably Inconsistent.</p> <p>The majority of lots impacted by this planning proposal are located upon bushfire prone land.</p> <p>Consultation has been undertaken with the NSW Rural Fire Service post the original Gateway determination.</p> <p>The NSW Rural Fire Service has raised no objection to the original planning proposal subject to it being amended to reflect the recommendations of the Bushfire Results Brief, prepared by Bushfire Risk, dated 9 September 2019.</p> <p>This amended planning proposal incorporates the recommendations made in the Bushfire Risk report.</p>
5. Regional Planning	

Section 9.1 Direction Checklist	
Planning Proposal – Attached Dual Occupancy, Wardell	
Direction No.	Compliance of Planning Proposal
5.1 Implementation of Regional Strategies (Revoked 17 October 2017)	Revoked.
5.2 Sydney Drinking Water Catchments	Does not apply to planning proposal.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Does not apply to planning proposal. The subject lots have not been mapped as State Significant Farmland, Regionally Significant Farmland or Significant non-contiguous Farmland.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to this planning proposal.
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Revoked 18 June 2010)	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008)	Revoked.
5.7 Central Coast (Revoked 10 July 2008)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to planning proposal.
5.9 North West Rail Link Corridor Strategy	Does not apply to planning proposal.
5.10 Implementation of Regional Plans	Consistent. The planning proposal is considered to be consistent with the North Coast Regional Plan 2036 as the subject land is located within a designated Urban Growth Area. The planning proposal is considered to achieve the overall intent of the regional strategy and supports the achievement of its vision, land use strategy, policies, outcomes and actions.
5.11 Development of Aboriginal Land Council land	Does not apply to planning proposal. Land affected by this planning proposal is not shown on the Land Application Map of State Environmental Planning Policy (Aboriginal Land) 2019.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.
6.3 Site Specific Provisions	Consistent. The planning proposal is consistent with this Direction as it seeks to allow a land use that is compatible with the residential development of the site.
7. Metropolitan Planning	
7.1 Implementation of A Plan for Growing Sydney	Does not apply to planning proposal.
7.2 Implementation of greater Macarthur Land Release Investigation	Does not apply to planning proposal.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to planning proposal.
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Does not apply to planning proposal.

Section 9.1 Direction Checklist	
Planning Proposal – Attached Dual Occupancy, Wardell	
Direction No.	Compliance of Planning Proposal
7.5 Implementation of Greater Parramatta Priority growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to planning proposal.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to planning proposal.
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Does not apply to planning proposal.
7.8 <i>There is no information relating to 7.8</i>	<i>There is no information relating to 7.8</i>
7.9 Implementation of Bayside West Precincts 2036 Plan	Does not apply to planning proposal.
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	Does not apply to planning proposal.

Appendix 4 – Gateway Determinations



PP_2018_BALLI_006_00(IRF18/7200)

Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Mr Hickey

Planning proposal PP_2018_BALLI_006_00 to amend Ballina Local Environmental Plan 2012 to permit attached dual occupancy development on certain R2 zoned lots at Wardell

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to permit attached dual occupancy development on certain R2 zoned lots at Wardell.

As delegate of the Minister for Planning, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistencies with section 9.1 Directions 2.1 Environment Protection Zones, 2.3 Heritage Conservation and 4.1 Acid Sulfate Soils are justified in accordance with the terms of the Direction. No further approval is required in relation to these Directions.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant section 9.1 Direction 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to the plan being made.

It is noted that Council has requested to be authorised as the local plan-making authority. I have considered the nature of Council's planning proposal and have conditioned the Gateway for Council to be authorised as the local plan-making authority.

The amending local environmental plan (LEP) is to be finalised within six months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office six weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment.

The state government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing

clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Ms Alison Parr to assist you. Ms Parr can be contacted on 6641 6612.

Yours sincerely



6-3-2019

Jeremy Gray
Director Regions, Northern
Planning Services

Encl: Gateway determination
Authorised plan-making reporting template



Gateway Determination

Planning proposal (Department Ref: PP_2018_BALLI_006_00): to amend Ballina Local Environmental Plan 2012 to permit attached dual occupancy development on certain R2 zoned lots at Wardell

I, the Director Regions, Northern at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to permit attached dual occupancy development on certain R2 zoned lots at Wardell should proceed subject to the following conditions:

1. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) and must be made publicly available for a minimum of **14 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
2. Consultation is required with the NSW Rural Fire Service under section 3.34(2)(d) of the Act. NSW Rural Fire Service is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.
3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
4. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - a. the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - b. the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - c. there are no outstanding written objections from public authorities.

5. The time frame for completing the LEP is to be **6 months** following the date of the Gateway determination.

Dated 6 day of March 2019.



Jeremy Gray
Director Regions, Northern
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning



PP_2018_BALLI_006_00 (IRF19/5911)

Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Mr Hickey

**Planning proposal PP_2018_BALLI_006_00 – Alteration of Gateway
Determination**

I refer to your letter seeking an extension of time to complete planning proposal PP_2018_BALLI_006_00 for attached dual occupancy development on certain R2 Low Density Residential zoned lots at Wardell.

I have determined as the delegate of the Minister, in accordance with section 3.34(7) of the *Environmental Planning and Assessment Act 1979*, to alter the Gateway determination dated 6 March 2019 for PP_2018_BALLI_006_00. The Alteration of Gateway determination is enclosed.

If you have any questions in relation to this matter, I have arranged for Ms Alison Parr to assist you. Ms Parr can be contacted on 6643 6412.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Gray'.

11/09/2019

Jeremy Gray
Director, Northern Region
Planning and Assessment

Encl: Alteration of Gateway Determination



**Planning,
Industry &
Environment**

Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2018_BALLI_006_00)

I, Director, Northern Region, at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 6 March 2019 for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Delete condition 5:

“5. The time frame for completing the LEP is to be 6 months following the date of the Gateway determination.”

and replace with a new condition 5:

“5. The time frame for completing the LEP is by 6 March 2020.”

Dated 11th day of September 2019.

A handwritten signature in black ink, appearing to read "J Gray".

Jeremy Gray
Director, Northern Region
Planning and Assessment
Department of Planning, Industry and
Environment

**Delegate of the Minister for Planning
and Public Spaces**

Appendix 5 - Bushfire Risk Report



BUSHFIRE RISK PTY LTD
assess - report - certify
ABN: 16 611 625 551

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Mobile: 0447 211 375
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BUSHFIRE RESULTS BRIEF

Hazard Assessment in Relation to the Rezoning of Various Lots

Location: Wardell Village – Various Lots

Client: Ballina Council

Date of Issue: 9 September 2019

Our Ref: 1905Ker688

Report prepared by **Melanie Jackson**

Grad Dip (Bushfire Protection); B.App.Sc (EnvResMgt)

BPAD-Level 3 Accredited Practitioner & Member of the FPA Australia



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1 BUSHFIRE ASSESSMENT – REZONING VARIOUS LOTS

1.1 DATE OF ISSUE

30 June 2019; PDF emailed to Klauz Kerzinger on 30 June 2019.

1.2 PROPOSED DEVELOPMENT:

Re-zoning to permit attached dual occupancy development on selected existing lots within the village of Wardell. Suitability bushfire assessment in relation to complying with the bushfire requirements set out in PBP 2006.

1.3 LOCATION:

Various existing lots within Wardell Village

1.4 RFS REQUEST:

The RFS have made the request to demonstrate the proposed additional housing yields can comply with the 'aims and objectives' of Planning for Bushfire Protection 2006.

The planning proposal is requested to demonstrate the increase in residential density can achieve the following principles:

- *APZ based on a radiant heat threshold of 29kW/m² for any new housing opportunities;*
- *Suitable provisions for construction, access, water and landscaping.*

1.5 FIELD ASSESSMENT DATE

The subject sites were inspected on 18 and 30 June 2019 by Melanie Jackson a BPAD – Level 3 Accredited Practitioner.

2 METHODOLOGY:

Increases in density on a parcel of land must provide APZs where radiant heat flux to potential dwellings shall not exceed 29kw/m^2 . Integrated development proposals shall satisfy minimum APZ setbacks within the subject site or across managed land as per Table A2.5 of PBP (2006) see below.

Vegetation Formation	Effective Slopes				
	Upslope/Flat	>0°-5°	>5°-10°	>10°-15°	>15°-18°
Rainforests	10	10	15	15	20
Forests	20	20	30	40	45
Woodland	10	15	15	20	25
Plantations (Pine)	15	20	25	35	40
Tall Heath (Scrub)	15	15	20	20	20
Short Heath (Open Scrub)	10	10	10	15	15
Freshwater Wetlands	10	10	10	15	15
Forested Wetlands	15	20	20	30	35
Semi-Arid (Woodland)	10	10	10	10	15
Arid Shrubland	10	10	10	15	15

SOURCE: RFS PBP (2006) SUB-DIVISION APZ TABLE A2.5.

The results shall be cross referenced against 'Method 1 simplified procedure' as per AS3959-2009 (Ref. Table 1) pursuant to the assessment called up in Addendum – Appendix 3 (RFS 2010), ensuring compliance for APZ is achievable across the subject site.

2.1 PBP 2018 PRE-RELEASE VERSION

It is also noted where applicable setbacks may differ from current legislative requirements. As a result, the vegetation types and setbacks from the Pre-release Version of PBP 2018 which is proposed to be releases in September 2019 shall be considered in the assessment process and included in the results where anomalies are called up i.e. Forest in lieu of Forested Wetlands; the results shall be cross referenced against Table A1.12.4 PBP (2018), see below.

KEITH VEGETATION FORMATION	EFFECTIVE SLOPE				
	Up slopes and flat	>0°-5°	>5°-10°	>10°-15°	>15°-20°
Distance (m) from the asset to the predominant vegetation formation					
Rainforest	9	12	15	20	25
Forest (Shrubby and Grassy) including Coastal Swamp Forest, Pine Plantations and Sub-Alpine Woodland	20	25	31	39	48
Woodland (grassy and woody)	11	13	17	21	27
Forested Wetland	8	10	13	17	22
Tall Heath	15	16	18	21	23
Short Heath	10	11	13	14	16
Arid-Shrublands (acacia and chenopod)	7	8	9	10	11
Freshwater Wetlands	6	7	8	9	10
Alpine Complex	7	8	8	10	11
Grassland	10	11	12	14	16

SOURCE: RFS PBP PRE-RELEASE VERSION (2018) SUB-DIVISION APZ TABLE A1.12.4.

3 RESULTS

The following tables indicate the minimum setbacks required in order to achieve suitable setbacks from the hazard as identified where BAL-29 or lower construction level can be achieved as per the acceptable solutions identified in PBP 2006.

There are a number of lots determine to have suitable setbacks from the hazard which are depicted with a green tick in Figures 1 - 8; Those lots which have been identified as unsuitable have been depicted with a red cross.

Reasons for excluding certain lots is noted in each table where applicable, which may include all or some of the following reasons:

- Limited area to create an APZ within the subject site;
- APZ are to be retained within the subject site only;
- Where hazards are situated off-site on neighbouring privately owned land; an APZ on cannot be imposed on an adjacent landowner.
- There should be no reliance on easements or unformed roads;
- In areas with existing managed fire breaks, unformed roads etc. as there is no guarantee Council and/or Crown lands etc. will continue to maintain these areas in perpetuity;
- Limited lot sizes restrict the ability to provide the required setbacks from the hazard (APZ) and a building envelope within the subject site e.g. 32 – 44 Lindsay Crescent and 42 - 54 Carlisle Street, interface lots;
- Existing vegetated lots i.e. lots 2-12 Lindsay Crescent adjacent to Lot 6 (east), there is no guarantee Lot 6 shall be maintained in a low fuel state in perpetuity;
- Existing dwellings may be sited with limited setbacks from the hazard land therefore minimum APZ are unachievable within the lot;

TABLE 1: NO. 2 – 12 LINDSAY CRESCENT

Hazard Direction	Hazard Structure	Veg Notes	Slope of Hazard (veg)	Table A2.5 (PBP 2006)	Method 1 (AS3959-2009)	Recommended min. APZ
East	Managed land	Currently a plant nursery	0° Level	N/A	N/A	To boundary
South	Tall Heath (Scrub)	Hazard on the opposite side of Pine Street	0° level/up-slope	15m	13m	To boundary
<p>Notes:</p> <ol style="list-style-type: none"> The lots identified are reliant on the neighbouring lot i.e. Lot 6 DP580972 east, being managed in a low fuel state in perpetuity; It is NOT recommended to re-zone these lots for dual occupancy (Ref. Figure 1). 						

TABLE 2: NO. 14 – 16 LINDSAY CRESCENT

Hazard Direction	Hazard Structure	Slope of Hazard (veg)	Table A2.5 (PBP 2006)	Method 1 (AS3959-2009)	Recommended min. APZ
East	Forest	0-5° down-slope	20m	21m	21m
<p>Notes:</p> <ol style="list-style-type: none"> This lot is <u>unlikely</u> to achieve dual occupancy requirements as there will be little separation from the hazard as the APZ need to be managed within the subject site. The lots identified have a lot length of approx. 35m, with existing dwellings sited where existing setbacks are less than the recommended minimum APZ. The hazard is situated off-site on the neighbouring privately owned lot, namely Lot 6 DP580972 east; An APZ on neighbouring land cannot be imposed on an adjacent landowner. It is NOT recommended to re-zone these lots for dual occupancy (Ref. Figure 1). 					

TABLE 3: NO. 22 LINDSAY CRESCENT

Hazard Direction	Hazard Structure	Veg Notes	Slope of Hazard (veg)	Table A2.5 (PBP 2006)	Method 1 (AS3959-2009)	Recommended min. APZ
North	Forest	-	0-5° down-slope	20m	27m	27m
<p>Notes:</p> <ol style="list-style-type: none"> The lot identified has a lot length of approx. 35m, with existing dwellings sited where existing setbacks are less than the recommended minimum APZ. The hazard is situated off-site on the neighbouring privately owned lot, therefore an APZ on neighbouring land cannot be imposed on an adjacent landowner. This lot is unlikely to achieve dual occupancy requirements under the acceptable solutions having little separation from the hazard contained within the subject site. It is NOT recommended to re-zone these lots for dual occupancy (Ref. Figure 1). 						

TABLE 4: NO. 32 – 44 LINDSAY CRESCENT

Hazard Direction	Hazard Structure	Veg Notes	Slope of Hazard (veg)	Table A2.5 (PBP 2006)	Method 1 (AS3959-2009)	Recommended min. APZ
West	Forest	-	0-5° down-slope	20m	27m	27m

Notes:

1. The lots identified have a lot length of approx. 35m. Many lots have existing dwellings sited where existing setbacks are less than the recommended minimum APZ.
2. These lots are unlikely to achieve dual occupancy requirements under the acceptable solutions having little separation from the hazard contained on within each lot.
3. The Council off-site unformed road is currently managed in a low fuel state for a variable width of approx. 10 - 20m from the existing lot boundaries.
4. A Council unformed road is situated along the rear of the lots; if this area was managed in a low fuel state, i.e. cleared of vegetation, in perpetuity with a legally binding easement i.e. s.88b instrument, including ongoing vegetation management plan in place, this area may be recognised and applied for use as an off-site APZ.
5. Undertake further consultation with Council representatives to assess the potential of this option (above).
6. It is NOT recommended to re-zone these lots for dual occupancy (Ref. Figure 1).

TABLE 5: NO. 46 & 48 LINDSAY CRESCENT & 136 PINE STREET

Hazard Direction	Hazard Structure	Veg Notes	Slope of Hazard (veg)	Table A2.5 (PBP 2006)	Method 1 (AS3959-2009)	Recommended min. APZ
West	Rainforest (Remnant vegetation)	Derived from short fire run of less than 50m (ref. p.52 PBP)	0° level	10m	9m	10m
South	Tall Heath (Scrub)	-	0° level	15m	13m	To boundary

Notes:

1. These lots are unlikely to achieve dual occupancy requirements as per the acceptable solutions set out in PBP 2006 based on lack of separation within each subject site.
2. The lots identified have a lot length of approx. 35m. The lots have existing dwellings sited where existing setbacks are less than the recommended minimum APZ.
3. A Council unformed road is situated along the rear of these lots; if this area was cleared of vegetation and/or managed as an APZ in perpetuity with a legally binding easement i.e. s.88b instrument, including ongoing management guidelines, this area may be utilised as an off-site APZ.
4. It is NOT recommended to re-zone these lots for dual occupancy (Ref. Figure 1).

TABLE 6: NON-INTERFACE LOTS OF LINDSAY CRESCENT & ROGERS PLACE

Hazard Direction	Hazard Structure	Notes
All directions	Various	The internal lots of Lindsay Crescent and Rodgers Place are not situated on the interface of the land mapped or identified as bushfire prone.
<p>Notes:</p> <ol style="list-style-type: none"> 1. These lots achieve dual occupancy requirements as per the acceptable solutions set out in PBP 2006 based on appropriate separation from bushfire prone land. 2. These lots ARE recommended for re-zoning for dual occupancy (Ref. Figure 1). 		



FIGURE 1: LINDSAY CRESCENT & ROGERS PLACE ANALYSIS (SOURCE: NSW GOVERNMENT 2019)

TABLE 7: NO. 17 BATH STREET

Hazard Direction	Hazard Structure	Veg Notes	Slope of Hazard (veg)	Table A2.5 (PBP 2006)	Method 1 (AS3959-2009)	Recommended min. APZ
North	Tall Heath (Scrub)	Cypress Pine EEC, heath and sparse eucalypts	0° Level	15m	13m	15m
West	Tall Heath (Scrub)	Cypress Pine EEC, heath and sparse eucalypts	0° level	15m	13m	15m

Notes:

1. The lot is approx. 40m deep by 50m wide and appears satisfactory to accommodate a new dual occupancy development.
2. This lot IS suitable to re-zone for dual occupancy (Ref. Figure 2).



FIGURE 2: 17 BATH STREET ANALYSIS (SOURCE: NSW GOVERNMENT 2019)

TABLE 8: NO. 85 - 97 CARLISLE STREET

Hazard Direction	Hazard Structure	Veg Notes	Slope of Hazard (veg)	Table A2.5 (PBP 2006)	Method 1 (AS3959-2009)	Recommended min. APZ
North	Tall Heath (Scrub)		0° Level	15m	13m	15m
South	Rainforest (Riparian vegetation)	Derived from riparian vegetation	0° level/up-slope	10m	9m	10m
West	Forest (Pre-release version PBP 2018)	Forested wetlands assessed as Forest	0-5° down-slope (as per table A1.12.4 PBP 2018)	25m	27m	27m

Notes:

1. These lots are approx. 40m long and no 97 is unlikely to meet the min. setbacks for new dual occupancy developments.
2. No's 85 to 95 are likely to meet the minimum setbacks for dual occupancy developments.
3. Forested wetlands shall be removed from the assessment process, as per the new PBP 2018 (pre-release version, due to be released early September 2019). Forest classification will be the nominated appropriate classification.
4. Some existing dwellings may encroach into the APZ locality; therefore some lots may not achieve dual occupancy requirements when considering the existing structures.
5. It is NOT recommended to re-zone no 97 for dual occupancy (Ref. Figure 3).
6. It IS possible to re-zone no's 85, 91, 93 & 95 for dual occupancy (Ref. Figure 3).

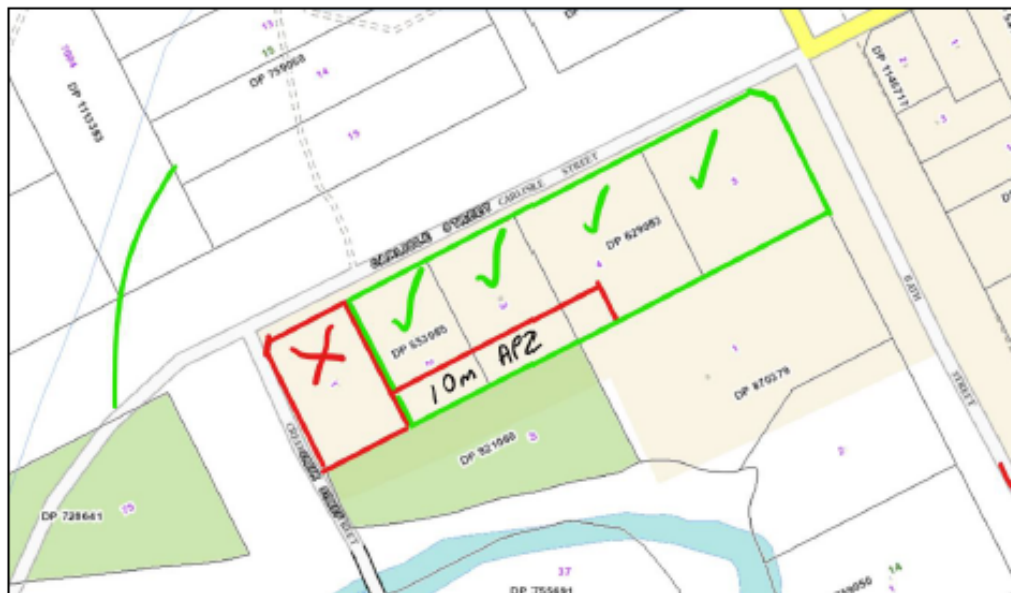


FIGURE 3: 85 - 97 CARLISLE STREET ANALYSIS (SOURCE: NSW GOVERNMENT 2019)

TABLE 9: NO. 42 - 54 CARLISLE STREET

Hazard Direction	Hazard Structure	Veg Notes	Slope of Hazard (veg)	Table A2.5 (PBP 2006)	Method 1 (AS3959-2009)	Recommended min. APZ
North & west	Forest (Pre-release version PBP 2018)	Forested wetlands assessed as Forest	0° Level	20m	14m (same as woodland classification)	20m

Notes:

1. Forested wetlands shall be removed from the assessment process, as per the new PBP 2018 (pre-release version, due to be released early September 2019).
2. Forest classification will be the nominated appropriate classification requiring a 20m APZ which includes the requirements for the pre-release version of PBP 2018.
3. As a result, future dual occupancy proposals will fall under the Forest classification and setbacks will be greater than those for Forested Wetlands under current legislation.
4. These lots are approx. 40m in length therefore new construction is unlikely to meet the requirements due to a small remaining potential building footprint.
5. Many of these lots however have existing structures which encroach into the APZ locality, therefore are unlikely to achieve dual occupancy requirements when considering the existing structures.
6. An existing road is mapped at the rear of these lots i.e. 6m north & 30m west; if this area was cleared of vegetation and/or managed as an APZ in perpetuity with a legally binding easement i.e. s.88b instrument, including ongoing management guidelines, this area may be utilised as an off-site APZ if council owned for example.
7. It is NOT recommended to re-zone these lots for dual occupancy (Ref. Figure 4).



FIGURE 4: 42 - 54 CARLISLE STREET ANALYSIS (SOURCE: NSW GOVERNMENT 2019)

TABLE 10: FITZROY STREET & SINCLAIR STREET

Hazard Direction	Hazard Structure	Veg Notes	Slope of Hazard (veg)	Table A2.5 (PBP 2006)	Method 1 (AS3959-2009)	Recommended min. APZ
East	Grassland	-	0° Level	10m (as per table A1.12.4 PBP 2018)	8m	10m

Notes:

1. Currently assessed as grassland, however if the proposed sub-division is approved and managed in a low fuel state adjacent to the dual occupancy sites on Fitzroy Street, the assessment of the proposed dual occupancy lots shall be acceptable as the 10m APZ is unlikely to be required once developed.
2. These lots ARE suitable for re-zoning (Ref. Figure 5).



FIGURE 5: FITZROY & SINCLAIR STREET ANALYSIS (SOURCE: NSW GOVERNMENT 2019)

TABLE 11: 32 – 42 FITZROY STREET

Hazard Direction	Hazard Structure	Veg Notes	Slope of Hazard (veg)	Table A2.5 (PBP 2006)	Method 1 (AS3959-2009)	Recommended min. APZ
North-east	Rainforest	Derived from Camphor laurel	0° Level	10m	9m	10m

Notes:

1. The area north-east is considered a low bushfire threat to the subject site, consisting of derived camphor laurel 'Rainforest';
2. The area on the south side of Fitzroy Street, is also considered a low bushfire threat to the subject site and is likely to be managed in a low fuel state once the proposed subdivision is approved;
3. These lots ARE suitable for re-zoning (Ref. Figure 6).



FIGURE 6: 32 – 42 FITZROY STREET (SOURCE: NSW GOVERNMENT 2019)

5 ANALYSIS OF REMAINING LOW RISK LOTS

The remaining lots are sited in areas of low bushfire threat and/or are able to achieve minimum setbacks for compliance (Ref. Figures 7 & 8).

Note: Subject to potential development / clearing of 53 Fitzroy Street, a 10m APZ on the east of 57 Fitzroy Street and Cedar Street lots can be achieved if required (Ref. Figure 7).



FIGURE 7: LOW RISK LOTS: BRIDGE DRIVE, CEDAR & FITZROY STREET (SOURCE: NSW GOVERNMENT 2019)



FIGURE 8: LOW RISK LOTS: CARLISLE & CEDAR STREET (SOURCE: NSW GOVERNMENT 2019)

6 CONCLUSION

These preliminary results have taken into consideration both existing and proposed legislative requirements in respect of the Pre-release version of PBP 2018 and a final version based on the Pre-release version is purportedly to be released in early September 2019. Therefore it was prudent to ensure the dual occupancy lots were considered based on the most likely scenario required for compliance.

These results are subject to consideration of off-site APZ where Council decides to modify road reserves abutting lots which currently cannot obtain compliance without a larger APZ, however subject to consultation with the NSW RFS.

DISCLAIMER

Any representation, statement, opinion, or advice expressed or implied in this report is made in good faith on the basis that Bushfire Risk or its employees are not liable (whether by reason of negligence, lack of care or otherwise) to any person for damage or loss whatsoever that may occur in relation to that person taking or not taking (as the case may be) action in respect of any representation, statement or advice referred to below.

Despite best efforts, there is no guarantee that desirable outcomes are achievable during extreme bushfire weather episodes. Despite best efforts and due to the unpredictable behaviour and variable nature of bushfires desirable outcomes are not always achievable during extreme bushfire weather events and unpredictable bushfire behaviour may result in detrimental consequences to life, property and the environment.

Appendix 6 – NSW Rural Fire Service Correspondence



NSW RURAL FIRE SERVICE



The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Your Ref: BSCPP 18/003
Our Ref: R19/538
DA19032818052 AB

ATTENTION: Klauz Kerzinger

2 May 2019

Dear Mr Kerzinger

**Agency Comment:- Ballina Local Environment Plan 2012 Planning Proposal Attached
Dual Occupancy Development Various Lots Wardell**

I refer to your letter dated 27 March 2019 seeking advice for the above Planning Proposal in accordance with the 'Environmental Planning and Assessment Act 1979'.

The NSW Rural Fire Service (NSW RFS) understands the planning proposal will amend Ballina LEP 2012 in the following manner:

- *Permit attached dual occupancy development on selected existing lots within the village of Wardell.*

The NSW RFS notes that part of the land reference in the planning proposal are mapped bush fire prone by Ballina Shire Council.

The NSW RFS cannot support the planning proposal in its current form for the following reasons:

- The planning proposal has not demonstrated that the proposed additional housing yields can comply with the 'aims and objectives' of *Planning for Bush Fire Protection 2006*. NSW RFS cannot support strategic planning instruments where any new housing opportunities will be of high risk to bush fire impacts;
- A single parcel of land whilst being suitable for the erection of a single dwelling may not be suitable for dual occupancy development. The planning proposal will need to demonstrate that an increase in residential density can achieve the following principles:

Postal address

Records
NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address


NSW Rural Fire Service
Planning and Environment Services (North)
Suite 1, 129 West High Street
COFFS HARBOUR NSW 2450

T (02) 6691 0400
F (02) 6691 0499
www.rfs.nsw.gov.au
Email: pes@rfs.nsw.gov.au

- o APZ based on a radiant heat threshold of 29kW/m² for any new housing opportunities;
- o suitable provisions for construction, access, water and landscaping.

For any queries regarding this correspondence please contact Alan Bawden on 1300 NSW RFS.

Yours Sincerely



Ivan Perkins

Acting Manager – Planning and Environment Services North

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.



NSW RURAL FIRE SERVICE

Ballina

Your reference: BSCPP 18/003
Our reference: SP-2019-00047

ATTENTION: Klaus Kerzinger

Date: Monday 23 December 2019

Dear Sir/Madam,

Strategic Planning Instrument
Draft LEP – Gateway
BALLINA LEP 2012 - ATTACHED DUAL OCCUPANCY, WARDELL

I refer to your correspondence dated 11/09/2019 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and provides the following comments.

1. The NSW RFS has no objection to the planning proposal providing the planning proposal is amended to reflect the recommendations of the Bushfire Results Brief, prepared by Bushfire Risk, dated 9 September 2019.

For any queries regarding this correspondence, please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely,

Kalpana Varghese
Manager Planning & Environment Services
Planning and Environment Services

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555
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www.rfs.nsw.gov.au

Appendix 7 – Adopted DCP Amendments

Amendments authorised to be exhibited by Council at its Ordinary meeting on 13 December 2018. Adopted by Council at its Ordinary meeting on 24 October 2019 and effective for Alstonville from 13 December 2019.

(Will also be effective for Wardell from the date of publication of the Wardell LEP Amendment on the NSW Legislation web site – assuming Council resolves to finalise).

Draft Amendments to Chapter 2 – General and Environmental Considerations

- *Insert the following text as a note in Part 3.5 Land Slip / Geotechnical Hazard:*



Note:

Attached dual occupancy development within the Alstonville R2 Low Density Residential Zone upon lots having a slope gradient of greater than 20% is deemed to be an inappropriate form of development having regard to land slip risk factors and the degree of site works (cut and fill / retaining walls) required.

Draft Amendments to Chapter 3 – Urban Subdivision

- *Amend Table 3.1 in Part 3.1.2 Minor Subdivision Control Elements, Element G: Minimum Lot Size and Shape, as shown below in yellow:*

Table 3.1 – Lot Size Requirements				
Built Form	Zone	Min. Lot Size	Min. Lot Width	Requirements
Detached Dwelling Houses	R2, R3	450m ² 550m ² – per corner lot	12m	– Irregular shaped lots to contain a building envelope nominating rectangle with minimum dimensions of 10m x 15m
Dual Occupancies	R3	450m ² – per attached dual occupancy 600m ² – per detached dual occupancy	12m	– Must be capable of containing a building envelope nominating rectangle with minimum dimensions of 10m x 15m
Dual Occupancy (Attached)	R2 (Alstonville)	900m ²	12m	– 20% maximum slope gradient permitted
Dual Occupancy (Attached)	R2 (Wardell)	450m ² – per attached dual occupancy	12m	– Must be capable of containing a building envelope nominating rectangle with minimum dimensions of 10m x 15m
Semi-	R3	300m ² per	10m	– Integrated

Amended Planning Proposal 18/003 – Attached Dual Occupancy, Wardell

Detached Dwellings		dwelling		development requirements (Chapter 4 Section 3.2)
Attached Dwellings	R3	300m ² per dwelling	10m	<ul style="list-style-type: none"> - Integrated development requirements (Chapter 4 Section 3.2) - Parent lot to be nominated at the subdivision stage - Dwellings to be accessed via rear laneway
Multi Dwelling Housing	R3	1000m ²	10m	<ul style="list-style-type: none"> - Density provisions regarding site area per unit are provided in Chapter 4
Residential Flat Buildings	R3	1000m ²	On merit	<ul style="list-style-type: none"> - Density provisions regarding site area per unit are provided in Chapter 4

Draft Amendments to Chapter 4 – Residential and Tourist Development

- Amend Table 4.6 in Part 3, Element N – Minimum Lot Area, as shown below in yellow:

Table 4.6 - Minimum Lot Areas for Residential Accommodation		
Type of Residential Accommodation	Zone	Minimum Lot Area
Dwelling House	R2, R3	450m ² 550m ² – corner lots
Dual Occupancy	R3	450m ² - attached 600m ² - detached
Dual Occupancy (Attached) (Alstonville)	R2	900m ²
Dual Occupancy (Attached) (Wardell)	R2	450m ²
Semi-Detached Dwelling (per dwelling)	R3	300m ²
Attached Dwelling (per dwelling)	R3	300m ²
Multi Dwelling Housing	R3	1000m ²
Residential Flat Building	R3	1000m ²

Additional DCP Amendments Authorised by Council for Exhibition at its Ordinary meeting on 24 October 2019 and adopted at Council's Ordinary meeting on 23 January 2020.

Amendments to Ballina Shire DCP 2012 – Chapter 4 Residential and Tourist Accommodation

Element T – Incorporation of Existing Dwellings into Attached Dual Occupancy Development

3.3 Attached Dual Occupancy (incorporating retention of existing dwelling)

3.3.1 Application

Applies to:	
Location/s:	Certain lots within the Zone R2 at Alstonville and Wardell (Refer Ballina LEP 2012 clause xxx)
Development Type/s:	Applications for attached dual occupancy development which seek to retain an existing dwelling

3.3.2 Background

Ballina LEP 2012 was amended to permit **attached dual occupancy** development upon certain lots within the R2 zone at Alstonville and Wardell. The amendments permit new purpose built **attached dual occupancy** development. They also permit the incorporation of existing dwellings within the **attached dual occupancy** development. Element T addresses amenity impacts associated with the retention of existing **dwellings** as part of **attached dual occupancy development**.

3.3.3 Planning Objectives

- a. Ensure the orderly development of the site;
- b. Minimise the potential amenity impacts associated with developing a new dwelling attached to an existing dwelling on the same lot of land;
- c. Require improvement or rectification of the existing dwelling to ensure its compatibility with and integration into the new development;
- d. Ensure that the attached dual occupancy development makes a positive contribution to the streetscape and neighbourhood;
- e. Encourage the renewal of old housing stock as part of any attached dual occupancy development seeking to retain an existing dwelling; and
- f. To discourage development on battle axe shaped lots.
- g.

3.3.4 Development Controls

A. Building Design – General

- i. Designs for attached dual occupancy development which retain existing **dwelling**s within the development must demonstrate that:
 - the existing dwelling can address relevant development controls identified in Part 3 General Controls of this chapter related to dual occupancy development. This includes privacy (Element I (iii)) and solar access (Element J);
 - Sanitary drainage lines are to be designed and installed so that each dwelling has its own individual sanitary drainage lines, each with an overflow gully and inspection shaft upstream of a single connection to the main house drainage line connecting the dwellings;
 - Separate individual Council installed water meters having separate connections from the meter to each dwelling are to be provided. Meters are to be individually tagged for residential unit identification and located near the front boundary for ease of meter reading purposes; and
 - each **dwelling** shall be provided with **landscaped areas** and **private open space** in accordance with the requirements of Element G in section 3.1.3 of this chapter.
- ii. The **building height plane** specified in section 3.1.3 of this chapter applies to applications for attached dual occupancy development (old and new sections).

B. Additional controls for *attached dual occupancy development*

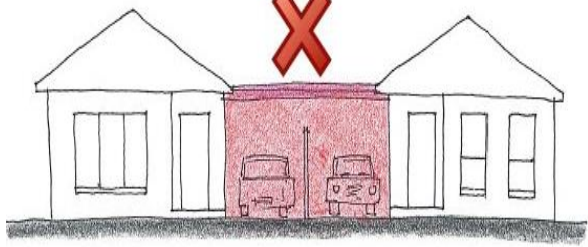
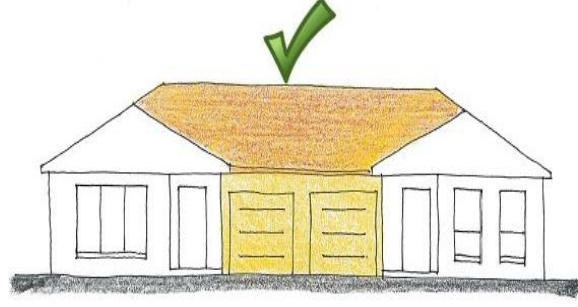


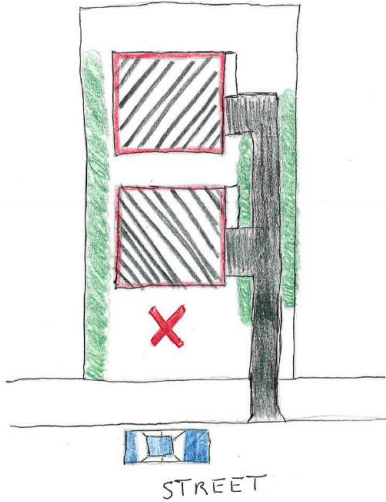
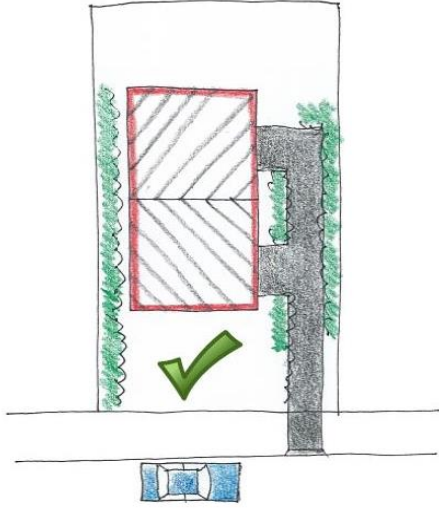
- i. **Attached dual occupancy** development that retains all or part of an existing **dwelling** must be designed to be complementary to one another with respect to building form, materials and landscaping.
- ii. Carports and breezeways are deemed to be an inappropriate means of attaching the existing **dwelling** to the new **dwelling**.
- iii. Uniformity of roof design between the old and new dwelling is required.
- iv. Where development of the new **dwelling** affects the existing **dwelling's** ability to comply with the relevant controls in this DCP, or does not comply with relevant Building Code of Australia (BCA) requirements, Council may require the existing **dwelling** to be:
 - a. upgraded to the meet the relevant development controls identified in this DCP and/or BCA requirements; or
 - b. the applicant to consider rebuilding in accordance with the controls identified in this DCP.
- iii. **Attached dual occupancy** development proposed on a corner allotment shall address both frontages by the use of verandas, balconies, windows or similar modulating elements.

- iv. The location of mail and garbage services are to be nominated and adequate provision made for each **dwelling** to access such services.
- v. Unless demonstrated to the contrary **attached dual occupancy** development on battle-axe shaped lots is deemed an inappropriate form of development.
- vi. Where a wall of an existing **dwelling** forms a separating wall between the two **dwellings**, details of the means of achieving the fire separation and noise transmission provisions of the BCA are to be provided at the Development Application stage.

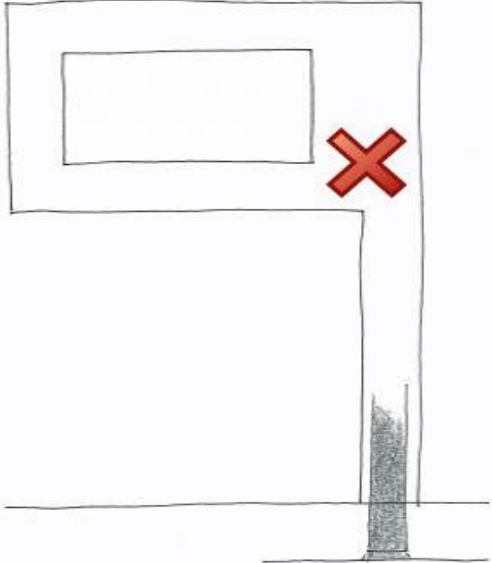
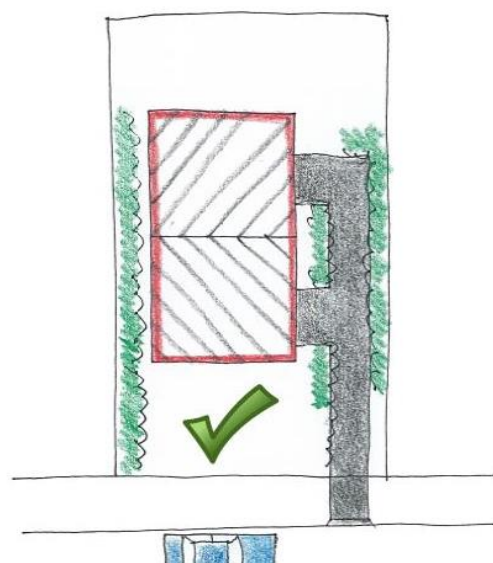
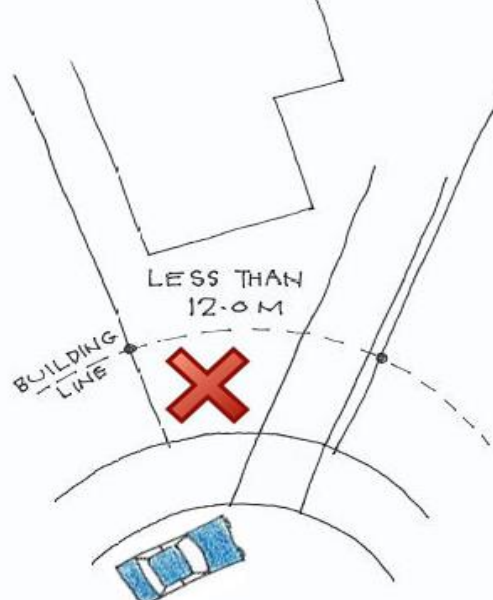
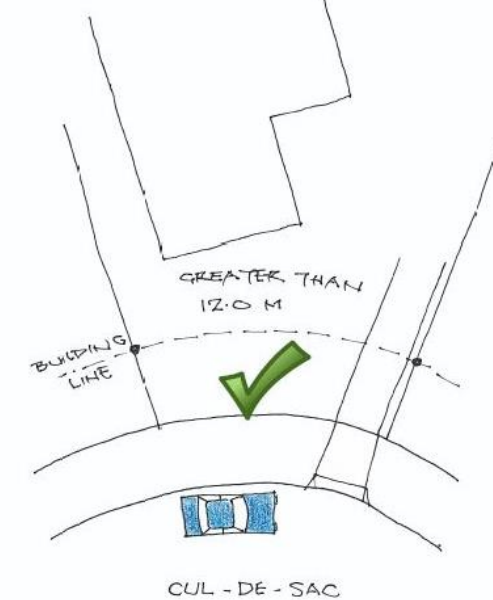


Note: Where a Performance Solution is proposed, for the fire separation and noise transmission provisions of the BCA, a report from a Fire Engineer and / or Acoustic Engineer may be required.

Attached Dual Occupancy - Acceptable and Unacceptable Addition Solutions

	
<p>Linking dwellings with car ports or breezways is an unacceptable solution.</p>	<p>Linking dwellings by incorporating a consistent roof design style is an acceptable solution.</p>
	
<p>Dual occupancy extensions which result in visually inconsistent design elements such as a gable and skillion roof combinations, and inconsistency in the use of building materials such as brick and cladding are unacceptable.</p>	<p>Extensions which unify the design through consistency of design elements such as roof, windows, height and materials are acceptable.</p>
 <p style="text-align: center;">STREET</p>	 <p style="text-align: center;">STREET</p>
<p>Detached dual occupancy is not permitted by provisions contained within Ballina LEP 2012. Both dwellings must be attached and visually look like one building.</p>	<p>Attached dual occupancy addition onto the rear of an existing dwelling may be acceptable providing the development is visually unified through design and materials.</p>

Attached Dual Occupancy Suitable and Unsuitable Sites

 <p style="text-align: center;">STREET</p>	 <p style="text-align: center;">STREET</p>
<p>Battle axe lots are considered unsuitable for attached dual occupancy development due to lack of on street parking in front of the lot and overlooking and privacy concerns.</p>	<p>Rectangular lots which provide space for on street parking are considered suitable for attached dual occupancy development.</p>
 <p style="text-align: center;">CUL - DE - SAC</p>	 <p style="text-align: center;">CUL - DE - SAC</p>
<p>Cul-de-sac lots which have a width of less than 12 metres at the 6 metre building line are considered unsuitable for attached dual occupancy development as they provide insufficient space for the parking of a vehicle in front of the lot.</p>	<p>Larger frontage cul-de-sac lots which have sufficient width to park at least 1 vehicle in front of the lot are considered suitable for attached dual occupancy development.</p>