



Planning Proposal 17/007

» Visions Estate

***Henderson Drive, Lennox
Head***

May 2017 (V2. Gateway) 17/42993

ballina
shire council



40 cherry street • po box 450 • ballina nsw 2478
t 02 6686 4444 • f 02 6686 7035 • e council@ballina.nsw.gov.au

ballina.nsw.gov.au

DISCLAIMER © Land & Property Information 2017. Although all care is taken in the preparation of plans within this document, Ballina Shire Council accepts no responsibility for any misprints, errors, omissions or inaccuracies. The information contained within this plan is for pictorial representation only. Do not scale. Accurate measurements should be undertaken by survey.

Contents

1.	Introduction.....	4
1.1	Summary of Planning Proposal	4
1.2	Land to Which the Planning Proposal Applies	5
1.3	Council Resolutions.....	6
1.4	Gateway Determination	7
2.	Objectives & Intended Outcomes.....	8
3.	Explanation of Provisions.....	8
3.1	Background.....	8
3.2	The Proposal.....	9
3.3	Mapping Overview.....	10
4.	Justification	11
4.1	Section A – Need for the Planning Proposal.....	11
4.2	Section B – Relationship to Strategic Planning Framework	11
4.3	Section C – Environmental, Social and Economic Impact.....	14
4.4	Section D – State and Commonwealth Interests.....	15
5.	Mapping.....	16
6.	Community Consultation	16
7.	Timeline.....	16
8.	Appendices	17
	Appendix 1 – Maps.....	18
	Appendix 2 – Ballina LEP 1987 Zone Objectives – 2(a) Living Area Zone	21
	Appendix 3 – Section 117 Direction Checklist	22
	Appendix 4 – Council Resolutions	25
	Appendix 5 – SEPP 26 Concurrence – DA 2016/166.....	50
	Appendix 6 – Revised Subdivision Layout Plan	51
	Appendix 7 – Gateway Determination	52

1. Introduction

1.1 Summary of Planning Proposal

This planning proposal relates to part of Lot 7 DP 1216761, Henderson Drive and Kellie-Ann Crescent, Lennox Head and adjacent road reserves as part of the approved Subdivision DA 2016/166 'Visions Estate'. The land is shown on the Site Identification Map contained within Appendix 1. The property owners are Negrada Pty Limited (the registered owners of Lot 7 DP 1216761).

The land that occupies the 25 lot residential subdivision footprint covers an area of 4.15 hectares (excluding road reserves), is currently zoned R3 Medium Density Residential under Ballina LEP 2012 and is subject to the 800m² minimum lot size standard. This site has been zoned for residential purposes for approximately 30 years under the terms of the Ballina LEP 1987 and Ballina LEP 2012.

The north-eastern corner of Lot 7 DP 1216761 comprises SEPP 26 Littoral Rainforest and is classified as a deferred matter pursuant to the Ballina LEP 2012. This part of Lot 7 is not subject to this planning proposal. The SEPP 26 land is zoned 2(a) Living Area Zone under the Ballina LEP 1987 and the objectives of this zone are provided in Appendix 2.

Development application 2016/166 which proposed a 26 lot residential subdivision and associated works on the subject land was approved by Council at its Ordinary Meeting held on 25 January 2017 subject to a number of conditions. In consenting to the subdivision application, the Council also resolved to align the zoning of the land with the development intentions set out by the approved subdivision plan.

This planning proposal has been prepared in response to the Council resolution of 25 May 2017.

1.2 Land to Which the Planning Proposal Applies

This planning proposal relates to part of Lot 7 DP 1216761, Henderson Drive and Kellie-Ann Crescent, Lennox Head and adjacent road reserves as shown in Figure 1 below and on the Site Identification Map contained within Appendix 1. DA 2016/166 for a 25 lot residential subdivision was approved by Council on 25 January 2017 subject to conditions. Council also resolved to prepare a planning proposal to rezone each residential lot (other than proposed Lots 1 and 15) to R2 Low Density Residential to align the zoning with the approved subdivision outcome.



Figure 1: The subject land

Lot 7 DP 1216761 and road reserve, Henderson Drive, Lennox Head

1.3 Council Resolutions

At its Ordinary Meeting held on 25 January 2017, Council resolved to approve DA 2016/166 relating to the residential subdivision of the subject land. The Council resolved as follows [Minute No. 250117/8]:

1. *That DA 2016/166 to undertake a 26 Lot residential subdivision and associated works at Lot 7 DP 1216761, Lot 12 DP 814039, Lot 52 DP 864764 & Crown Public Road, Henderson Drive and Kellie Anne Crescent, Skennars Head be APPROVED subject to:*
 - a) *the deletion of proposed Lot 16 and thereby reducing the proposed urban allotments to a total of 25*
 - b) *the suitable re-alignment of the loop road (without any reliance upon Public Reserve Lot 62 lands) as shown in the alternative design*
 - c) *the suitable provision of a minimum 10 metre by 15 metre building envelopes and minimum 17.5 metre wide easement on proposed Lots 25 and 26 to protect the vegetation within Public Reserve Lot 62 (unless the applicant can provide evidence that the proposed alternative footing means can be practically enforced having regard for Exempt and Complying Development)*
 - d) *each proposed residential allotment having a minimum area of 800m² or greater*
 - e) *each proposed lot (other than Lot 1 and reconfigured Lot 15) having a single dwelling house only*
 - f) *preparation of a restriction on use by way of an 88B instrument under the Conveyancing Act 1919 informed by a qualified entomologist being applied to the relevant lots restricting the type, amount, and spacing of vegetation in the building line setbacks suitable for a mosquito buffer and*
 - g) *the imposition of other standard, relevant and suitable conditions for the subdivision.*
2. *That Council resolves to prepare a Planning Proposal to rezone each residential lot (other than proposed Lot 1 and reconfigured Lot 15) to R2 Low Density Residential.*

A copy of the report considered by the Council is provided in Appendix 4.

The planning proposal was presented to Council at its Ordinary Meeting held on 25 May 2017 to seek the Council's direction with respect to the submission of the planning proposal for Gateway determination. At the request of the proponent an alternative proposal was presented to the Council seeking an additional three lots for retention in the R3 Medium Density Residential zone. Council resolved to allow an additional lot (Lot 7) to remain in the R3 Medium Density Residential zone, resulting in a total of three lots to remain zoned R3 (Lots 1, 7 and 15) and the remaining lots to be rezoned R2 Low Density Residential. The Council resolution of 25 May 2017 is as follows [Minute No. 250517/9]:

1. *That Council submit the planning proposal for the amendment of the Ballina Local Environmental Plan 2012 (Attachment One), relating to the rezoning of each residential lot and surrounding land in the Visions Estate (other than approved Lot 1 and reconfigured Lot 15 and Lot 7) to R2 Low Density Residential, to the NSW Department of Planning & Environment for Gateway determination.*
2. *That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.*
3. *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.*

A copy of the report presented to the Council on 25 May 2017 is provided in Appendix 4.

1.4 Gateway Determination

To be completed following the Gateway determination.

2. Objectives & Intended Outcomes

The objective of this planning proposal is to alter the residential zone applying to the subject land in accordance with a resolution of the Council. The outcomes of this proposal are to:

- Apply a low density residential zone to each of the approved residential lots (other than Lots 1, 7 and 15);
- Retain the medium density residential zoning in respect of approved Lots 1, 7 and 15.

3. Explanation of Provisions

3.1 Background

The Subject Land

The land to which this planning proposal relates has been zoned for future urban development for over 30 years. The Lennox Head Structure Plan (2004) provides the framework for the development of new release areas in Lennox Head. The subject land, which forms part of the Lennox Palms Estate, is identified in the Structure Plan as existing urban zoned land. Adjacent land located to the west of the Lennox Palms Estate is identified in the Structure Plan as being suitable for future low density residential development consistent with the density of Lennox Palms Estate.

The Ballina Shire Growth Management Strategy (2012) aims to achieve a greater dwelling mix in new release areas to accommodate changing household types and to provide diversity in housing choice. The subject site is identified in the strategy as urban zoned undeveloped land. The objectives of the strategy include the retention of the existing village atmosphere and character of Lennox Head, with medium density infill development expected to occur in the original village area (north of The Coast Road).

Prior to the commencement of the Ballina LEP 2012, the land was zoned 2(a) Living Area under the Ballina LEP 1987. Historically, the R3 Medium Density Residential Zone was applied to new release areas to enable flexibility and to allow the development application process to determine the most suitable type of development for the area. The application of the R3 Medium Density Residential Zone under the LEP renewal process was consistent with the capacity and environmental constraints of the land, the existing road network within the Lennox Palms Estate and the character of the existing subdivision. Additionally, the suite of available zones in the Standard Instrument LEP was limited in terms of the residential zones.

Development Application 2016/166

In the Statement of Environmental Effects submitted with DA 2016/166, the applicant indicated their intent for low density usage of the site by proposing single dwelling covenants on the majority of lots and nominating three lots for dual occupancy use. This is similar to previous proposals relating to the rezoning of land at Cumbalum and Wollongbar where land was rezoned from R3 Medium Density Residential to R2 Low Density Residential at the request of the developer to reflect the market demand for low density residential lots and provide certainty to future home owners.

In relation to the subject land, the Council initially resolved to approve only two lots for dual occupancy use having regard for the environmental constraints of the site (sensitive SEPP 26 Littoral Rainforest on and surrounding the site), the low density zoning of the established subdivision to the south and the strong public support for maintaining the low density character of the area.

At its May 2017 Ordinary Meeting the Council considered the proponent's request to include a further three lots for dual occupancy use, however Council resolved to retain a total of three lots in the R3 Medium Density Residential zone and to rezone the remaining lots to R2 Low Density Residential zone. No further subdivision of the land is anticipated, nor was it proposed with DA 2016/166. The revised subdivision layout plan is included at Appendix 6.

3.2 The Proposal

This planning proposal seeks to rezone part of the subject land from R3 Medium Density Residential to R2 Low Density Residential, with the exception of approved Lots 1, 7 and 15 which are to retain the existing R3 zoning. The extent of the existing and proposed zoning is shown on the land zoning maps contained within Appendix 1 and in Figure 2 below, subject to receipt of a final survey plan.

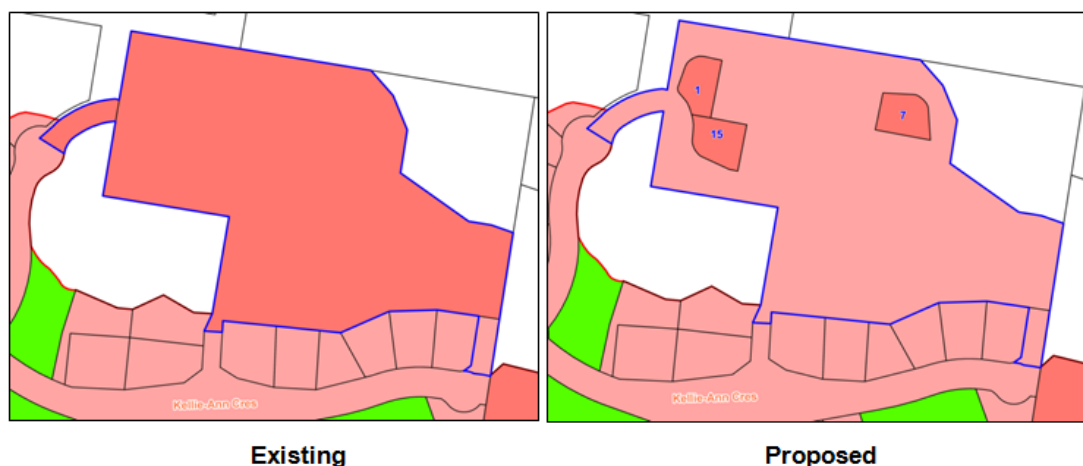


Figure 2: Existing and proposed zoning

No changes are proposed to the existing minimum lot size of 800m² or the maximum permitted building height of 8.5 metres. The site is identified as being land adjacent to a strategic urban growth area, referring to land located west of the subject site. No changes are proposed to this buffer.

The minimum 800m² lot size was applied at the time Council introduced the Ballina LEP 2012. In preparing the Ballina LEP 2012, Council variously applied 600m², 800m² or 1200m² minimum lot sizes for subdivision to urban areas across the shire. The 800m² standard was applied in the case of the Visions Estate area in recognition of the configuration of the adjoining residential subdivision as well as the medium density zoning applicable to the land. The 800m² standard was also applied in this case to provide flexibility in the subdivision pattern for the new area, relative to the adjoining low density residential zone which is subject to a 1200m² minimum lot size standard. As stated, the proposal does not seek to vary the existing minimum lot size.

This planning proposal does not intend to rezone the SEPP 26 Littoral Rainforest section of Lot 7 which is currently a deferred matter, subject to the 2(a) Living Area Zone under Ballina LEP 1987. At its April 2017 Ordinary Meeting Council resolved to retain all deferred areas the subject of an environmental protection zone under the Ballina LEP 1987 as deferred areas, having the effect that the Ballina LEP 1987 will continue to apply. All other deferred areas that are not subject to existing environmental protection zones will be integrated into the Ballina LEP 2012 having regard for the criteria established under the Northern Councils E Zone Review. The land subject to SEPP 26 will be considered as part of this separate process.

3.3 Mapping Overview

The proposal will require changes to the Land Zoning Map only, as shown in Figure 2. The maps are provided in Appendix 1.

4. Justification

4.1 Section A – Need for the Planning Proposal

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

Yes. The land has been zoned for residential purposes for approximately 30 years and is identified as an existing urban zoned area in the Lennox Head Structure Plan (2004). The Structure Plan identifies the land immediately to the west of the subject site as Candidate Release Area Q and states that this area is suitable for future low density residential development consistent with the density of Lennox Palms Estate. The land is also identified as urban zoned undeveloped land in the Ballina Shire Growth Management Strategy (2012).

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

An LEP amendment is the best way of achieving the proposed outcomes as the proposal directly relates to land use zoning and subdivision potential.

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 proposal is consistent with the North Coast Regional Plan 2036 (NCRP) which provides the regional framework for the consideration of rezoning land for urban purposes in Ballina Shire. Ballina is identified in the Plan as a strategic centre and the subject land is mapped as an urban growth area within the NCRP.

The planning proposal aligns with the following Directions listed under Goal 4 – great housing choice and lifestyle options:

- *Direction 22: Deliver greater housing supply* – the proposal to provide land for residential purposes will assist in meeting future projected minimum housing supply requirements of Ballina Shire and specifically the Lennox Head area.
- *Direction 23: Increase housing diversity and choice* – the proposal will provide additional housing opportunities within the existing urban footprint area of Lennox Head and is located close to existing services.

The planning proposal will align zoning with approved plans in accordance with community expectations and consistent with the NCRP regional framework.

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

Ballina Shire Council Community Strategic Plan 2013-2023

The planning proposal is consistent with the elements and specified outcomes contained within Council's Community Strategic Plan 2013 – 2023 (CSP) as indicated in the table below:

Element and Reference	Outcomes	Benefits
PE3 Prosperous Economy	We can work close to home	
PE3.1	Facilitate and provide economic land and infrastructure to support business growth	Increased availability of land and locations to support business activity
HE3 Healthy Environment	Our built environment blends with the natural and cultural environment	
HE3.1	Develop and implement plans that balance the built environment with the natural environment	More people are satisfied with our management of development
HE3.2	Minimise negative impacts on the natural environment	Retention of our natural environment
HE3.3	Match infrastructure with development	No under supply of community infrastructure

Draft Ballina Shire Council Community Strategic Plan 2017-2027

The planning proposal is also consistent with the elements and specified outcomes of the Draft CSP 2017-2027 as indicated in the table below:

Element and Reference	Outcomes	Benefits
PE3 Prosperous Economy	Improve liveability in the shire	
PE3.1	Support residential development that delivers services close to home	Lower cost of living
HE3 Healthy Environment	Our built environment blends with the natural environment	
HE3.1	Develop and implement plans that balance the built environment with the natural environment	More people are satisfied with our management of development
HE3.2	Minimise negative impacts on the natural environment	Retention of our natural environment
HE3.3	Match infrastructure with development	No under supply of community infrastructure

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

Ballina LEP 2012

The subject land is currently zoned R3 Medium Density Residential under the provisions of the Ballina LEP 2012. The primary zone objectives are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To encourage housing and infrastructure that supports the ageing population.*

- *To provide for development that meets the social and cultural needs of the community.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

The proposal to rezone the land to a lower density will remove the potential for development which may not be suitable on the site given the constraints identified in DA 2016/166 and the strong public support for maintaining the low density character of the area.

The objectives of the R2 Low Density Residential Zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To provide for development that meets the social and cultural needs of the community.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

The proposal is considered generally consistent with the objectives of the R2 Low Density Residential zone as the provision of housing, facilities and services to meet the needs of the community can be readily provided and will be compatible with the character and amenity of the surrounding neighbourhood.

Ballina Shire Growth Management Strategy 2012 (BSGMS)

The purpose of the BSGMS is to provide the framework for managing population and employment growth in Ballina Shire over the planning period of 2012-2031.

The strategy sets out local growth management arrangements for each of the shire's urban localities. These outline the desired future character of the particular locality, identify key locality objectives and proposed actions to give effect to those objectives.

The subject land has been identified as urban zoned undeveloped land within the BSGMS and is located within the existing urban footprint of Lennox Head.

The rezoning of the land from one urban zone to another as proposed is generally consistent with Council's Ballina Shire Growth Management Strategy.

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

The proposal is considered to be generally consistent with applicable State Environmental Planning Policies (SEPPs) as detailed in the table below:

SEPP Title	Compliance of Planning Proposal
SEPP No. 26 Littoral Rainforests	The site is largely bounded by SEPP No. 26 Littoral Rainforest core. The proposal involves some minor works comprising road alignments along the edge of the core requiring removal of native vegetation, which is subject to

SEPP Title	Compliance of Planning Proposal
	rehabilitation works. The conditional concurrence of the Department of Planning and Environment has been issued for these works as part of the assessment of DA 2016/166 and is provided at Appendix 5.
SEPP No. 55 Remediation of Land	The site has been zoned for residential purposes for approximately 30 years. In accordance with clause 6(1) of the SEPP, the rezoning of the land as proposed will not result in a change of use of the land.

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

A Section 117 Direction checklist for the planning proposal is provided at Appendix 3.

4.3 Section C – Environmental, Social and Economic Impact

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

The land largely comprises vacant grassland. SEPP No. 26 Littoral Rainforest exists along the northern boundary, in the north-eastern corner of the site and on the adjacent Council reserve. The potential impact on native vegetation, including the identified SEPP No. 26 Littoral Rainforest on and surrounding the subject land, was subject to consideration in relation to the assessment of DA 2016/166. Concurrence was issued by the Department of Planning and Environment in respect of DA 2016/166 and a copy is provided in Appendix 5. Subject to compliance with conditions of consent, it is unlikely that any critical habitat or threatened species will be adversely affected as a result of the proposal.

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

There are no other significant environmental impacts identified as a result of the proposed rezoning. DA 2016/166 includes conditions relating to drainage, mosquito management and bushfire hazard. The NSW Rural Fire Service has provided General Terms of Approval in respect of the originally submitted layout subject to conditions.

Following a positive Gateway determination, the planning proposal will be forwarded to the NSW RFS for consultation.

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

The social and economic outcomes resulting from the proposed rezoning are considered to be positive. Utility services are available in the Lennox Palms Estate, located immediately south of the subject site and are capable of being extended to service the future subdivision of the site.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

All required public infrastructure is available to the locality and therefore future subdivision of the land for residential purposes can be adequately serviced.

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

During assessment of DA 2016/166, the concurrence of the NSW Department of Planning and Environment (DPE) and the integrated approval requirements of the NSW Rural Fire Service (RFS) were required to be obtained under Section 79B and Section 91 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) due to works being proposed proximate to and within the surrounding SEPP 26 Littoral Rainforest and adjacent to identified bush fire prone vegetation.

Concurrence was issued by DPE on 31 August 2016 (copy provided at Appendix 5) and the NSW RFS provided general terms of approval on 15 June 2016 for the originally submitted layout subject to conditions. The NSW Office of Environment and Heritage (OEH) were also consulted throughout the assessment process.

Consultation will be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the LEP amendment.

5. Mapping

The following maps have been prepared to support this planning proposal and are contained in Appendix 1:

- Map 1 – Site Plan (Aerial);
- Map 2 – Current Land Zoning Map Ballina LEP 2012; and
- Map 3 – Proposed Land Zoning Map Ballina LEP 2012.

6. Community Consultation

DA 2016/166 was publicly notified in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (EP&A Act). A total of 23 submissions were received objecting to the proposed subdivision. Many of the issues raised were resolved by way of conditions of consent.

This planning proposal will be exhibited in accordance with the Gateway determination and the terms of the EP&A Act.

7. Timeline

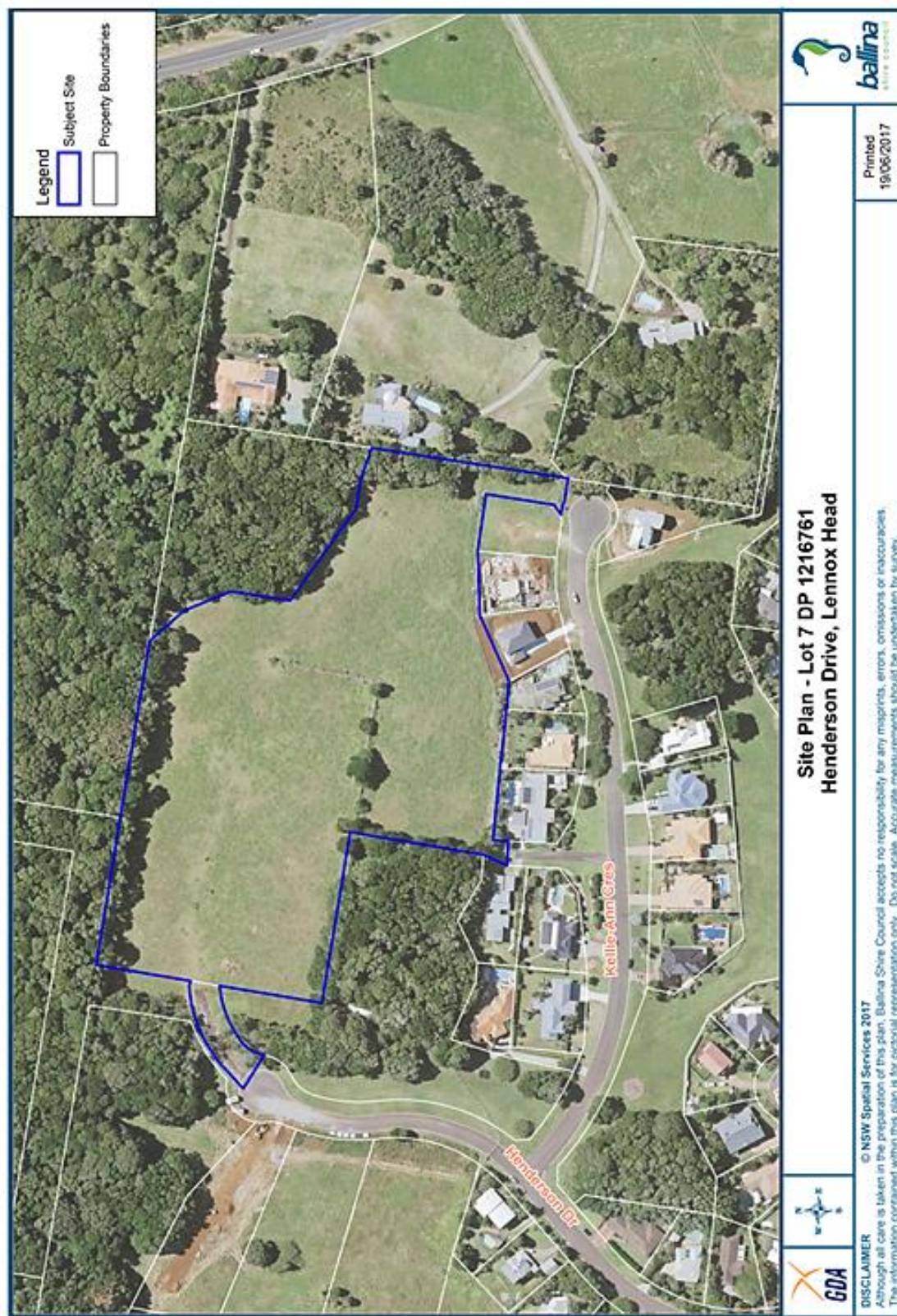
The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	July 2017
Government Agency Consultation	August 2017
Public Exhibition Period	September 2017
Public Hearing	N/A
Submissions Assessment	October 2017
RPA Assessment of Planning Proposal and Exhibition Outcomes	November 2017
Submission of Endorsed LEP to DP&I for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	December 2017
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	January 2018

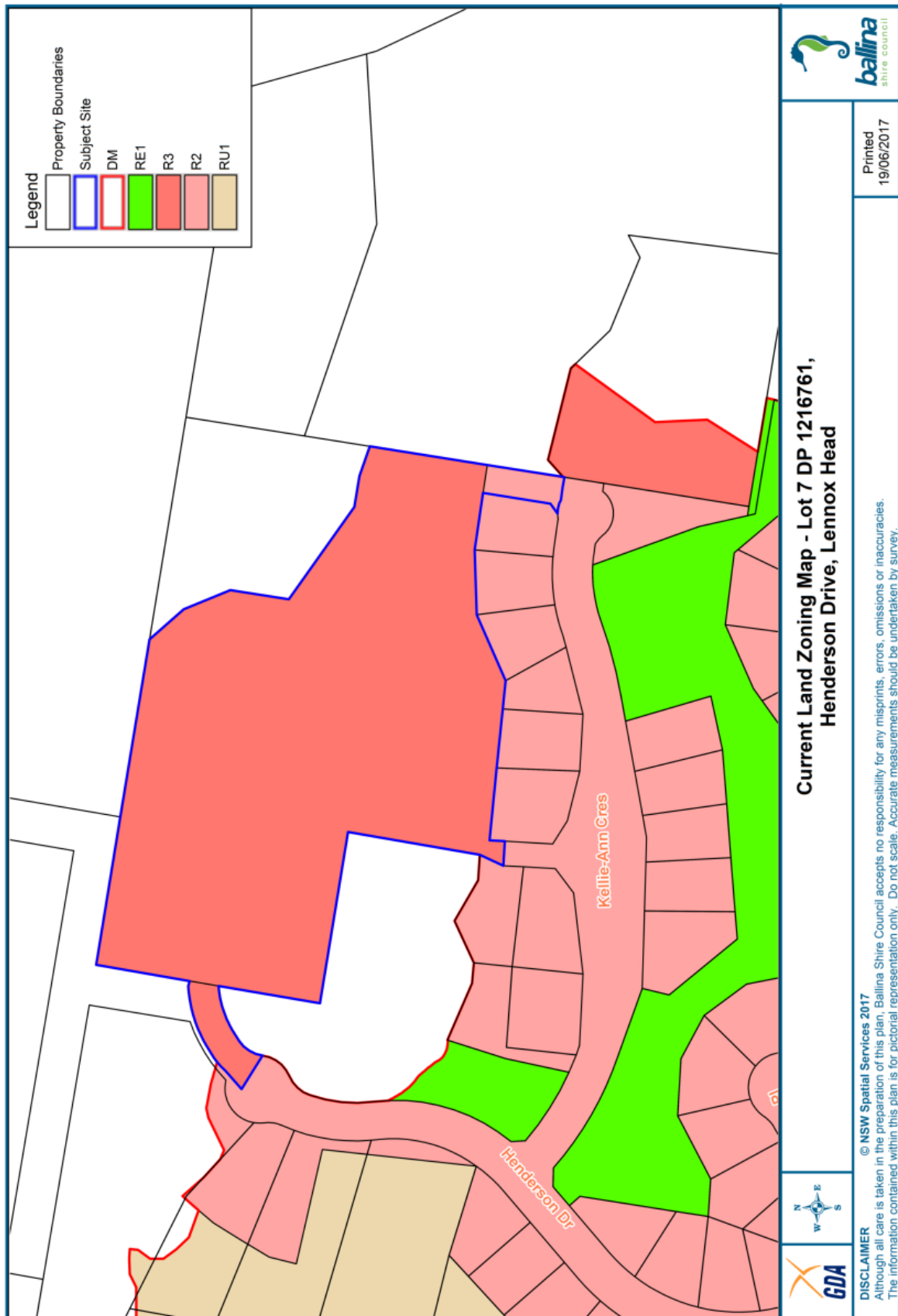
8. Appendices

Appendix 1 – Maps

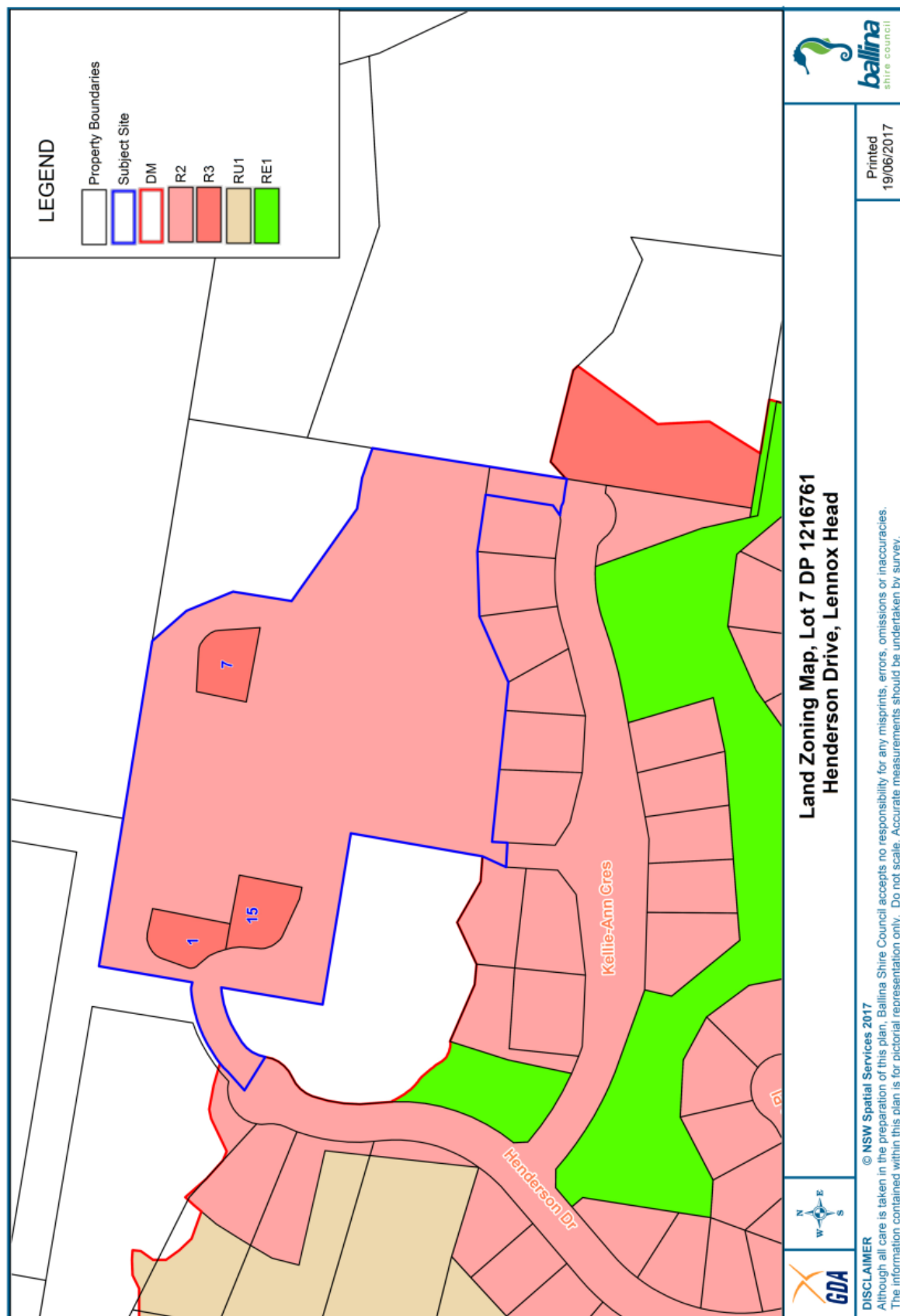
Map 1 – Site Plan (Aerial)



Map 2 – Current Land Zoning Map Ballina LEP 2012



Map 3 – Proposed Land Zoning Map Ballina LEP 2012



Appendix 2 – Ballina LEP 1987 Zone Objectives – 2(a) Living Area Zone

Zone No 2 (a) Living Area Zone

1 Objectives of zone

A The primary objectives are:

- a) to regulate the subdivision and use of land to permit housing and ancillary development where the scale, type and traffic generating characteristics of the ancillary development are compatible with the character and amenity of the surrounding residential area,
- b) to permit development which is considered by the council to be an essential land use within the urban living area, but not including a shop (other than a general store), and
- c) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for varying housing densities as well as other associated urban and tourist facilities.

B The secondary objective is to allow a variety of housing types and designs and to encourage greater visual amenity by requiring site landscaping.

C The exception to these objectives is development of land within this zone for public works and services, outside the parameters specified in the primary objectives.

Appendix 3 – Section 117 Direction Checklist

Section 117 Direction Checklist Planning Proposal – Visions Estate, Henderson Drive, 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	Does not apply to planning proposal.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Does not apply to planning proposal.
2. Environment and Heritage	
2.1 Environment Protection Zones	Consistent. The planning proposal does not involve the development of land identified as being of environmental significance.
2.2 Coastal Protection	Does not apply to planning proposal. Land is not within the coastal zone.
2.3 Heritage Conservation	Consistent. The planning proposal does not involve the development of land on which a heritage item is located, within a heritage conservation area or within the vicinity of a heritage item or conservation area.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Justifiably Inconsistent. This proposal involves the rezoning of land from R3 Medium Density Residential to R2 Low Density Residential with the exception of three lots which will retain the R3 zoning. The proposal is consistent with the objectives of this direction as it will provide variety and choice in housing types, is located close to existing infrastructure and services and provides a supply of residential land without impacting on the environment or resource lands. The reduction in the permissible density of the land is considered to be of minor significance as it reflects the approved subdivision plan and is consistent with the zoning of the existing residential subdivision in the locality. The provision of housing choice is further supported by the availability of other land within the urban growth area of the shire that has been identified as suitable for future subdivision purposes. The Ballina LEP 2012 includes an existing provision (Clause 7.7) that requires that adequate servicing be in place, or suitable arrangements to have been made for such servicing, before development proceeds.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. This proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.
3.3 Home Occupations	Consistent. The proposal will not affect any existing permissibility or exemptions for home occupations.

Section 117 Direction Checklist Planning Proposal – Visions Estate, Henderson Drive, Lennox Head	
Direction No.	Compliance of Planning Proposal
3.4 Integrating Land Use and Transport	Consistent. This proposal will not result in any negative impacts on accessibility or transport movements.
3.5 Development Near Licensed Aerodromes	Justifiably Inconsistent. The subject land is located within the Obstacle Limitation Surface (OLS) of the Ballina-Byron Gateway Airport. The land is already zoned for urban purposes and no change in allowable building height is proposed. The proposal has not yet been referred to the relevant airport authorities for consultation in accordance with the direction. However, as the proposed development may encroach above the OLS, the proposal will be referred to the relevant airport authorities in accordance with the requirements of the Gateway determination.
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Does not apply to planning proposal.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Does not apply to planning proposal.
4.4 Planning for Bushfire Protection	Justifiably Inconsistent. Part of the subject land is mapped as bush fire prone land. DA 2016/166 was referred to the NSW Rural Fire Service (RFS) to obtain integrated approval as required under S79B and S91 of the EP&A Act. The NSW RFS provided general terms of approval for the originally submitted layout subject to consent conditions as part of DA 2016/166. The future subdivision and development of the land will contain fully constructed urban roads, a reticulated water supply system (including fire hydrants) and underground electricity supply. Appropriate APZs and buffers would be able to be achieved in any future development of the land. The NSW RFS will be consulted as part of the planning proposal.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent. The planning proposal is generally consistent with the North Coast Regional Plan 2036.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Does not apply to planning proposal.
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 (Cessnock LGA).	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1	Revoked.

Section 117 Direction Checklist Planning Proposal – Visions Estate, Henderson Drive, Lennox Head	
Direction No.	Compliance of Planning Proposal
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.
5.10 Implementation of Regional Plans	Consistent. The planning proposal is consistent with the North Coast Regional Plan 2036.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.
6.3 Site Specific Provisions	Consistent. The planning proposal is consistent with this Direction as it seeks to apply a land use zone and standards compatible with the residential development of the site.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to Ballina Shire.

Appendix 4 – Council Resolutions

Council Resolution 25 January 2017:

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

Applicant	Planners North (on behalf of Negrada Pty Limited and others)
Property	Lot 7 DP 1216761, Lot 12 DP 814039, Lot 52 DP 864764 & Crown Public Road, Henderson Drive and Kellie Anne Crescent, Skennars Head
Proposal	To undertake a 26 Lot Designated/Integrated Torrens Title Residential Subdivision and associated works ("Visions Estate")
Effect of Planning Instrument	The land is predominately zoned R3 Medium Density Residential, but is also part R2 Low Density Residential and part Deferred Matter under the provisions of the Ballina LEP 2012
Locality Plan	The subject lands are depicted on the locality plan <u>attached</u>

Introduction

The proposal involves a Torrens Title subdivision of an existing 4.148 hectare site that is predominately zoned residential. It is proposed to construct a 26 lot residential subdivision including the extension of Henderson Drive as entry to the estate from the west and Kellie Anne Crescent as entry to the estate from the south (refer attached layout plans).

The site has an elevated south-easterly and south-westerly aspect with some limited coastal and ocean views overlooking existing residential, rural and environmentally sensitive lands (SEPP 26 Littoral Rainforest).

The majority of the site is cleared grazing land. There are substantial stands of established/mature State Environmental Planning Policy No. 26 Littoral Rainforest included in and bounding the site (refer attached SEPP 26 plan). Immediately to the south is the original Lennox Palms residential estate that was initially developed in the 1980s. Some clearing works and removal of rock walls (not heritage listed) are also proposed.

Vehicle access is currently available to the site from the eastern end of Kellie Anne Crescent cul-de-sac head and the northern end of Henderson Drive. There are currently no pedestrian pathways within the existing/adjoining Lennox Palms Estate, however an internal pathway is proposed within the "Visions Estate". Both Henderson Drive and Kellie Anne Crescent are proposed to be extended to create what is essentially a loop road to service the proposed allotments.

The extension to the road system is predominately around the perimeter of the site. This design also has the advantage of allowing the public street system to provide bush fire and mosquito buffers for parts of the estate from the surrounding vegetation and setbacks to the SEPP 26 Littoral Rainforest areas.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

This road system does not, however, extend entirely around Council's adjoining Public Reserve Lot 62 DP 864764 located to the south-west of the site. Lot 62 contains significant stands of SEPP 26 Littoral Rainforest and the potential impacts of proposed Lots 16, 25 and 26 on this adjoining vegetation and required buffers are considered to be of particular assessment importance.

The proposal also involves boundary adjustments with surrounding lands and the provision of various stormwater treatment devices and rehabilitation.

This site has been identified in various Council and State Government Strategies as being a potential urban growth area for a substantial number of years and has been zoned residential for approximately 40 years.

The land that forms part of the 26 urban residential lot subdivision footprint is zoned R3 Medium Density. The proposed allotments range in size from 730m² to 1,100m² (predominately configured having north to south aspects).

The north-eastern corner of the development site comprises SEPP 26 Littoral Rainforest and is a Deferred Matter still under the provisions of the 1987 Shire Plan. This area of the site is proposed to become a 6521m² residue allotment (proposed Lot 27) and to be consolidated into the privately held allotment adjoining the development site to the east.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The proposal was received in April 2016 and placed on public exhibition from 27 April to 27 May 2016. 23 letters of objection have been received. Copies of each submission are included as attachments to this report. Confidential submissions will be provided separately to Councillors.

The following issues of concern are those that have been generally raised within the submissions.

- Minimum lot size should be 1,000m² to 1,200m² having regard for the existing character of the locality. The number of lots, and narrow frontages causes this to be an overdevelopment of the site and will change Lennox Palms Estate's low density character.

Comment: Refer to "Variation to Minimum Lot Size" section of this report.

- Ecological concerns, primarily the clearing of littoral rainforest and placement of future dwellings, infrastructure services and roads within SEPP 26 Littoral Rainforest buffer and the impact of this on the root zones and on fauna.

Comment: Refer to "Flora and Fauna" section of this report.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

- Stormwater drainage issues.

Comment: Council's Civil Services Group has raised no objection in relation to the submitted stormwater design and has assessed that the quality and quantity of stormwater discharge will be satisfactory subject to appropriate conditions if approved. Refer to "Stormwater Treatment & Attenuation" section of this report for detailed comments.

- Extension of lots and infrastructure into lands zoned non-urban (environmental) is circumventing Council's planning process.

Comment: The subdivision site and the proposed residential allotments have been zoned residential for a substantial number of years. The proposed residential lots (as revised) do not extend into non-urban environmental zones.

- There is no provision for public open space/recreation facilities or pathways within/between adjacent subdivisions.

Comment: Council's Civil Services Group has raised no objection in relation to the provision of public open space. The subdivision will provide for suitable internal pedestrian pathways. Substantial overall dedication of public reserves occurred in the establishing stages of the overall estate that the current land is part of and the developers will be required to make monetary contributions towards the provision and development of Council's open space lands if the subdivision is approved.

- Increased traffic movements and noise.

Comment: Refer to "Roads and Traffic" section of this report. The future traffic generation of the proposed residential subdivision will not be of a volume that will unreasonably impact on the amenity of existing or future residents. The road network has the capacity to handle the future traffic volumes of the estate.

- Proposed roads are too narrow.

Comment: The narrower carriageway widths are considered acceptable for the location in relation to relevant standards. Refer to "Roads and Traffic" section of this report.

- Overlooking/Privacy/Light impact on existing dwellings. A landscaped easement should be provided between proposed Lots 19 to 26.

Comment: Having regard for Council's DCP requirements in relation to building setbacks, building height planes, bush fire asset protection zones (for proposed Lots 22, 23, 24 and 26) and required infrastructure services that will traverse along the southern boundary of the majority of these lots (and associated zones of influences/easements that cannot be built over), it is considered that the placement of any future dwelling houses on proposed Lots 19 to 26 can be reasonably expected to occur without significantly impacting upon the lower, existing dwelling houses fronting Kellie Anne Crescent.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

Given the topography, it is likely that dwelling houses will be placed towards the northern street frontages of these allotments where they will be elevated and may achieve distant views to the south and south-east.

- Visual impact on coastal escarpment.

Comment: The site has been zoned residential for a substantial number of years. Although the site has some visual significance due to its elevation, it is surrounded by littoral rainforest that will provide some screening from external viewpoints. The visual impact of the subdivision in the landscape will be compatible with that of adjacent streets, albeit that they have a lower elevation.

- Impact on rock walls (that should be heritage listed)

Comment: Although they are not heritage listed in this locality, the rock walls have been previously noted as having some heritage value and character. They will largely be retained (other than for demolition required for part of the vehicular access road, driveway access for proposed Lot 10 and building envelope for proposed Lot 8). The Council has previously discussed heritage listing of the walls with earlier landholders but this did not proceed.

Council could separately pursue this matter further with the current developers/owners if heritage listing of the walls is still desired. Alternatively, easements could be created over the walls as part of the subdivision to assist in their on-going retention/protection.

- Devaluing of properties

Comment: If the minimum 800m² lot size is maintained for this subdivision (as outlined during pre-lodgement meetings and correspondence) and as recommended within this report, it is considered that the proposed subdivision will not devalue surrounding existing properties. Due diligence investigations would highlight, via the zoning, that this site was envisaged for some form of residential development in the original planning for the estate.

- Provision of High Voltage Cable along Kellie Anne Crescent has potential health effects where there are other viable alternatives

Comment: A number of residents have provided plans indicating a proposed high voltage cable route surrounding and within the subdivision site. This has not, however, formed part of the development application made by the applicant and the subdivision's particular servicing design would generally not be decided until after consent is obtained and a Construction Certificate application was being prepared. Underground high voltage cables are commonly provided in residential estates.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

Such cables are generally provided at approximately one metre depth. Trenching for cabling could potentially impact the tree root zones of the SEPP 26 Littoral Rainforest and this may need to be assessed further should a high voltage cable route (or other infrastructure services) be proposed immediately adjacent to the vegetation surrounding the subdivision. This can be suitably conditioned should the application be approved.

- Civil Construction Impacts (including dilapidation).

Comment: Due to the proximity of surrounding residences a dilapidation report will be conditioned (if approved) requiring the developer to assess adjoining properties prior to construction commencing.

- Community Consultation outlined by the Developers is Misleading

Comment: This is not a relevant matter for consideration under Section 79C of the EP&A Act 1979. Pre-lodgement discussions with residents may have been conducted by the developers on their own accord. Formal community consultation has been undertaken by Council as part of the public exhibition of the application when it was first submitted to Council.

The relevant matters raised by public submissions (including those not addressed specifically above) will be considered throughout this report. The applicant has also provided responses to the key issues raised in the submissions for Council's consideration (copy attached).

Applicable Planning Instruments

The proposed development has been assessed under the heads of consideration in Sections 79B, 79C and 91 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and relevant matters under Designated and Integrated development provisions.

Report

Only those matters directly relevant to objections and matters of development determination significance will be specifically addressed in this report.

During assessment the concurrence of the NSW Department of Planning and Environment (DoPE) and the integrated approval requirements of the NSW Rural Fire Service (RFS) were required to be obtained under Section 79B and Section 91 of the EP&A Act due to works being proposed proximate to and within the surrounding SEPP 26 Littoral Rainforest and adjacent to identified bush fire prone vegetation.

Concurrence was issued by DoPE on 31 August 2016 (copy attached) subject to landscape plantings comprising North Coast Littoral Rainforest species being undertaken and the provision of a vegetation management plan detailing buffer plantings immediately adjacent to the adjoining Littoral Rainforest vegetation.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

The RFS provided General Terms of Approval on 15 June 2016 for the originally submitted layout (copy attached) subject to conditions.

The Office of Environment and Heritage (OEH) have been involved throughout the assessment process and have also provided advice (copies attached).

For further comments in relation to OEH's responses of 31 May and 31 August 2016 refer to the Flora and Fauna section of this report.

Variation to Minimum Lot Size

Although not originally submitted or sought, the application now seeks to vary a development standard pursuant to the provisions of Clause 4.6 of the BLEP 2012. In this instance, concurrence is not required from the DoPE to the requested variation.

The development standard requested to be varied is Clause 4.1 Minimum Subdivision Lot Size of the BLEP 2012 which requires a minimum 800m² lot area for this site.

Clause 4.1 – Minimum subdivision lot size of the BLEP 2012 states:

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure that subdivision is compatible with the character of the locality,*
 - (b) *to ensure that in the case of urban areas:*
 - (i) *the subdivision pattern reflects and reinforces the current or planned subdivision pattern of the locality, and*
 - (ii) *lot configurations are suitable to enable development that is consistent with relevant development controls,*
 - (c) *to ensure that in the case of rural areas:*
 - (i) *the subdivision pattern reflects and reinforces the agricultural, resource and environmental values of the land, and*
 - (ii) *the subdivision pattern minimises land use conflict.*
- (2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

As outlined in the report, there have been various objections to allowing and to departing from the 800m² minimum lot size (i.e. the surrounding community considered that the allotments should be a 1,000m² to 1,200m² minimum). Throughout pre-lodgement discussions Council Officers consistently advised the applicants that the minimum lot area should be at or above the minimum 800m² to comply with the BLEP 2012 and to be consistent with the existing subdivision character of this locality.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

The minimum 800m² lot size was applied at the time Council introduced the BLEP 2012. In preparing the BLEP 2012, Council variously applied 600m², 800m² or 1,200m² minimum lot sizes for subdivision to urban areas across the Shire. Having regard for the typical standards utilised by Council, the application of the 800m² standard in the case of the Visions Estate area indicates a recognition of the configuration of the adjoining residential subdivision as well as the medium density zoning applicable to the land, and provides for some flexibility in the subdivision pattern for the new area relative to the adjoining low density zone which is subject to a 1,200m² minimum lot size standard.

The applicant's original lot layout proposed a minimum of 800m² consistent with the minimum lot size; however the applicant now submits that the proposed variations (for four of the allotments and for less than a 10% variation) are required due to the SEPP 26 Littoral Rainforest, bush fire, and engineering considerations raised during the assessment of the application.

Of the four allotments in question, two are proposed at approximately 730m² (proposed Lot 16 as repositioned and adjoining Lot 15), one at 750m² (proposed Lot 2) and one at 787m² (proposed Lot 6). These allotments are all within the "body" of the loop/perimeter road of the subdivision and are generally not directly constrained by those matters argued by the applicant to justify the variations that are being sought.

Compliance with the minimum 800m² could be reasonably achieved through the deletion of one of the 26 proposed allotments (which would then result in the capacity to adjust the proposed lot areas across this part of the estate to above 800m²). Such a reduction in the number of proposed lots would be consistent with the subdivision plan/layout considered as part of pre-lodgment discussions.

The alternative proposal put forward to re-align the road immediately adjacent to proposed Lots 1, 15, and 16 to avoid encroachment into the Public Reserve Lot 62 as discussed later in this report would reduce the areas of Lot 15 and 16 to approximately 700m² (or greater than a 10% variation) if the applicant's proposed lot yield is consented to.

This is not considered to be an appropriate outcome in the context of this locality and would be inconsistent with the objectives of the minimum lot size provisions and the existing character of the surrounding subdivision. The average lot size of the existing 61 residential lots in Lennox Palms Estate (not including the larger rural residential allotments to the west) is currently substantially larger at 1,188m².

Consequently, it is considered preferable that Lot 16 be deleted and consolidated into the proposed allotments, thereby reducing the density and allowing all of the proposed allotments to have areas larger than the 800m² minimum standard of the Shire Plan for this locality. This consolidation/reduction of lots may indirectly further reduce the density of the subdivision in that proposed Lots 1 and 15 were originally proposed as dual occupancy allotments (rather than low density single dwelling allotments) leaving Lot 1, at the entrance to the subdivision, as the only lot identified for future dual occupancy development. It should be noted, however, that with the deletion of Lot 16, a reconfigured Lot 15 larger than 800m² and with a longer

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

road frontage due to the realignment of the road would still be suitable as a dual occupancy allotment if the applicant so wished.

State Environmental Planning Policy No. 26 – Littoral Rainforest

The site is largely bounded by SEPP No. 26 Littoral Rainforest core (No. 37).

The proposal relates to some minor works comprising road alignments along the edge of the core and as such there is some minor removal of native vegetation required for these future works. Future edge/buffer rehabilitation works are also proposed along the edge of the core primarily along the northern edge of the subdivision and for the extension of Henderson Drive to service the subdivision.

As previously outlined, the conditional concurrence of the DoPE has been issued for these works that would affect SEPP 26.

Flora and Fauna

Threatened Species Impacts

The key environmental attribute on and/or immediately adjoining the subject site is considered to be SEPP 26 Littoral Rainforests No. 37 and No. 37B which occur to the north, west and south of the development site.

Aside from being listed as SEPP 26, the subject vegetation is listed as an Endangered Ecological Community (EEC) under both the Threatened Species Conservation Act 1995 (the TSC Act) and Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act).

Other patches of littoral rainforest that are not protected by SEPP 26 legislation occur along the eastern boundary of the development site.

Littoral rainforest in this locality is also known for the occurrence of the critically endangered Coastal Fontainea (*Fontainea oraria*). The species occurs within northern fringes of SEPP 26 No. 37 and within approximately 250 metres of the subject development site.

Coastal Fontainea is only known to occur at Lennox Head and is considered to be one of the rarest trees in Australia. The entire natural population consists of ten adults and 45 seedlings and some juveniles. Consequently, the long-term protection of the species and its immediate environment arising from this development is considered imperative.

In 2011 OEH (then DECCW) produced a Management Plan for the Coastal Fontainea (MPCF). The MPCF addresses a range of issues including, identifying threatening processes, proposed management actions to protect existing Coastal Fontainea populations, and the specie's habitat.

Relevant to this application are the adverse impacts of habitat fragmentation and isolation, weed infestations, and salt wind shear.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

Environmental Buffers

Given the ecological significance of the adjacent SEPP 26 rainforests, it is considered that vegetated conservation buffers are required. Conservation buffers have been applied to a number of subdivisions in the Shire (Coastal Grove, Pines Estate, Henderson Farm and Greenfield Road) to protect similar vegetation and are recommended to be applied to this development.

In this respect, Council staff through the pre-lodgement and development application process requested:

"The development should be designed to include a 20m wide vegetated buffer to existing SEPP 26 littoral EEC growing along the northern boundary of the property to negate against vehicle headlights and general disturbance. Council is, however, open to other potential mitigation measures. A reduced 10m planting buffer is required to be established adjacent to the Lot 62 given the existing development has already impacted on the subject vegetation".

In the event, the development proposes to buffer the vegetation principally by the use of the ring/loop road. It is noted, given the applicant's ecological consultant has not undertaken any direct survey work, that the adjoining SEPP 26 rainforest area that is not subject to the current development application, and the ecological importance and potential usage of these areas by native fauna assemblages, including threatened species, remains unknown.

Council's Public Reserve Lot 62 DP 864764 is known to contain the threatened species (Stinking Cryptocarya) *Cryptocarya foetida* and, as stated above, SEPP 26 No. 37 is known to contain the Coastal Fontainea.

Tree Protection Areas (TPA)

The pre-lodgement advice dated 22 January 2015 also stated:

"Construction buffer distances need to be based on both AS 4970—2009 Protection of trees on development sites and Appendix B of AS2870- 2011 Residential Slabs and Footings. This would need to be demonstrated at subdivision stage rather than construction stage. "

Council's letter of the 16 July 2015 requested the abovementioned data to be presented in a tabulated form. This information has not been supplied with the development application. In the alternative, the applicant is seeking consent to rely upon structural engineering standards to be applied to future slab foundations which will be discussed further below.

Proposed Lots 16, 25 and 26 adjoining Public Reserve Lot 62 DP 864764

Proposed Lots 16, 25 and 26 directly adjoin Littoral Rainforest EEC and thus would potentially create a range of long term conflicts for the residents and for the Council in its on-going management of the reserve. As stated above, Council's Public Reserve Lot 62 needs to be buffered via plantings and use of the road network. The establishment of dwellings immediately adjacent to Lot

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

62 can be problematic and have a range of adverse impacts if not properly planned for, including:

- Noise and light disturbance.
- Planting of inappropriate species of plants that will become a weed source.
- Building footing cracking and falling overhanging branches.
- Domestic animal disturbance/predation.
- The pruning back of SEPP 26 vegetation (new growth) to comply with bush fire requirements.
- The removal of littoral rainforest EEC for the construction of the access driveway to Lot 26.
- Ongoing removal of the any understorey regrowth to comply with bushfire and mosquito requirements.
- Increased edge effects.
- Inadequate mosquito buffers between future dwelling houses and littoral rainforest EEC.

In relation to directly adjoining proposed Lots 16, 25 and 26, Council has requested the applicant to demonstrate a suitably sized building envelope in compliance with AS2870-2011. In response the applicant has now submitted a dimensioned plan (attached) illustrating the proposed building envelopes for Lots 25 and 26 and has offered an alternative road layout to re-configure Lot 16 into the central area as discussed above.

In the meantime, Council's Surveyor confirmed that the height of the adjoining vegetation is 17.5 metres. Based on this height of vegetation, to strictly comply with AS2870-2011's standard separation distance criteria, a minimum set back distance of 17.5m would be required for future domestic buildings.

This distance may need to be increased to meet the requirements of AS2870-2011 as it states where groups of trees occur setback distances need to be increased.

Rather than complying with these requirements, the applicant is seeking to achieve compliance by alternative means provided for in the standard. The alternative solution allows for particular footing designs to be employed that won't disturb the root zones of the vegetation. This option is not supported given the identified dwelling site on Lot 26 is proposed to have a separation distance of 3.5 metres from the existing littoral rainforest EEC. In this regard this separation distance is considered inadequate to mitigate against tree root zones and falls having a direct impact on any future dwelling house or associated buildings/structures. Additionally, it is considered that the close proximity of the vegetation to the identified dwelling site on this lot would likely result in landowners requesting for vegetation to be removed and/or lopped due to perceived safety issues. Major tree failures have already occurred adjacent to proposed Lot 25 and the age, class and the exposure of the vegetation to storm and high wind makes it vulnerable to damage.

A footing design condition of consent as suggested by the applicant (or 88B Restriction on Use Instrument), may have no effect if an applicant were to utilise exempt and complying development legislative provisions. Therefore, in this regard, it is considered that Lots 25 and 26 should only be approved if either an appropriate 17.5 metre wide easement or other alternative

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

arrangement consistent with AS2870-2011 is in place and Lot 16 should be relocated as proposed under the alternative option.

It is recognised that a 17.5m wide easement would substantially decrease the available building envelope on Lots 25 and 26.

With respect to the proposed alternative road alignment and positioning of Lot 16, the submitted plan identifies that the road would occupy a small part of Council's reserve. This reliance upon public lands is not supported as Council's Civil Services Group have advised that appropriate swept paths around the bends can be provided entirely within the development site without any reliance upon public lands.

As discussed in the 'Variation to Minimum Lot Size' section of this report, above, the alternative re-alignment of the road would also reduce the areas of the repositioned Lot 16 and the adjoining Lot 15 to approximately 700m². This further variation or reduction of the 800m² minimum lot size is not preferred.

In all the circumstances of the assessment of this application, it is considered preferable that proposed Lot 16, in either its original location adjacent to the Public Reserve Lot 62, or as alternatively repositioned be deleted and the land be consolidated into the overall subdivision.

Although a 17.5 metre easement within the western portion of Lots 25 and 26 would substantially reduce available building envelopes, it is likely that a 10 metre by 15 metre building envelope can still be suitably provided in accordance with the DCP provisions.

Therefore, unless the applicant can demonstrate that an alternative restriction/condition can be practically enforced and is legally binding, particularly having regard for the Exempt and Complying Development provisions of NSW legislation, the 17.5 metre easement (rather than the 11 metre buffer and alternative footing design) should be applied to Lots 25 and 26.

Roads and Traffic

The subdivision layout design consists of a simple loop road with the main access to the subdivision via Henderson Drive and a minor access road via Kellie Ann Crescent enabling efficient traffic accessibility and flow through the proposed subdivision. The extension of Henderson Drive is proposed to traverse through part of the Crown public reserve adjoining the subdivision. The Department of Primary Industries has agreed to the closure of transfer of the road (copy attached).

Road carriageway widths are eight metres and seven metres for roads one and two respectively with a 3.5 metre verge where services are proposed and variable verge width where the loop roads front SEPP 26 littoral rainforest. Council's Civil Services Group have advised that road widths and layout are adequate to service the proposed subdivision.

If the subdivision is approved, there will be an increase in traffic leaving the estates via the intersection of Henderson Drive and Skennars Head Road.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

The anticipated traffic generation for the development is an additional 168 vehicles per day. There are 65 existing dwellings in the estate with 26 proposed by the development equating to an approximately 40% increase in traffic volumes. The site is zoned as R3 Medium Density which would have been reflected in traffic studies for the original design of the intersection of Henderson Drive and Skennars Head Road.

Consequently, the proposed subdivision is relatively low density having regard for the R3 zoning and there will effectively be a reduction in the originally anticipated traffic volumes for the intersection.

There are no road design or capacity issues with congestion or accidents at the intersection of Skennars Head Road and Henderson Drive. Skennars Head Road is 13 metres from kerb to kerb at the intersection and therefore if congestion becomes an issue in the future there is adequate space to reline and mark Skennars Head Road to include a right hand turning lane.

There are conflicting sub consultants' reports within the applicant's submission relating to road design and vegetation constraints within the subdivision itself.

Whilst the engineering design layout is satisfactory, the Bush Fire report suggests that a narrowing of Road One to a single lane near proposed lots 25 and 26 is required. The Civil Services Group are not supportive of a one lane section for the main circulation road/loop.

The bush regeneration layout proposes to revegetate the northern side of Road One right to the edge of kerb. The Civil Services Group do not support revegetating the clear zone from both a road safety perspective and ongoing maintenance. A three metre clear zone from the edge of the drip line of the vegetation to the edge of kerb is required, (with some minor incursions accepted noting the significance of the surrounding vegetation).

There are environmental constraints along Road One's access point to Kellie Ann Crescent. Whilst the applicant's latest submission does not propose a change in road widths, different road proposals have been submitted for Council's consideration during the application process. From an engineering perspective Council's Civil Services would consider a short narrowing of Road One, to one lane for up to 15 metres in length (but not one lane connecting directly to Kellie Ann Crescent) to reduce impact on this vegetation. Road One in this vicinity has low traffic volumes and would still serve as an egress point.

In the event the applicant has maintained two lane widths in this vicinity and this is considered acceptable despite the removal of some vegetation.

Stormwater Treatment & Attenuation

A stormwater plan has been provided which is considered to be generally acceptable (report by Newton Denny Chapelle Technical Note Stormwater Management dated July 2016).

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

Stormwater treatment is provided by two gross pollutant traps, one on the Henderson Drive cul-de-sac and the other on the public reserve close to Skennars Head Road. The treatment device has been accepted on the public reserve as the proposal is to treat a larger portion of the catchment, and to include existing untreated residential areas, thus providing a greater net pollution reduction than solely treating the proposed subdivision to required reduction targets. This benefits the developer by not having to provide on lot treatment or dedicating treatment areas and it benefits the environment and public interest by providing greater net pollution reductions to the receiving waters.

Stormwater attenuation is not proposed. Council's Stormwater Management Standards for Development allows an alternative approach whereby the downstream network is augmented to an acceptable discharge point that does not adversely impact downstream properties.

The majority of pre-developed stormwater flows were directed towards Henderson Drive and Kellie Anne Crescent and ultimately to the piped network under Skennars Head Road next to the playing fields.

The proposal divides the site areas into four catchments and redirects catchment A to the west thereby reducing flows to the sports playing fields' discharge point.

The applicant has proposed to pipe the 1/100 ARI event from Catchments B, C and D through the existing residential area via Council's public reserve to an outlet structure next to the Skennars Head sports playing fields and the natural watercourse/swamp basin which discharges to the Skennars Head Road stormwater network. The applicant has confirmed that the piped crossing under Skennars Head Road can still accommodate the 20 year ARI event.

Similarly Catchment A is directed via easements to the wetland system to the west where detention would have no hydrological benefit.

Mosquito Buffers

The applicant's entomologist has confirmed that the proposed subdivision is capable of achieving the recommended minimum 20 metre mosquito buffer to proposed Lots 1 to 9 and 17 to 19. This will be achieved by including the 6 metre building line setback and restricting revegetation to only occur further than 20 metres from the building line. It is noted that, to achieve this for Lots 18 and 19, some vegetation will need to be removed.

Consequently, should the application be approved, a restriction on use by way of an 88B instrument under the Conveyancing Act 1919 restricting the type, amount and spacing of vegetation in the building line setback on Lots 1 to 19 and 11 metres from the property boundaries adjoining the Public Reserve (Lot 62) is proposed to be conditioned. A description of appropriate vegetation restrictions would be supplied by a qualified entomologist.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

These restrictions would also prohibit the building of a dwelling house or habitable building within the 11 metre mosquito buffer and the requirement for all buildings comprising residential accommodation to be effectively screened in accordance with Chapter 2 Part 3.6 of the DCP. Conditions would be recommended to implement such requirements prior to the issue of the relevant Subdivision Certificate.

A reduced 11 metre mosquito buffer to the adjacent remnant coastal grove forest (i.e. Public Reserve Lot 62) has been recommended by the entomologist for the following reasons:

- on-site observations confirmed the coastal grove forest to be isolated from the larger section of coastal forest to the north,
- minimal breeding habitat exists within the forest that would generate a resident adult population of adult mosquitoes,
- the elevated position with strong prevailing winds and relatively low humidity within the forest would provide reasonably hostile conditions for adult mosquitoes.

In relation to proposed Lot 16 immediately north and east of the Public Reserve (Lot 62), Council's Open Spaces and Resource Recovery Section plans to revegetate the grassland leaving only a four metre wide access adjacent to proposed Lot 16. This access, inclusive of the nominated 5 metre wide asset protection zone, would only allow a maximum nine metre mosquito buffer which falls short of the recommended minimum 11 metres.

For similar reasons to those previously outlined within the report, it is recommended that the road in this vicinity be re-aligned and proposed Lot 16 be deleted. This will achieve required buffers to Lot 62, and not only in relation to mosquitos.

The engaged entomologist has also confirmed that he believes the inability of the extension of Henderson Drive access to achieve a clear 20 metre wide separation between the vegetation to the north and the isolated coastal grove forest will have a very low risk of contributing to a mosquito problem for future residents of the subdivision.

Based on these conditional recommendations and the entomologist advice it is considered that the proposal will reasonably achieve the objectives of Chapter 2 Part 3.6 of the DCP to minimise nuisance and health risk associated with mosquitoes and minimise human contact with mosquitoes as a result of the provision of a minimum 20 metre mosquito buffer to proposed Lots 1 to 9 and 17 to 19 and 11 metres to proposed Lots 25 and 26 (with the exception of Lot 16 due to its deletion outlined above); and the screening of all buildings comprising residential accommodation.

Conclusions

Throughout the protracted assessment of the proposal, the applicant has made various design amendments in efforts to satisfactorily respond to Council's requests for clarification on matters directly associated with various tree protection/buffer zones.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

Although the lands surrounding the site have environmental sensitivities, the site has been zoned for future urban development for a substantial number of years.

The applicant has suitably identified that the R3 zoned lands can be developed for residential purposes.

The site, however, is primarily suitable for low density subdivision having regard for the surrounding environmental sensitivities/constraints and existing character and density of the locality.

Although Council's Environmental Scientist and the OEH considers that the buffers to the SEPP 26 Littoral Rainforest should be greater, subject to the deletion of Lot 16 and the provision of suitable easements and building envelopes on proposed Lots 25 and 26 to protect the Public Reserve Lot 62 vegetation, Council's Development and Environmental Health Group is satisfied with the proposed development as it maintains a fair and reasonable degree of separation.

Relevant Government agencies have also supported these conclusions and therefore the subdivision can be supported subject to conditions; and particularly the suitable rehabilitation and buffering of the SEPP 26 littoral rainforest.

Having regard for the outcomes of the assessment undertaken, Council has the following options with regard to determining the subject application:

Option One

That Council approves the development as submitted:

- with proposed Lot 16 immediately adjacent to Public Reserve Lot 62,
- having 11m wide buffers for proposed Lots 16, 25 and 26, and
- with two allotments having areas less than the minimum 800m² lot size.

This is not supported having regard for the surrounding subdivision and due to the environmental impacts outlined within this report.

Option Two

That Council approves the alternative development as submitted:

- with proposed Lot 16 repositioned further from Public Reserve Lot 62 due to the re-alignment of the proposed loop road adjacent to Public Reserve Lot 62,
- with four allotments having areas less than 800m², and
- making suitable provision for building envelopes and incorporating a 17.5m wide setback easement for proposed Lots 25 and 26 to protect the vegetation within Public Reserve Lot 62 unless it can be demonstrated that an 11m wide setback easement protecting the construction of a dwelling house or other structures (i.e. swimming pools, pergolas, sheds etc.), by having footings designed not to disturb the root zones of adjoining vegetation in Lot 62 can be practically

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

enforced having regard for Exempt and Complying Development provisions.

This is not supported as it will create four lots less than the minimum 800m² lot size and there do not appear to be sufficient reasons for approving the departures from the Shire Plan's development standards.

Option Three

That Council approves the development subject to:

- the deletion of proposed Lot 16,
- the suitable re-alignment of road in this vicinity (without any reliance upon Public Reserve Lot 62 lands) as shown in the submitted alternative design,
- making suitable provision for building envelopes and incorporating a 17.5m wide setback easement for proposed Lots 25 and 26 to protect the vegetation within Public Reserve Lot 62, unless it can be demonstrated that an 11m wide setback easement protecting the construction of a dwelling house or other structures (i.e. swimming pools, pergolas, sheds etc.), by having footings designed not to disturb the root zones of adjoining vegetation in Lot 62 can be practically enforced having regard for Exempt and Complying Development provisions,
- all allotments having a minimum land area of 800m², and
- the reconfiguration of proposed Lot 15 to be suitable for a future dual occupancy allotment (if desired)

Option Three is recommended as it is considered that the matters identified in the report can be addressed via these suitable consent conditions to minimise environmental impacts.

Option Four

That Council refuses the development application on the basis of environmental issues/impacts and non-compliance with the minimum lot size provisions of clause 4.1 of the BLEP 2012. This is not supported as the application warrants development consent for the reasons outlined in this report.

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

RECOMMENDATIONS

1. That DA 2016/166 to undertake a 26 Lot residential subdivision and associated works at Lot 7 DP 1216761, Lot 12 DP 814039, Lot 52 DP 864764 & Crown Public Road, Henderson Drive and Kellie Anne Crescent, Skennars Head be **APPROVED** subject to:
 - (a) the deletion of proposed Lot 16 and thereby reducing the proposed urban allotments to a total of 25
 - (b) the suitable re-alignment of the loop road (without any reliance upon Public Reserve Lot 62 lands) as shown in the alternative design
 - (c) the suitable provision of a minimum 10 metre by 15 metre building envelopes and minimum 17.5 metre wide easement on proposed Lots 25 and 26 to protect the vegetation within Public Reserve Lot 62 (unless the applicant can provide evidence that the proposed alternative footing means can be practically enforced having regard for Exempt and Complying Development)
 - (d) each proposed residential allotment having a minimum area of 800m² or greater
 - (e) each proposed lot (other than Lot 1 and reconfigured Lot 15) having a single dwelling house only
 - (f) preparation of a restriction on use by way of an 88B instrument under the Conveyancing Act 1919 informed by a qualified entomologist being applied to the relevant lots restricting the type, amount, and spacing of vegetation in the building line setbacks suitable for a mosquito buffer and
 - (g) the imposition of other standard, relevant and suitable conditions for the subdivision.
2. That Council resolves to prepare a Planning Proposal to rezone each residential lot (other than proposed Lot 1 and reconfigured Lot 15) to R2 Low Density Residential.

Attachment(s)

1. Locality Plan - Visions Estate, Henderson Drive, Lennox Head
2. Subdivision Layout Plans
3. SEPP 26 Littoral Rainforest
4. Public Submissions
5. Submissions - (not for public viewing) (Under separate cover)
6. Applicant's Response to Public Submissions
7. DoPE Concurrence
8. NSW RFS General Terms of Approval
9. NSW OEH Response dated 5 September 2016
10. NSW OEH Response dated 3 June 2016
11. NSW Dept of Primary Industries dated 8 June 2016
12. Plan of Proposed Building Envelopes - Lots 16, 25 & 26
13. Plan of Alternative road alignment and Relocation of Lot 16

8.2 DA 2016/166 - 26 Lot Subdivision, Henderson Drive (Visions Estate)

A **Motion** was moved by Cr Sharon Cadwallader and seconded by Cr Eoin Johnston

1. That DA 2016/166 to undertake a 26 Lot residential subdivision and associated works at Lot 7 DP 1216761, Lot 12 DP 814039, Lot 52 DP 864764 & Crown Public Road, Henderson Drive and Kellie Anne Crescent, Skennars Head be **APPROVED** subject to:
 - (a) the deletion of proposed Lot 16 and thereby reducing the proposed urban allotments to a total of 25
 - (b) the suitable re-alignment of the loop road (without any reliance upon Public Reserve Lot 62 lands) as shown in the alternative design
 - (c) the suitable provision of a minimum 10 metre by 15 metre building envelopes and minimum 17.5 metre wide easement on proposed Lots 25 and 26 to protect the vegetation within Public Reserve Lot 62 (unless the applicant can provide evidence that the proposed alternative footing means can be practically enforced having regard for Exempt and Complying Development)
 - (d) each proposed residential allotment having a minimum area of 800m² or greater
 - (e) each proposed lot (other than Lot 1 and reconfigured Lot 15) having a single dwelling house only
 - (f) preparation of a restriction on use by way of an 88B instrument under the Conveyancing Act 1919 informed by a qualified entomologist being applied to the relevant lots restricting the type, amount, and spacing of vegetation in the building line setbacks suitable for a mosquito buffer and
 - (g) the imposition of other standard, relevant and suitable conditions for the subdivision.
2. That Council resolves to prepare a Planning Proposal to rezone each residential lot (other than proposed Lot 1 and reconfigured Lot 15) to R2 Low Density Residential.

An **Amendment** was moved by Cr Keith Williams and seconded by Cr Jeff Johnson

1. That DA 2016/166 to undertake a 26 Lot residential subdivision and associated works at Lot 7 DP 1216761, Lot 12 DP 814039, Lot 52 DP 864764 & Crown Public Road, Henderson Drive and Kellie Anne Crescent, Skennars Head be **APPROVED**, inclusive of all the recommended conditions subject to:
 - the deletion of Lot 26 and that the total urban allotments be reduced to 24.
2. That Council resolves to prepare a Planning Proposal to rezone each residential lot (other than proposed Lot 1 and reconfigured Lot 15) to R2 Low Density Residential.

The Amendment was LOST.

FOR VOTE - Cr Jeff Johnson, Cr Nathan Willis and Cr Keith Williams

AGAINST VOTE - Cr David Wright, Cr Phillip Meehan, Cr Sharon Parry, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Sharon Cadwallader and Cr Ben Smith

The Motion was CARRIED.

FOR VOTE - Cr David Wright, Cr Phillip Meehan, Cr Sharon Parry, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Jeff Johnson, Cr Nathan Willis and Cr Keith Williams

250117/8 RESOLVED

(Cr Sharon Cadwallader/Cr Eoin Johnston)

1. That DA 2016/166 to undertake a 26 Lot residential subdivision and associated works at Lot 7 DP 1216761, Lot 12 DP 814039, Lot 52 DP 864764 & Crown Public Road, Henderson Drive and Kellie Anne Crescent, Skennars Head be **APPROVED** subject to:
 - (a) the deletion of proposed Lot 16 and thereby reducing the proposed urban allotments to a total of 25
 - (b) the suitable re-alignment of the loop road (without any reliance upon Public Reserve Lot 62 lands) as shown in the alternative design
 - (c) the suitable provision of a minimum 10 metre by 15 metre building envelopes and minimum 17.5 metre wide easement on proposed Lots 25 and 26 to protect the vegetation within Public Reserve Lot 62 (unless the applicant can provide evidence that the proposed alternative footing means can be practically enforced having regard for Exempt and Complying Development)
 - (d) each proposed residential allotment having a minimum area of 800m² or greater
 - (e) each proposed lot (other than Lot 1 and reconfigured Lot 15) having a single dwelling house only
 - (f) preparation of a restriction on use by way of an 88B instrument under the Conveyancing Act 1919 informed by a qualified entomologist being applied to the relevant lots restricting the type, amount, and spacing of vegetation in the building line setbacks suitable for a mosquito buffer and
 - (g) the imposition of other standard, relevant and suitable conditions for the subdivision.
2. That Council resolves to prepare a Planning Proposal to rezone each residential lot (other than proposed Lot 1 and reconfigured Lot 15) to R2 Low Density Residential.

FOR VOTE - Cr David Wright, Cr Phillip Meehan, Cr Sharon Parry, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Jeff Johnson, Cr Nathan Willis and Cr Keith Williams

Council Resolution 25 May 2017:

9.1 Planning Proposal - Visions Estate, Henderson Drive, Lennox Head

9. Strategic and Community Facilities Group Reports

9.1 Planning Proposal - Visions Estate, Henderson Drive, Lennox Head

Delivery Program Strategic Planning

Objective To outline a proposal to amend the Ballina Local Environmental Plan 2012 to alter the residential zone applying to land in the Visions Estate at Lennox Head and seek direction on the submission of a planning proposal for Gateway determination.

Background

Council at its Ordinary Meeting held on 25 January 2017 resolved to approve DA 2016/166 in respect of a proposed 26 lot residential subdivision and associated works relating to land in Henderson Drive and Kellie Ann Crescent, Lennox Head (known as "Visions Estate"). That approval included a requirement to reduce the number of urban lots to 25 and provided for Lots 1 and 15 to be utilised for dual occupancy purposes.

At the same meeting, Council resolved to prepare a planning proposal to rezone each residential lot, other than approved Lot 1 and reconfigured Lot 15, from R3 Medium Density Residential to R2 Low Density Residential zone. A copy of the report and resolution of the January 2017 Ordinary Meeting is provided in the planning proposal (Attachment One).

The Council resolution of the Ordinary Meeting held on 25 January 2017 is reproduced below [Minute No. 250117/8]:

1. That DA 2016/166 to undertake a 26 Lot residential subdivision and associated works at Lot 7 DP 1216761, Lot 12 DP 814039, Lot 52 DP 864764 & Crown Public Road, Henderson Drive and Kellie Anne Crescent, Skennars Head be **APPROVED** subject to:
 - a) the deletion of proposed Lot 16 and thereby reducing the proposed urban allotments to a total of 25
 - b) the suitable re-alignment of the loop road (without any reliance upon Public Reserve Lot 62 lands) as shown in the alternative design
 - c) the suitable provision of a minimum 10 metre by 15 metre building envelopes and minimum 17.5 metre wide easement on proposed Lots 25 and 26 to protect the vegetation within Public Reserve Lot 62 (unless the applicant can provide evidence that the proposed alternative footing means can be practically enforced having regard for Exempt and Complying Development)
 - d) each proposed residential allotment having a minimum area of 800m² or greater
 - e) each proposed lot (other than Lot 1 and reconfigured Lot 15) having a single dwelling house only
 - f) preparation of a restriction on use by way of an 88B instrument under the Conveyancing Act 1919 informed by a qualified entomologist being applied to the relevant lots restricting the type, amount, and spacing of vegetation in the building line setbacks suitable for a mosquito buffer and
 - g) the imposition of other standard, relevant and suitable conditions for the subdivision.

9.1 Planning Proposal - Visions Estate, Henderson Drive, Lennox Head

2. *That Council resolves to prepare a Planning Proposal to rezone each residential lot (other than proposed Lot 1 and reconfigured Lot 15) to R2 Low Density Residential.*

The land is located to the north of the established Lennox Palms Estate and is accessed from the northern end of Henderson Drive and the eastern end of the Kellie Ann Crescent cul-de-sac. The 1987 LEP and associated DCP identified the land for medium density development and more recently the 2012 LEP applied an R3 Medium Density Residential Zone over the land.

The proponent has submitted an amended subdivision layout plan having regard for the Council resolution of 25 January 2017. The proponents have requested that Council also consider the inclusion of Lots 2, 6 and 7 within the revised plan for dual occupancy development in addition to Lots 1 and 15. To enable this, an adjustment would be necessary to the attachment planning proposal (Attachment One) to retain additional areas of R3 Medium Density Residential zoning over the site. This zoning permits dual occupancy development as well as other forms of multi dwelling housing.

Information in support of the proponent's request has been prepared by Planners North and is provided in Attachment Two to this report.

Appendix 1 in the planning proposal (as contained in Attachment One to this report) contains plans showing the location of the site, the current land use zoning, the proposed zoning consistent with Council's January 2017 resolution and an alternate zoning arrangement that reflects the proponent's proposed approach.

This report provides an overview of the proposed LEP amendment and seeks the Council's direction on the progress of the matter.

The attachments to this report are provided together under separate cover.

Key Issues

- Merits of proposed LEP amendment.
- Adjustment to an existing zoning arrangement in relation to the determination of a development application for subdivision of land.
- Urban growth management.

Information

The Subject Land

Visions Estate covers an area of 4.148 hectares (excluding road reserves). The majority of the site is cleared grazing land, with the exception of the north-eastern corner which comprises SEPP 26 Littoral Rainforest. The land is predominantly zoned R3 Medium Density Residential and is subject to a minimum lot size of 800m². The land has been zoned for residential purposes for approximately 40 years. The portion of the site comprising the littoral rainforest is classified as a deferred matter, presently being subject to the 2(a) Living Area Zone under the Ballina LEP 1987.

9.1 Planning Proposal - Visions Estate, Henderson Drive, Lennox Head

Plans showing the location of the subject land and the current zoning arrangement are contained in Appendix 1 within Attachment One.

Summary of the Proposal

In accordance with the Council resolution of 25 January 2017, the planning proposal involves the rezoning of land from R3 Medium Density Residential to R2 Low Density Residential, with the exception of approved Lot 1 and reconfigured Lot 15. No changes are proposed to the minimum lot size or building height provisions.

Details of the planning proposal are contained in Attachment One. Plans showing the proposed zoning arrangement consistent with Council's January 2017 resolution are contained in Attachment One (see Appendix 1).

Alternative Proposal

The proponent has provided an amended lot layout plan, subject to final survey, and has also requested that Council canvas the inclusion of approved Lots 2, 6 and 7 for dual occupancy development in addition to approved Lots 1 and 15 as provided for in the Council resolution. A copy of the proponent's supporting information is provided in Attachment Two.

This option is presented for the Council's consideration and, if supported, would involve the retention of approved Lots 2, 6 and 7 in the R3 Medium Density Residential Zone (in addition to Lots 1 and 15), with the remaining area rezoned to R2 Low Density Residential Zone. The proposed zoning to enable the proponent's request is shown in mapping within Appendix 1 in Attachment One.

Sustainability Considerations

- **Environment**

The potential impact on native vegetation, including the identified SEPP No. 26 Littoral Rainforest on and surrounding the subject land, was subject to consideration in relation to the assessment of DA 2016/166.

- **Social**

The proposal to provide infill residential housing within an existing residential area provides for additional housing consistent with existing urban planning policy for the Lennox Head and Skennars Head area.

- **Economic**

There are no significant economic implications identified in relation to the proposed rezoning.

Legal / Resource / Financial Implications

Should Council resolve to proceed based on its previous resolution (Option 1), then Council will meet the costs of processing the LEP amendment. This is because the change sought has been initiated by Council.

9.1 Planning Proposal - Visions Estate, Henderson Drive, Lennox Head

If Council proceeds with the proponent's amended proposal (Option 2), then it is reasonable that costs of processing the LEP amendment request should be split evenly between Council and the proponent. Under this scenario, the change is comprised of both the intentions of Council and the proponent.

Consultation

There has been no consultation undertaken with either the community or government agencies in relation to this LEP amendment request to date as this matter is in the initial concept phase. The associated development application has been the subject of public exhibition and community feedback as well as reporting to Council in January 2017.

Should the planning proposal continue to proceed, community consultation, public exhibition and agency engagement will be undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act*.

Options

1. Prepare a planning proposal to rezone each residential lot, other than approved Lot 1 and reconfigured Lot 15, from R3 Medium Density Residential to R2 Low Density Residential zone.

Council could resolve to proceed with the rezoning in line with the resolution of 25 January 2017. This option would involve referring the planning proposal to the NSW Department of Planning and Environment for Gateway determination.

The assessment of DA 2016/166 considered that the majority of the proposed allotments should be single low density dwelling allotments, having regard for the existing character and density of the existing estate and the strong public support for maintaining the low density character of the area.

In relation to DA 2016/166, the proponent had originally requested that Lot 2 be specified for dual occupancy development in addition to Lots 1 and 15. During the assessment of the development application, the proponent was advised that Lot 2 may not be suitable for dual occupancy development and subsequently the proponent agreed to dual occupancy being permitted on Lots 1 and 15 only.

This option is the recommended course of action as it is in line with the previous resolution of the Council.

Where Council proceeds to submit a planning proposal for Gateway determination, it has the option of requesting delegation of certain plan making functions from the Department. Under these delegations, Council would perform some of the plan making functions that would otherwise be completed by the Department. In the subject case, and given the proposal's consistency with the State and local strategic planning context, it is recommended that Council seeks the delegation.

2. Prepare a planning proposal to rezone each residential lot, other than proposed Lots 1, 2, 6, 7 and reconfigured Lot 15, from R3 Medium Density Residential to R2 Low Density Residential zone.

9.1 Planning Proposal - Visions Estate, Henderson Drive, Lennox Head

This option would involve amending the planning proposal to retain approved Lots 2, 6 and 7 (as well as Lots 1 and 15) in the R3 Medium Density Residential zone to enable dual occupancy development. Council could also support inclusion of some but not all of these Lots (i.e. Lots 2, 6 and 7) in an alternative planning proposal.

In considering the R3 zone, it is important to recognise this zone also allows for other forms of multi dwelling housing (being housing forms that incorporate three or more dwellings).

If this approach is taken, an amended planning proposal would be referred to the NSW Department of Planning and Environment for Gateway determination. Under this option, it is recommended that the cost of processing the LEP amendment request should be split evenly between Council and the proponent. If Council prefers this option, it is suggested that the resolution should address the issue of cost apportionment. A suggested point to such a resolution is as follows:

That Council shares the cost of processing the planning proposal based on a 50/50 split of costs.

As mentioned previously, the assessment of DA 2016/166 considered Lot 2 to be unsuitable for dual occupancy development and the proponent agreed with this assessment. Given that Lot 6 has similar characteristics to Lot 2 it may also be considered unsuitable for dual occupancy.

There may be some merit in permitting dual occupancy development on proposed Lot 7 as it has similar characteristics to Lots 1 and 15 (corner allotment, dual road frontage). Allowing dual occupancy on an additional lot would assist with adding to the available housing stock which is consistent with the density targets outlined in the North Coast Regional Plan and the Ballina Shire Growth Management Strategy.

This option is not recommended on the basis of the following:

- It is inconsistent with the Council resolution of the 25 January 2017;
- The strong public objection to DA 2016/166 to maintain the low density character of the area.

3. Defer or discontinue to planning proposal.

Council may defer the planning proposal to seek additional information or alternatively, may discontinue processing of this matter.

Deferral is not recommended given that the planning proposal seeks to advance Council's January 2017 decision to establish a low density zone over the land in line with the approval for the subdivision for the land.

Discontinuation of the proposal would result in retention of the existing R3 Medium Density zoning over the land. This approach is not recommended unless the Council wishes to retract from the requirement for a low density residential zone to be applied to the majority of the Visions Estate.

9.1 Planning Proposal - Visions Estate, Henderson Drive, Lennox Head

RECOMMENDATIONS

1. That Council submit the planning proposal for the amendment of the Ballina Local Environmental Plan 2012 (Attachment One), relating to the rezoning of each residential lot and surrounding land in the Visions Estate (other than approved Lot 1 and reconfigured Lot 15) to R2 Low Density Residential, to the NSW Department of Planning & Environment for Gateway determination.
2. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
3. 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.

Attachment(s)

1. Planning Proposal BSCPP 17/007 - Visions Estate, Lennox Head (Under separate cover)
2. Proponent's Alternative Proposal - Planners North

250517/9 RESOLVED

(Cr Ben Smith/Cr Phillip Meehan)

1. That Council submit the planning proposal for the amendment of the Ballina Local Environmental Plan 2012 (Attachment One), relating to the rezoning of each residential lot and surrounding land in the Visions Estate (other than approved Lot 1 and reconfigured Lot 15 and Lot 7) to R2 Low Density Residential, to the NSW Department of Planning & Environment for Gateway determination.
2. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
3. 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.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Jeff Johnson

Appendix 5 – SEPP 26 Concurrence – DA 2016/166



Planning &
Environment



Our ref: 16/06685

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

Dear Mr Hickey

**State Environmental Planning Policy (SEPP) No 26 – Littoral
Rainforest Concurrence – Henderson Drive, 545 The Coast Road and
13 Kellie-Ann Crescent, Lennox Head**

I refer to Council's request for the Secretary's concurrence for a proposed 26 lot torrens title subdivision including road construction, earthworks and associated subdivision on land subject to clause 4(1)(a) of SEPP 26 at the above address.

Following consideration of the application and supporting information, as delegate of the Secretary, I advise that concurrence has been granted pursuant to section 79B of the *Environmental Planning and Assessment Act 1979* (the Act), as required in clause 7(3) of SEPP 26, to development as described in Development Application DA2016/166. Concurrence has been granted subject to the following conditions:

- (1) All landscape plantings must comprise North Coast Littoral Rainforest species;
and
- (2) A vegetation management plan must be prepared prior to the issue of any construction certificate, which includes as a minimum, details of the buffer vegetation to be planted immediately adjacent to the adjoining littoral rainforest vegetation.

As you are aware, the Secretary's concurrence relates only to the land on the site enclosed by the heavy black line on the adopted SEPP 26 maps which I note currently constitute cleared grassland. Council as the relevant consent authority should ensure it considers the broader environmental impacts of the proposal.

Should you have any further enquiries about this matter, please contact Ms Tamara Prentice, of the Department's Northern Region Office. Ms Prentice can be contacted on telephone number (02) 6641 6610.

Yours sincerely

 31 August 2016
Craig Diss
Acting Director Regions, Northern
Planning Services

Northern Region Office 76 Victoria St Grafton NSW 2460 Locked Bag 9022 Grafton NSW 2460
Telephone: (02) 6641 6600 Facsimile (02) 6641 6601 Website planning.nsw.gov.au



Appendix 7 – Gateway Determination

A copy of the Gateway determination will be included here.