

## Planning Services

IRF19/4181

### Gateway determination report

<b>LGA</b>	Ballina
<b>PPA</b>	Ballina Shire Council
<b>NAME</b>	Ballina LEP 2012 – Reservoir Hill rezoning
<b>NUMBER</b>	PP_2019_BALLI_01_00
<b>LEP TO BE AMENDED</b>	Ballina LEP 2012
<b>ADDRESS</b>	20 North Creek Road, Lennox Head
<b>DESCRIPTION</b>	Lot 1 DP 517111
<b>RECEIVED</b>	05/06/2019
<b>FILE NO.</b>	IRF19/4181
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to amend Ballina LEP 2012 for the purpose of rationalising and making minor realignments to the zones and minimum lot sizes contained within Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head to provide consistency with the revised subdivision layout of the subject land. The planning proposal involves the following LZN and MLS changes:

Zone change	Area of change	MLS change
RU1 to R2	1,004m <sup>2</sup>	40ha to 600m <sup>2</sup>
R2 to R3	2,001m <sup>2</sup>	No change
R3 to R2	12,296m <sup>2</sup>	No change

The planning proposal also seeks to include a new local clause in the Ballina LEP 2012 to permit the subdivision of land for drainage purposes in the RU1 and RU2 zones.

### 1.2 Site description

The subject site is described as Lot 1 DP 517111, 20 North Creek Road, Lennox Head. The land was originally subject to a planning proposal (PP\_2014\_BALLI\_003\_00) and Gateway determination in 2014 for rezoning from RU1 Primary Production to a mix of R2 Low Density Residential, R3 Medium Density Residential and RE1 Public Recreation. Changes were also made to the applicable MLS for the R2 and R3 zones.

Council found that there were a number of key issues relating to this proposal that required further examination and as such a documentation review and gap analysis was undertaken. The result was a revised planning proposal to better reflect the final detailed road alignment for the proposed subdivision of the land. The altered zoning regime included the proposed R2 and R3 zones but retained the areas of identified ecological value and drainage areas as RU1 rather than RE1. The revised planning proposal was approved by the Department in September 2016 with the draft LEP being made in December 2016.

This planning proposal (PP\_2019\_BALLI\_001\_00) relates to the same parcel of land and also seeks to realign zone boundaries to better reflect a revised subdivision layout, which is no longer required to accommodate a proposed road corridor.

### 1.3 Existing planning controls

Pursuant to the Ballina LEP 2012, the subject land is zoned (LZN) RU1 Primary Production with a minimum lot size (MLS) of 40ha, and R2 Low Density Residential and R3 Medium Density Residential both with an MLS of 600m<sup>2</sup> (Figures 1 & 2).

The Ballina LEP 2012 does not currently permit the subdivision of undersized allotments for drainage purposes. While the construction of stormwater management systems can be undertaken by or on behalf of a public authority without consent on any land in accordance with the provisions of the *State Environmental Planning Policy (Infrastructure) 2007*, the initial excise of the land and subsequent dedication to Council is not addressed.

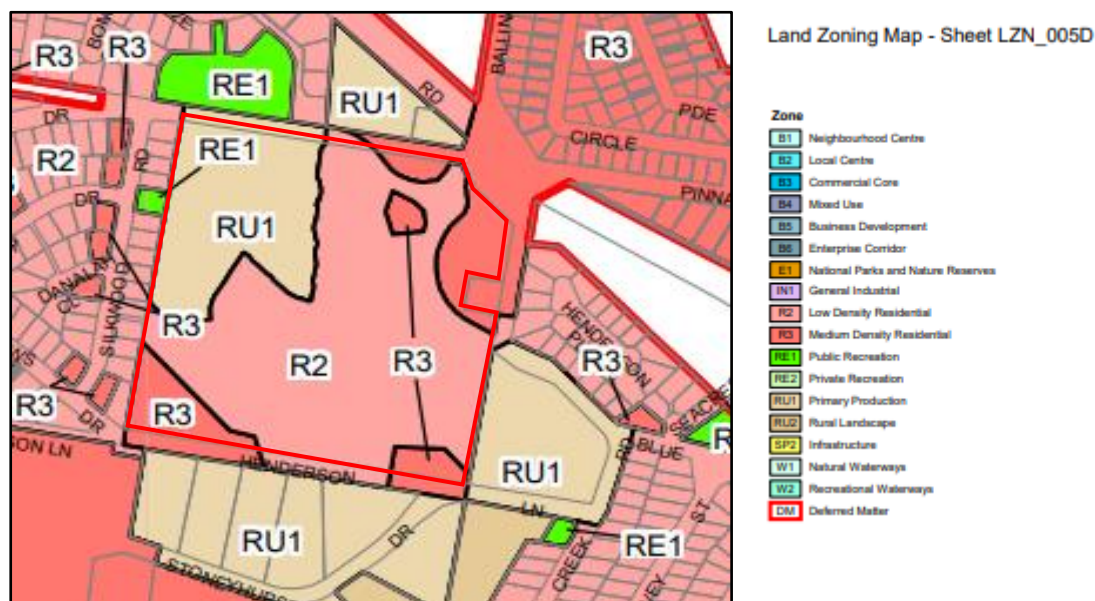


Figure 1 - Land Zoning - Ballina LEP 2012

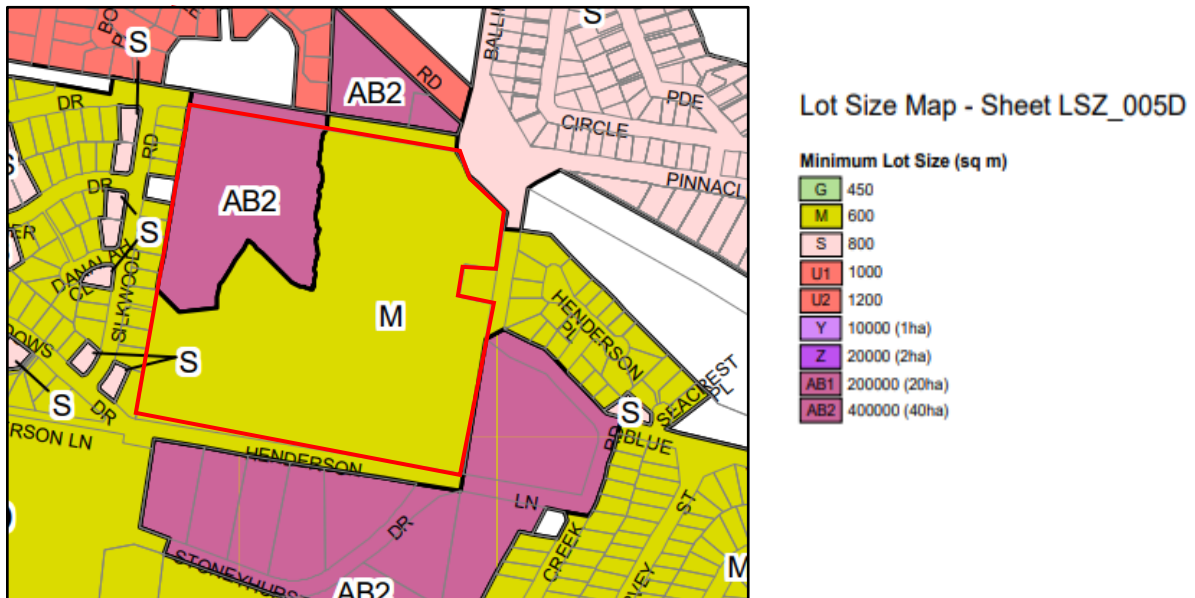


Figure 2 - Minimum Lot Size - Ballina LEP 2012

#### 1.4 Surrounding area

The subject allotment is surrounded by predominantly residential development (Figure 1 and 3). The site was originally identified in the Ballina Growth Management Strategy and the Lennox Head Structure Plan (2004) as a 'strategic urban growth area' suitable for residential development. The land was rezoned for this purpose in 2016 (see Section 1.2).



Figure 3 - Surrounding area (Source: SIX Maps)



## 1.5 Summary of recommendation

It is considered that the proposal has merit to proceed to Gateway. It is recommended that the planning proposal proceed subject to conditions for the following reasons:

1. the proposal seeks to undertake a small-scale realignment of zone boundaries to better facilitate proposed residential subdivision of the subject lot;
2. the inclusion of a local provision to permit the subdivision of RU1 and RU2 zoned land for drainage purposes will allow dedication of drainage infrastructure to Council and streamline development assessment; and
3. the proposal is generally consistent with the North Coast Regional Plan 2036 (NCRP) and helps attain Council's strategic framework.

## 2. PROPOSAL

### 2.1 Objectives or intended outcomes

The intended outcomes of the planning proposal are to rationalise the zone boundaries within the subject lot to enable the efficient use of land and provide consistency with a revised residential subdivision layout. The proposal also seeks the inclusion of a local clause within the Ballina LEP 2012 to facilitate the subdivision of RU1 and RU2 zoned land for drainage purposes.

### 2.2 Explanation of provisions

The planning proposal seeks to make changes to Ballina LEP 2012 by:

- amending the relevant LZN map to show the subject lot with realigned zone boundaries as per Figure 4;
- amending the LSZ map to show the relevant MLS for the new realigned zones as per Figure 5; and
- including an additional local provision to permit the subdivision of land for drainage purposes within all RU1 and RU2 zones.

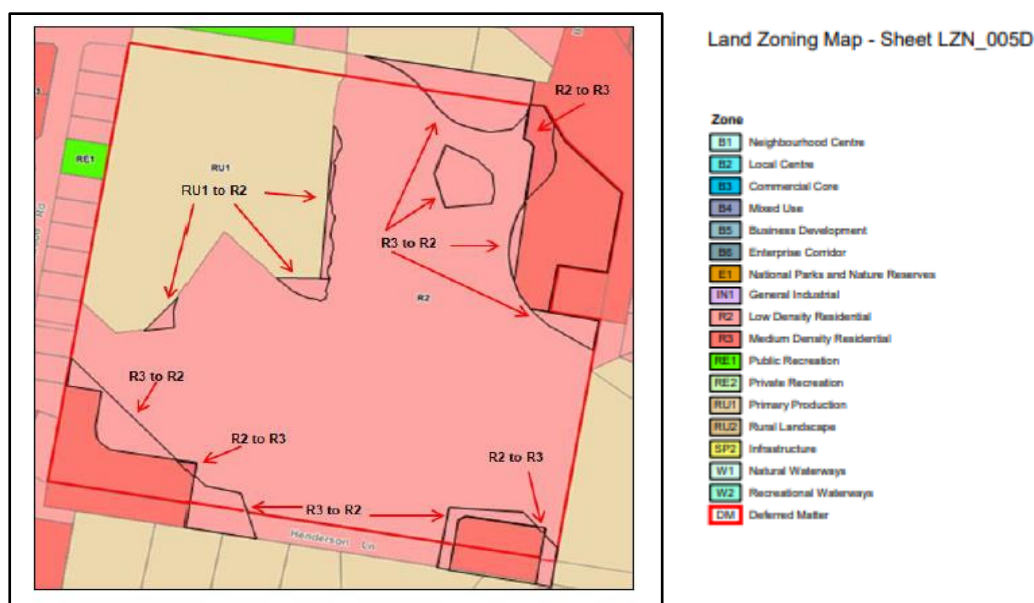


Figure 4 - Proposed LZN change

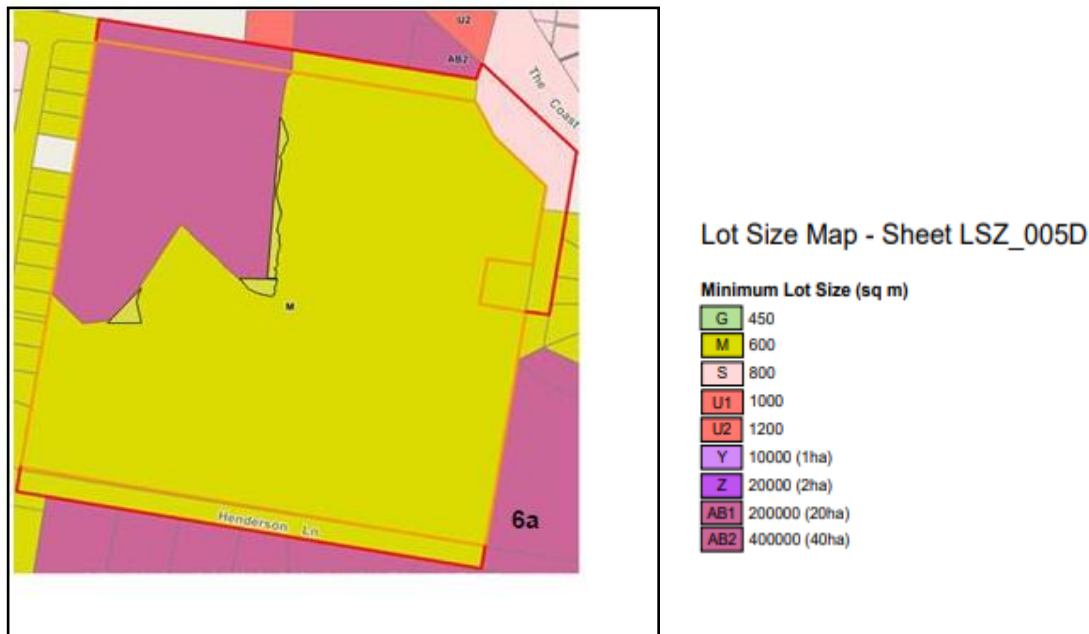


Figure 5 - Proposed LSZ change

## 2.3 Mapping

To give effect to the proposed changes, the planning proposal will amend both the LZN and LSZ map sheets for the relevant lot (Sheet 5D). The maps included in the planning proposal however need to be updated prior to public exhibition to clearly show that the proposal also relates to the road reserve adjoining the subject lot. Apart from this, the maps are considered suitable for exhibition purposes.

## 3. NEED FOR THE PLANNING PROPOSAL

The site was subject to a planning proposal and Gateway determination in 2014. A revised planning proposal which incorporated a minor change to the R2 and R3 zone boundaries to reflect the final road alignment design for the site was approved by the Department in 2016.

The subject planning proposal seeks to rationalise existing LEP mapping boundaries which are irregular in shape and the result of an approved subdivision layout no longer supported by Council. It also proposes the introduction of a local provision to permit subdivision of RU1 and RU2 zoned land for drainage purposes, which will help facilitate the dedication of this land to Council.

It is considered that the proposal is the best means for achieving the intended outcomes.

## 4. STRATEGIC ASSESSMENT

### 4.1 State

The planning proposal does not contain any matters of state or regional significance.

### 4.2 Regional / District

*North Coast Regional Plan 2036 (NCRP)*

The NCRP identifies the subject land to be within the urban growth boundary as well as an investigation area for urban land. The planning proposal is consistent with the direction of the subject site as detailed within the NCRP.

The NCRP seeks to provide great housing choice and lifestyle options on the north coast by encouraging greater housing supply, increased housing diversity and choice, and delivery of increased opportunities for affordable housing (Directions 22, 23 & 24). It also intends to develop healthy, safe, socially engaged and well-connected communities (Direction 15). To this end, approval of the planning proposal is considered to be consistent with the provisions of the NCRP.

#### **4.3 Local**

Under the Ballina Growth Management Strategy and the Lennox Head Structure Plan 2004, the site was identified as a 'strategic urban growth area' with medium and low-density housing as the preferred urban land use. Accordingly, the land was rezoned in 2014 for this purpose with a subdivision masterplan approved by Council for the site. The subject proposal retains the overall intention of the original approval.

The planning proposal is also considered consistent with the relevant objectives, strategic actions and outcomes in Council's current strategic planning framework, in particular the Ballina Major Regional Centre Strategy 2035. This Strategy has been developed to guide growth within the local government area with one of the key strategic actions being the provision of suitable and adequate housing opportunities that cater for the diverse needs of the community. The planning proposal supports the intended outcomes of the Strategy as it will facilitate the delivery of residential development in proximity to regional road networks, local amenities and services.

#### **4.4 Section 9.1 Ministerial Directions**

##### *1.2 Rural Zones*

The planning proposal is inconsistent with this direction as it proposes to rezone rural land for residential purposes. The inconsistency is considered to be of minor significance in this instance as only approximately 1000m<sup>2</sup> of land will be rezoned from RU1 to R2 on the eastern and southern edges of a 3.68ha parcel of land. This equates to the rezoning of 2.7% of rural land on the subject site.

It is intended that the land which retains a RU1 zone shall be utilised for the purpose of drainage infrastructure basins as well as to preserve endangered ecological communities. Although the allotment is classified as significant farmland, the land is currently zoned for urban purposes, is within the urban growth boundary and is in an investigation area for urban land. Surrounding land uses are also predominantly residential. In this regard, the allotment does not form a viable parcel of agricultural land and as such, any inconsistency with this direction is considered to be of minor significance.

##### *1.5 Rural Lands*

The proposal is inconsistent with this direction as it proposes to rezone rural land and correspondingly reduce the minimum lot size. As such, the application is unable to demonstrate compliance with all the relevant planning principles. However, considering the small percentage of land to be rezoned from RU1 to R2 (2.7%), surrounding residential land uses, inclusion of the allotment within the urban growth boundary and identification of the site as an investigation area for urban land, the inconsistency is considered to be of minor significance.

##### *2.2 Coastal Management*

The proposal has the potential to be inconsistent with this direction as the inclusion of the new local provision will apply across all RU1 and RU2 zones. The proposed local provision relating to the dedication of land zoned RU1 and RU2 for drainage purposes could affect land that is within the coastal zone, comprising coastal wetlands and littoral

rainforest areas, coastal vulnerability areas, coastal environment areas and/or coastal use areas. This inconsistency is of minor significance as further consideration regarding the issue can be undertaken at the development application stage as required by *State Environmental Planning Policy (Coastal Management) 2018*.

#### **4.1 Acid Sulfate Soils**

The proposal has the potential to be inconsistent with this direction as the inclusion of the new local provision will apply across all RU1 and RU2 zones. The inclusion of a local provision to allow the subdivision of RU1 and RU2 zoned land for drainage purposes could potentially affect acid sulfate soils and the proposal is not supported by an acid sulfate soils study. This inconsistency is considered to be of minor significance as further consideration regarding the issue can be undertaken at the development application stage as required by the acid sulfate soil provisions of Ballina LEP 2012.

#### **4.3 Flood Prone Land**

The proposal has the potential to be inconsistent with this direction as the inclusion of the new local provision will apply across all RU1 and RU2 zones. The inclusion of a local provision to allow the subdivision of RU1 and RU2 zoned land for drainage purposes could potentially affect flood prone land, and the proposal is not supported by a report that considers potential flood impacts. This inconsistency is of minor significance as further consideration regarding the issue can be undertaken at the development application stage in accordance with the flood planning provisions of Ballina LEP 2012.

#### **4.4 Planning for Bushfire Protection**

The inclusion of a local provision relating to the RU1 and RU2 zones has the potential to apply to land that has been mapped as bushfire prone.

This direction requires Council as the relevant Planning Authority to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred, consistency of the proposal with this direction will remain unresolved.

#### **4.5 State environmental planning policies (SEPPs)**

The proposal is consistent with all applicable SEPPs with the exception of *State Environmental Planning Policy (Primary Production and Rural Development) 2019*. While the planning proposal does not comply with the aims of this Policy, the proposal is considered to be appropriate as discussed in Section 4.4 of this report, above.

A phase 1 site contamination assessment was completed on the subject site in accordance with the provisions of *State Environmental Planning Policy No. 55 Remediation of Land*. The assessment did not identify any areas of environmental concern on the site and as such, a detailed phase 2 site contamination assessment is not required.

### **5. SITE-SPECIFIC ASSESSMENT**

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#### **5.1 Social**

Positive social impacts are expected as a result of the proposed rezoning through the provision of additional residential zoned lots which have the potential to facilitate a variety of housing densities.

The inclusion of a local clause which permits the subdivision of RU1 and RU2 zoned land for drainage purposes is considered to be in the public interest, as it will allow dedication of this land to Council and facilitate future proposals which have been assessed to have a positive social impact.

Considering the above, it is not anticipated that any detrimental social impacts will arise as a result of the planning proposal.

## **5.2 Environmental**

Lot 1 DP 517111 has historically been utilised for agricultural purposes (most recently grazing) and little native vegetation occurs on the allotment.

The stormwater drainage infrastructure basins required to support the development are proposed to be located within an area identified as containing a Freshwater Wetland Endangered Ecological Community as well as Hairy-joint grass, located within the north western portion of the site (zoned RU1). Hairy-joint grass is listed as a vulnerable plant species under both Federal and State legislation. It is considered that suitable options are available to the developer to preserve these communities, and that the proposed minor rezoning of the land will not impede the preservation of this vegetation.

As the planning proposal seeks to permit the subdivision of land for drainage purposes within all RU1 and RU2 rural zones within the shire, it is likely that such works relating to future proposals may be located on sensitive land thereby triggering the provisions of the *Local Land Services Act 2013* and *Biodiversity Conservation Act 2016*. Matters relating to the assessment of such impacts and any required offset strategies or compensatory measures would be required to be addressed within future development applications.

## **5.3 Economic**

Positive economic impacts can be expected from the proposal through rationalisation of existing land zoning, which is irregular and the result of an outdated subdivision layout.

Furthermore, the inclusion of a local clause to permit the subdivision of RU1 and RU2 zoned land for drainage purposes will facilitate streamlined assessments of affected applications in the future and this has the potential to result in positive economic impacts.

## **5.4 Infrastructure**

The provision and funding of State infrastructure is not necessary for this proposal.

The subject land has been designated as a strategic urban growth area and is within the urban growth boundary referenced in the NCRP. As such, the proposed development of the land is generally compatible with existing and planned infrastructure in the locality. The proposal includes substantial new road infrastructure throughout the site, as well as site drainage works within the RU1 zoned portion of the land.

Inclusion of a local provision which allows the subdivision of land zoned RU1 and RU2 for drainage purposes will ensure that community infrastructure is able to be transferred to Council in the future in an efficient manner.

## **5.5 Heritage**

No adverse impact to Aboriginal cultural heritage is anticipated as there are no known items present on the subject land. Furthermore, Schedule 5 of the Ballina LEP 2012 does not identify any items of environmental heritage on the subject allotment.

# **6. CONSULTATION**

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## **6.1 Community**

The proposal meets the requirements to be a low impact proposal under the Guide to Preparing Local Environmental Plans, and as such only requires a 14-day consultation. However, Council has nominated a 28-day public exhibition period in the planning proposal (although a 14-day period has been nominated in the Council report). There is



no impediment to Council undertaking a longer community consultation period than the 14-day mandatory period.

## **6.2 Agencies**

Council has not proposed consultation with any specific agencies. Given the previous history of the site and the relatively minor nature of the proposed amendments, no specific agency consultation is considered necessary with regard to Lot 1 DP 517111. However, consultation with the following agencies regarding the proposed local provision relating to RU1 and RU2 zoned land will be required:

- NSW Rural Fire Service
- Department of Planning, Industry and Environment (Environment, Energy and Science)
- Department of Planning, Industry and Environment (Agriculture)

## **7. TIME FRAME**

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The planning proposal includes a time frame which estimates completion of the LEP by November 2019. Given the relatively minor nature of the proposed amendments, it is considered that a nine-month time frame is suitable.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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The proposal is consistent, or justifiably inconsistent, with the State, regional and local planning framework and deals primarily with matters of local significance. It is considered appropriate that Council be provided authorisation to act as the local plan-making authority for this matter.

## **9. CONCLUSION**

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The preparation of the rezoning planning proposal is supported as it:

- meets the adequacy criteria by providing: appropriate objectives and intended outcomes; a suitable explanation of the provisions and justification for the proposal; appropriate community consultation; a suitable project timeline; and an evaluation for the delegation of plan making functions;
- is consistent or justifiably inconsistent with all relevant 9.1 directions and SEPPs apart from 4.4 Planning for Bushfire Protection (which can only be determined after consultation with the NSW Rural Fire Service);
- is consistent with the North Coast Regional Plan 2036;
- is consistent with the local planning framework;
- is unlikely to have any detrimental impact on the socio-economic welfare of the Local Government Area; and
- will provide future residential land within an urban growth area in Lennox Head.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.2 Coastal Management, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to exhibition, the planning proposal maps are to be updated to clearly show that the road reserve adjoining the subject lot will also be affected by the proposed zoning changes.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the NSW Rural Fire Service.
4. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority to make this plan.



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12-8-2019

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