

Planning Services

Gateway Determination Report

LGA	Ballina
RPA	Ballina Shire Council
NAME	Skennars Head - expansion of B1 Neighbourhood Centre and rezoning of some land from R2 Low Density Residential to R3 Medium Density Residential.
NUMBER	PP_2018_BALLI_001_00
LEP TO BE AMENDED	Ballina LEP 2012
ADDRESS	The Coast Road, Skennars Head
DESCRIPTION	Lot 6 DP 1225206
RECEIVED	18 January 2018
FILE NO.	EF17/14531
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to change the configuration of the zonings and introduce an R3 Medium Density Zone for the Skennars Head release area. The proposal seeks to:

- relocate and increase the size of the B1 Neighbourhood Centre zone from 870m² to 13,600m²;
- change the Floor Space Ratio Map so that the 0.8:1 floor space ratio (FSR) for the B1 zoned land reflects the proposed changes to the location and size of the B1 zoned land; and
- rezone seven separate areas of the land to R3 Medium Density Residential (a total of 27,670m²).

Site Description

The subject land constitutes the first stage of the Skennars Head Expansion Area. The land was rezoned for residential purposes in 2014 as it was identified as an urban release area by the strategic planning framework at the time including the Far North Coast Regional Strategy 2006. The land is currently cleared grazing land.

A development application for the subdivision of the land was lodged with Council in May 2017. The development application will be determined by the Joint Regional Planning Panel. The planning proposal seeks to amend the zoning of the land consistent with the concept plan for the subdivision.

An aerial photo of the subject land, outlined in red, is at Figure 1.



Figure 1

Surrounding Area

The land is bounded to the north by the established residential area of Headlands Estate. The Coast Road forms the eastern edge of the subject land and an area of wetland adjoins the western edge of the subject land. The land to the south is undeveloped residential zoned land which will comprise the future stages of the Skennars Head expansion area.

Summary of Recommendation

It is recommended that the planning proposal proceed with conditions for the following reasons:

- it will align the LEP provisions for the subject land with the adopted DCP controls and development concept plan, enabling the land to be developed for residential purposes;
- it will facilitate medium density development on the site providing a greater diversity of housing choice and supply;
- it will improve the layout of the estate and enable the B1 zoned land to better cater for the needs of the residents of Skennars Head and visitors to Sharpes Beach.

PROPOSAL

Objectives or Intended Outcomes

The planning proposal contains objectives and intended outcomes which adequately describe the intent of the planning proposal. The intended outcomes of the planning proposal are to:

- Facilitate medium density residential development on parts of the site within proximity to future commercial areas and open space areas;

- Provide for the commercial needs of future residents of Skennars Head and visitors to Sharpes Beach and adjacent coastal reserve; and
- Improve the physical layout of the future residential area with respect to the proposed neighbourhood commercial area.

Explanation of Provisions

The planning proposal contains an explanation of provisions which adequately describes the proposed changes to the Ballina LEP 2012 as they apply to the subject land. The proposal will:

- increase the size of the B1 Neighbourhood Centre zone from 870m² to 13,600m²;
- relocate the B1 Neighbourhood Centre Zone to align with the proposed road network;
- change the Floor Space Ratio Map so that the 0.8:1 floor space ratio (FSR) for the B1 zoned land reflects the proposed changes to the location and size of the B1 zoned land; and
- apply an R3 Medium Density Residential zone to parts of the site (totalling 27,670m²).

Mapping

The planning proposal contains maps which show the current and proposed zoning configuration. These maps are adequate for community consultation purposes. The proposal does not show the proposed changes to the Floor Space Ratio Map and it is recommended that a condition of the Gateway determination require these maps to be prepared prior to community consultation. Maps which comply with the Technical Requirements will need to be prepared for finalisation of the LEP amendment.

NEED FOR THE PLANNING PROPOSAL

The planning proposal has arisen as a result of concept planning for the subdivision of the land. A development application (DA 2017/244) for subdivision of the land is currently being assessed by Council and will be determined by the Northern Joint Regional Planning Panel. The proposed LEP amendment will not hold up the determination of the development application as the proposed subdivision will still be permissible with consent, and in accordance with the minimum lot size development standard which currently applies to the subject land (450m²).

In order to align the LEP controls with the concept planning for the subdivision the proponent requested Council to make the following changes to the LEP provisions for Skennars Head:

1. the relocation of the area of B1 zoned land;
2. the increase in size of the area of B1 zoned land from 870m² to 13,600m²;
3. the rezoning of several parcels of land from R2 Low Density Residential to R3 Medium Density Residential (a total of 27,670m²);
4. the application of a 300m² minimum lot size to the land proposed to be zoned R3; and
5. change the maximum building height of the proposed B1 zoned land from 8.5m to 10m.

Council resolved to support the first three changes and these are reflected in the planning proposal and are discussed below.

Relocation of B1 Zoned Land

The proponent has identified the need to relocate the existing B1 Neighbourhood Centre zone to align with the proposed road network design which had to be revised to accommodate a roundabout on The Coast Road.

The DCP adopted for the land by Council in December 2016 considered, in general terms, the relocation of the B1 zoned land. At the time it was considered that the relocation of the B1 zone would lead to improved outcomes in terms of road safety, pedestrian access and urban design. The proposed relocation of the B1 zone is consistent with the DCP for the land.

The relocation of the B1 zoned land is supported by Council and is considered to be appropriate. The proposed location south of the existing B1 zoned land will better integrate with the revised road network for the subdivision and will enable the commercial facilities to service the public areas of Sharpes Beach and the existing surrounding residential areas without drawing traffic through the proposed residential area.

Increase in area of B1 zone

In response to the proponent's request, the proposal also intends to increase the area of B1 zoned land for the release area. While Council resolved to endorse the planning proposal which proposes an increase in the area of B1 zoned land from 870m² to 13,600m², it has also requested the proponent to provide additional information on the proposed increase in the area of B1 zoned land and the potential impact on nearby commercial centres. This additional information is to be provided after the Gateway determination and before community consultation.

Council considers the additional justification for the size of the proposed B1 zone to be necessary as the retail demand report and impact analysis report which supports the proponent's request suggests that a neighbourhood commercial area comprising approximately 3000m² of gross floor area could be provided without adversely impacting other existing and planned retail centres to any significant degree.

Council has calculated that based on that figure of 3000m² of commercial floor area only approximately 6300m² of B1 zoned land is required. This takes into account approximately 3300m² to accommodate car parking, stormwater infrastructure, amenities and pedestrian access. The calculated 6300m² is significantly less than the 13,600m² proposed by the proponent and the planning proposal and has the potential to yield a much greater commercial floor area than the impact analysis considered. The potential impacts of a larger commercial floor area in the B1 zone has not been fully explored.

Council staff consider that an area of approximately 8000m² of B1 zoned land will be sufficient to accommodate the projected commercial needs of the Skennars Head locality, however Council resolved to support the 13600m² area pending further analysis. Council therefore intends to review the size of the proposed B1 zoned land after the additional information is received and prior to community consultation.

Council's approach is considered to be appropriate and it is recommended that the Gateway determination include a condition requiring the retail demand and impact analysis report be reviewed to determine if there will be an adverse impact on neighbouring centres as a result of a B1 neighbourhood centre that may enable more than 3000m² of retail floor space to be developed.

Rezoning of land to R3 Medium Density

In response to the proponent's request the planning proposal seeks to rezone several areas of the subject land from R2 Low Density Residential to R3 Medium Density Residential.

This aspect of the proposal is consistent with the proponent's request with the exception of the south western most master lot. The proponent's concept plan proposed to zone this lot R3. The planning proposal retains the R2 zone for this lot as the concept plan for the subdivision indicated that this master lot would only be serviced by rear lane access. Council was concerned that medium density housing would not be appropriate where it is only serviced by a rear laneway with a width below the current standard. Council advises that these future lots should be serviced by a road rather than a laneway to ensure access and services can be adequately provided. The planning proposal submitted by Council therefore retains the R2 zone over this land. Council's position is considered to be reasonable.

Proponent's request to Council

The proponent also requested that the maximum building height for the B1 zoned land be increased to 10 metres (it is currently 8.5m) and a 300m² MLS be applied to the land proposed to be zoned R3.

Council resolved not to support these proposed changes to the LEP controls that apply to the land.

Building Height - The requested increase in the building height for the B1 zoned land was not supported because of the visually sensitive coastal location of the land and Council's policy framework for building heights in the LGA. The Ballina LEP 2012 sets a maximum building height of 8.5 metres for the majority of land in Ballina LGA. The proponent had sought an increase in the maximum building height in order to achieve a higher quality of architectural roof design for the site. The setting of building heights is a local matter. Any proposal that exceeds the 8.5m height limit could be considered on its merits using the provisions of clause 4.6 of the Ballina LEP 2012 when the development application is submitted and the final design of the proposed structures is known.

Minimum Lot Size - Council's decision not to support the requested 300m² MLS for the proposed R3 zoned land was based on the provisions of clause 4.1A in the Ballina LEP 2012. Clause 4.1A already allows for subdivision of lots to 300m² in size where these lots will contain attached or semi-detached dwellings, the design of which is approved with the application for the subdivision. This approach ensures that issues such as loss of privacy, noise, overshadowing and access can be addressed with the design of the subdivision and dwellings in a single step.

Council's position does not prevent approval of the development application for subdivision of the land as the proposed areas of R3 zoned land are "master lots" which comply with the current MLS of 450m² and will be further subdivided in future stages.

The proponent's consultant has written to the Department to request that a Gateway determination support the application of a 300m² MLS to the land proposed to be zoned R3.

The justification provided for this request is that by providing vacant lots of 300m² the proposed development will provide a greater diversity of housing product at a diversity of price points. Where a vacant lot can be bought the landowner can then erect a dwelling to suit their financial position whereas where integrated subdivision and house design is undertaken the purchaser may be limited to the construction of the approved dwelling which may be beyond their financial means.

The proponent identifies that it will have design guidelines as part of a sales contract for smaller lots where all landowners need to comply with the guidelines as part of the legal

contract. It is stated that this will ensure good quality design outcomes for the subdivision. Private design guidelines are not required to be enforced by Council and will be the responsibility of the developer or other land holders to enforce. This approach is not considered to be a suitable alternative to Council's Development Control Plan and LEP provisions.

The proponent also identifies that there is more demand for single houses on single lots than there may be for attached dwellings or semi-detached dwellings, both of which can be built on lots of 300m² in accordance with clause 4.1A.

The Ballina LEP defines attached dwelling as *a building containing 3 or more dwellings, where:*

- (a) each dwelling is attached to another dwelling by a common wall, and*
- (b) each of the dwellings is on its own lot of land, and*
- (c) none of the dwellings is located above any part of another dwelling.*

And *semi-detached dwelling as a dwelling that is on its own lot of land and is attached to only one other dwelling.*

It is acknowledged that attached dwellings may not be a desirable alternative housing product to a single dwelling on a single lot. However, it is considered that a semi-detached dwelling, which only needs to be attached to one other dwelling, and there is no minimum requirement for the degree of attachment, could be designed to be a suitable alternative to a single dwelling on a single lot. Semi-detached dwelling design can maximise site area by utilising zero side setbacks and achieve improved privacy and solar access if designed and constructed as an integrated subdivision.

The proponent has acknowledged that proposed lots of 300m² would be designed and constructed as integrated lots and therefore the provisions of clause 4.1A would achieve a similar intent to reducing the lot size to 300m² while mitigating against potential neighbouring conflicts arising for dwelling designs which do not consider the small size of the site. Council's position is considered to be reasonable in this instance and the setting of MLSs is a local matter for Council to determine.

STRATEGIC ASSESSMENT

State

NSW State Priorities

The proposal is not inconsistent with any of the eighteen State priorities being actioned by the State Government.

Regional / District

North Coast Regional Plan 2036

The proposal is consistent with the directions and actions of the North Coast Regional Plan 2036 (NCRP). The land is located within the urban growth area boundary for Skennars Head. The proposal constitutes a refinement of the urban planning controls for the land to align with the development proposal currently before Council. The proposal will facilitate a higher density and greater diversity of dwelling types through the introduction of areas of R3 zoned land.

Local

The proposal is not inconsistent with the Ballina Shire Growth Management Strategy 2012 (BSGMS). The BSGMS identified the land for urban purposes and the land has been zoned

as such since 2014. The proposal constitutes a refinement of the urban planning controls for the land to align with the development proposal currently before Council.

Section 117(2) Ministerial Directions

The following S117 Directions are relevant to the planning proposal: 1.1 Business and Industrial Zones, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Homes Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 3.5 Development Near Licensed Aerodromes, 4.1 Acid Sulfate Soils, 4.4 Planning for Bushfire Protection, 5.10 Implementation of Regional Plans, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, 6.3 Site Specific Provisions.

Of the above directions, the proposal is considered to be inconsistent with directions 4.1, and 4.4 while further justification for the consistency with directions 1.1 and 3.5 will be necessary.

Direction 1.1 Business and Industrial Zones is relevant to the planning proposal. The direction provides that a planning proposal must be consistent with the objectives of the direction, one of which is to support the viability of identified centres, and retain the areas and locations of existing business and industrial zones.

The proposal seeks to increase the area of the B1 zone from 870m² to 13,600m² and relocate the location of the B1 zone further south. The relocation of the B1 zoned land further south has become necessary to align it with the revised road layout which is considered to be appropriate as it facilitates a roundabout on The Coast road for traffic safety reasons. The relocation will also still enable the B1 zoned land to service the current and proposed residential development in Skennars Head while also enabling it to better service the public areas of Sharpe's Beach without drawing additional traffic through the proposed residential area.

The retail demand and impact analysis investigations for the proposal indicate a commercial floor area of 3000m² will not have an adverse impact on surrounding commercial centres. However, the proposal to increase the area of the B1 zoned land to 13,600m² could result in a commercial floor area in excess of 3000m². Council has therefore recommended a review of the retail impact analysis to ensure that a larger area will not have an adverse impact. It is considered that any inconsistency of this proposal with this direction remains unresolved until this further assessment has been undertaken.

Direction 3.5 Development Near Licensed Aerodromes is relevant to the planning proposal. The Direction provides that where a planning proposal applies to land in the vicinity of an aerodrome the Council must consult with the department of the Commonwealth responsible for aerodromes, and take into consideration the obstacle limitation surface (OLS) and the ANEF levels.

The proposal applies to land which is located within the OLS. The OLS surface level is 46.5 metres AHD. The height of the land ranges from 2 to 18m AHD and the maximum building height is 8.5m so future development on the land will not exceed the OLS. The subject land is not located within an ANEF contour of 20 or greater.

The proposal is therefore not inconsistent with the direction however consultation with the Commonwealth agency is still required, and until this consultation has been completed any inconsistency of the proposal with the direction remains unresolved.

Direction 4.1 Acid Sulfate Soils is relevant to the planning proposal. The direction provides that a planning proposal shall not facilitate an increase in the intensification of development on land subject to acid sulfate soils. Some of the land to be rezoned from R2 Low Density Residential to R3 Medium Density Residential is mapped as being Class 2 and Class 5 acid sulfate soils.

The direction states that a proposal may be inconsistent with the direction if a study has been prepared assessing the acid sulfate soil risk for the proposal. The Ballina LEP 2012 also contains provisions which require consideration of the potential impacts on acid sulfate soils at development application stage. An acid sulfate soils assessment was undertaken as part of the development application for the land.

The inconsistency of the proposal with the direction is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. Some of the subject land proposed to be zoned R3 includes land which is bushfire prone. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service, and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 5.10 Implementation of Regional Plans is relevant to the planning proposal. The direction provides that a planning proposal must be consistent with the North Coast Regional Plan 2036.

The consistency of the proposal with the North Coast Regional Plan is discussed previously in this report. It is considered that the proposal is consistent with North Coast Regional Plan.

The proposal is otherwise consistent with all other Section 117 directions.

State Environmental Planning Policies

There are many State environmental planning policies which apply to the land. The proposal is not inconsistent with these state policies.

SITE SPECIFIC ASSESSMENT

Social

The proposal is not expected to have any negative social impacts. The proposal will facilitate areas of medium density housing within the Skennars Head Expansion Area providing more diverse housing types and greater housing choice. The relocation of the B1 zoned land will position the commercial and community uses in a location which can be better utilised by the public who will be using the recreation areas and public spaces at Sharpes Beach.

Environmental

The proposal is not considered to have a significant environmental impact. The land is already cleared of significant native vegetation and has been zoned for urban purposes since 2014. A detailed ecological assessment of the flora and fauna characteristics of the site was undertaken and is being assessed with the current development application. The

proposed R3 zone and increased area of B1 zoned land will not result in any additional adverse environmental impacts.

Despite the planning proposal asserting that the land is flood prone, it is not mapped as flood prone land on Council's Flood Planning Area map. This land has been recently subdivided with the flood prone land having been removed from the subject property.

Economic

The proposed increase in the area of B1 zoned land has the potential to have an adverse impact on surrounding commercial area. The retail demand and impact analysis report concludes that a neighbourhood centre with a commercial floor area of 3000m² would not have an adverse impact on surrounding commercial centres. However, the proposed area of B1 zoned land could potentially accommodate a neighbourhood centre nearly twice as large as considered in the impact analysis. It is therefore recommended that the Gateway determination contain a condition requiring a review of the potential maximum commercial floor area in the proposed B1 zone and the potential impact that may occur on surrounding commercial areas.

Should this review indicate that an adverse impact could be expected at a certain maximum commercial floor area, Council could amend the planning proposal to reduce the area of B1 zoned land or apply an appropriate floor space ratio to the land.

Infrastructure

The proposal will not require any significant additional state infrastructure. The proposed R3 zoned land and the increased area of B1 zoned land will not result in a significant increase in population density for the site or require additional infrastructure which has not already been planned for in the original rezoning of the land for urban purposes.

CONSULTATION

Community

The planning proposal indicates that a minimum 28 day community consultation period is proposed. It is considered that the proposal is a low impact proposal as it affects land within an existing urban zone and is generally consistent with the current development application before Council and the Ballina DCP 2012. It is considered that a 14 day community consultation period will be adequate. This does not prevent Council from conducting a longer period of community consultation.

Agencies

The planning proposal indicates consultation with the following state agencies or organisations will be undertaken.

- (a) NSW Rural Fire Service;
- (b) NSW Roads and Maritime Services;
- (c) Ballina – Byron Gateway Airport; and
- (d) Civil Aviation Safety Authority.

This consultation is considered to be appropriate.

TIMEFRAME

The planning proposal includes a timeline for completion of the LEP amendment in May 2018. Given the need for the proponent to provide additional information relating to the size of the B1 zoned land and the potential for the proposal to be amended, it is considered that a 12 month time frame is appropriate.

DELEGATION

Council has requested that an authorisation be issued to enable it to exercise its delegation to make the LEP amendment. It is considered that an authorisation should be issued in this instance as the proposal is considered to be a local matter as the land is already zoned for urban purposes and the proposal constitutes a refinement of the zoning controls for the land to align with the concept plan, Council's DCP and the development proposal before Council.

CONCLUSION

It is recommended that the planning proposal proceed with conditions for the following reasons:

- it will align the LEP provisions for the subject land with the adopted DCP controls and development concept plan, enabling the land to be developed for residential purposes;
- it will facilitate medium density development on the site providing a greater diversity of housing choice and supply;
- it will improve the layout of the estate and enable the B1 zoned land to better cater for the needs of the residents of Skennars Head and visitors to Sharpes Beach.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that the inconsistency with Section 117 Direction 4.1 Acid Sulfate Soils is justified in accordance with the terms of the direction; and
2. note that the consistency with Section 117 Directions 1.1 Business and Industrial Zones, 3.5 Development Near Licensed Aerodromes, and 4.4 Planning for Bushfire Protection remain unresolved until consultation with State and Commonwealth authorities has been undertaken.

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

1. Prior to community consultation a review of the Retail Demand and Impact Analysis report is to be undertaken to confirm that the maximum commercial floor area that could be achieved within the proposed area of B1 Neighbourhood Centre zoned land will not result in an adverse impact on neighbouring commercial centres. If the review identifies that there will be an adverse impact on neighbouring commercial centres then details of the maximum commercial floor area at which an impact does not occur is to be provided.
2. Prior to community consultation the planning proposal is to be amended as follows:
 - (a) maps which show the current and proposed floor space ratio for the land are to be included in the planning proposal; and
 - (b) to reflect any necessary changes arising from the outcomes of the review of the potential impacts of the increase in the area of B1 zoned land.
3. The planning proposal should be made available for community consultation for a minimum of 14 days.
4. Consultation is required with the following public authorities and organisations:
 - NSW Rural Fire Service;
 - NSW Roads and Maritime Services;
 - Ballina – Byron Gateway Airport; and
 - Civil Aviation Safety Authority.

5. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.



8/2/18

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15-2-2018

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