



Planning Proposal 18/004

» Reservoir Hill Site, Lennox Head

20 North Creek Road, Lennox Head

August 2021 (V6 Final) 21/82081

ballina
shire council



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1. Introduction

1.1 Summary of the original planning proposal

The original planning proposal, the subject of the Gateway determination dated 12 August 2019, primarily sought to make minor zone boundary and minimum lot size changes to Lot 1, DP 517111 (Lot 1) and adjoining road reserves at 20 North Creek Road, Lennox Head.

The existing LEP mapping boundaries were the result of a planning scheme no longer supported by Council and as such the landowner sought to realign zone boundaries in accordance with the proposed subdivision design in development application DA 2018/51. Changes to the lot size map were also sought to facilitate consistency with the proposed zone boundary realignments.

The original proposal also sought to include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land.

Lot 1 (outlined in red) and adjoining road reserves (outlined in blue) are shown in the site identification diagram contained in Figure 1.



Figure 1: Site identification – 20 North Creek Road, Lennox Head

The thumbnail maps in Figures 2 and 3 below show the extent of the proposed zone boundary and lot size changes as exhibited.

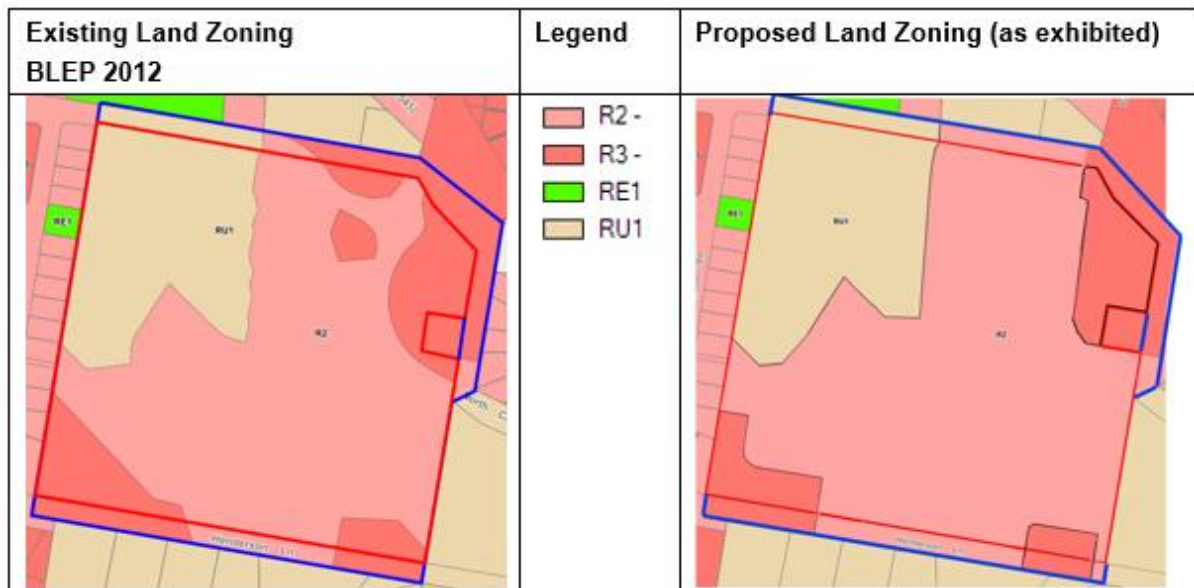


Figure 2: Existing and proposed zoning (as exhibited)

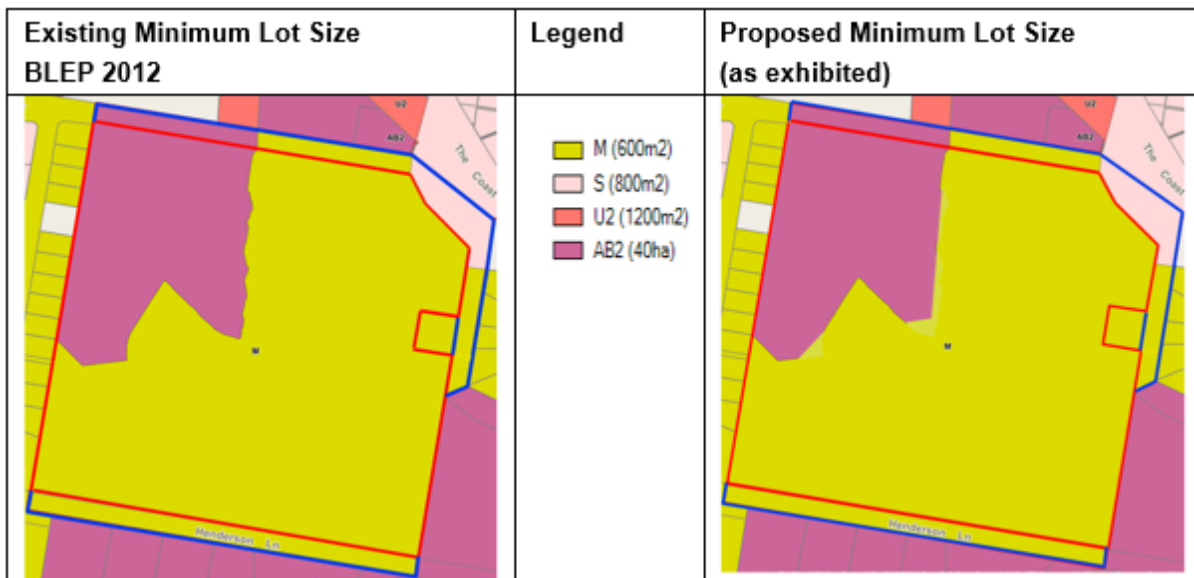


Figure 3: Existing and proposed lot size (as exhibited)

1.2 Summary of the amended planning proposal

Following public exhibition and consultation on the original planning proposal, the following minor changes to the planning proposal are required:

- Removal of proposed new local provision to permit the subdivision of land for drainage purposes within all RU1 and RU2 zones; and
- Minor realignment of RU1 and R3 zone boundaries.

The need for these changes is explained in further detail below.

Removal of proposed new local provision

The NSW Department of Primary Industries (NSW DPI) Agriculture raised concerns regarding the proposed amendment to the Ballina LEP 2012 to permit the subdivision of land for drainage purposes within all RU1 and RU2 zones. A copy of the consultation advice received from NSW DPI Agriculture is provided at Appendix 9.

Clause 2.75(f) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* enables subdivision for the purposes of creation of a lot for drainage purposes where that lot is to be dedicated to Council.

Given that DA 2018/51 contains a condition of consent requiring dedication of approved drainage reserves to Council (condition 10), it was considered that the proposed new local provision is no longer required and as a result an amended Gateway determination was issued by the Department of Planning, Infrastructure and Environment (DPIE) on 18 February 2021 which removed the proposed new local provision from the planning proposal.

Minor realignment of zone boundaries

The Council at its Ordinary meeting on 27 August 2020 resolved to conditionally approve the associated DA 2018/51. The report considered by the Council, notice of determination and stamped approved plans are contained within Appendix 8.

The required amendments to the planning proposal as a result of the determination of DA 2018/51 involve a minor realignment of zone boundaries comprising the following:

- A reduction in lots that are required to be rezoned from R2 to R3, located in the northeast corner of the site; and
- Amendments to the RU1 zone boundaries resulting in an increase in RU1 land.

The minor amendments to zone boundaries are essentially “housekeeping” in nature and serve to ensure consistency with the approved subdivision and zone boundaries. Associated changes to the minimum lot size, consistent with the proposed zoning changes, are also proposed.

The thumbnail maps in Figures 4 and 5 show the extent of the amendments to proposed zone boundaries and lot size post-exhibition.

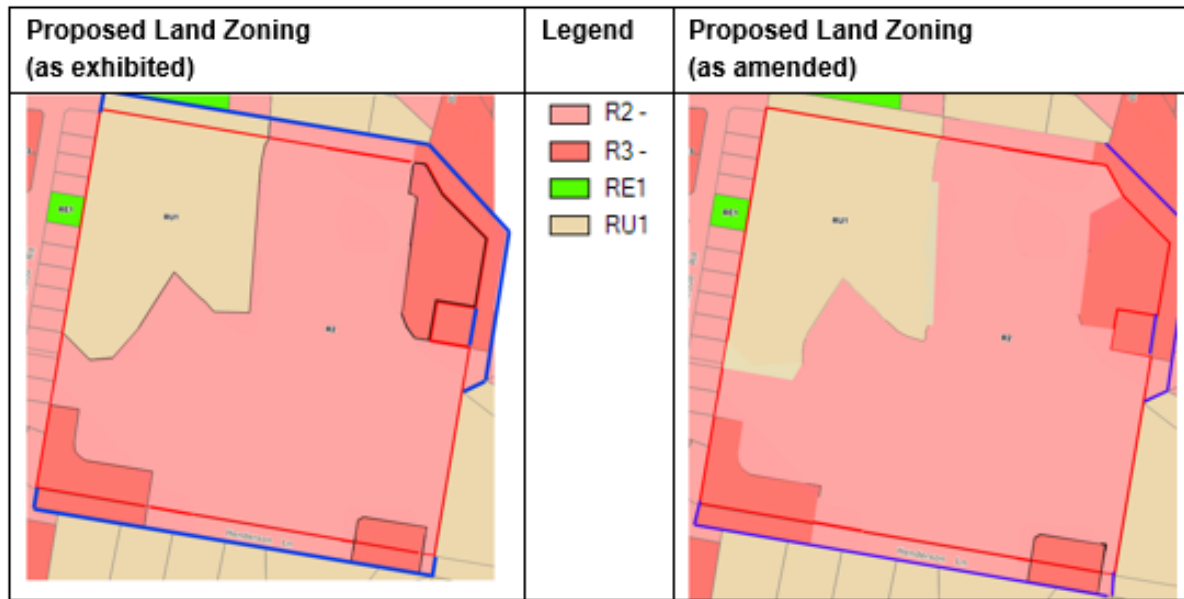


Figure 4: Exhibited and amended zoning

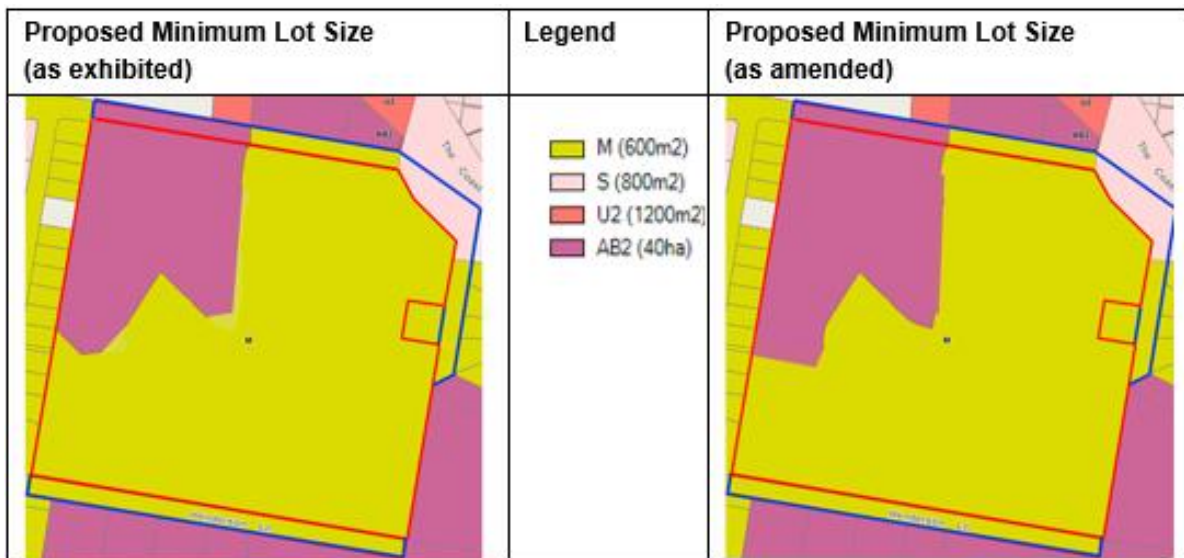


Figure 5: Exhibited and amended lot size

1.3 Background

The site was subject to a planning proposal in 2014. The original planning proposal was prepared in association with an indicative subdivision master plan as a guide to the type of development that could occur on the land if rezoned. The relevant LEP mapping was subsequently amended in accordance with the indicative subdivision master plan, resulting in the existing irregular shaped zone and minimum lot size boundaries of the RU1 Primary Production land within the site.

The original subdivision design included a planned road corridor for the realignment of North Creek Road and the extension of Hutley Drive along the northern boundary of the site, with both roads intersecting at a new 2 lane roundabout which was to connect with The Coast Road, Ballina Road and Byron Bay Road. These road works were to be located within the north-eastern corner of the site.

In February 2018 the applicant was advised that Council no longer requires the realignment of North Creek Road and Hutley Drive through the site and consequently a revised concept subdivision plan was submitted to Council, which also identified the requirement for minor rationalisation of existing zone boundaries.

Development application DA 2018/51 (under assessment at the time this planning proposal was publicly exhibited) comprises the first stage of development and includes the creation of super lots for future residential development in Stage 2. The applicant was advised that a minor LEP amendment would be required to facilitate the proposed Stage 2 development. A copy of the revised subdivision layout plan (as exhibited) is provided at Appendix 3.

1.4 Development Application DA 2018/51

DA 2018/51 was lodged on 2 February 2018 and sought consent for the subdivision of land to create 99 residential lots, five super lots subject to future development and associated infrastructure works. Council considered DA 2018/51 at its Ordinary meeting on 27 August 2020 and resolved to approve the DA subject to conditions.

A copy of the report considered by the Council together with the notice of determination and stamped approved plans is provided at Appendix 8.

The current planning proposal (BSCPP 18/004) was lodged in February 2018 and initially sought to make minor zone boundary adjustments to reflect an amended subdivision design as outlined in DA 2018/51. There were ongoing and interconnected issues between DA 2018/51 and the planning proposal related to site drainage and ecological issues. It was considered to be critical that these issues be resolved through the development assessment process prior to finalisation of the planning proposal. As a result, the planning proposal was placed on hold at the request of the proponent until the DA issues were resolved.

The planning proposal will require further amendments, as noted above in section 1.2, to reflect the subdivision plan prepared by Urbis, drawing no. 02 Rev N dated 11/11/19, approved under DA 2018/51.

1.5 Land to Which the Planning Proposal Applies

This planning proposal relates to land at Lot 1 DP 517111, No 20 North Creek Road, Lennox Head as outlined in red, and adjacent road reserves as outlined in blue, as shown in Figure 1.

1.6 Council Resolutions

A copy of the reports considered by the Council are contained in Appendix 6.

Council originally considered this planning proposal at its Ordinary Meeting held on 24 April 2019. The Council resolved as follows [Minute No. 240419/7]:

1. *That Council endorses the planning proposal (BSCPP 18/004), as per Attachment 3 to this report.*
2. *That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.*
3. *That the Department of Planning and Environment be advised that Council seeks to exercise the functions of the local plan-making authority under section 3.36(2) of the Environmental Planning and Assessment Act 1979 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 Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.*

Following public exhibition the Council further considered the planning proposal at its Ordinary meeting on 26 August 2021 and resolved as follows:

1. *That Council endorses the amendments to the Ballina Local Environmental Plan 2012 as outlined in Planning Proposal BSCPP 18/004 relating to Lot 1 DP 517111, 20 North Creek Road, Lennox Head, as detailed in Attachment 2 to this report (including the recommended changes as outlined in this report).*
2. *That Council requests that the NSW Department of Planning, Industry and Environment complete the LEP amendment process.*
3. *That Council authorises the General Manager to finalise the LEP amendment under delegation, should the Department of Planning, Industry and Environment defer the matter back to Council.*

1.7 Gateway Determination

A Gateway determination was issued on 12 August 2019 allowing the planning proposal to proceed subject to conditions.

An altered Gateway determination was issued on 25 May 2020 which extended the time frame for completion of the LEP amendment until 12 February 2021.

A further altered Gateway determination was issued on 18 February 2021 which extended the timeframe for completion of the LEP amendment until 12 August 2021 and also removed the proposed new local provision to permit subdivision of land for drainage purposes within all RU1 and RU2 zones.

Appendix 7 contains copies of the original and altered Gateway determinations.

2. Objectives & Intended Outcomes

The objectives and intended outcomes of this planning proposal are to amend the Ballina LEP 2012 to adjust existing mapping boundaries with respect to Lot 1 and adjoining road reserves to provide consistency with a revised subdivision layout approved via development application DA 2018/51.

3. Explanation of Provisions

3.1 The Proposal

The proposed outcomes will be achieved by:

- Amending the Ballina LEP 2012 Land Zoning Map by making minor adjustments to RU1, R2 and R3 zone boundaries; and
- Amending the Ballina LEP 2012 Lot Size Map to facilitate consistency with the proposed zone boundary realignments.

The minor amendments to zone boundaries are essentially “housekeeping” in nature and serve to ensure consistency with the approved subdivision and zone boundaries.

The thumbnail maps contained in Figures 6 and 7 indicate the mapping outcomes proposed by the amended planning proposal.



Figure 6: Existing and proposed zoning

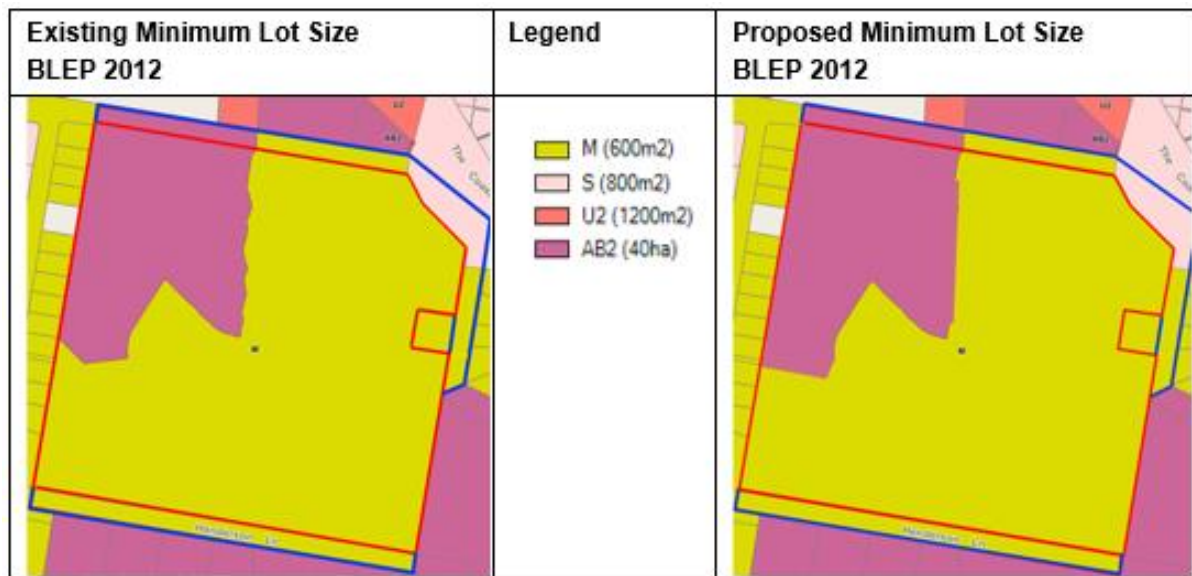


Figure 7: Existing and proposed lot size

4. Justification

4.1 Section A – Need for the Planning Proposal

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

The amended planning proposal is a result of a specific development application, DA 2018/51 approved by the Council on 27 August 2020, which approved an amended subdivision layout plan. The planning proposal will provide consistency with the amended subdivision plan.

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 best way of achieving the proposed outcomes as the proposal relates to the amendment of zone boundaries and minimum lot size requirements.

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 demonstrates strategic merit through its consistency with the objectives and actions set out in the North Coast Regional Plan 2036 and aligns with the following goals and objectives of the plan:

Goal 3: Vibrant and engaged communities

Direction 15: Develop healthy, safe, socially engaged and well-connected communities

Goal 4: Great housing choice and lifestyle options

Direction 22: Deliver greater housing supply

Direction 23: Increase housing diversity and choice

Direction 24: Deliver well-planned rural residential housing areas

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

The amended planning proposal is consistent with the Lennox Head Structure Plan and the Ballina Shire Local Growth Management Strategy as the land is identified as a potential urban release area in both plans.

The original rezoning application for the site addressed the key issues of road infrastructure, vehicle access, stormwater management, slope and vegetation. These issues have also been addressed under the recently approved subdivision application DA 2018/51. This amended planning proposal remains consistent with the outcomes of these previous assessments.

The amended planning proposal is consistent with Council's Community Strategic Plan (CSP) in that it aligns with Council's endorsed urban planning policy which sits under the overarching direction of the CSP.

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

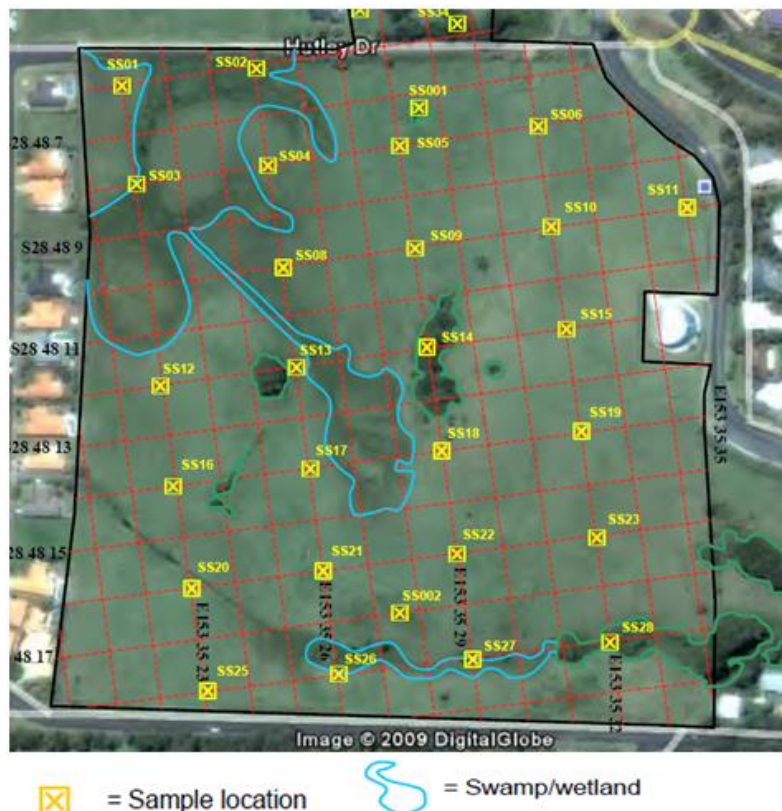
The amended planning proposal is generally consistent with applicable State Environmental Planning Policies (SEPPs).

SEPP No. 55 – Remediation of Land

Following a Court of Appeal decision (*Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd* [2018] NSWCA 304) it is required that planning authorities must give specific consideration to whether the land included within a planning proposal is contaminated land under the provisions of State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55).

The issue of whether Lot 1 is contaminated land has been previously considered as part of the process associated with the 2016 amendment of Ballina LEP 2012. In this respect the whole of Lot 1 was the subject of a Phase 1 Site Contamination Assessment (SCA) undertaken by Coffey Geotechnics in 2013. The SCA identified no areas of environmental concern and concluded that further assessment is not required for this site. The conclusions were based on a review of site history as well as analysis of soil samples.

The diagram below is an extract from the 2013 Coffey report which shows the locations upon Lot 1 which were subject to soil sampling.



It is considered that land contamination issues have been previously assessed as required by SEPP 55 and the associated Land Contamination Guidelines and no further land contamination assessments are required to support the current planning proposal. A copy of the 2013 Coffey Site Contamination Report is included at Appendix Five.

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

No. A number of inconsistencies, considered to be of minor significance and justifiable in the circumstances, have been identified. A section 9.1 Ministerial Direction checklist is provided in Appendix Two.

The Department of Planning, Industry and Environment's Director Regions, Northern Planning Services, has agreed when issuing the Gateway determination that the original proposal's 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 justified or of minor significance.

The Director, Northern Region, Local and Regional Planning, Department of Planning, Industry and Environment in his letter dated 3 February 2020 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is justified in accordance with the terms of the Direction.

4.3 Section C – Environmental, Social and Economic Impact

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

The sites ecological attributes have been considered previously as part of the original planning proposal that rezoned the land (Ballina LEP 2012 Amendment No. 27).

A revised ecological assessment report dated March 2019 was submitted as part of DA 2018/51 and is included at Appendix Four. During the assessment of DA 2018/51 further ecological reports were considered in relation to the likelihood of any impacts on threatened species and ecological communities located on the site as a result of the amended subdivision layout plan.

Consultation was undertaken in September 2019 with the Biodiversity and Conservation Division (BCD) of the Environment, Energy and Science Group in the NSW Department of Planning, Industry and Environment as required by the Gateway determination.

The BCD objected to the original planning proposal primarily on the basis that the impacts on biodiversity values (freshwater wetland community, littoral rainforest and habitat for the threatened plant Hairy Joint Grass (HJG)) were not satisfactorily avoided at the previous rezoning stage as per their initial advice.

Further, the BCD advised that, as the freshwater wetland endangered ecological community (EEC) extends into the recently zoned residential land, the previous rezoning did not accord with the goals of the North Coast Regional Plan as it intensified land uses in areas of high environmental value and the current planning proposal seeks to further encroach into areas of confirmed high environmental value. This opinion formed the basis of the BCD's objection.

There were ongoing and interconnected issues between DA 2018/51 and the planning proposal relating to site drainage and ecological issues and it was considered critical that these issues be resolved through the development assessment process prior to finalisation of the planning proposal.

Council considered DA 2018/51 at its Ordinary meeting on 27 August 2020 and resolved to approve the DA subject to conditions. A copy of the report considered by the Council together with the notice of determination and stamped approved plans is provided at Appendix 8.

Stormwater detention basins, approved via DA 2018/51, are to be located within an area identified as containing a Freshwater Wetland EEC as well as HJG, located within the north western portion of the site that is zoned RU1. HJG is listed as vulnerable plant species under both Federal and State legislation. The mitigation of ecological impacts associated with proposed drainage works were considered as part of the DA process.

The development consent was conditioned requiring all areas of freshwater wetland EEC directly and/or indirectly impacted by the development are to be offset on a like for like basis in the ratio of 10:1, and areas of littoral rainforest EEC and HJG habitat are to be offset on a like for like basis in the ratio of 5:1 (condition 62). Further conditions relating to the protection of freshwater wetland EEC have been imposed.

Council undertook further consultation with the BCD in December 2020 to advise the outcomes of DA 2018/51 and that the planning proposal no longer seeks to rezone three small areas of RU1 zoned land to residential. A copy of the letter sent to BCD is contained within Appendix 9.

The BCD have advised they no longer raise any objection to the revised planning proposal however they recommend that the residual RU1 land containing the wetland be rezoned via a future LEP amendment to the highest conservation zone available, and that Council engage with the landholder over suitable longer-term arrangements for this residual land.

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 amended planning proposal. The potential impacts on threatened species and EECs have been considered during the assessment of DA 2018/51 and are considered to be appropriately mitigated via conditions of consent.

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

The social and economic effects of the planning proposal are considered to be positive. The proposal will facilitate the creation of additional residential zoned lots and a more functional and efficient subdivision layout. This will provide for increased social and economic outcomes through the provision of increased housing supply and improved accessibility whilst minimising impacts to RU1 zoned land.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

The proposal for residential development on the land is generally compatible with existing and planned infrastructure in the locality. The proposal includes substantial new road infrastructure throughout the site.

Original proposal – new local provision

The original proposal sought to include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land. Typically, drainage works are located on residential zoned land and subdivision is not impeded as a consequence of minimum lot size requirements. In the subject case the minimum lot size for the RU1 zone is 40ha and presents a significant constraint to land subdivision which would require an LEP amendment to resolve.

It was initially proposed to apply a SP2 Infrastructure zone, which is not subject to minimum lot size restrictions, to that part of Lot 1 required for drainage purposes. Whilst feasible the difficulty with this approach relates to the extent of the land area required for drainage works not being able to be precisely determined until after works have been constructed. An alternative, and more favoured, option is to permit land subdivision for the purpose of drainage works within all of the RU1 and RU2 rural zones utilizing the mechanism of a special clause within Ballina LEP 2012.

It was envisaged the special clause mechanism could then be utilised on other sites in the future where drainage works located on rural zoned land are proposed to be transferred to the Council.

Following consultation with NSW Department of Industry (NSW DPI) Agriculture, it is considered that the new local provision is not required as clause 2.75(f) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* enables subdivision for the purposes of creation of a lot for drainage purposes where that lot is to be dedicated to Council.

Site drainage works are proposed to be located within the RU1 zoned portion of the site. Once drainage works have been satisfactorily completed a condition of consent (condition 10 approved via DA 2018/51) requires that the land occupied by such works be dedicated to Council as a drainage reserve.

As a result the amended planning proposal no longer seeks to incorporate the new local provision.

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

Consultation relating to the original planning proposal was undertaken with the NSW Rural Fire Service (NSW RFS), the NSW Department of Planning, Industry and Environment's Biodiversity and Conservation Division (BCD) (formerly Office of Environment and Heritage) and the NSW Department of Primary Industries (NSW DPI) Agriculture as required by the Gateway determination during the public exhibition stage of the planning proposal.

NSW RFS Comments

Correspondence received from the NSW RFS is contained within Appendix 9.

The NSW RFS in their correspondence dated 17 December 2019 raised no concerns or issues in relation to bush fire.

NSW DPI Agriculture

Correspondence received from NSW DPI Agriculture is contained within Appendix 9.

NSW DPI Agriculture in their correspondence dated 4 November 2019 raised no objection to the minor realignment of RU1 and R3 zone boundaries identified within the planning proposal.

Concerns were raised however with respect to amending the LEP to include a new local provision to permit the subdivision of land for drainage purposes within all RU1 and RU2 zones. The concerns are summarised below:

- Clause 2.75(f) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* enables subdivision for the purposes of creation of a lot for drainage purposes where that lot is to be dedicated to Council. If dedication is not required the proposed provisions should not allow dwelling houses or other residential land uses to be permitted on undersized lots created for drainage purposes in RU1 or RU2 zones.
- The planning proposal should clarify the circumstances in which undersized lots in rural zones could be created for drainage purposes.
- A definition of what constitutes ‘drainage purposes’ should be included in the proposed provisions if this term is preferred over ‘stormwater management systems’.
- The proposed provisions should include other matters for consideration so as to not adversely impact on surrounding agricultural land use or increase rural land use conflict in the locality.

Having regard for the above comments, and given that condition 10 of DA 2018/51 requires dedication of the drainage reserves to Council, the new local provision is not warranted. It is proposed to request, by way of an alteration to the Gateway determination, that the Department of Planning, Industry and Environment delete reference to the proposed new local provision, which would then satisfy the concerns raised by the NSW DPI Agriculture.

NSW Department of Planning, Industry and Environment’s Biodiversity and Conservation Division (BCD)

Responses received from the Biodiversity and Conservation Division of the Department of Planning, Industry and Environment (BCD) are contained within Appendix 9.

An overview of the consultation between council and the BCD is provided under question 7 above which addresses the likely ecological impacts of the revised planning proposal.

The BCD have advised they no longer raise any objection to the revised planning proposal however they recommend that the residual RU1 land containing the wetland be rezoned via a future LEP amendment to the highest conservation zone available.

Council could consider, by way of a future LEP housekeeping amendment, incorporating the residual wetland in an E zone at such time when environmental protection zones are able to be incorporated into the Ballina LEP 2012.

The BCD also recommend that Council engage with the landholder over suitable longer-term arrangements for this residual land and reconsider the matter of dedication of this land should the landholder offer it.

The landholder has had extensive discussions with Council during the assessment of DA 2018/51 with respect to the potential dedication of the wetland area to Council.

Condition 60 of DA 2018/51 requires the provision of an s88B instrument to state that the ownership and maintenance of the wetland restoration area is either dedicated to Council or is attached to a residential allotment within the subdivision to ensure it is managed and protected in perpetuity.

A further condition (140) states that if a portion of land within the restoration area is to remain in private ownership then a positive covenant is to be registered on the title of the residue lot to ensure its management and protection in perpetuity.

Given the above conditions and extensive negotiations between Council and the landholder during the development assessment phase, it is considered that the recommendation by BCD has been adequately addressed.

5. Mapping

The following maps will be prepared to support this planning proposal:

- Land Zoning Map – Sheet LZN_005D
- Lot Size Map – Sheet LSZ_005D

6. Community Consultation

The original planning proposal was exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. The planning proposal was exhibited from 2 October until 18 October 2019. The exhibition process incorporated the following elements:

- Advertisement within the Ballina Shire Advocate;
- Letters to adjoining and nearby property owners;
- Notice on Council's website; and
- Exhibition at Council's Customer Service Centre and Community Access Points.

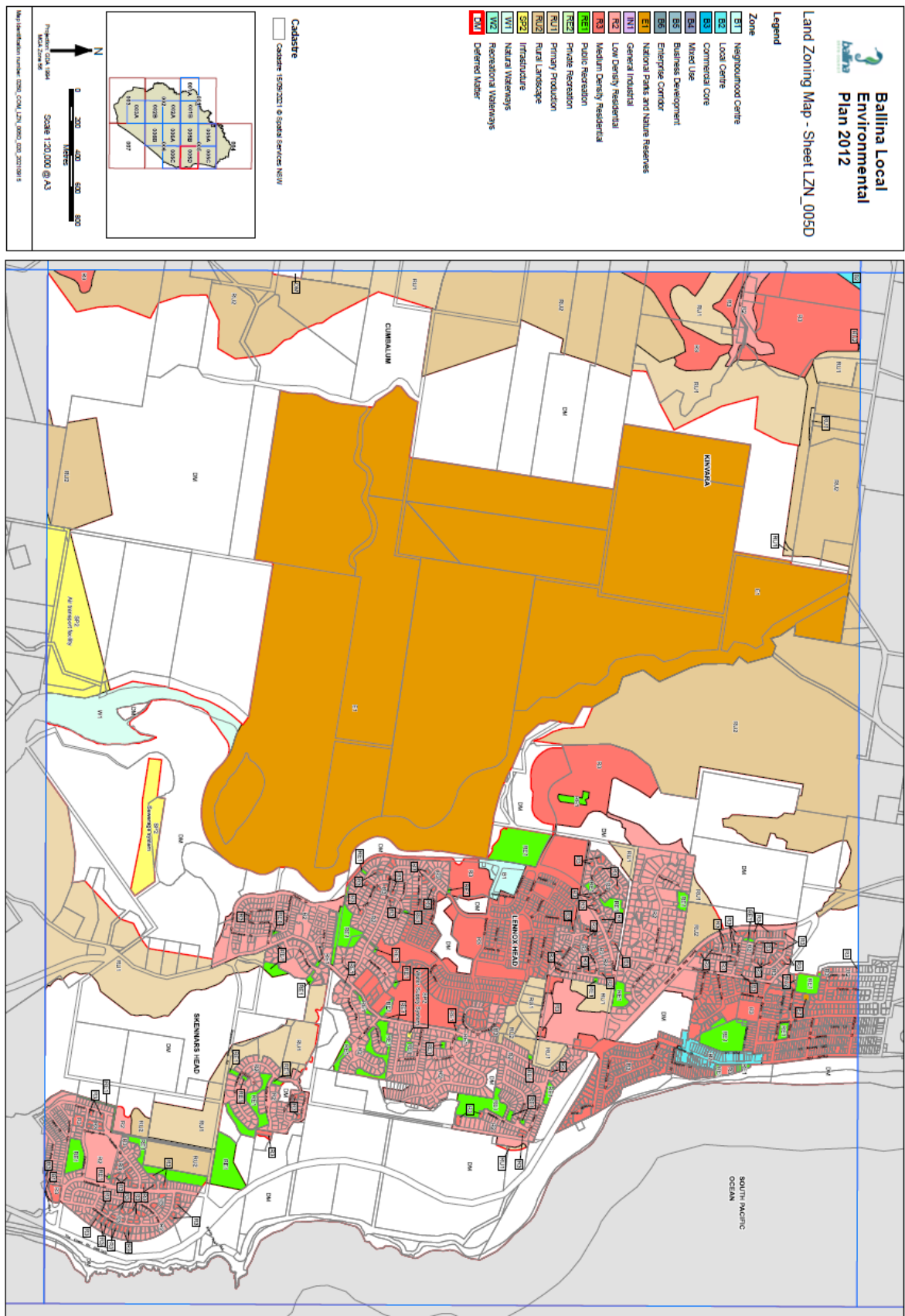
7. Timeline

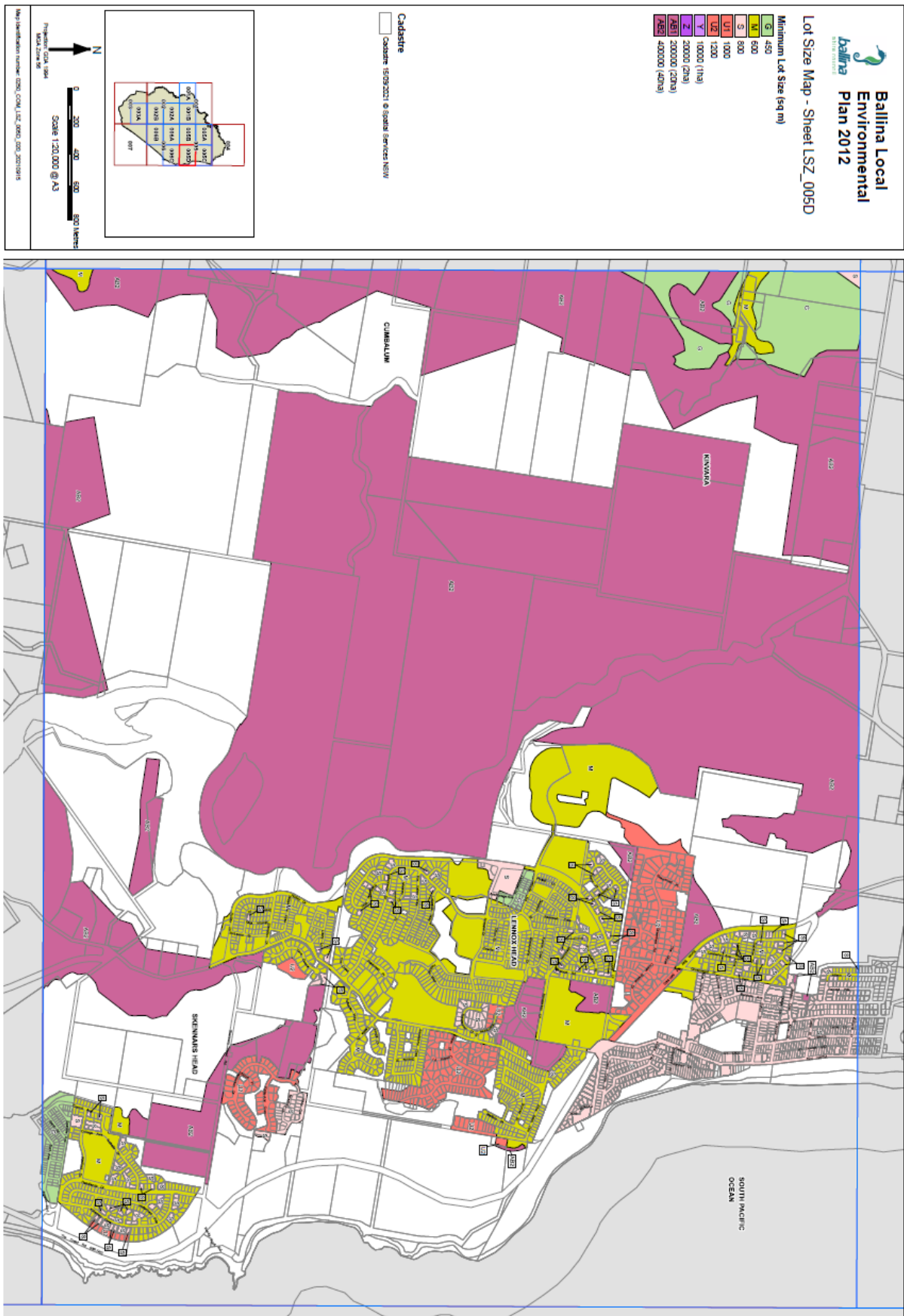
The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Original Gateway Determination	August 2019
Government Agency Consultation	September 2019 to February 2021
Public Exhibition Period	October 2019
Public Hearing	N/A
Submissions Assessment	February 2021
PPA Assessment of Planning Proposal and Exhibition Outcomes	March 2021
Submission of Endorsed LEP to DPI&E for Finalisation	N/A
PPA Decision to Make the LEP Amendment (if delegated)	July 2021
Forwarding of LEP Amendment to DPI&E for Notification (if delegated)	August 2021

8. Appendices

Appendix 1 – Maps





Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 Direction Checklist Planning Proposal – Reservoir Hill Site, 20 North Creek Road, Lennox Head	
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	<p>Justifiably inconsistent.</p> <p>The planning proposal involves a minor adjustment of rural zone boundaries consistent with the proposed residential allotment layout and the extent of roads proposed within the subdivision application currently being assessed by Council under DA 2018/51.</p> <p>The extent of rural land proposed to be rezoned to residential comprises approximately 1,000m² of land on the eastern and southern edges of the 3.68ha rural zoned area of the site and therefore is considered to be of minor significance.</p> <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 12 August 2019 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>
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	<p>Justifiably inconsistent.</p> <p>The planning proposal involves a minor adjustment of rural zone boundaries consistent with the proposed residential allotment layout and the extent of roads proposed within the subdivision application currently being assessed by Council under DA 2018/51.</p> <p>The extent of rural land proposed to be rezoned to residential comprises approximately 1,000m² of land on the eastern and southern edges of the 3.68ha rural zoned area of the site and therefore is considered to be of minor significance.</p> <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 12 August 2019 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>
2. Environment and Heritage	
2.1 Environment Protection Zones	<p>Consistent.</p> <p>Environmental Protection zones are not proposed due to deferral of E zones from the Ballina LEP 2012. Areas within the site having ecological value are not proposed to be rezoned for urban purposes. Amendments to rural zone boundaries are essentially of a housekeeping nature.</p>

Section 9.1 Direction Checklist Planning Proposal – Reservoir Hill Site, 20 North Creek Road, Lennox Head	
Direction No.	Compliance of Planning Proposal
2.2 Coastal Protection	<p>Justifiably Inconsistent.</p> <p>The planning proposal in respect to the Reservoir Hill site relates to amendments that are generally of a housekeeping nature and are considered to be of minor significance.</p> <p>With respect to the proposed local clause to permit subdivision for drainage purposes within the RU1 and RU2 rural zones of the shire, the application of coastal planning principles as established under the Coastal Management Act 2016, the NSW Coastal Design Guidelines and the NSW Coastline Management Manual will be required to be considered as part of any future development application for such development.</p> <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 12 August 2019 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>
2.3 Heritage Conservation	<p>Consistent.</p> <p>There are no known items of environmental or Aboriginal cultural heritage value on the land.</p>
2.4 Recreation Vehicle Areas	<p>Consistent.</p> <p>The planning proposal relates to the provision of residential housing and does not involve the development of land for the purpose of a recreation vehicle area.</p>
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	
3.1 Residential Zones	<p>Consistent.</p> <p>The planning proposal involves the realignment of RU1, R2 and R3 zone boundaries. The proposal is consistent with this direction as it will facilitate a large scale residential subdivision on which dwelling houses are to be constructed.</p> <p>The Ballina LEP 2012 includes an existing provision (Clause 7.7) that requires that adequate servicing is in place, or suitable arrangements have been made for such servicing, before development proceeds.</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 or manufactured home estates.</p>
3.3 Home Occupation	<p>Consistent.</p> <p>The planning 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 relates to amendments that are generally of a housekeeping nature and are considered to be of minor significance.</p> <p>The proposal will facilitate an internal road network that will provide access to future residential lots within the subdivision.</p>

Section 9.1 Direction Checklist Planning Proposal – Reservoir Hill Site, 20 North Creek Road, Lennox Head	
Direction No.	Compliance of Planning Proposal
3.5 Development near Licensed Aerodromes	<p>Consistent.</p> <p>The planning proposal relates to amendments that are generally of a housekeeping nature and are considered to be of minor significance.</p> <p>The proposal does not involve any change to the allowable building heights on the site and therefore will not impact on the effective and safe operation of aerodromes.</p>
3.6 Shooting Ranges	Does not apply to planning proposal.
3.7 Reduction in non-hosted short term rental accommodation period	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	<p>Justifiably inconsistent.</p> <p>This Direction does not apply to the Reservoir Hill site.</p> <p>With respect to the proposed local clause to permit subdivision for drainage purposes within the RU1 and RU2 rural zones of the shire, further assessment will be required to be undertaken as part of the DA process in accordance with the requirements of clause 7.1 of Ballina LEP 2012 where the proposed development involves land mapped as having a probability of containing acid sulfate soils.</p> <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 12 August 2019 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>
4.2 Mine subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	<p>Justifiably inconsistent.</p> <p>This Direction does not apply to the Reservoir Hill site.</p> <p>With respect to the proposed local clause to permit subdivision for drainage purposes within the RU1 and RU2 rural zones of the shire, further assessment will be required to be undertaken as part of the DA process in accordance with the requirements of clause 7.3 of Ballina LEP 2012 where the proposed development involves land identified as being flood prone land.</p> <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 12 August 2019 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>
4.4 Planning for Bushfire Protection	<p>Justifiably inconsistent.</p> <p>The planning proposal was referred to the NSW Rural Fire Service for comment as required by the Gateway determination. The NSW RFS raised no concerns or issues in relation to bush fire.</p> <p>The Director, Northern Region, Local and Regional Planning, Department of Planning, Industry and Environment in his letter dated 3 February 2020 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified in accordance with the terms of the Direction.</p>
5. Regional Planning	

Section 9.1 Direction Checklist	
Planning Proposal – Reservoir Hill Site, 20 North Creek Road, Lennox Head	
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 land is not 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 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 generally consistent with the North Coast Regional Plan 2036.
5.11 Development of Aboriginal Land Council land	Does not apply to planning proposal.
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 does not introduce any new site specific provisions.
7. Metropolitan Planning	
7.1 to 7.10	These Directions do not apply to Ballina Shire.

Appendix 3 – Revised Subdivision Layout Plan (as exhibited) (DA 2018/51)



Appendix 4 – Revised Ecological Assessment (March 2019)

(Provided under separate cover)

Appendix 5 – Site Contamination Assessment (Coffey 2013)

(Provided under separate cover)

Appendix 6 – Council Resolutions

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

Delivery Program Strategic Planning

Objective To seek direction from Council in respect to a planning proposal to amend the Ballina Local Environmental Plan 2012 to make zone boundary adjustments to better reflect a proposed subdivision design and to permit subdivision for drainage purposes.

Background

Council has received a request to amend the Ballina Local Environmental Plan (LEP) 2012. The proponent (Urbis Pty Ltd) has submitted a zoning amendment request on behalf of the owner of Lot 1 DP 517111 (Lot 1), 20 North Creek Road, Lennox Head. The owner of the land is Ballina Island Developments Pty Ltd.

The land (Lot 1) is commonly referred to as the Reservoir Hill site.

Attachment 1 to this report is the proponent's zoning amendment request.

The proposed amendment involves the rationalisation of existing LEP boundaries to facilitate the efficient use of land and provide consistency with a proposed subdivision layout plan (DA 2018/51). The proposed subdivision layout plan is provided in Attachment 2.

The subdivision concept plan submitted in 2016 as part of the then LEP amendment process included a planned road corridor for the realignment of North Creek Road and the extension of Hutley Drive. The then road design concepts influenced the manner in which the land was rezoned in December 2016 (Ballina LEP 2012 Amendment No 27).

The realignment of North Creek Road and Hutley Drive through the site is no longer required by Council. Consequently the original indicative subdivision layout plan upon which the 2016 LEP amendment was based is now obsolete.

A revised subdivision plan has been prepared and submitted with DA 2018/51 which also identifies the requirement for minor rationalisation of existing zone boundaries.

This report provides an overview of the relatively minor LEP amendments sought by the proponent as well as additional amendments considered to be warranted following more detailed assessment of the proposal.

Key Issues

- Processing of LEP amendment request
- Provision of land for residential development
- Mechanism to permit subdivision for drainage purposes

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

Information

A planning proposal has been prepared for Council's consideration (Attachment 3).

If endorsed, the planning proposal will be forwarded to the Department of Planning and Environment for a Gateway determination.

In summary the planning proposal seeks to make a number of minor zone boundary changes as well as facilitating the subdivision of rural land for drainage purposes into a lot below the 40ha minimum lot size.

Proposed Zone Boundary Changes

The planning proposal, as it relates to Lot 1 and adjoining sections of road, provides for an amendment to the Ballina LEP 2012 to make minor zone boundary changes to the RU1, R2 and R3 zone boundaries.

This is to ensure consistency with the subdivision layout proposed under DA 2018/51 (Attachment 2).

It is also proposed to amend the minimum lot size map consistent with the proposed zone boundary realignment.

The proponent is seeking relatively minor zone boundary adjustments as shown in the plan provided in Attachment 4, comprising the following:

- Realignment of the existing irregular shaped RU1 Primary Production zone boundary, located on the southern side of the RU1 boundary; and
- Realignment of various R3 Medium Density Residential zone boundaries to incorporate additional R2 Low Density Residential zoned land.

The proponent is also seeking to rezone proposed Lots 6, 7 and 16, located in the north eastern corner of the site, from R2 to R3 which is inconsistent with the subdivision layout proposed under DA 2018/51 (Attachment 2).

The majority of proposed Lot 16 is already zoned R3.

In addition, having regard to the extent of R3 land that is proposed to be rezoned to R2, the rezoning of the three lots as proposed appears a reasonable request.

In addition to the minor amendments sought by the proponent additional amendments to zone boundaries are considered to be warranted.

These amendments, whilst more significant than what has been proposed by the proponent, are also essentially "housekeeping" in nature and serve to ensure consistency with the subdivision now proposed and zone boundaries.

The map extracts in Figures 1 to 3 below indicate the mapping outcomes proposed by this planning proposal.

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

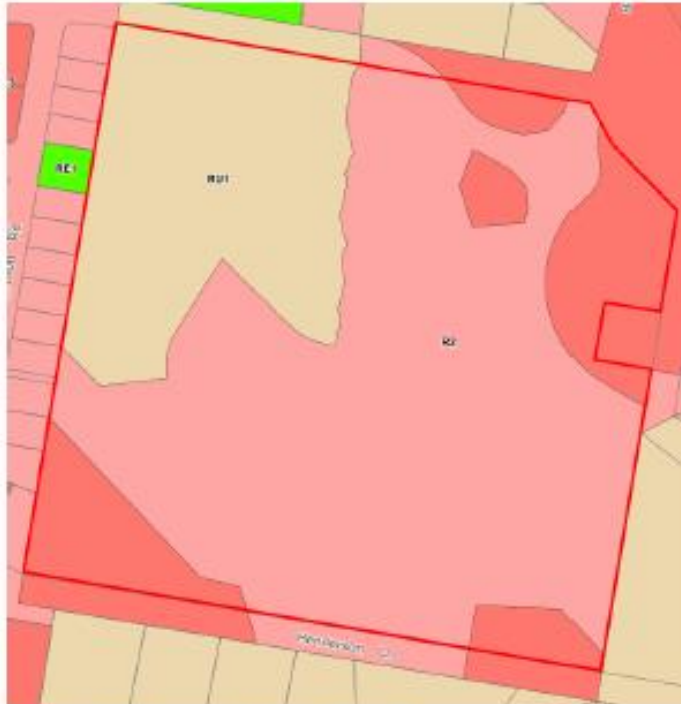


Figure 1: Existing Land Zoning Map Extract



Figure 2: Proposed Land Zoning Map Extract showing changes

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road



Figure 3: Proposed Land Zoning Map Extract

Proposed Subdivision Provisions Relating to Drainage Works

Stormwater drainage works are proposed to be located within the RU1 zoned portion of Lot 1. Once drainage works have been satisfactorily completed it is proposed that the land occupied by such works be dedicated to Council for drainage purposes.

The dedication of land for stormwater drainage purposes involves a land subdivision and is consistent with the approach taken by Council in other release areas.

Typically the stormwater infrastructure is located on residential zoned land and subdivision is not impeded as a consequence of minimum lot size requirements.

In the subject case the minimum lot size for the RU1 zone is 40ha and presents a significant constraint to land subdivision which requires an LEP amendment for resolution.

Another significant constraint is that the drainage infrastructure basins are proposed to be located within an area identified as containing a Freshwater Wetland Endangered Ecological Community (EEC) as well as Hairy-joint grass (HJG). HJG is listed as vulnerable plant species under both Federal and State legislation.

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

The issue of avoidance and/or the mitigation of ecological impacts associated with proposed drainage works is subject to separate merit consideration as part of the DA (DA 2018/51) process.

It was initially proposed to apply a SP2 Infrastructure zone, which is not subject to minimum lot size restrictions, to that part of Lot 1 required for drainage purposes.

Whilst feasible the difficulty with this approach relates to the ecological significance, location and extent of the land area required and assessed to be suitable for drainage works, which can only be confirmed as part of the DA process (DA 2018/51).

An alternative, and more favoured, option is to permit land subdivision for the purpose of drainage works within all of the RU1 and RU2 rural zones utilising the mechanism of a special clause within Ballina LEP 2012.

The special clause mechanism could then be utilised on other sites in the future, subject to merit assessment, where drainage works located on rural zoned land are proposed to be transferred to the Council.

The special clause will be drafted post-Gateway determination and upon advice sought from the Parliamentary Counsel's Office.

In the event that the special local clause option is not able to be implemented an alternative to limit the permissibility of land subdivision for drainage purposes to only that part of the site zoned RU1 is also included within the planning proposal.

There are a number of options available to address this issue none of which are considered to impact the land zoning applied to the land.

Proposed Zone Change Land Area Estimates

Lot 1 has an area of 15.17 ha.

The approximate land area proposed for rezoning is shown in Table 1 below.

Table 1: Approximate land areas proposed for rezoning

Zone Change	Proponent	Council	Total
RU1 to R2	599m ²	405m ²	1,004m ²
R2 to R3	2,001m ²	-	2,001m ²
R3 to R2	-	12,296m ²	12,296m ²
Total	2,600m²	12,701m²	15,301m² (1.5301ha)

The attached planning proposal documents the degree to which the proposal complies with the strategic planning framework for the locality.

Consideration has been given to the planning proposal's consistency with the North Coast Regional Plan, Ballina Shire Council Community Strategic Plan, Lennox Head Structure Plan, the Ballina LEP 2012, applicable State Environmental Planning Policies and the Minister's Section 9.1 Directions.

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

It has been concluded that the planning proposal is generally consistent with the framework provided by each of these documents.

Following a Court of Appeal decision (*Moorebank Recyclers Pty Ltd v Tanilane Pty Ltd* [2018] NSWCA 304) it is required that planning authorities must give specific consideration to whether the land included within a planning proposal is contaminated land under the provisions of State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55).

The issue of whether Lot 1 is contaminated land has been previously considered as part of the process associated with the 2016 amendment of Ballina LEP 2012.

In this respect the whole of Lot 1 was the subject of a Phase 1 Site Contamination Assessment (SCA) undertaken by Coffey Geotechnics in 2013. The SCA identified no areas of environmental concern and concluded that further assessment is not required for this site.

The conclusions were based on a review of site history as well as analysis of soil samples.

The diagram below is an extract from the 2013 Coffey report which shows the locations upon Lot 1 which were subject to soil sampling.



It is considered that land contamination issues have been previously assessed as required by SEPP 55 and the associated Land Contamination Guidelines and no further land contamination assessments are required to support the current planning proposal.

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

At this stage it is not proposed to require any specific additional studies or assessments to support the planning proposal.

The 2013 Coffey Site Contamination Report is provided in Attachment 5 and the Ecological Assessment (March 2019) submitted as part of DA 2018/51 is provided in Attachment 6.

The Gateway determination may specify further investigations and information that the Department of Planning and Environment requires.

Such information will then be required to be submitted to Council by the proponent for incorporation within the planning proposal prior to the public consultation.

Sustainability Considerations

- **Environment**

The proposal is considered to have positive environmental, social and economic effects.

The proposal will facilitate the creation of additional residential zoned allotments and a more functional and efficient subdivision layout.

This will provide for increased social and economic outcomes through the provision of increased housing supply and improved accessibility whilst minimising impacts to RU1 zoned land.

- **Social**

As above.

- **Economic**

As above.

Legal / Resource / Financial Implications

There are no specific legal or financial implications associated with this proposed LEP amendment at this time. The matters arising from this report can be attended to within existing resources.

In the event that Council wishes to advance this proposal, the proponent will be required to meet various processing costs in accordance with the Council's adopted schedule of fees and charges, as well as providing any additional technical information, following Gateway determination.

Progression of this matter can be accommodated within the Planning and Environmental Health Division.

Consultation

Should the matter proceed, an affirmative Gateway determination will specify government agencies consultation requirements and the minimum community consultation period.

At this stage no specific public agency consultation is proposed.

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

Community consultation is proposed over a 14 day period.

Options

The following options are presented for Council's consideration.

1. Council may resolve to endorse the planning proposal for submission to the Department of Planning and Environment for Gateway determination.

This is the preferred and recommended option.

The proposal seeks minor amendments to zone boundaries, endorsed under a previous planning proposal BSCPP 14/002, to facilitate the efficient design and layout in accordance with the revised subdivision layout plan submitted with DA 2018/51.

In addition the planning proposal seeks to insert provisions within Ballina LEP 2012 which would permit subdivision for drainage purposes generally within the RU1 and RU2 rural zones or alternatively specifically within the RU1 zone located within Lot 1.

2. Council may resolve to amend the planning proposal prior to its submission to the Department of Planning and Environment for Gateway determination.

Should Council wish to limit the proposal to permit subdivision for drainage purposes so that it only applies to the RU1 zoned portion of Lot 1 then it may do so.

It is however considered that attempting to broaden this aspect of the planning proposal to incorporate all RU1 and RU2 zoned land has merit and may overcome the need to consider this issue again in the future for other release area sites.

Council could under this option also resolve to make additional zone boundary changes as they apply to Lot 1.

In this respect the changes detailed in this report are considered to be all minor in terms of their impact and have been agreed with the proponent.

3. Council may resolve to reject the planning proposal and maintain existing zone boundaries.

This option is not recommended as the zone boundaries as they currently exist reflected a road design proposal which is now no longer being pursued.

Maintaining zone boundaries as previously determined will not prevent the subdivision of this land for residential purposes but will lead to the creation of many part zoned lots (part R2 and R3) which is considered to be undesirable.

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

This option will not resolve a number of minor zoning anomalies which would normally be the subject of a housekeeping LEP amendment following subdivision.

In addition to the above the subdivision of RU1 land for drainage purposes would not be able to be approved if this planning proposal was not supported.

Alternatives to land subdivision such as easement and other restrictions on title are available but these alternatives are not favoured given the nature and size of the drainage infrastructure proposed.

4. Council may resolve to defer consideration of this matter for a further report or a briefing.

Should the Council require additional information then it is appropriate that this report be deferred for an additional report or a briefing.

RECOMMENDATIONS

1. That Council endorses the planning proposal (BSCPP 18/004), as per Attachment 3 to this report.
2. That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That the Department of Planning and Environment be advised that Council seeks to exercise the functions of the local plan-making authority under section 3.36(2) of the *Environmental Planning and Assessment Act* 1979 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 Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

Attachment(s)

1. Proponent's LEP Amendment Request (Under separate cover)
2. Proposed Subdivision Layout Plan (DA 2018/51)
3. BSCPP 18/004 - Planning Proposal (V1 Initiation/Gateway)
4. BSCPP 18/004 - Proponent's revised zoning map
5. 2013 Coffey Site Contamination Report (Under separate cover)
6. Revised Ecological Assessment March 2019 (Under separate cover)

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

240419/1 RESOLVED

(Cr Sharon Cadwallader/Cr Nathan Willis)

1. That Council endorses the planning proposal (BSCPP 18/004), as per Attachment 3 to this report.
2. That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That the Department of Planning and Environment be advised that Council seeks to exercise the functions of the local plan-making authority under section 3.36(2) of the *Environmental Planning and Assessment Act* 1979 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 Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

FOR VOTE - All Councillors voted unanimously.

ABSENT, DID NOT VOTE - Cr Jeff Johnson and Cr Ben Smith

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

8. Planning and Environmental Health Division Reports

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

Delivery Program

Strategic Planning

Objective

To inform the Council of the outcomes of the public exhibition of Planning Proposal BSCPP 18/004 and seek direction on the finalisation of the LEP amendment.

Background

Council, at its Ordinary meeting held on 24 April 2019 considered a report on an LEP amendment request relating to Lot 1 DP 517111 and adjoining road reserves at 20 North Creek Road, Lennox Head. This site has commonly been known as Reservoir Hill but is now referred to by the land developer as The Crest.

The application proposed the rationalisation of existing LEP zone boundaries to facilitate the efficient use of land and provide consistency with a revised (and now approved) subdivision layout plan.

In considering this matter in April 2019, Council resolved as follows:

1. *That Council endorses the planning proposal (BSCPP 18/004), as per Attachment 3 to this report.*
2. *That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.*
3. *That the Department of Planning and Environment be advised that Council seeks to exercise the functions of the local plan-making authority under section 3.36(2) of the Environmental Planning and Assessment Act 1979 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 Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.*

The planning proposal has been publicly exhibited following the receipt of an affirmative Gateway determination.

This report further considers the merits of the planning proposal following consultation and public exhibition and seeks direction on the finalisation of the matter.

Attachment 1 contains a copy of the exhibited planning proposal. A copy of the revised planning proposal following public exhibition and agency consultation is provided at Attachment 2.

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

Key technical reports associated with the planning proposal relating to site ecology and geotechnical conditions (Appendices 4 and 5 of the exhibited and revised planning proposals) are provided at Attachments 3 and 4.

The purpose of this report is to outline the outcomes of the public exhibition and planning proposal assessment, and seek direction on the finalisation of the proposed LEP amendment.

Key Issues

- Outcomes of the public exhibition process
- Suitability of the proposed LEP amendment and finalisation of the amendment

Information

Land to which the planning proposal relates

The proposed LEP amendment relates to Lot 1 DP 517111 (Lot 1), 20 North Creek Road, Lennox Head (outlined in red) and adjacent road reserves (outlined in blue) as shown in Figure 1 below.

The land (Lot 1) is commonly referred to as the Reservoir Hill site as it adjoins a concrete reservoir structure located on the eastern boundary of the site within Lot 2, adjacent to North Creek Road. The site is also known as The Crest development.

The land is the subject of two approvals for residential subdivision under DA 2018/51 and DA 2020/284. The subdivision approvals are discussed further below.



Figure 1 – Site Location Plan

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

Planning proposal details – as exhibited

The planning proposal has progressed through its assessment during a time when two DAs for the subdivision of the land have also been assessed (and now determined). Ultimately this has meant that the original amendments proposed to zoning and minimum lot size for subdivision have been refined since the exhibition of the amendment to reflect the final approved subdivision layout. The original proposal and changes are outlined below.

The original planning proposal primarily sought to make minor zone boundary and minimum lot size changes to Lot 1 and adjacent road reserves. The existing LEP mapping boundaries reflected the outcomes of the site assessment undertaken at the time the land was first rezoned to enable residential subdivision. However, since that time more detailed assessment has been undertaken in relation to the subdivision (in assessing the development applications for subdivision of the land).

Initially, the landowner sought to realign zone boundaries in accordance with the then proposed subdivision design under development application DA 2018/51.

The original proposal also sought to include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land.

Refer to thumbnail maps in Table 1 to see the existing land use zoning and minimum lot sizes applicable to the lot, and the proposed zone boundary and lot size changes as indicated within the exhibited planning proposal.

Planning proposal details – as amended

DA 2018/51 was lodged on 2 February 2018 and sought consent for the subdivision of land to create 99 residential lots, five super lots subject to future development applications and associated infrastructure works.

The current planning proposal (BSCPP 18/004) was lodged in February 2018 and initially sought to make minor zone boundary adjustments to reflect the amended subdivision design as outlined in DA 2018/51.

There were ongoing and interconnected issues between DA 2018/51 and the planning proposal relating to site drainage and ecological issues. It was considered critical that these issues be resolved through the development assessment process prior to finalisation of the planning proposal. As a result, the planning proposal was placed on hold at the request of the proponent until the DA issues were resolved.

Council considered DA 2018/51 at its Ordinary meeting on 27 August 2020 and resolved to approve the DA subject to conditions. A copy of the report considered by the Council together with the notice of determination and stamped approved plans is provided in Attachments 5, 6 and 7 to this report.

The planning proposal was subsequently amended to reflect the subdivision plan prepared by Urbis, drawing no. 02 Rev N dated 11/11/19, approved under DA 2018/51. The amendments involve a minor realignment of zone boundaries comprising the following:

















8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

- A reduction in lots that are required to be rezoned from R2 to R3, located in the northeast corner of the site; and
- Amendments to the RU1 zone boundaries resulting in an increase in RU1 land.

The amendments to zone boundaries are minor in nature and serve to ensure consistency with the approved subdivision and zone boundaries. Associated changes to the minimum lot size, consistent with the proposed zoning changes, are also proposed.

The thumbnail maps within Table 1 show the existing land use zoning and minimum lot sizes applicable to the lot, and the proposed amendments to zone boundaries and lot size as exhibited and as amended post-exhibition, in chronological order.

Table 1: Existing, as exhibited and as amended (post-exhibition) land use zoning and minimum lot size boundaries.

Legend	Land Zoning	Minimum Lot Size
	 R2  R3  RE1  RU1  Indicative locations of amended zoning boundaries	 M (800m ²)  S (800m ²)  L2 (1200m ²)  AB2 (40ha)  Indicative locations of amended lot size boundaries
Existing		
As exhibited		
As amended post-exhibition		

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

DA 2020/284 was approved on 21 December 2020. This application approved an 18 lot subdivision and associated subdivision works within Lot 102 of approved DA 2018/51. A copy of the stamped approved plan is provided in Attachment 10 to this report.

As depicted in the plan for DA 2020/284, this subdivision does not have any impact on the zone boundary changes sought by this planning proposal.

Gateway Determination

The NSW Department of Planning, Industry and Environment (DPIE) issued a Gateway determination on 12 August 2019 which allowed the planning proposal to proceed to public exhibition.

The Gateway determination was subject to conditions, which included the following requirements:

- i) 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.
- ii) A minimum exhibition period of 14 days.
- iii) Consultation to take place with the NSW Rural Fire Service (RFS), Department of Planning, Industry and Environment's Biodiversity and Conservation Division (BCD) and the NSW Department of Primary Industries (NSW DPI) Agriculture.
- iv) The timeframe for completion of the LEP amendment was specified as 9 months following the date of Gateway determination. (An altered Gateway determination was issued on 13 May 2020 which extended the completion period until 12 February 2021. This timeframe was again extended on 18 February 2021 to require completion by 12 August 2021).

The DPIE also advised Council that the Department Secretary had agreed that no further approvals were required in respect to the planning proposal's 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.

In respect to Direction 4.4 Planning for Bushfire Protection, following consultation with the NSW RFS, advice was provided on 3 February 2020 that the Department Secretary agreed that the inconsistency was justified in accordance with the terms of the Direction.

Altered Gateway Determinations

An altered Gateway determination was issued on 13 May 2020 which extended the timeframe for completion of the LEP amendment to 12 February 2021. This allowed further time for the interconnected issues relating to site drainage and ecological matters to be resolved through the assessment of the related development application DA 2018/51.

On 10 February 2021, Council informed the DPIE of the outcomes of the government agency consultation and the nature of the proposed amendments to the planning proposal arising from the consultation. Further discussion of agency consultation is provided below in this report.

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

The DPIE subsequently issued an altered Gateway determination on 18 February 2021 which removed the proposed new local provision to permit the subdivision of land for drainage purposes within all RU1 and RU2 zones and further extended the timeframe for completion of the LEP amendment to 12 August 2021.

Given that the timeframe for completion of the LEP amendment has now expired, and having regard for current DPIE practice in relation to matters in this circumstance, it is intended that Council not request a formal extension of time but to continue to complete the matter with the recommendation below being that the Department undertake the finalisation process.

If, however, the DPIE defers the matter back to Council for finalisation, staff would complete the matter under delegation.

Copies of the original and altered Gateway determinations are contained in Appendix 7 of the revised planning proposal (Attachment 2 to this report).

Consultation – NSW Rural Fire Service

The NSW RFS in their correspondence dated 17 December 2019 raised no concerns or issues in relation to bush fire.

Correspondence received from the NSW RFS is contained in Appendix 9 of the revised planning proposal.

Consultation – NSW DPI Agriculture

In their correspondence dated 4 November 2019, the NSW DPI Agriculture raised no objection to the minor realignment of RU1 and R3 zone boundaries identified within the planning proposal. Correspondence received from the NSW DPI Agriculture is contained in Appendix 10 of the revised planning proposal.

Concerns were raised however with respect to amending the Ballina LEP 2012 to include a new local provision to permit the subdivision of land for drainage purposes within all RU1 and RU2 zones.

Clause 2.75(f) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* enables subdivision for the purposes of creation of a lot for drainage purposes where that lot is to be dedicated to Council.

Given that DA 2018/51 contains a condition of consent requiring dedication of approved drainage reserves to Council (condition 10), it was considered that the proposed new local provision is not warranted and as a result, the DPIE altered the Gateway determination by removing the proposed new local clause from the planning proposal, as discussed above.

Consultation – NSW DPIE's Biodiversity and Conservation Division (BCD)

The site's ecological attributes have been considered previously as part of the original planning proposal that rezoned the land (Ballina LEP 2012 Amendment No. 27).

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

The assessment of DA 2018/51 considered further ecological reports in relation to the likelihood of any impacts on threatened species and ecological communities located on the site as a result of the amended subdivision layout plan.

In accordance with the terms of the Gateway determination, consultation was undertaken in September 2019 with the Biodiversity and Conservation Division of the NSW Department of Planning, Industry and Environment (BCD).

The BCD objected to the original planning proposal primarily on the basis that the impacts on biodiversity values (freshwater wetland community, littoral rainforest and habitat for the threatened plant Hairy Joint Grass (HJG)) were not satisfactorily avoided at the previous rezoning stage as per the BCD's initial advice.

Further, the BCD advised that, as the freshwater wetland endangered ecological community (EEC) extends into the recently zoned residential land, the previous rezoning did not accord with the goals of the North Coast Regional Plan as it intensified land uses in areas of high environmental value and the current planning proposal seeks to further encroach into areas of confirmed high environmental value. This opinion formed the basis of the BCD's objection.

There were ongoing and interconnected issues between DA 2018/51 and the planning proposal relating to site drainage and ecological issues and it was considered critical that these issues be resolved through the development assessment process prior to finalisation of the planning proposal.

Stormwater detention basins, approved via DA 2018/51, are to be located within an area identified as containing a Freshwater Wetland EEC as well as HJG, located within the north western portion of the site that is zoned RU1. HJG is listed as vulnerable plant species under both Federal and State legislation. The mitigation of ecological impacts associated with proposed drainage works were considered as part of the DA process.

The development consent was conditioned requiring all areas of freshwater wetland EEC directly and/or indirectly impacted by the development area to be offset on a like for like basis in the ratio of 10:1, and areas of littoral rainforest EEC and HJG habitat are to be offset on a like for like basis in the ratio of 5:1 (condition 62). Further conditions relating to the protection of freshwater wetland EEC have been imposed.

Council undertook further consultation with the BCD in December 2020 to advise the outcomes of DA 2018/51 and that the planning proposal had been amended to reflect the subdivision plan approved in DA 2018/51 (see Attachment 6 for approved subdivision plan).

The BCD have advised they no longer raise any objection to the revised planning proposal however they recommend that the residual RU1 land containing the wetland be rezoned via a future LEP amendment to the highest conservation zone available.

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

Council could consider, by way of a future LEP amendment, incorporating the residual wetland in an environmental protection zone at such time when environmental protection zones relating to this type of circumstance are able to be incorporated into the Ballina LEP 2012.

The BCD also recommended that Council engage with the landholder over suitable longer-term arrangements for this residual land and reconsider the matter of dedication of this land should the landholder offer it.

The landholder has had extensive discussions with Council during the assessment of DA 2018/51 with respect to the potential dedication of the wetland area to Council.

Condition 60 of DA 2018/51 requires the provision of an s88B instrument to state that the ownership and maintenance of the wetland restoration area is either dedicated to Council or is attached to a residential allotment within the subdivision to ensure it is managed and protected in perpetuity.

A further condition (140) states that if a portion of land within the restoration area is to remain in private ownership then a positive covenant is to be registered on the title of the residue lot to ensure its management and protection in perpetuity.

Given the above conditions and extensive negotiations between Council and the landholder during the development assessment phase, it is considered that the recommendation by BCD has been adequately addressed.

Correspondence received from the BCD is contained within Appendix 11 of the revised planning proposal (Attachment 2 to this report).

Delivery Program Strategy / Operational Plan Activity

The assessment of this planning proposal relates to action HE3.1j – *Manage LEP amendment requests* in Council's adopted Delivery Program and Operational Plan.

Community Consultation Policy

The planning proposal was publicly exhibited from 2 October 2019 until 18 October 2019 in accordance with the terms of the Gateway determination and the *Environmental Planning and Assessment Act 1979*.

In response to the public exhibition, 22 submissions were received and are contained in Attachment 8.

The issues raised in the submissions largely related to traffic and site access issues which were matters for consideration in respect of the development application for the subdivision of the land, not the LEP amendment. The submissions were forwarded to Council's development assessment section for consideration during the assessment of DA 2018/51 and submitters were notified via email. A copy of the notification provided to submitters is contained in Attachment 9.

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

Financial / Risk Considerations

The assessment and processing of this planning proposal can be accommodated within existing resources, including through the receipt of applicable fees from the proponent.

Options

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

Option 1 – Finalise the LEP Amendment

This is the recommended option.

The proposal seeks minor amendments to zone boundaries which resulted from a planning scheme no longer supported by Council, to facilitate the efficient design and layout in accordance with the revised subdivision layout plan approved via DA 2018/51.

Additional minor adjustments are proposed as outlined in this report, based on the final approved subdivision design. Given the further amendments are very minor in nature and are for purposes consistent with the original intent of the planning proposal, it is not considered to be necessary to re-exhibit the changes.

This option would involve Council resolving to finalise the amendment to the Ballina Local Environmental Plan 2012 and requesting that the Department of Planning, Infrastructure and Environment (DPIE) complete the amendment given that the Gateway determination has now expired.

If, however, the DPIE defers the matter back to Council, staff would complete the LEP amendment under delegation.

Council could also further investigate incorporating the residual wetland (currently zoned RU1 Primary Production) in an E zone at such time when environmental protection zones are able to be incorporated into the Ballina LEP 2012. This would ensure that the land is provided with the highest level of protection available under the Ballina LEP 2012 suite of land use zones and, if appropriate, would be undertaken as part of a future LEP housekeeping amendment.

The address of the environmental protection zoning does not form part of the recommendation as Council's current focus in relation to e zones are those areas that are subject to zoning under the 1987 LEP not already zoned for environmental protection purposes (the subject area is zoned under the 2012 LEP). This matter can be revisited at a future date depending on Council's overall approach to environmental protection zones.

Option 2 – Discontinue the planning proposal

Maintaining zone boundaries as they currently exist will lead to the creation of many part zoned lots (part R2 and R3) which is considered to be undesirable.

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head

This option is not recommended as the planning objectives associated with the amendment and overall simplification of zoning for certain residential lots will not be achieved.

Option 3 – Defer the consideration of this matter to a Councillor briefing

Council may defer the matter to receive additional information. This option is not recommended as there are no outstanding technical matters or issues arising from the submissions received that have been identified as requiring further assessment.

RECOMMENDATIONS

1. That Council endorses the amendments to the Ballina Local Environmental Plan 2012 as outlined in Planning Proposal BSCPP 18/004 relating to Lot 1 DP 517111, 20 North Creek Road, Lennox Head, as detailed in Attachment 2 to this report (including the recommended changes as outlined in this report).
2. That Council requests that the NSW Department of Planning, Industry and Environment complete the LEP amendment process.
3. That Council authorises the General Manager to finalise the LEP amendment under delegation, should the Department of Planning, Industry and Environment defer the matter back to Council.

Attachment(s)

1. BSCPP 18/004 - Exhibited Planning Proposal (V4 Exhibition) (Under separate cover)
2. BSCPP 18/004 - Altered Planning Proposal (V5 Revised_Finalisation) (Under separate cover)
3. BSCPP 18/004 - Revised Ecological Assessment March 2019 (Appendix 4 of Planning Proposal) (Under separate cover)
4. BSCPP 18/004 - 2013 Coffey Site Contamination Report (Appendix 5 of Planning Proposal) (Under separate cover)
5. DA 2018/51 - Council Report and Minutes
6. DA 2018/51 - Stamped Approved Plans
7. DA 2018/51 - Notice of Determination
8. BSCPP 18/004 - Submissions
9. BSCPP 18/004 - Response email to submissions
10. DA 2020/284 - Stamped Approved Plan

8.1 Planning Proposal - Reservoir Hill, 20 North Creek Road Lennox Head
260821/4 RESOLVED

(Cr Ben Smith/Cr Phillip Meehan)

1. That Council endorses the amendments to the Ballina Local Environmental Plan 2012 as outlined in Planning Proposal BSCPP 18/004 relating to Lot 1 DP 517111, 20 North Creek Road, Lennox Head, as detailed in Attachment 2 to this report (including the recommended changes as outlined in this report).
2. That Council requests that the NSW Department of Planning, Industry and Environment complete the LEP amendment process.
3. That Council authorises the General Manager to finalise the LEP amendment under delegation, should the Department of Planning, Industry and Environment defer the matter back to Council.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Nathan Willis

Appendix 7 – Gateway Determination

Original Gateway Determination – 12 August 2019



PP_2019_BALLI_001_00/IRF19/4181

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

Dear Mr Hickey

Planning proposal PP_2019_BALLI_001_00 to amend Ballina Local Environmental Plan 2012

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 make minor zone and minimum lot size changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head and include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land.

As delegate of the Minister for Planning and Public Spaces, 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 1.2 Rural Zones, 1.5 Rural Lands, 2.2 Coastal Management, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land 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 Directions 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to public exhibition / 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 nine 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, Industry 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 enquiries about this matter, I have arranged for Ms Kate Campbell to assist you. Ms Campbell can be contacted on 5778 1401.

Yours sincerely



12-8-2019

Jeremy Gray
Director, Northern Region
Planning Services

Encl: Gateway determination
Authorised plan-making reporting template



Gateway Determination

Planning proposal (Department Ref: PP_2019_BALLI_001_00): to make minor zone and minimum lot size changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head and include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land.

I, the Director Regions, Northern at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, 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 make minor zone boundary changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head and include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land 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. 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, Industry 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 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning, Industry and Environment 2016).
3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - NSW Rural Fire Service
 - Department of Planning, Industry and Environment (Environment, Energy and Science)
 - Department of Planning, Industry and Environment (Agriculture)

Each public authority/organisation 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.

4. 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).
5. 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.
6. The time frame for completing the LEP is to be 9 months following the date of the Gateway determination.

Dated 12 day of August 2019.



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

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

Altered Gateway Determination – 13 May 2020



**Planning,
Industry &
Environment**

PP_2019_BALLI_001_00/IRF20/2055

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

Dear Mr Hickey

Planning proposal PP_2019_BALLI_001_00 – Alteration of Gateway Determination

I refer to your correspondence seeking an extension of time to complete planning proposal PP_2019_BALLI_001_00 to make minor zone and minimum lot size changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head and include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land.

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 12 August 2019 for PP_2019_BALLI_001_00. The Alteration of Gateway determination is enclosed.

If you have any questions in relation to this matter, I have arranged for Ms Kate Campbell to assist you. Ms Campbell can be contacted on 5778 1401.

Yours sincerely

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

13-5-2020

Jeremy Gray
Director, Northern Region
Local and Regional Planning

Encl: Alteration of Gateway Determination



**Planning,
Industry &
Environment**

Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2019_BALLI_001_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 12 August 2019 for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Delete:

"condition 6"

and replace with:

a new condition 6: "The time frame for completing the LEP is by 12/02/2021"

Dated 13 day of May 2020.

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

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

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

PP_2019_BALLI_001_00 (IRF 20/2055)

Altered Gateway Determination – 18 February 2021



**Planning,
Industry &
Environment**

PP_2019_BALLI_001_00(IRF21/513)

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

Via email: council@ballina.nsw.gov.au
leah.toole@ballina.nsw.gov.au

Dear Mr Hickey

**Planning proposal PP_2019_BALLI_001_00 / PP-2020-2123 – Alteration of
Gateway Determination**

I refer to your letter in relation to an extension request and proposed revisions to the above planning proposal to make minor zone and minimum lot size changes to land at the Reservoir Hill site, 20 North Creek Road, Lennox Head.

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 12 August 2019 for PP_2019_BALLI_001_00 (since altered). The Alteration of Gateway determination is enclosed.

If you have any questions in relation to this matter, I have arranged for Ms Carlie Boyd to assist you. Ms Boyd can be contacted on 6643 6404.

Yours sincerely

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

18/2/2021

Jeremy Gray
Director, Northern Region
Local and Regional Planning

End: Alteration of Gateway Determination



Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2019_BALLI_001_00 / PP-2020-2123)

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 12 August 2019 (since altered) for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Change the name and description of the planning proposal from:

Planning proposal (Department Ref: PP_2019_BALLI_001_00): to make minor zone and minimum lot size changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head and include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land.

I, the Director Regions, Northern at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, 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 make minor zone boundary changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head and include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land should proceed subject to the following conditions:

to:

Planning proposal (Department Ref: PP_2019_BALLI_001_00): to make minor zone and minimum lot size changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head.

I, the Director Regions, Northern at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, 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 make minor zone boundary changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head should proceed subject to the following conditions:

2. Delete condition 6:

"6. The time frame for completing the LEP is by 12/02/2021."

and replace with a new condition 6:

"6. The time frame for completing the LEP is by 12 August 2021."

Dated 18 day of February 2021.



Jeremy Gray
Director, Northern
Local and Regional Planning
Department of Planning, Industry and
Environment

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

Appendix 8 – DA 2018/51 – Council Report, Notice of Determination, Stamped Approved Subdivision Plans

(Provided under separate cover)

Appendix 9 – Consultation – NSW Rural Fire Service



NSW RURAL FIRE SERVICE

Ballina

Your reference: BSCPP 18/004
Our reference: SP-2019-00094

ATTENTION: Leah Toole

Date: Tuesday 17 December 2019

Dear Sir/Madam,

Strategic Planning Instrument

Draft LEP

BALLINA LEP 2012 - RESERVOIR HILL SITE, 20 NORTH CREEK ROAD LENNOX HEAD

I refer to your correspondence dated 26/09/2019 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 subsequently raise no concerns or issues in relation to bush fire.

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

Yours sincerely,

Martha Dotter

**Team Leader, Dev. Assessment & Planning
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 Road Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 9555
F (02) 8741 9550
www.rfs.nsw.gov.au

Appendix 10 – Consultation – NSW DPI (Agriculture)



Department of
Primary Industries

OUT19/14744

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Attention: Leah Toole/Klaus Kerzinger
leah.toole@ballina.nsw.gov.au / klaus.kerzinger@ballina.nsw.gov.au

Dear Sir/Madam

Planning Proposal BSCPP 18/004 – Reservoir Hill Site, 20 North Creek Road, Lennox Head

Thank you for the opportunity to provide comment on the above planning proposal and new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land, as per your letter dated 27 September 2019.

The NSW Department of Primary Industries (NSW DPI) Agriculture provides advice to planning authorities about the protection and growth of agricultural industries and the resources upon which these industries depend.

DPI Agriculture has no objections to the minor realignment of RU1 and R3 zone boundaries identified within the planning proposal.

Concerns are raised however with respect to amending the *Ballina LEP 2012* to permit the subdivision of land for drainage purposes within all RU1 and RU2 zones. Specific comments relating to this proposed amendment are provided below:

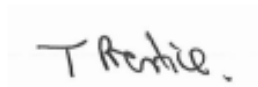
1. Clause 2.75(f) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* enables subdivision for the purposes of creation of a lot for drainage purposes where that lot is to be dedicated to Council. This clause is quite broad, however does require dedication to Council. If dedication is not required the proposed provisions should not allow dwelling houses or other residential land uses to be permitted to be constructed on undersized lots created for drainage purposes in the RU1 or RU2 zones.
2. The planning proposal does not appear to adequately explain the intent of the proposed clause to enable the creation of undersized lots. The planning proposal should explain the circumstances in which undersized lots in RU1/RU2 zones could be created for drainage purposes, i.e. is the only circumstance when this clause would apply is when the lot is to be used for the management of stormwater from urban developments and the lot is to be dedicated to Council?
3. Council should consider whether a reference to 'stormwater management systems' would be more appropriate in the proposed clause than 'drainage purposes'. If a reference to 'drainage purposes' is preferred then a definition of what constitutes drainage purposes for which an undersized lot can be created should be included in the proposed provisions.

NSW Department of Primary Industries - Agriculture
Locked Bag 21, Orange NSW 2800 | 161 Kite St, Orange NSW 2800
Tel: 02 6391 3391 | Email: landuse.ag@dpi.nsw.gov.au | www.dpi.nsw.gov.au | ABN: 72 189 919 072

4. The proposed provisions should include some matters for consideration such as
 - a) the subdivision will not adversely affect the use of the surrounding land for agriculture, and
 - (b) the subdivision is necessary for the ongoing operation of the permissible use, and
 - (c) the subdivision will not increase rural land uses conflict in the locality, and
 - (d) the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

Should you wish to discuss this matter further, please contact Agricultural Land Use Planning Officer, Selina Stillman, on 0412 424 397.

Yours sincerely



4/11/19

Tamara Prentice
Manager – Agricultural Land Use Planning

Appendix 11 – Consultation – NSW DPIE Biodiversity and Conservation Division (BCD)

BCD initial consultation advice – 13 November 2019



Planning,
Industry &
Environment

Our Ref: DDC19/043852
Your Ref: BSCPP 18/004 – Reservoir Hill Site, Lennox Head (19/3663)

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Attention: Ms Leah Toole, Strategic Planner

Dear Mr Hickey

RE: Reservoir Hill, Lennox Head Planning Proposal (BSCPP 18/004)

Thank you for your letter dated 26 September 2019 about the Reservoir Hill Site, Lennox Head Planning Proposal seeking comments from the Biodiversity and Conservation Division (BCD) of the Environment, Energy and Science Group in the NSW Department of Planning, Industry and Environment. I appreciate the opportunity to provide input.

The BCD was formerly part of the Office of Environment and Heritage, but now forms part of a Group that has responsibilities relating to biodiversity (including threatened species and ecological communities, or their habitats), Aboriginal cultural heritage, National Parks and Wildlife Service estate, climate change, sustainability, flooding, coastal and estuary matters.

We have reviewed the documents supplied and advise that the impacts on biodiversity values (freshwater wetland community, littoral rainforest and habitat for the threatened plant Hairy Joint Grass) were not satisfactorily avoided at the previous rezoning stage despite our detailed advice.

We note that we were not consulted on the previous Planning Proposal for the planning area at exhibition stage although we provided comments about the issues we identified with the environmental and flooding assessments at pre-exhibition stage. Our previous advice was that these studies should inform appropriate land use zones. Instead the RU1 Primary Production zone was retained in the north-west corner of the site and the remainder of the site was zoned either R1 Low Density Residential or R3 Medium Density Residential.

The freshwater wetland endangered ecological community (EEC) extends into the recently zoned residential land. Hence, the previous rezoning did not accord with the goals of the North Coast Regional Plan as it intensified land uses in areas of high environmental value, and the current Planning Proposal seeks to further encroach into areas of confirmed high environmental value.

For this reason, we object to this Planning Proposal in its current form.

As the issues we raised at pre-exhibition stage for the previous Planning Proposal were not adequately addressed and the biodiversity values have not been avoided and minimised, we consider this Planning Proposal should be revised and re-exhibited to instead provide a suitable zone for the area that contains the freshwater wetland (EEC). We would prefer this be zoned E2 Environmental Conservation.

Alternatively, the council could reconsider its earlier decision and agree to accept transfer of the land to the council. If the council agreed to receive the land then we could support a rezoning to RE1 Public Recreation for this part of the site. However, we note that while some recreational uses on this part of the site could be permitted and would benefit the future residents of the area, such uses would have to be carefully considered so that the biodiversity values across this part of the site are protected and managed.

These issues are discussed in detail in **Attachment 1** to this letter.

In summary, the BCD recommends that:

1. The north-west corner of the site be rezoned from RU1 Primary Production to E2 Environmental Conservation to protect the endangered ecological community and habitat for Hairy Jointgrass.
2. Alternatively, if the council reconsiders its earlier decision and decides to accept dedication of the land, then this part of the site could be zoned RE1 Public Recreation.
3. Regardless of the zone outcome, all stormwater infrastructure and detention basins should be located within the residential zoned land and the biodiversity values across the north-west corner of the site should be protected and managed.

If you have any questions about this advice, please do not hesitate to contact Ms Rachel Lonie, Senior Conservation Planning Officer, at rachel.lonie@environment.nsw.gov.au or 6650 7130.

Yours sincerely

 13 November 2019

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Biodiversity and Conservation

Enclosure: Attachment 1 – Detailed BCD Comments – Reservoir Hill Site, Lennox Head Planning Proposal 18/004

cc: Kate Campbell, Senior Planning Officer Planning and Assessment

Attachment 1: Detailed BCD Comments – Reservoir Hill Site, Lennox Head Planning Proposal 18/004

The Planning Proposal seeks to amend the Ballina Local Environmental Plan (LEP) 2012 in relation to land at Lot 1, DP 517111 located at 20 North Creek Road, Lennox Head. Specifically, it seeks to amend the Ballina LEP 2012 to:

- facilitate a minor realignment of the existing irregular shaped RU1 Primary Production zone boundaries;
- facilitate minor realignment of various R3 Medium Density Residential zone boundaries;
- facilitate consistency with the zone boundary realignments; and
- permit the subdivision of land for drainage purposes within all RU1 and R2 Low Density Residential zones.

1. Previous OEH involvement

Lot 1 DP 517111 was formerly the subject of a Planning Proposal in 2014. The (then) Office of Environment and Heritage (OEH) commented on the Planning Proposal prior to public exhibition in our response dated 8 August 2019 (DOC14/127401). Based on that review, the OEH recommended further investigations be undertaken in relation to the freshwater wetland community, the threatened Hairy Jointgrass (HJG) and flood hazard.

The OEH recommended this investigation be followed by the application of appropriate land use zones prior to finalising the Planning Proposal. The OEH (now the Biodiversity and Conservation Division or BCD) was not provided with any reports for further review or consulted again prior to the proposal being determined with a LEP amendment gazetted in December 2016.

It was originally intended that the north-west corner of the planning area would have an open space or conservation zoning applied. However, the council was unwilling to have the land transferred to it as open space. Therefore, this portion of the site remained zoned RU1.

2. Biodiversity impacts to be avoided at Planning Proposal stage

The current Planning Proposal report states that drainage infrastructure basins are proposed to be located within an area identified as containing a Freshwater Wetland Endangered Ecological Community (FW EEC) as well as habitat for Hairy-joint grass (HJG), which is listed as vulnerable plant species under both Federal and State legislation. Rather than avoiding impacts on these areas of high environmental value the Planning Proposal states, *"The mitigation of ecological impacts associated with proposed drainage works is subject to separate consideration as part of the DA (DA 2018/51) process."* We understand the Development Assessment (DA) is in progress.

Biodiversity impacts on areas of high environmental value need to be avoided and minimised wherever possible at the Planning Proposal stage in accordance with the North Coast Regional Plan. This should not be deferred until development assessment (DA) stage. Sufficient environmental assessment needs to be undertaken to support the planning decisions in order to demonstrate that biodiversity impacts have been avoided and minimised.

This Planning Proposal does not avoid any biodiversity impacts. The report merely states that such impacts will be subject to consideration at DA stage. This is despite the presence of two EECs (as littoral rainforest is also present on the site) and the presence of HJG across the site. No environmental zones have been proposed to retain land that has biodiversity values and the R1, R3 and RU1 zones have permitted land uses that are incompatible with the retention and protection of biodiversity.

3. Freshwater Wetland Endangered Ecological Community (EEC)

Mapping of FW EEC

In support of the Planning Proposal, the BCD was provided with a Revised Ecological Assessment (REA) by JWA dated March 2019. The REA states *"...Council's ecologist is of the opinion that the area previously mapped (i.e. in the 2013 study) is representative of the EEC, and this area will therefore be treated as such for the purposes of this assessment. The area of EEC (i.e. better-quality wetland vegetation comprising >50% native species, as opposed to areas dominated by exotic grasses) was ground-truthed during this assessment and its extent is shown in FIGURE 7)".*

The 2013 mapping relied upon a vegetation assessment that was undertaken in 2008 and was based on random meanders rather than systematic plot surveys. Despite the comment that this area was ground-truthed during the current assessment, there is no plot data to support the claim that some areas of vegetation comprise <50% native species. The site visit by BCD staff in June 2019 found large areas of *Persicaria* spp. in the upper reaches of the first order tributary (i.e. in the portion of community 4 that has not been identified as containing >50% native species) (see Photo 1).

The 2013 report (p12) also acknowledged that *"the EEC is likely to cover a larger area of the site than is currently mapped. While this Flora and Fauna assessment is based on the current mapping (2008), it is advised that additional fieldwork to update the vegetation mapping accompanies later stages of the development application process in order to more adequately address the EEC occurring on the subject site."*

Further information provided

In response to a request for further information, the BCD was provided with the following reports:

- Amended Hairy Joint Grass Survey Report (JWA Ecological Consultants) dated July 2019, which replaces the Hairy Joint Grass Compensatory Habitat Plan that is referred to in the revised ecological assessment dated March 2019; and
- Stormwater Management Report (Mott MacDonald) dated 26 August 2019, which shows the proposed revised layout of the detention basins.
- a Revised Assessment of Significance (RAS) – Freshwater Wetland EEC report, prepared by JWA Ecological Consultants, dated July 2019.

The RAS reports on a detailed soil analysis undertaken by Gilbert and Sutherland Pty Ltd (2019a) to determine whether soil types in the area of Community 4 were consistent with the NSW Scientific Committee's final determination for the FW EEC. The soil survey found that soils within portions of Community 4 in the low-lying north western portion of the site are consistent with the landscape and edaphic conditions described within the NSW Scientific Committee's determination for the FW EEC. We note no bore holes were made in the southern portion of the planning area despite it also being mapped as a wetland community in the REA.

Mapping of the FW EEC has therefore been revised (see Figures below). The extent of this is still less than the area BCD staff consider is the total extent of FW EEC on the site. The justification given is that only the relatively intact wetland vegetation was considered more consistent with the FW EEC descriptions. This reasoning as to why the upper reach of the wetland does not align with the soil mapping is questioned, as the determination does not distinguish between condition classes. The area is also vegetated as shown in Figure 3 below and as confirmed during the site investigation by BCD staff, see Photo 1. As discussed above the decision regarding percentage of native vegetation cover has not been based on plot data. Therefore, the extent of the FW EEC aligns with the soil mapping regardless of the condition of the vegetation, so the area in the centre of the site is also FW EEC.

The FWEEC extends into the recently zoned residential land and the current Planning Proposal seeks to further encroach into areas of confirmed high environmental value containing FWEEC. Hence, we object to this Planning Proposal.

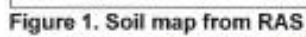




Photo 1. BCD officer in an area of abundant *Persicaria* spp. in the upper reach of one of the tributaries in the central part of the planning area.

Test of significance

JWA have applied the incorrect test of significance, referring instead to the Assessment of Significance (7-part test equivalence) under the TSC Act. The test of significance is now set out in s.7.3 of the *Biodiversity Conservation Act 2016* (BC Act) and is only relevant to development applications, not Planning Proposals.

4. Littoral rainforest EEC

The BCD provided advice dated 19 June 2019 (DOC19/438112-12) that vegetation community 1 Mid-high woodland (*Banksia integrifolia*) appeared to be representative of the littoral rainforest in the NSW North Coast, Sydney Basin and South-East Corner bioregion EEC (LR EEC) despite its lower condition state.

Advice was also given that by applying the primary definition of the word "contiguous" it was considered unlikely that the local occurrence of the LR EEC would extend beyond the planning area.

The REA states that this community is considered to be a degraded representative of the LR EEC and future development will result in the loss of 0.14 ha (100%) of this EEC. The report states the conservation value of this community is reduced by its small size, disturbance by cattle, and high level of degradation by weed species and other edge effects.

The Department agrees that this area is highly degraded and small in area. Although it is not considered feasible that this area be avoided as part of this Planning Proposal, it will require consideration and possible offsetting at DA stage.

5. Hairy Jointgrass (*Arthraxon hispidus*)

Survey effort

This threatened plant species Hairy Jointgrass (*Arthraxon hispidus*) (HJG) has been recorded in several locations within the boundaries of the site. These locations were ground-truthed by JWA in August 2017, May 2018 and most recently in May 2019. The EA states that there are no published survey guidelines for this species. This is not correct. The Threatened Species Profile Database in BioNet states the survey times for HJG are January, February, March, April, November and December only and there are guidelines for surveying threatened plants published by the Department. The survey times are therefore outside the prescribed survey time in the Threatened Biodiversity Data Collection. However, at the council's request a nearby reference site was also surveyed in 2019 where HJG was recorded at this time in reasonable condition suggesting that the annual winter die-off had not yet commenced.

Results of the recent site surveys as reported in the Amended Hairy Joint Grass Survey Report (JWA Ecological Consultants) dated July 2019, suggest the distribution of HJG within the site has contracted since the 2013 surveys. Individuals were still observed in the 2018 survey in the drainage line in the southern part of the planning area along the Henderson Lane boundary and in the upper reach of the 1st order drainage line in the middle of the site. In the latest May 2019 survey individuals were only located in one small area in the north-eastern portion of the subject site (see Figure 4).



Figure 4. JWA HJG surveys

Protection of HJG habitat

The REA suggests the rehabilitation of the 2.38 ha compensatory habitat area as show in Figure 11 in the north-western portion of the subject site will result in a significant improvement in habitat values occurring on the site for HJG. This has not been revised since the FWEEC mapping was revised and the stormwater infrastructure redesigned.

The additional information that has been provided includes a plan of the proposed stormwater infrastructure (Figure 5). Although this will be assessed at the DA stage, the current proposal would remove a considerable area of FWEEC that has been identified as habitat for HJG in past surveys even though no individuals were recorded there in May 2019 (see Figure 6).

A recent study on HJG¹ suggests the maintenance of ecologically representative populations of *A. hispidus* be integrated into comprehensive biodiversity conservation strategies so that ecological restoration of wetland communities that benefit the wetland community (such as weed control, hydrological remediation and appropriate fire management) would also promote the conservation of *A. hispidus*. Protection of all the FWEEC would also benefit the population of HJG on the site.

¹ The habitat and management of hairy jointgrass (*Arthraxon hispidus*, Poaceae) on the north coast of New South Wales, Australia (Laura White Claudia Catterall and Kathryn Taffs 2019 Pacific Conservation Biology CSIRO Publishing <https://doi.org/10.1071/PC19017>).



Figure 5. Map from RAS showing wetland and stormwater infrastructure



Figure 6. Bionet records of *A. hispidus* (HJG)

Translocation of HJG

The REA report suggests any HJG within the proposed development footprint will require translocation to the compensatory habitat area in the north-western portion of the subject site. Translocation is not supported by the BCD as an offset for the loss of habitat for the *A. hispidus* but may be considered as an additional mitigation measure. The Department has produced a Translocation Operational Policy to guide the development and implementation of translocation proposals (see <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/programs-legislation-and-framework/translocation>). Should the council decide to support the translocation proposal, in addition to any offset requirements generated through the application of the Biodiversity Offset Scheme, it is recommended that this translocation policy be considered.

6. Need for an appropriate zone for current RU1 zoned land

We do not support the Planning Proposal in its current form as it includes a portion of the FW EEC (as the extent has now been established through soil testing as discussed above) being zoned from RU1 to R2.

Further, the BCD considers that this Planning Proposal should provide an appropriate zone to protect this area. The RU1 zone is clearly inappropriate now the surrounding land has been developed as part of the urban expansion of Lennox Head. We also note that retaining this zoning means that native vegetation clearing is regulated under the *Local Land Services Act 2013*.

The RE2 Private Recreation zone in the Tweed Local Environmental Plan 2014 (LEP 2014) allows a broad range of recreational uses and does not contain strong conservation zone objectives and would therefore be unsuitable.

The area should preferably be zoned E2 Environmental Conservation. We note that the council does not yet have an E2 zone in its LEP but that this does not mean it could not be added as provided for in the Standard Instrument LEP template. An E2 zone with restricted land uses would be appropriate, particularly as the Ballina Shire DCP 2012 includes development controls for clearing of native vegetation in an E2 zone.

Alternatively, the council might reconsider its earlier decision and agree to having the land transferred to the council. In this case the RU1 portion of the site could also be zoned RE1 Public Recreation. The Ballina LEP 2012 RE1 zone includes an objective to protect and conserve landscapes in environmentally sensitive areas, particularly in foreshore and visually prominent locations and has a limited range of land uses permitted without consent.

Any land uses permitted with consent would have to be carefully considered so that the biodiversity values across this part of the site are protected and managed. Stormwater infrastructure and detention basins should be located outside this area and instead be located within the residential zoned land.

7. Ongoing protection and management of the retained land

The BCD questions how the proponent will “*protect the area in perpetuity under an Environmental Covenant pursuant to Section 88B of the Conveyancing Act 1919*”. Section 88BA of the *Conveyancing Act 1919* for positive covenants for maintenance or repair appears to be the most relevant provision in the Act although it is not known as an environmental covenant.

The issues with ensuring that compensatory habitat can be satisfactorily managed and protected over time via the use of a positive covenant are well known. Particularly, difficulties lie in how the obligations for managing the land are carried into the future. For the covenant to continue to be enforceable after the original party to the covenant has sold the land or died the burden imposed (in this case the ongoing maintenance of land that is intended to support a population of the threatened plant) must run with the land. Such a covenant may be released or varied. If this approach is accepted by the council, then the council would need to be a party to the covenant so that if it was sought to be released or varied, they could raise an objection.

As this is a substantial residential development that could enable at least 120 residential lots to be developed on the site, it will increase the demand for public amenity and services in this area. Although there may be plans to establish open space areas within the site, information on this has not been provided to the BCD. It would however be desirable that suitable areas of land are included in the new residential area for public open space and recreation. This would have to consider how impacts on the FWEEC would be avoided.

It may be possible to develop a local developer contribution plan under s7.11 (contributions) or a mechanism to raise funding under s7.12 (levies) of the *Environmental Planning and Assessment Act 1979* for each residential lot to be created at subdivision stage to fund establishment costs for the stormwater measures and park landscaping works. Consideration could also be given to a planning agreement between the developer and the council to ensure the land will be managed and rehabilitated prior to any transfer to council as discussed above.

Correspondence from Council to BCD – 17 December 2020

enquiries refer
Leah Toole
in reply please quote
BSCPP 18/04 – 20 North Creek Road, Lennox Head (CM 2065)



17 December 2020

Department of Planning, Industry and Environment
Biodiversity and Conservation Division
Locked Bag 914
COFFS HARBOUR NSW 2450

(via email: rachel.lonie@environment.nsw.gov.au)

Attention: Ms Rachel Lonie

Dear Ms Lonie

**Re: BSCPP 18/004 – Reservoir Hill, 20 North Creek Road, Lennox Head
(Your Ref: DOC19/843852)**

I refer to your correspondence dated 13 November 2019 and the objection lodged in respect to the abovementioned planning proposal.

To address the issues raised in your objection, this letter provides an overview of the previous rezoning application, the recently approved development application for subdivision and a summary of the proposed changes required under the current planning proposal to align with the approved subdivision plans.

Planning Proposal BSCPP 14/002

The original planning proposal submitted in 2013 sought to rezone Lot 1 DP 517111 to low density residential, medium density residential and public recreation purposes. A Gateway determination was issued on 17 April 2014 allowing the planning proposal to proceed to public exhibition. Consultation was undertaken with the then Office of Environment and Heritage (OEH) as required by the Gateway determination.

In summary the OEH recommended further investigation in relation to freshwater wetlands on coastal floodplains, Hairy Joint Grass and flood hazard, followed by the application of appropriate land use zones prior to the planning proposal being finalised.

The planning proposal and technical documentation was independently assessed by Mike Svikis Planning. Blackwood Ecological Consultants undertook a peer review of the proponent's ecological assessment, and drainage and flooding issues were subject to peer review by Greg Alderson and Associates. The conclusion reached by Mike Svikis Planning in the Environmental Assessment and Planning Report (see attached) is that in the absence of a bio-banking assessment, to address and offset the loss of Freshwater Wetland Endangered Ecological Community (EEC) and Hairy Joint Grass, these areas should be retained on site. That is, affected areas should not be rezoned for residential purposes but retain their RU1 Primary Production zoning.

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t 1300 864 444 e council@ballina.nsw.gov.au w ballina.nsw.gov.au abn 539 29 887 369

The Mike Svikiis report also acknowledged that the stormwater detention basins may be located within the RU1 zone but outside of the Hairy Joint Grass core habitat and wetland EEC boundaries.

On 22 March 2016 an altered Gateway determination was issued which granted an extension of time to complete the amendment and also amended the description of the proposal to include Lot 2 (the water reservoir site) and sections of the adjoining road reserves. The description of the planning proposal was reworded as follows:

From "... to rezone Lot 1 DP 517111 at North Creek Road, Lennox Head to low density residential, medium density residential and public recreation purposes should proceed subject to the following conditions:"

To "... to rezone part of Lot 1 and Lot 2 DP 517111, and sections of the adjoining road reserves, at North Creek Road, Lennox Head, to facilitate future residential development should proceed subject to the following conditions:"

The altered Gateway determination did not include a requirement to further consult with any government agencies.

Having regard to the above Council considers that it has adequately discharged its responsibility to consult with the OEH as required by the April 2014 Gateway determination.

Development Application DA 2018/51

DA 2018/51 was lodged on 2 February 2018 and sought consent for the subdivision of land to create 99 residential lots, five super lots subject to future development and associated infrastructure works.

Council considered DA 2018/51 at its Ordinary meeting on 27 August 2020 and resolved to approve the DA subject to conditions. Enclosed for your information is a copy of the report considered by the Council together with the notice of determination, stamped approved plans and additional technical reports submitted with the DA.

The proposed location of stormwater detention basins under the DA differs from that proposed within the rezoning application. Clause 7.10 of the Ballina LEP 2012 permits the location of stormwater management systems within any zone.

As the DA was lodged prior to the commencement of the *Biodiversity Conservation Act 2016*, in accordance with the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, the previous legislation (*Threatened Species Conservation Act 1995*) applies.

The consent was conditioned requiring all areas of freshwater wetland EEC directly and/or indirectly impacted by the development are to be offset on a like for like basis in the ratio of 10:1, and areas of littoral rainforest EEC and HJG habitat are to be offset on a like for like basis in the ratio of 5:1 (condition 62). Further conditions relating to the protection of freshwater wetland EEC have been imposed.

Current Planning Proposal BSCPP 18/004

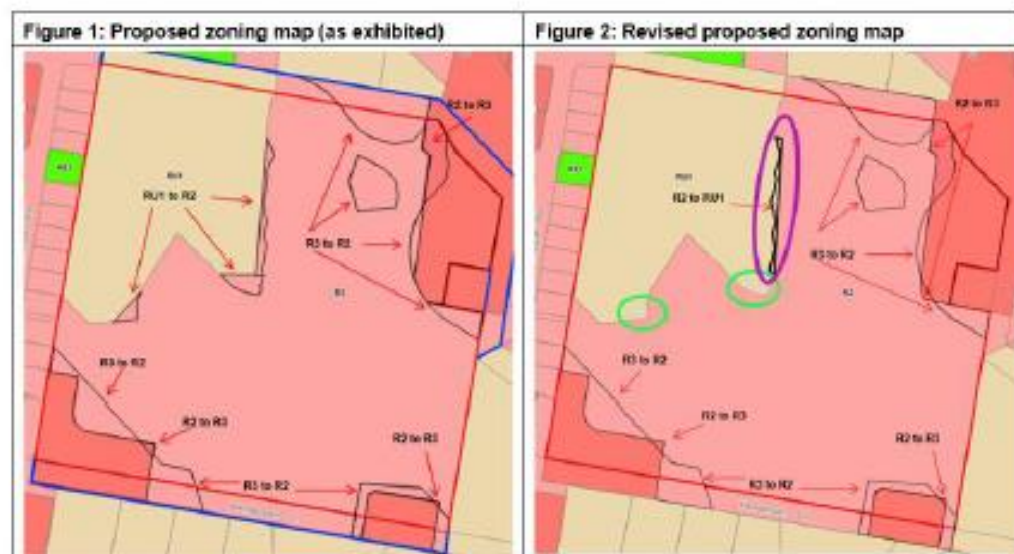
The current planning proposal was lodged in February 2018 and initially sought to make minor zone boundary adjustments to reflect an amended subdivision design as outlined in DA 2018/51. There were ongoing and interconnected issues between the DA 2018/51 and the planning proposal related to site drainage and ecological issues. It was considered to be critical that these issues be resolved through the development assessment process prior to finalisation of the planning proposal. As a result, the planning proposal was placed on hold at the request of the proponent until the DA issues were resolved.

At this stage the planning proposal will require further amendments to reflect the subdivision plan prepared by Urbis, drawing no. 02 Rev N dated 11/11/19, which was approved under DA 2018/51.

The planning proposal initially sought to make minor zone boundary adjustments as outlined in Figure 1 below.

The amendments resulting from the approved plan under DA 2018/51 involve a minor realignment of zone boundaries as depicted in Figure 2 and which comprise:

- The 'triangle' areas circled in green in Figure 2 will remain RU1; and
- The zone boundary interface between the RU1 and R2 zones (circled in purple) will be amended to provide an increase in RU1 land, not a reduction, with the intent to consolidate this land into the RU1 land as a single lot. The amended RU1 zoned land is best shown in the approved subdivision plan (see enclosed).



RU1 Zoned Land

It is noted that the proposed amendments do not seek to rezone any portion of the RU1 land for residential purposes. There will in fact be an increase in RU1 land as a result of amending the boundary interface between the RU1 and R2 zone as noted in Figure 2 above.

The suitability of the RU1 zoned portion of land for public open space (RE1) was independently assessed in the Mike Svikis planning report (December 2015) under the original LEP amendment request (BSCPP 14/002). The application of an RE1 zoning to this land was not supported for the following reasons:

- The RE1 zone is for public open space and Council has not made a decision that the land is suitable for acquisition;
- The objectives of the RE1 zone do not match the characteristics of the land, ie its ecological values; and
- The ecological characteristics of the land are better suited to an E zone when this zone is reinstated into Ballina LEP 2012.

DA 2018/51 approved the stormwater infrastructure and detention basins to be located within the RU1 zoned land. A condition of consent requires these areas to be dedicated to Council as drainage reserves within five years from the issue of a subdivision certificate.

Conclusion

On the basis of the information provided in this letter, it is considered that the matters raised in your objection have been adequately addressed. Council therefore looks forward to receiving your revised comments in respect to the current planning proposal BSCPP 18/004.

If you have any enquiries in regard to this matter please contact me on telephone 6686 1454 or via email at leah.toole@ballina.nsw.gov.au.

Yours faithfully



Leah Toole
Strategic Planner
Planning and Environmental Health Division

Enc. Report to Council's Ordinary meeting 27 August 2020
DA 2018/51 Notice of Determination
DA 2018/51 Stamped approved plans
Wetland Management Plan (July 2019)
Section 5A Littoral Rainforest EEC (July 2019)
Revised Hydrological Regime Assessment (February 2019)
Environmental Assessment and Planning Report (Mike Svikis Planning, December 2015)

BCD consultation advice – 3 February 2021



Planning,
Industry &
Environment

Our Ref: DOC20/1044722
Your Ref: BSCPP 18/04 20 North Creek Road, Lennox Head (CM 2065)

General Manager
Ballina Shire Council
PO Box 45
Ballina NSW 2478

Attention: Ms Leah Toole

Dear Mr Hickey

RE: Referral for Consideration and Advice – Revised Planning Proposal for Reservoir Hill, Lennox Head

Thank you for your e-mail dated 17 December 2020 about the revised planning proposal for Reservoir Hill, Lennox Head, seeking comments from the Biodiversity and Conservation Division (BCD) in the Biodiversity, Conservation and Science Directorate of the Environment, Energy and Science Group in the Department of Planning, Industry and Environment. I appreciate the opportunity to provide input.

The BCD previously objected to the planning proposal in our response dated 13 November 2019.

We note the revised planning proposal no longer seeks to rezone three small areas of currently zoned RU 1 Primary Production land to R2 Low Density Residential.

We therefore raise no issues with this aspect of the revised planning proposal.

However, we continue to raise the issue regarding the lack of an appropriate zone for the land in the north-west of the site and appropriate long-term management.

These issues are discussed in detail in **Attachment 1** to this letter.

In summary, while we do not have an objection to the revised planning proposal, the BCD recommends that the Ballina Shire Council:

1. Include the residual RU1 land containing the wetland in a future Local Environmental Plan amendment in order to rezone it to the highest conservation zone available.
2. Engage with the landholder over suitable longer-term arrangements for the residual RU1 land containing the wetland and reconsider the matter of dedication of this land should the landholder offer it.

If you have any questions about this advice, please do not hesitate to contact Ms Rachel Lonie, Senior Conservation Planning Officer, at rachel.lonie@environment.nsw.gov.au or 6650 7130.

Yours sincerely



3 February 2021

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Biodiversity and Conservation

Enclosure: Attachment 1: Detailed BCD Comments – Revised Planning Proposal for Reservoir Hill, Lennox Head

Attachment 1: Detailed BCD Comments – Revised Planning Proposal for Reservoir Hill, Lennox Head

The BCD previously objected to the planning proposal in our response dated 13 November 2019. We note the revised planning proposal no longer seeks to rezone three small areas of currently zoned RU 1 Primary Production land to R2 Low Density Residential. We therefore raise no issues with this aspect of the revised planning proposal as described below.



Figure 1. Current revised planning proposal

However, our previous response also included comments and recommendations regarding the zoning and management of the land in the north-west corner of the site that have not been addressed in the revised planning proposal. We continue to raise the issue regarding the lack of an appropriate zone for the land in the north-west part of the site. Our preferred zone outcome for this land remains E2 Environmental Management. We also consider the best long-term management of the site is likely to be achieved through public ownership, i.e. council land with the land classified as community land and categorised as wetland.

1. Earlier iterations of the planning proposal

Resolution of this planning matter has been a protracted process. Some of this land was proposed to be zoned RE1 Public Recreation in the original planning proposal (PP_2014_BALLI_003_00) which the BCD provided comment on in July 2014. At this time, we recommended that further investigations be undertaken in relation to freshwater wetlands on coastal floodplains, Hairy Jointgrass and flood hazard, followed by the application of appropriate land use zones prior to the planning proposal being finalised.

We note that we were not consulted in 2016 when the altered planning proposal and supporting environmental studies and assessments were exhibited. Had we been consulted at that time, we would have objected to the zoning of land containing the freshwater wetland endangered ecological and habitat for Hairy Jointgrass and the littoral rainforest to R2 Low Density Residential and the remaining area being retained as RU1 Primary Production. We would also have objected to the land containing the littoral rainforest being zoned R2. As we advised in our previous response, these outcomes did not accord with the North Coast Regional Plan as they intensify land uses in areas of high environmental value.

2. Development consent

Since our previous comments on the planning proposal, a development application (DA 2018/51 determined 27/08/20) has been approved for the subject site. Stormwater infrastructure and detention basins within the RU1 zoned land have been approved. Condition 10 of the DA consent requires these areas to be dedicated to the Ballina Shire Council as drainage reserves within five years from the issue of a subdivision certificate. However, most of the RU1 land containing the wetland will not be dedicated as shown in Figure 2 below.



Figure 2. Land to be dedicated to the council for drainage purposes is identified as A, B, C and D according to condition 10 of the DA consent. Remaining RU1 zoned land that contains freshwater wetland and Hairy Jointgrass habitat in the north east part of the site has not been dedicated.

The DA consent included the following conditions for the protection and management of land in the north-west corner, which contains the majority of the freshwater wetland endangered ecological community (EEC) and habitat for Hairy Jointgrass:

- 10. Dedication of drainage reserve areas to the council
- 57. Protection of the freshwater wetland EEC
- 58. Wetland monitoring and adaptive management plan
- 59. Wetland hydrological monitoring and management plan
- 60. Wetland management plan (WMP)
- 61. Freshwater wetland bond
- 140. Positive Covenant

Condition 140 states that if the portion of land subject to the requirements of the approved WMP is to remain in private ownership, then a positive covenant is to be registered on the title of the Residue Lot, in accordance with section 88E of the *Conveyancing Act 1919*. The section 88E instrument is to ensure the owner of the lot protects and maintains the vegetation in the area to which the approved WMP applies. The section 88E instrument is required to be registered on the Residue Lot prior to the release of the applicable Subdivision Certificate. The WMP includes a five year maintenance period.

The stamped approved DA plans describe the RU1 land Lot 104 as "future development" but also as "future open space" in the Legend. This is contradictory to the consent conditions. Also, the wetland is mapped as being a much smaller area in the stamped approved DA plan than has been mapped and identified in the Stormwater Management Plan. The BCD also questions the long-term management arrangements for the littoral rainforest in the Residual Lot 102, as it is now zoned residential.

3. Appropriate zoning

The independent review of the planning proposal by Mike Svikis Planning (Environmental Assessment and Planning Report dated December 2015) found that areas containing either freshwater EEC or Hairy Jointgrass should be retained on site and not be zoned for residential purposes.

The Svikis report found the ecological characteristics of the area were better suited to an E zone but noted this was not yet available in the Ballina LEP 2012. The recommendation was therefore that the area remain as RU1. An RE1 Public Recreation zone was not supported because the areas suggested for this purpose were still in private ownership (RE1 is an acquisition zone) and the council had not decided to acquire them or accept dedication. Also, the objectives and suite of uses permitted in the RE1 zone do not match the characteristics of the land.

We agree that the best zone outcome for this area is an environmental zone and urge the council to include this area in a future amendment to its LEP to rezone the residual RU1 land to the highest conservation zone available.

4. Long term management and ownership of the wetland

The DA consent conditions seek to ensure the wetland in the north-west corner of the site is managed for conservation purposes. However, private management of the wetland over time is likely to be problematic, particularly as the WMP only applies for a short time period.

We consider the dedication of the remaining land currently zoned RU1 to the council for open space purposes, in combination with a rezoning to E2, would be the best arrangement for protecting and managing the wetland and Hairy Jointgrass habitat area over the longer term. This would be enabled by the land being classified as community land and categorised as wetland with a plan of management to guide management of the land in accordance with the environmental zone objectives.

We therefore recommend the council engage with the landholder over suitable longer term arrangements for this land and reconsider the matter of dedication of this land should the landholder offer it.

BCD Recommendations

While we do not have an objection to the revised planning proposal, the BCD recommends the council:

1. Include the residual RU1 land containing the wetland in a future Local Environmental Plan amendment in order to rezone it to the highest conservation zone available.
2. Engage with the landholder over suitable longer term arrangements for the above land and reconsider the matter of dedication of this land should the landholder offer it.