

Ballina Shire Council
40 Cherry Street
BALLINA NSW 2478

PO Box 450
BALLINA NSW 2478

1300 864 444
council@ballina.nsw.gov.au
www.ballina.nsw.gov.au



© Ballina Shire Council © NSW Spatial Services 2020
While every care is taken to ensure the accuracy of this product, Ballina Shire Council and the Local / State / Federal Government departments and Non-Government organisations whose supply datasets, make no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which you might incur as a result of the product being inaccurate or incomplete in any way and for any reason.

ballina shire council
geographical information system

Projection: GDA94 / MGA zone 56
Date: 21/04/2020

Development and Environmental Health Group
Development Application Assessment Form
Pursuant to s.4.15 (1) of the EP & A Act 1979

Development Application No:	2018/432
Applicant's Name & Address:	Ardill Payne & Partners PO Box 20 BALLINA NSW 2478
Lodgement Date:	26 July 2018
Date Determined:	29 October 2019
Assessment Period (days):	Total days = 461 Stop the clock days 21/08/2018 – 29/10/2019 = 434 Assessment days = 27
Determined by: (under Delegated Authority – s.378 of LG Act 1993 /DAP/Council/JRPP/NSW DoP)	Delegated Authority
Subject Land:	Lot 1 DP 575688, Lot 2 DP 776207, 2 Old Pacific Highway NEWRYBAR, 10 Old Pacific Highway NEWRYBAR
Description of Proposed Development:	Two lot subdivision by way of boundary adjustment to create 1 x 1080sqm and one x 776sqm allotments and construction of a shed on Proposed Lot 1

Does the Proposal involve a variation to a Development Standard?	Yes (SEPP 1 – BLEP 1987)
---	--------------------------

Having inspected the site and assessed the application in terms of relevant matters for consideration enumerated in Section 4.15 (1) of the EP & A Act 1979 and other pertinent concerns as detailed in the following sections of this report, it is recommended that the application be determined by:

1. Refusing of consent (refer to Notice of Determination)

Site inspection date:	21 and 29 August 2018
Is the development designated development?	NO
Is the development integrated development?	NO
List consultations/referrals undertaken and comments provided:	External: Rous Water – Not supported due to OSSM issues Internal: Civil Services: Response received Environmental Health: Not supported due to OSSM issues Building Services: Further information required before comment could be made.

Explanation of Proposal**History**

Lot 1 DP 575688 (Proposed Lot 1) was created by severance associated with the rerouting of the Pacific Highway through Newrybar. The original dwelling which occupied the site at the time of the highway deviation occupies Lot 2 DP 575688, located on the eastern side of the road. The manner in which Lot 1 DP 575688 was created did not meet the provisions of Clause 11 and therefore did not enjoy a dwelling entitlement.

A development application was lodged with Council to seek consent for a dwelling to be erected on Lot 1 DP 575688. This application was refused by the Council and the subsequent appeal by the applicant with the Land and Environment Court was dismissed on 25 October 2001. The BLEP 1987 Amendment No. 75 was gazetted on 13 September 2002 to allow, with consent of Council, to erect a dwelling house on Lot 1 DP 575688.

A development application was lodged with Council DA 2003/578 to seek approval for a dwelling was approved on 5 December 2002. Council's records indicate that a Final Occupation Certificate has not been issued for the dwelling. Council's records provide that a site inspection of the property (15 June 2010) identified that the OSSM Land Application Area (LAA) installed is not in accordance with the conditions of the Approval to Install associated with DA 2003/578.

Lot 2 DP 776207 (Proposed Lot 2). Council issued an Order under Section 123 of the Local Government Act to rectify defects with the OSSM system on 22 July 2014. Council received a Section 68 application to Install, Construct or Alter OSSM system accompanied with an OSSM report from Dave Abbott Plumbing. This report highlighted the property is within the Emigrant Creek Catchment 7(c) Environmental Protection land zone and the small allotment size presents constraints for onsite wastewater management but outlined the installation of a 5000L AWTS with a 15m x 2m x 450mm ETA Bed as shown in the below diagram would be suitable. It should also be highlighted that the report for the system did not refer to Council's current OSSM Guidelines 2017.

Council issued an Approval to Install an OSSM System on 30 January 2018 which included the requirement for the system to be installed in accordance with the design by Dave Abbott Plumbing. On 25 May 2018 in error, Council issued a Certificate of Approval to Operate. Subsequently, a letter was issued to the property owner notifying them of this error and highlighting the requirements of the Order still needs to be complied with and a new Approval to Operate will be issued once this has occurred. Although the Certificate of Compliance outlined the system was installed as per Council approval, information provided to Council, show the system in a different location.

Council records indicate to date, an Approval to Operate has not been issued.

Proposal

The proposal seeks consent for a boundary adjustment subdivision of two lots to create one x 1080m² allotment (Proposed Lot 1) and one x 776m² allotment (Proposed Lot 2) and the erection of a shed (boat storage) on Proposed Lot 1.

The proposal will result in the erection of an additional shed with overall dimensions of 8m (W) x 11.5m (L) x 5.378m (H), to be erected on Proposed Lot 1. This is in addition to a triple bay garage with associated storage area and a single car port. The use of the shed is for boat storage, and the proponent has made Council aware that the existing triple bay garage is not high enough to accommodate a large fishing boat.

Boundary Adjustment

The subject sites are zoned 7(c) Environmental Protection (Water Catchment) under the Ballina Local Environmental Plan (BLEP) 1987 and consequently, the provisions of the BLEP 1987 apply to the subject lands. The proposed boundary adjustment subdivision will result in two modified allotments, each being significantly less than the 40 hectare minimum lot size as stipulated in Clause 11 of the BLEP 1987.

The existing and proposed lot areas and their variation from the minimum lot size development standard (40h) are shown in the following table:

Existing			Proposed			
Lot	Area	Variation (%)	Lot	Area (ha)	Variation (%)	Variation between existing and proposed (%)
1	815m ²	99.79%	1	1080m ²	99.73%	32.5% increase
2	1015m ²	99.74%	2	776m ²	99.8%	23.5% decrease

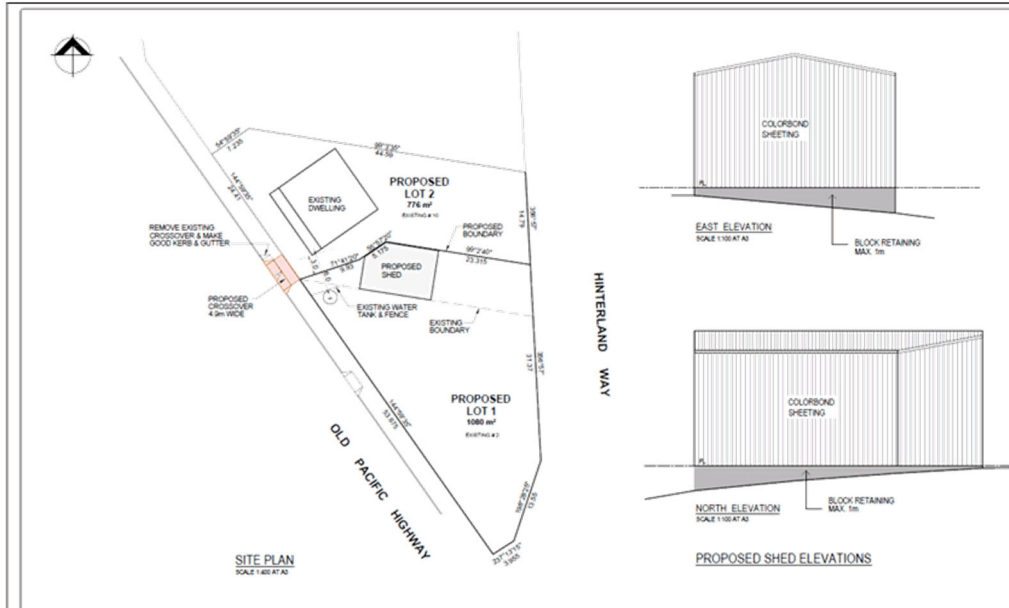
Assessment

During the assessment, it was identified that the Proposed Lot 2 reduction in lot area and width to the rear of the property will restrict the ongoing operation and maintenance of the existing OSSM system (with appropriate buffers and required reserve trench). The development application was not accompanied with an OSSM report to support the application, as required for any subdivision/boundary adjustment in non-sewered areas, pursuant to Council's OSSM Management Strategy 2017.

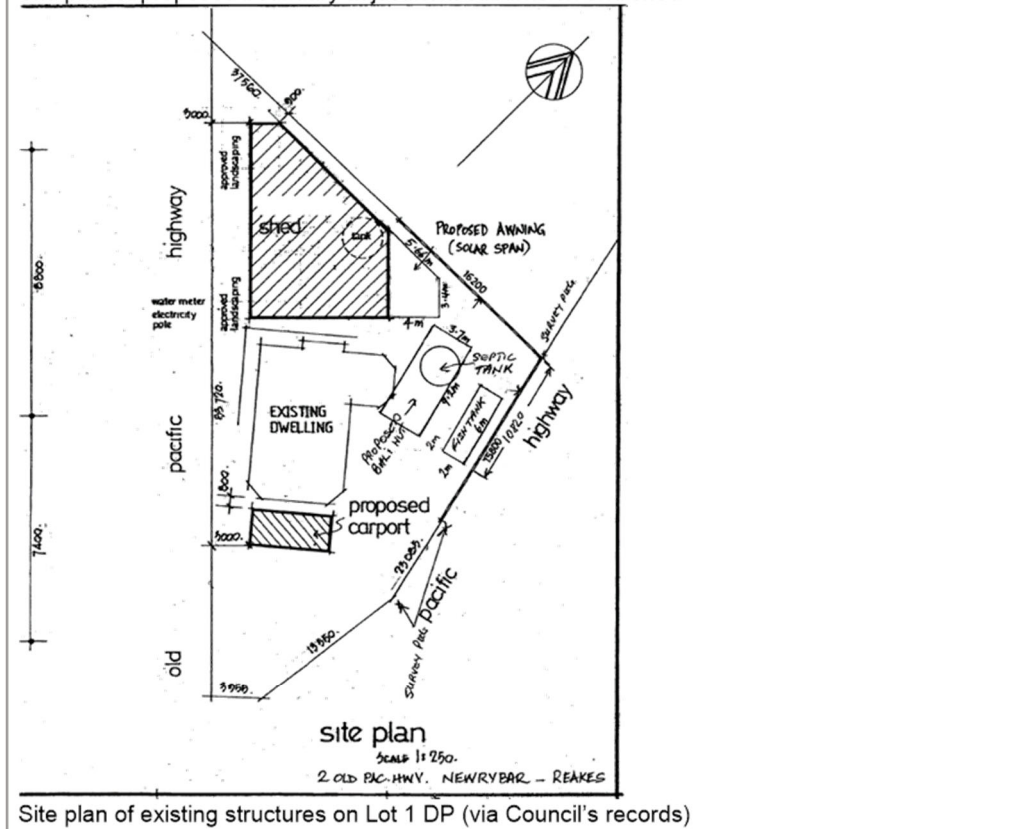
Council issued a request for additional information on 21 August 2018 and again on 28 September 2018 for the applicant to provide Council with an On-site Sewage Management (OSSM) Report, prepared in accordance with Council's Strategy to support the proposed boundary adjustment. The applicant has not provided Council with an OSSM report. This was considered necessary for Council to adequately assess the suitability of the proposal.

The applicant provided Council a revised OSSM design on 2 August 2019. The amended design; did not adequately address Council's concerns, was not designed in accordance with Council's OSSM Guidelines 2017, did not meet any setback requirements of the Rous Water Onsite Wastewater Guidelines and therefore, is not supported by Council.

On the advice from Council's Civil Services, the applicant was advised that the application was unlikely to be supported as a result of the proposed extra crossover that would result in three crossovers for one property. In response, the applicant revised the development proposal. The existing driveway fronting proposed Lot 2 is to be reconstructed closer to the boundary. No new driveway frontage is proposed for Lot 1 and a right of carriageway would be relied upon over Proposed Lot 2 for access to the shed.



Site plan of proposed boundary adjustment subdivision and shed



Site plan of existing structures on Lot 1 DP (via Council's records)

ASSESSMENT OF THE APPLICATION UNDER SECTION 4.15 (1) OF THE EP& A ACT 1979

4.15 (1) (a) (i) - the provisions of any environmental planning instrument

Local Environmental Plans (LEPs)

Relevant LEP	Applies YES/NO
Ballina Local Environmental Plan 2012	NO
Ballina Local Environmental Plan 1987 (Note: BLEP 1987 only applies to land identified as "Deferred Matter" on the Land Application Map accompanying the BLEP 2012)	Yes

Ballina LEP 1987 – Zoning, Permissibility and Relevant Clauses	Comments/Is consistency with these provisions achieved?
Aims, objectives of BLEP (Clause 2)	The proposal is generally consistent with the aims and objectives of BLEP 1987.
Land use definition (Clause 5) (includes Clause 4(1) of Model Provisions 1980)	<p>'Subdivision' is not classified as a land use and is not defined in the BELP 1987 or Model Provisions 1980.</p> <p>Note: the subdivision of land is classified as a form of development under section 1.5 of the <i>Environmental Planning & Assessment Act 1979</i>.</p>
Zoning under BLEP 1987, permissibility within zone and compliance with zone objectives (Clause 9)	<p>The subject allotments are mapped within the 7 (c) Environmental Protection (Water Catchment) Zone.</p> <p>Objectives of the zone:</p> <p><i>A. The primary objective is to prevent development which would adversely affect the quantity or quality of the urban water supply.</i></p> <p><i>B. The secondary objective is to regulate the use of land within the zone:</i></p> <p><i>(a) To encourage the productive use of land for agricultural purposes and to permit development which is ancillary to agricultural land uses, except for development which would conflict with the primary objective of the zone, and</i></p> <p><i>(b) To ensure development of the land maintains the rural character of the locality, and</i></p> <p><i>(c) To ensure development of the land does not create unreasonable and uneconomic demands, or both, for the provision or extension of public amenities or services.</i></p> <p>Clause 9(7) provides that Council shall not grant consent to the carrying out of a development on land to which this plan applies unless the carrying out of the development is consistent with the objectives of the</p>

	<p>zone within which the development is proposed to be carried out.</p> <p>The proposal is not considered to be consistent with the primary objective of the 7(c) zone. The boundary adjustment, as proposed, will reduce the land available to manage the ongoing operation and maintenance of the OSSM system installed on Proposed Lot 2. The proposal has not demonstrated that there is adequate land available with appropriate buffers to install the required reserve trench. The proposal may adversely impact on the quality of the urban water supply and may adversely impact the public health given the land being within the Emigrant Creek Catchment.</p>
Subdivision generally (Clause 10)	<p>Clause 10 identifies that a person should not subdivide land except with consent from Council.</p> <p>The subject application was lodged for a Boundary Adjustment subdivision between two existing rural allotments.</p> <p>However, for reasons contained within the Notice of Determination, Council does not support the proposal.</p>
Subdivision of land within Zone No. 1 (a1), 1 (a2), 1(b), 1 (d), 1 (e), 7 (a), 7(c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l) (Clause 11)	<p>The application was lodged under Clause 11(6)(b). Clause 11(6)(b) of the BLEP 1987 permits minor boundary adjustments to common property boundaries, but only if Council is satisfied that any such adjustment will not lead to:</p> <p><i>(i) the creation of any additional allotments or additional dwelling entitlements or both, and</i></p> <p>No additional dwelling entitlements will result from the proposed boundary adjustment.</p> <p><i>(ii) a substantial change to the land area contained in each allotment or a substantial change to the area of each allotment, and</i></p> <p>The proposal will result in a substantial change to the land area (numerically) of each allotment. Proposed Lot 1 will increase from 815m² to 1080m² (32.5% increase), while Proposed Lot 2 will decrease from 1015m² to 776m² (23.5% decrease).</p> <p><i>(iii) an increase in the size of an allotment that would provide in the future for the creation of additional allotments or additional dwelling entitlements, and</i></p> <p>The increase in the size of existing Lot 1 from 815m² to 1080m² (265m² increase) would not provide in the future for the creation of additional allotments or additional dwelling entitlements as the allotment</p>

	<p>remains significantly below the minimum lot size of 40 hectares.</p> <p><i>(iv) an increase in the likelihood of potential for land use conflict,</i></p> <p>The subject allotments are situated within the Newrybar village and do not adjoin agricultural (cultivable) lands. The proposed boundary adjustment will not result in additional uses that could be in conflict with any agricultural activities.</p>
<p>Limitation on building height (Clause 17)</p>	<p>The proposed shed has a ceiling height of 4.6m and therefore complies with this standard.</p>
<p>Development within Zone No 7 (c) (Clause 24A)</p>	<p>In determining an application for consent to carry out development on land to which this clause applies, Council must take into consideration the following matters:</p> <p><i>(a) Any potential adverse impact, including any incremental adverse impact, on the water quality within the catchment that may result from the development;</i></p> <p>Comment: The proponent has provided that the proposed boundary adjustment and construction of a shed will not have any impacts on the quality of the water in the catchment. Contingent upon the continued appropriate management and treatment of waste water from the dwellings.</p> <p>This is not agreed upon. The applicant has not adequately demonstrated that the proposed lots are suitably sized and configured to accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench). The proposal is likely to result in a development that has a potential to have an adverse impact on the water quality within the catchment and therefore, not supported.</p> <p><i>(b) Whether adequate safeguards and other measures have been proposed to protect the water quality;</i></p> <p>Comment: The applicant has stated that there are no particular safeguards considered necessary in respect to protecting the water quality.</p> <p>This is not agreed upon by Council and Rous Water. Both lots are already significantly constrained in relation to provisions for on-site sewage management. A reduction to Proposed Lot 2 will further constrain an already limited site in the ability to adequately manage the ongoing operation and maintenance of the existing</p>

	<p>OSSM system (with appropriate buffers). The applicant has not demonstrated that there is sufficient land area for the required reserve trench. This is a mandatory safeguard to protect the water quality should the system fail.</p> <p><i>(c) Whether the proposed development would be more suitably undertaken on an alternative site;</i></p> <p>Comment: The subject sites are not considered suitable to support the development. The proposal involves a boundary adjustment of two existing and significantly constrained allotments to provide additional land for Proposed Lot 1 to erect a shed. Proposed Lot 1 is benefited by a number of buildings/structures and is considered to be an over-development of the site.</p> <p><i>(d) Any comments that have been provided in relation to the proposed development following consultation with the relevant water supply authority;</i></p> <p>Comment: The land is within the Emigrant Creek Catchment and Rous County Council is the water supply authority in this regard. The proposal was originally referred to Rous Water for comment (08/08/2018). Council received the following: No comments from asset/water connection perspective. Council received further comment from Rous Water (22/03/2019) to the effect that the proposal is not supported on the following basis:</p> <p><i>Whilst Rous County Council (RCC) would always look to find a solution to facilitate a proposed development where the proposed development is permissible and where issues can be appropriately managed, this cannot come at the expense of compromising critical safeguards.</i></p> <p><i>The Rous On-site Wastewater Management Guidelines do afford Council's a degree of flexibility in applying these guidelines, however, this flexibility does not extend to buffer distances. Whilst the buffer distances here in question relate to property boundaries and not waterways (although there is site drainage immediately behind the property), this still provides a limit to the potential effluent loading available at the site and so this is effectively still an absolute constraint.</i></p> <p><i>As stated above, where issues can be appropriately managed, RCC would always try to establish a solution. However any options for these sites that would facilitate the proposed boundary adjustment on</i></p>
--	--

	<p><i>such a constrained site and allow for both adequate buffers both for now and the future would be very limited.</i></p> <p><i>Accordingly, RCC has reviewed the assessment undertaken by BSC staff and is in agreement with the findings made by the BSC specialist staff i.e. that the proposed boundary adjustment is not supported.</i></p> <p>Council supports Rous Water's comments and does not support the proposed development.</p>
Relevant Clauses of the Environmental Planning and Assessment Model Provisions 1980	<p>Part 3 Clause 5</p> <p>The subject lots adjoin the Hinterland Way which is considered to be a main road that services the Newrybar village and surrounds. The Hinterland Way was once a main highway network. The proposed shed is not likely to be visible from the Hinterland Way. No issues are raised in regard to this clause in relation to aesthetic impact when viewed from any road.</p>
BLEP 1987 - SEPP 1	
Questions	Comments (Y/N, complies)
Has the applicant submitted a written request to vary a development standard as part of the development application?	Yes
Identify when the written request was lodged (as part of lodgement of DA or during assessment process). Provide details of circumstance if written request was not submitted as part of the lodgement of the development application (i.e. was a non-compliance identified after lodgement, was the proposal modified after lodgement resulting in a non-compliance?).	The request was lodged as part of the Development Application within the Statement of Environmental Effects.
Have all the required matters listed as part of SEPP 1 and as outlined within Council's written request form been satisfactorily answered by the applicant?	The applicant has provided a detailed request for the variation to the standard within the lodged Development Application, which provides commentary on each of the required matters.
Assessment of requested variation	
a) What is the development standard being varied? (provide details of clause in BLEP 1987, including objectives of the development standard, numeric value and percentage variation)	<p>The request to vary Clause 11 Subdivision of land within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l).</p> <p>Clause 11(2)(b) of the BLEP relates to the minimum lot size within the 7(c) zone, and states the following:</p> <p><i>(2) Except as provided by subclause (3), the council may consent to the subdivision of</i></p>

	<p><i>land referred to in subclause (1) only where the area of each allotment to be created by the subdivision is not less than:</i></p> <p><i>(a) in the case of land within Zone No 1 (a1) or 7 (i)—20 hectares, and</i></p> <p><i>(b) in the case of land within Zone No 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (d1), 7 (f) or 7 (l)—40 hectares.</i></p> <p>The minimum lot size standard for the 7(c) zone (subject allotments) is 40 hectares.</p> <p>There is no defined objective of Clause 11. However, the assumed underlying objective of the clause is to restrict subdivision of rural land so the area and quality of the land is maximised for agricultural productivity and the land remains of a size and configuration to support a dwelling and associated infrastructure (including OSSM).</p> <p>When considering the application of the development standard in this particular location, it is considered appropriate to have regard to the objectives of the zone to which the proposal relates. The primary objective of the zone is to prevent development which would adversely affect the quantity or quality of the urban water supply.</p> <p>The numerical values and percentage of the departure from the standard:</p> <p>Lot 1 DP 575688 (Proposed Lot 1), 2 Old Pacific Highway, has a total area of 815m², which is 99.79% below the 40 hectare minimum lot size for the zone. The proposed modified lot (Proposed Lot 1) will result in a total land area of approximately 1080m², resulting in a 99.73% variation to the development standard.</p> <p>Lot 2 DP 776207 (Proposed Lot 2), 10 Old Pacific Highway, has a total area of 1015m² in area, which is 99.74% below the 40 hectare minimum lot size. The proposed modified lot (Proposed Lot 2) will result in a total land area of approximately 776m², resulting in a 99.8% variation to the development standard.</p> <p>Both existing lots are well under the minimum lot size and it is not possible to comply with this development standard.</p>
--	--

<p>b) What is the underlying objective of this development standard?</p>	<p>There are no specific objectives contained within Clause 11 relating to the minimum lot size development standard.</p> <p>However, it is assumed that the underlying objective (whilst not specifically stated) is to ensure that the proposed lot size and configuration is adequate in size for agricultural purposes and remains of a size to adequately support a dwelling, associated structures including OSSM infrastructure.</p> <p>The subject lands are within an environmental protection zone and within the Newrybar village, which historically contains a large number of lots that do not comply with the development standard. It is therefore considered acceptable to consider the underlying objective to be site specific. In this instance, it is appropriate to assume that the underlying objective of the standard within the subject locality is to maintain appropriately sized allotments to accommodate a reasonably sized dwelling and sufficiently maintain and manage compliant OSSM systems and provide sufficient land for recreational use for the occupants.</p>
<p>c) In accordance with clause 8 of SEPP 1:</p> <ul style="list-style-type: none"> • Does the non-compliance with the development standard raise any matters of significance for state or regional environmental planning? • Is there a public benefit in maintaining the planning controls adopted by the Ballina Local Environmental Plan 1987? 	<ul style="list-style-type: none"> • Non-compliance with this standard would not raise any matters of significance for state or regional environmental planning. • In this instance there is a public benefit in not allowing further noncompliance with the minimum lot size development standard in the Ballina Local Environmental Plan 1987. The development would result in a significantly constrained allotment (Proposed Lot 2) that would limit the future potential of the site and highly restrict ongoing operation and maintenance of the existing OSSM system. <p>Given the lands are within the water catchment zone, there are public health concerns with this application, should the OSSM system fail. The applicant has not demonstrated that Proposed Lot 2 is sufficient in size and dimensions to accommodate the required reserve OSSM system in accordance with the Council issued Approval to Install and the Rous Water's guidelines.</p>
<p>d) Will the cumulative effect of similar approvals undermine the objective of the</p>	<p>The cumulative effect of similar developments within the Newrybar locality would undermine</p>

<p>development standard or the objectives of the zone?</p>	<p>the underlying objective of the development standard and the objective of the 7(c) zone.</p>
<p>e) The Five Part Test (Note: only one of these tests needs to be satisfied)</p> <ul style="list-style-type: none"> • Are the objectives of the standard achieved notwithstanding non-compliance with the development standard? • Is the underlying objective or purpose of the development standard not relevant to the development and therefore compliance is unnecessary? • Will the underlying object of the purpose be defeated or thwarted if compliance was required and therefore is compliance unreasonable? • Has the development standard been virtually abandoned or destroyed by Council's actions in granting consents departing from the development standard and therefore is compliance with the development standard unnecessary and unreasonable? • Is compliance with the development standard unreasonable or inappropriate due to the existing use of the land and current environmental character of the subject property (should this property have been included in the current zone)? 	<p>When determining a SEPP 1 objection, it is expected that the applicant has demonstrated to Council's satisfaction that the objection is well founded and compliance with the development standard is unreasonable or unnecessary in this instance. To demonstrate the above, the applicant can apply one of the five part test established in <i>Wehbe v Pittwater Council</i> [2007] NSWLEC 827. The applicant has not specifically identified the test in which they rely to support the SEPP 1 objection. Therefore, Council is to assume that Test 1 is of significance given that the applicant has justified the objection on the following basis: <i>'The proposal is in full compliance with all development standards and is permitted with consent and is consistent with the objectives of the zone'</i>.</p> <p>Notwithstanding this, all tests have been considered in this case.</p> <p><u>Test 1</u></p> <ul style="list-style-type: none"> • There is no specific objective contained within the standard. However, it is assumed that the underlying objective of the standard with regard to these sites is to ensure that the proposed lot size configuration is adequate in size for agricultural purposes and remains of a size to adequately support a dwelling and relevant infrastructure services (i.e. On-site Sewage Management Systems). <p>For reasons contained within the report, it has been identified that the reduction in lot size to Proposed Lot 2 is inappropriate to sufficiently accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench). It has been identified that the development does not comply with a number of Council's Development Controls as a result of the boundary adjustment. This further highlights that the proposal is inconsistent with the underlying objective of the standard and is insufficient in size to appropriately accommodate all required infrastructure services.</p>

	<p>Further to the above, principles of the five part test as set out in <i>Winton Property Group Limited v North Sydney Council</i> [2001] NSWLEC have been considered in determining the SEPP 1 objection. It is considered that the proposal does not meet the underlying objectives of the development standard nor the objectives of the zone. Therefore, it is considered that the proposal has not adequately demonstrated that further non-compliance with the standard is reasonable or necessary, in this instance. Given that the proposal has not adequately demonstrated that the underlying objectives of the development standard will be achieved, the objection is not considered to be well founded.</p> <p><u>Test 2</u></p> <ul style="list-style-type: none"> The underlying objective or purpose of the development standard is considered to be relevant to the development to ensure that adequate land is available to support a dwelling and associated structures and infrastructure. The reduction to Proposed Lot 2 is not considered to be adequate in size (width) to adequately manage the ongoing operation and maintenance of the existing OSSM system. <p><u>Test 3</u></p> <ul style="list-style-type: none"> The development standard cannot be maintained in this instance as neither lot complies. Given the reduction in land area to Proposed Lot 2, the underlying objective would be defeated or thwarted if further non-compliance with the standard was permitted, as the land would not be of a size that could appropriately accommodate the required OSSM infrastructure. <p><u>Test 4</u></p> <ul style="list-style-type: none"> The existing subdivision layout within the locality is historical, and therefore, the development standard is not considered to be abandoned or destroyed by Council's actions under the provisions of the BLEP 1987. Though it is acknowledged that a variation to this standard can be supported via a SEPP 1 objection when the
--	--

	<p>development is consistent with the underlying objective of the standard and the zone. This has not been demonstrated to Council's satisfaction in this instance.</p> <p><u>Test 5</u></p> <ul style="list-style-type: none"> Compliance with the development standard cannot be maintained as neither lot complies. The applicant has not sufficiently demonstrated that the development standard is unreasonable or inappropriate due to the existing use of the land and current environmental character (i.e. are the lands appropriately zoned). It is established that the lands are appropriately zoned within the water Emigrant Creek catchment area and further non-compliance with the development standard is not considered to be a necessity in this instance. This is to maintain the existing lot sizes and dimensions to allow for each lot to appropriately manage OSSM systems within the already highly constrained sites. <p>In conclusion, for the reasons outlined within this report, it is considered that the applicant has not satisfactorily demonstrated that there are sufficient environmental planning grounds to justify the SEPP 1 objection. The proposal does not meet the underlying objective of the standard nor the objectives of the 7(c) Water Catchment zone and therefore, Proposed Lot 2 is not considered adequate to support the development.</p>
--	---

State Environmental Planning Policies (SEPPs)

Relevant SEPPs	Comments/Is consistency with these provisions achieved?
SEPP 55 – Remediation of Land	<p>The objective of SEPP 55 is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.</p> <p>The properties are not on Council's Contaminated Land Register nor identified near a cattle dip site or investigation area. Additionally, the sites are not adjoining or adjacent to potentially contaminating lands or practices. The subject properties are embellished with approved dwelling houses and associated structures. In consideration of the current and previous uses of the site, the potential for land contamination is low. Any further contaminated land assessment is not considered necessary in this instance.</p>

SEPP (Rural Lands) 2008	<p>The subject application was submitted prior to the SEPP being repealed 28 February 2019 and replaced with (SEPP (Primary Production and Rural Development) 2019 on the same day. The application is to consider the aims of the Rural Lands SEPP.</p> <p>The proposal has been considered with regard to the Rural Planning Principles (Clause 7). The subject properties have little agricultural potential as a result of previous approvals and the severance from a major road. The proposed boundary adjustment will not result in further land fragmentation or impact on any adjoin rural lands.</p>
SEPP (Primary Production and Rural Development) 2019	Clause 9 provides that the SEPP does not apply to the application.

4.15 (1) (a) (ii) – any proposed instrument that is or has been the subject of public consultation under the EP&A Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)

Draft EPI/Planning Proposal	Comments/Is consistency with these provisions achieved?
<p>Draft Amendment to State Environmental Planning Policy 44 – Koala Habitat Protection.</p> <p>Draft State Environmental Planning Policy - Remediation of Land.</p> <p>Draft Amendment to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.</p> <p>Draft Amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.</p>	<p>No issues raised in regard to any Draft SEPP.</p> <p>Note: The following Draft SEPP's have been amended prior to determination of the application:</p> <ul style="list-style-type: none"> • Draft State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016. • Draft Amendment to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. • Draft State Environmental Planning Policy – Primary Production and Rural Development.

4.15 (1) (a) (iii) – any development control plan (DCP)

DCPs currently in force:	
Ballina Shire Development Control Plan 2012	<input checked="" type="checkbox"/>

Ballina Shire DCP 2012	Comments/Assessment of proposal against provisions of DCP
Chapter 2 – General and Environmental Considerations	<p>Part 2 Chapter Planning Objectives</p> <p>The following relevant sections of the BDCP 2012 have been taken into consideration in the assessment of the proposal:</p>

	<p>The subject lots are zoned as 7(c) Water Catchment under the BLEP 1987. The equivalent zone under this chapter identifies the properties as E3 Environmental Conservation pursuant to Chapter 1 – 1.5A Interpretation – Deferred Areas BDCP 2012.</p> <p>3.1 Land Use Conflict – The subject allotments are situated within the village of Newrybar and do not adjoin land used for intensive agricultural purposes. In this regard, the development, as proposed, would not impact on the amenity or agricultural activity of adjoining land. Council’s EHO has provided that a LUCRA is not required in this instance.</p> <p>3.3 Natural Areas and Habitat – The subject allotments are mapped within the Natural Areas and Habitat Map. This mapping is consistent with the deferred matter zoning. The land is considered to be an ecologically sensitive area, as the properties are within the Emigrant Creek Catchment. The development is not considered to be designed or managed to avoid or mitigate potential adverse impacts on natural areas and habitat. The development is likely to have an adverse impact on the ground water quality should the existing OSSM system fail. The development would result in a lot layout that is inappropriate to sufficiently accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench). As a result of the potential impact on public health, the proposal is not supported.</p> <p>3.4 Potentially Contained Land – Given the previous and existing uses of the subject sites, it is considered that there is a low potential for land contamination. Refer to section SEPP 55 – Remediation of Land for further comment.</p> <p>3.6 Mosquito Management – The proposal does not involve residential development or any stormwater detention areas. Therefore, no mosquito management required.</p> <p>3.7 Waste Management – The applicant did not provide a Waste Management Plan for the construction of shed. Any construction waste would be minor and could be manage by way of terms of consent.</p> <p>3.8 On-site Sewage Management Systems – Although this development does not directly result in the construction, installation or maintenance of an OSSM system, the indirect impact to the existing system (and maintenance of system) has been identified as reason to warrant refusal of the application. It is considered that the development does not meet the planning objectives of this standard.</p> <p style="padding-left: 40px;"><i>a. Ensure that on-site sewage management systems are designed and operated to ensure protection of ground and surface water, including drinking water supplies.</i></p> <p>Comment: The proposed development will impact on the ongoing and future maintenance of the OSSM system on Proposed Lot 2. The existing system on Proposed Lot 2 was not installed in accordance</p>
--	--

	<p>with the approved OSSM design by Dave Abbott Plumbing and the Approval to Install issued by Council (30 January 2018). Multiple site visits conducted by Council's OSSM technical officers have identified that the evapotranspiration trench (ETA) bed has been manipulated to fit the proposed boundary line. The proposal is seeking to reduce the width of the land within the rear of Proposed Lot 2 to 14.79m wide. The Approval to Install required a 15m trench and 15m reserve trench to be installed across the contours of the land. As a result, the installed system now runs down the contour of the land, not across, as approved.</p> <p>The proposal has not identified that there will be sufficient land to install a reserve trench of 15m across the contour of the land (as required under the approval).</p> <p>For this reason, the development is not supported.</p> <p><i>b. Encourage and provide for the use of water recycling systems where appropriate.</i></p> <p>Comment: The use of water recycling systems does not form part of this application.</p> <p><i>c. Prevent public health risk from the spreading of disease by micro-organisms.</i></p> <p>Comment: It is considered that the proposed boundary adjustment will limit the land available to install the required reserve trench on Proposed Lot 2 that is consistent with the Approval to Install issued by Council. Therefore, it is considered the development may pose a public health risk should the system fail.</p> <p><i>d. Prevent degradation of soil and vegetation including soil structure, salinisation, water logging, chemical contamination and soil erosion.</i></p> <p>Comment: The development is likely to impact on, the quality of the soil structure, water logging and chemical contamination should the system fail. The applicant has not demonstrated that there will be sufficient land available for a reserve trench to be installed.</p> <p><i>e. Ensure that neighbouring properties are not adversely affected by effluent or effluent management systems.</i></p> <p>Comment: It is considered likely that the adjoining neighbours would be impacted given that there would not be adequate land available to manage the ongoing and future maintenance of the OSSM system.</p> <p>3.9 Stormwater Management – The development involves a boundary adjustment and the erection of a shed which will result in an increase in impervious area of approximately 90m². A Stormwater Management Plan is not required.</p> <p>3.10 Sediment and Erosion control – Adequate sediment and erosion control measures are to be installed and maintained during</p>
--	---

	<p>the construction phase of the development. Details are to be provided prior to the issue of a Construction Certificate.</p> <p>3.11 Provision of Services – The subject sites is serviced with reticulated water, electricity and telephone infrastructure. The sites are not connected to reticulated sewerage system and therefore are reliant on on-site sewage management.</p> <p>The applicant has not provided any details that would suggest that the shed is to be connected to the available services.</p> <p>However, C – Sewage Management, is of relevance to this application given it has been identified that the development may impact on the existing system on Lot 2 DP 776207. Sewage management has been discussed in detail throughout this report.</p> <p>3.13 Drinking Water Catchments – The objective of this clause is to ensure that development does not adversely impact on water quality within drinking water catchments or groundwater resource areas that are part of the public water supply network.</p> <p>The subject lots are mapped within the Emigrant Creek Water Catchment under the BLEP 2012 Drinking Water Catchment Map.</p> <p>3.13.3 Development Controls</p> <ol style="list-style-type: none"> i. The development must not adversely impact on the water supply associated with this catchment and is generally determined through the consideration of the following matters: <ul style="list-style-type: none"> • The development poses a potential risk of effluent contamination as the proposed lot layout is inappropriate to sufficiently accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench). • The subject lots are located approximately 450m from the Emigrant Creek and adjoin a substantial road drainage directly behind the properties that feeds into Emigrant Creek. ii. The development will result in a reduction to the lot size (width) and as a result compromises the ability to provide adequate safeguards (reserve trench) should the existing system fail. iii. It is considered that the sites are not suitable to support the proposed development and the proposal is not considered to be reasonable within the water supply area. iv. The development is located within the Emigrant Creek Dam catchment and therefore, the proposal is to have regard for the Rous Water On-Site Wastewater Management Guidelines. These guidelines state that no level of flexibility afforded to rezoning and subdivision applications as buffer distances are treated as absolute minimums. Rous Water have provided the following: 'The Rous On-site Wastewater Management Guidelines do afford Councils a degree of flexibility in applying these guidelines, however this flexibility
--	--

	<p>does not extend to buffer distances. Whilst the buffer distances here in question relate to property boundaries and not waterways (although there is site drainage immediately behind the property), this still provides a limit to the potential effluent loading available at the site and so this is effectively still an absolute constraint'. On this basis, Rous Water does not support the application.</p> <p>3.19 Car Parking and Access – Council's Civil Services have provided the following:</p> <p>The application originally included a plan showing an additional driveway crossover fronting Proposed Lot 1.</p> <p>Typically single residential developments are provided with a single 3m driveway crossover. In some circumstances Council may consider the construction of a second driveway crossover acceptable provided it does not adversely impact on public amenity or road safety.</p> <p>Currently there is already a double crossover (9.8m) to service a three bay garage and a single driveway crossover (4m) to service a car port associated to No. 2 Old Pacific Highway (Proposed Lot 1). The addition of third driveway crossover is considered unusual for a property that has the characteristics of a single residential development and therefore, is not in the public interest.</p> <p>During peak periods there is a high demand for parking within the vicinity. Given that the existing site already has a single and a double driveway crossover, the impact that a third driveway crossover will have on reducing kerbside parking is not considered acceptable.</p> <p>Further to this, the construction of an additional driveway would reduce the flexibility for locating public utility services and street furniture and add to an undesirable precedence for the number of driveways that a single lot may have.</p> <p>Following advice from Council, the applicant has revised the development proposal. The existing driveway fronting proposed lot 2 is to be reconstructed closer to the boundary. No new driveway frontage is proposed for Lot 1. However, Proposed Lot 1 would be requiring a right of carriageway to be registered on the title that provides access across Proposed Lot 2 to the shed. Although this is not a desirable outcome, it was accepted in this instance.</p> <p>Based on the revised proposal the development can be supported from an engineering perspective. However, it is suggested that an advisory note and/or a condition be applied to the consent stating "Council will not permit the construction of any additional driveway crossovers fronting Lot 1 to service the proposed shed."</p> <p>Given the development requires additional conditions to limit any further crossovers, it is considered that the development is an overdevelopment and will not result in an outcome that is in the</p>
--	---

	<p>public's interest. This further highlights the cumulative impacts that may result from this proposal.</p>
<p>Chapter 7 – Rural Living and Activity</p>	<p>Part 3 Chapter Planning Objectives</p> <p>The proposal generally complies with the overarching objectives of this chapter.</p> <p>The following relevant sections of the BDCP 2012 have been taken into consideration:</p> <p>3.2 Rural Subdivision – The proposed development is generally not consistent with the overall planning objectives of this control.</p> <p>It is considered that the subdivision may adversely impact on the water quality within the Emigrant Creek Catchment, and the proposed lot layout is inappropriate to sufficiently accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench).</p> <p>3.2.3 Development Controls</p> <ul style="list-style-type: none"> <i>i. All subdivision applications must demonstrate that the relevant zone objectives set out in the BLEP will be achieved;</i> <p>Comment: The applicant has not sufficiently demonstrated that the primary objective of the 7(c) Water catchment zone will be achieved.</p> <ul style="list-style-type: none"> <i>ii. Subdivision of land must not result in a significant diminution of the agricultural production potential of the land the subject of the application or land nearby or must result in a significant environmental benefit;</i> <p>Comment: The boundary adjustment between two undersized lots would not result in any diminution of the agricultural production potential of the subject lots or any adjoining land, given the two lots have limited agricultural potential.</p> <ul style="list-style-type: none"> <i>iii. Subdivision which achieves or promotes farm build-up must not provide an ability for additional allotments, or dwellings to be created in the future;</i> <p>Comment: The subdivision does not achieve or provide farm build up and will provide for the ability of additional lots. The properties may support additional dwellings, subject to further Council approval.</p> <ul style="list-style-type: none"> <i>iv. Subdivision design must not create a situation where the relative position of existing or proposed improvements and rural activities on the new lots is likely to result in land use conflict;</i> <p>Comment: The development is not likely to result in any land use conflict (as identified in Chapter 2 – 3.1 Land Use Conflict of the BDCP 2012).</p>

	<p>v. <i>The size and shape of the proposed new allotments and their setting must be suited to their intended use;</i></p> <p>Comment: The size and shape of the proposed subdivision is to provide additional land for a shed to store a boat. Therefore, the size and shape is suited to that intended use. However, the proposed subdivision will adversely impact the ongoing operation and future maintenance of the existing infrastructure (OSSM).</p> <p>vi. <i>Vehicular access to and within the proposed allotments must be adequate having regard for the intended use of the land. the creation of allotments solely dependent on the rights of carriageway for access provision is discouraged;</i></p> <p>Comment: Access to either of the allotments will be solely dependent on the rights of carriageway. However, it is to be noted the boundary adjustment seeks to provide additional land to erect a shed for storage on Proposed Lot 1. Access to this shed will require a right of carriageway across Proposed Lot 2.</p> <p>vii. <i>Applications for subdivision must provide an assessment of the need for harvesting and storage of surface or groundwater for use on all the allotments; and</i></p> <p>Comment: The applicant has claimed that there is no need to provide an assessment of the need for harvesting and storage of surface or groundwater for use on the allotments. Given the minor scope of the boundary adjustment between two undersized allotments, this is generally agreed upon.</p> <p>viii. <i>Applications for subdivision are to be supported with sufficient information detailing that all relevant infrastructure, including on-site sewage management systems, are able to be wholly contained within each proposed allotment.</i></p> <p>Comment: The applicant has not sufficiently demonstrated that Proposed Lot 2 is sufficient in size and configuration to accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench) and be contained wholly on each proposed allotment.</p> <p>3.7 Building Lines and Setbacks – This control provides that all buildings and structures in rural areas must comply with the minimum building line or setbacks set out in Table 7.2. The subject development does not comply with these requirements as the development (shed) will be within 20m from a sealed road and within 10m of the side boundary.</p> <p>The applicant did not address this control or provide a written request to vary the control as required under the BDCP 2012.</p> <p>The proposal will result in a shed with a zero set back to the adjoining property. The applicant has made no attempt to comply with this standard or attempt to provide an appropriate setback to allow for</p>
--	---

	<p>maintenance of the shed without entering the adjoining property boundary. Proposed Lot 2 will be required to construct the carport that was removed during the installation of the OSSM system. The applicant has made Council aware that the carport will be located on the property boundary between the two allotments. Council requested a dimensioned site plan, outlining the location of the proposed shed and; setback from proposed boundary, separation distance between shed and existing buildings and any proposed site retaining. The applicant did not provide Council with a site plan containing the above information to sufficiently assess this control. The applicants lack of ability to demonstrate compliance with this control indicates that Proposed Lot 1 is significantly overdeveloped.</p> <p>3.8 Roads, Vehicular Access and Parking – The development will result in a modification to an existing crossover associated with Proposed Lot 2, with Proposed Lot 1 requiring a right of carriageway over Proposed Lot 2. The development will not result in any increase in traffic generation or require additional car parking spaces. No issues raised in this regard. Proposed Lot 2 is required to provide the covered car parking space that was removed during the installation of the OSSM system prior to the issue of Subdivision Certificate.</p>
--	---

4.15 (1) (a) (iiia) – any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

Planning Agreement (or draft)	Comments
	None Applicable

4.15 (1) (a) (iv) – any matters prescribed by the regulations

	Comments/Is consistency with these provisions achieved?
If the DA is for the demolition of a building, consider the provisions of AS 2601-1991: The demolition of structures (as in force 1 July 1993):	Not Applicable
If the DA is only for a change of use or the use of an existing building as a place of public entertainment, is the fire protection and structural capacity of the building appropriate to the building's proposed use?	Not Applicable
If the DA involves the rebuilding/ alteration/enlargement/extension of an existing building, is the existing building required to be brought into total or partial conformity with the Building Code of Australia (BCA)?	Not Applicable
If the DA is for the erection of a temporary structure, is the fire protection and structural capacity of the structure appropriate to the	Not Applicable

proposed use of the structure?, and is the ground or other surface, on which the structure is to be erected, sufficiently firm and level to sustain the structure while in use?

4.15 (1) (b) – the likely impacts of that development

Urban and Building Design	Discuss whether or not the impact is acceptable or not? If not, then describe the adverse impacts and the steps taken to mitigate the impacts
<p>i) Context and Settings</p>	<p>The proposal is seeking consent for a boundary adjustment subdivision of two undersized allotments within the 7(c) Water Catchment zone pursuant to the BLEP 1987.</p> <p>The assessment has concluded that the lot size and dimensions of Proposed Lot 2 is likely to be insufficient to accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench) for the existing house and will unreasonably restrict future development of this property.</p> <p>The applicant was given sufficient opportunity to provide Council with additional information to support the proposal. However, the applicant failed to produce adequate information to satisfactorily demonstrate that the development is suitable despite the concerns raised by Council in relation to the ongoing maintenance of the on-site sewage management system as a result of the departure from the minimum lot size.</p> <p>Accordingly, the proposed subdivision is not considered to meet the primary objective of the 7(c) Water Catchment zone, and the request for variation to Clause 11(2)(b) of the Ballina LEP 1987 regarding the minimum lot size cannot be supported.</p>
<p>ii) Site Design and Internal Design</p>	<p>The proposed boundary adjustment subdivision between two significantly undersized allotments within the Newrybar village will result in the following lot sizes:</p> <ul style="list-style-type: none"> • Proposed Lot 1 will result in an area of 1080m² (being a 32.5% increase in area), and • Proposed Lot 2 will result in an area of 776m² (being a 23.5% decrease in area). <p>The proposal will result in a reduction to the width of the rear boundary of Proposed Lot 2. This significantly restricts the land available for the required 15m</p>

		reserve OSSM system to be installed with appropriate buffer distances. The reduction in lot size will also significantly restrict the available useable private open space for the occupant of Proposed Lot 2.
iii)	Ecologically Sustainable Building Design	Not Applicable.
iv)	Access, Transport and Traffic	The existing driveway fronting Proposed Lot 2 is to be reconstructed closer to the boundary. No new driveway frontage is proposed for Lot 1. However, Proposed Lot 1 would be requiring a right of carriage way to be registered on the title that provides access across Proposed Lot 2 to the shed. Although this is not a desirable outcome, it was accepted in this instance.
v)	Public Domain	The development will result in a minor reduction to the on-street parking availability and impact on the public domain. This alone is not considered reason enough to warrant refusal, however, it does highlight the compounding issues associated with the proposal.
vi)	Utilities	Utilities have been discussed in detail in the BDCP 2012 section of this assessment.
vii)	Heritage	The subject site is not known to contain items of Aboriginal, non-Aboriginal and natural heritage significance.
viii)	Construction	All construction works are to comply with the conditions of consent.
Environmental Impacts		
ix)	Other Land Resources	The subject sites are with the Emigrant Creek catchment. It has been identified that the development may impact on the ability to adequately maintain the existing OSSM system on Proposed Lot 2. This would impact on the water quality that feeds into the catchment. For this reason, the development has not been supported.
x)	Water	The subject lands are identified within the Emigrant Creek catchment and as a result, the development was referred to Rous Water as the water authority. Given that the sites are significantly constrained and the proposal does not meet the Rous On-site Wastewater Management Guidelines, The development has not been supported by Rous Water.
xi)	Soils	The sites are not mapped as being affected by Acid Sulfate Soils.
xii)	Air and Microclimate	There is not expected to be issues with respect to air pollution as a result of the development.
xiii)	Flora and Fauna	No vegetation removal proposed to support the application.
xiv)	Waste	No issues raised in this regard. Construction waste could be managed by way of terms of consent.
xv)	Energy	No issues raised.

Hazards	
xvi) Noise and Vibration	No issues raised in relation to noise or vibration. Any construction noise could be managed by way of conditions of consent.
xvii) Natural Hazards	No issues raised.
xviii) Technological Hazards	
xix) Safety, Security and Crime Prevention (CPTED)	The development is not considered to increase the potential for accident, injury or criminal activity. No target hardening measures required.
Social and Economic Impacts	
xx) Social Impacts in the Locality	There is no public benefit to this proposal and the development may adversely impact the health and safety of the community.
xxi) Economic Impact in the Locality	The proposal would likely provide only a small amount of economic benefit through the initial establishment works, if the application was to be approved.
Cumulative Impacts	
xxii) Cumulative Impacts	The incremental effects of this development and developments of this nature within the water catchment is expected to have negative cumulative impacts (nibbling effects). The proposal will restrict the ongoing maintenance of the OSSM system on Proposed Lot 2 and reduce the land available to accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench). This is of concern to ensure that any OSSM system is appropriately maintained to protect the drinking water catchment.

4.15 (1) (c) – The suitability of the site for the development

		Comments
i)	Does the proposal fit in the locality?	The proposal is not considered to be suitable in the locality. The subject sites are heavily constrained in providing adequate buffer distances already for on-site sewage management and any further reduction to the lot size proposed to Proposed Lot 2 would significantly impact on the ability to accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench). This is especially critical given that the subject sites are mapped with the Emigrant Creek catchment.
ii)	Are the site attributes conducive to development?	Though not a specific consideration for the purpose of this section, the subject sites are located within the Emigrant Creek Catchment and therefore for the purpose of this section, considered a site attribute. Therefore, the site attributes are not considered to be conducive to the proposed development. The proposal will significantly restrict the land available to

	accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench). This is concerning given that that subject sites are within the Emigrant Creek Catchment.
--	--

4.15 (1) (d) Any submission made in accordance with this Act or the Regulations?

Is advertising required because the development is designated or "advertised" development?	No
Is advertising required in accordance with established Council policy and practice?	Yes
If YES, how many submissions were received?	Nil

4.15 (1) (e) The public interest

Federal, State & Local Government interests and Community interests	Due to the public health impacts, the proposal is not in the interest of the Federal, State & Local Governments and the wider community.
Section 64 Contributions and Section 7.11 Contributions	As the determination has resulted in refusal, no contributions are applicable.

STATEMENT OF REASONS FOR DECISION

Council has undertaken an assessment in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979, which has concluded that the application be recommended for refusal for the following reasons:

1. The proposal has not demonstrated that the SEPP 1 objection is well founded and that further non-compliance with the development standard contained in Clause 11(2)(b) of Ballina Local Environmental Plan 1987 in relation to the reduction in land area to Proposed Lot 2 is reasonable or necessary in this instance.
2. The proposal does not satisfy the primary objective of the 7(c) (Water Catchment) zone of the Ballina Local Environmental Plan 1987 with regard to development which would adversely affect the quality of the urban water supply in relation to Proposed Lot 2.
3. The lot size and configuration of proposed Lot 2 is insufficient to accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench) therefore the proposal is not in the interests of the public due to the potential public health impacts resulting from the development.
4. The proposal does not satisfy the matters of consideration outlined within Clause 24A of the Ballina Local Environmental Plan 1987. Specifically, the reduction in land area to Proposed Lot 2 will result in potential adverse impacts on the water quality within the catchment, and the applicant has not demonstrated that adequate and compliant safeguards can be accommodated within the reduced lot to protect water quality concerns.
5. The proposal does not achieve the planning objectives or comply with the development controls outlined in Chapter 2 of the Ballina Development Control Plan 2012 – Element 3.8 – On-site Sewage Management Systems and Element 3.13 – Drinking Water Catchments in relation to ensuring that the on-site sewage management system on Proposed Lot 2 can be maintained to prevent a public health risk and does not adversely impact on the water quality within drinking water catchments.

6. The proposal does not achieve the planning objectives or comply with the development controls outlined in Chapter 7 of the Ballina Development Control Plan 2012 – Element 3.2 – Rural Subdivision in relation to ensuring that the subdivision of land does not adversely impact on the environment.
7. The proposal does not achieve the planning objectives or comply with the development controls outlined in Chapter 7 of the Ballina Development Control Plan 2012 – Element 3.7 – Building Lines and Setbacks in relation to the non-compliance with the minimum setback requirements for a structure from the front and side boundary.

Signed:



Town Planner

Date: 24 October 2019

Recommendation Endorsed:



**per Development and Environmental Health
Group Manager**

Date: 29 October 2019

DA: 2018/432

Page 1 of 3

enquiries refer
Saxon Irvine
in reply please quote
DA 2018/432

Ardill Payne & Partners
PO Box 20
BALLINA NSW 2478



Notice to Applicant of Determination of a Development Application

Issued under Section 4.18(1)(a) of the Environmental Planning and Assessment Act 1979

Development Application No:	DA 2018/432
Applicant:	Ardill Payne & Partners
Subject Land:	Lot 1 DP 575688, Lot 2 DP 776207, No. 2 Old Pacific Highway NEWRYBAR, 10 Old Pacific Highway NEWRYBAR
Development Proposal:	Two lot subdivision by way of boundary adjustment to create 1 x 1080sqm and one x 776sqm allotments and construction of a shed on Proposed Lot 1
Development Type:	Local Development
Determination:	The development application has been determined by Ballina Shire Council on 12 November 2019 by way of refusal for the following reasons.

1. The proposal has not demonstrated that the SEPP 1 objection is well founded and that further non-compliance with the development standard contained in Clause 11(2)(b) of Ballina Local Environmental Plan 1987 in relation to the reduction in land area to Proposed Lot 2 is reasonable or necessary in this instance.
2. The proposal does not satisfy the primary objective of the 7(c) (Water Catchment) zone of the Ballina Local Environmental Plan 1987 with regard to development which would adversely affect the quality of the urban water supply in relation to Proposed Lot 2.

40 cherry street, po box 450, ballina nsw 2478
t 1300 864 444 e council@ballina.nsw.gov.au w ballina.nsw.gov.au abn 539 29 887 369

-
3. The lot size and configuration of proposed Lot 2 is insufficient to accommodate a compliant on-site sewage disposal system (with appropriate buffers and required reserve trench) therefore the proposal is not in the interests of the public due to the potential public health impacts resulting from the development.
 4. The proposal does not satisfy the matters of consideration outlined within Clause 24A of the Ballina Local Environmental Plan 1987. Specifically, the reduction in land area to Proposed Lot 2 will result in potential adverse impacts on the water quality within the catchment, and the applicant has not demonstrated that adequate and compliant safeguards can be accommodated within the reduced lot to protect water quality concerns.
 5. The proposal does not achieve the planning objectives or comply with the development controls outlined in Chapter 2 of the Ballina Development Control Plan 2012 – Element 3.8 – On-site Sewage Management Systems and Element 3.13 – Drinking Water Catchments in relation to ensuring that the on-site sewage management system on Proposed Lot 2 can be maintained to prevent a public health risk and does not adversely impact on the water quality within drinking water catchments.
 6. The proposal does not achieve the planning objectives or comply with the development controls outlined in Chapter 7 of the Ballina Development Control Plan 2012 – Element 3.2 – Rural Subdivision in relation to ensuring that the subdivision of land does not adversely impact on the environment.
 7. The proposal does not achieve the planning objectives or comply with the development controls outlined in Chapter 7 of the Ballina Development Control Plan 2012 – Element 3.7 – Building Lines and Setbacks in relation to the non-compliance with the minimum setback requirements for a structure from the front and side boundary.



Signed: _____ on 12/11/2019

Andrew Smith
**Manager Development Services
Planning and Environmental Health Division**

On behalf of Ballina Shire Council

Right of Appeal: If you are dissatisfied with this decision, Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you, the applicant, the right to appeal to the NSW Land and Environment Court within six months after the date on which you receive this notice.

Review of Determination: Section 8.3 of the Environmental Planning and Assessment Act 1979 gives you, the applicant, the right to request the consent authority to review the determination of your application. This request must be made and the review conducted and completed within the time prescribed by Section 8.3(2). A request must be accompanied by the fee prescribed by Section 257 of the Environmental Planning & Assessment Regulation 2000. Review provisions do not apply to:

- a) a determination in respect of designated development, or
- b) a determination made by the Council under Division 4.6 in respect of an application by or on behalf of the Crown.



Ballina Shire Council
40 Cherry Street
BALLINA NSW 2478

PO Box 450
BALLINA NSW 2478

1300 864 444
council@ballina.nsw.gov.au
www.ballina.nsw.gov.au



© Ballina Shire Council © NSW Spatial Services 2020
While every care is taken to ensure the accuracy of this product, Ballina Shire Council and the Local / State / Federal Government departments and Non-Government organisations whom supply datasets, make no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which you might incur as a result of the product being inaccurate or incomplete in any way and for any reason.

ballina shire council
geographical information system

Projection: GDA94 / MGA zone 56

Date: 1/05/2020