



## Planning Proposal BSCPP 14/007

September 2014

### North Creek Foreshore

Lot 10 DP 1126929, Lot 1 DP 1119099,  
Lot 3 DP 1079380 and Lot 33 DP 872966

2 Skinner Street, 3 & 5 Camden Lane, 1 Camden Street, Ballina

14/79718 Final

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Planning Proposal – November 2014  
North Creek Foreshore, Ballina

## INTRODUCTION

### Summary of Planning Proposal

This planning proposal relates to four residential lots with frontage to the North Creek foreshore in Ballina. The lots are described as Lot 10 DP 1126929, Lot 1 DP 1119099, Lot 3 DP 1079380 and Lot 33 DP 872966 and are located off Skinner Street, Camden Lane and Camden Street, Ballina as shown in Figure 1.

The subject lots have a direct frontage to North Creek with the immediate foreshore and bank located within the boundaries of the subject lots. The shoreline in this location is currently unprotected by engineered structures from the processes of coastal erosion and the landowners have indicated the desire to seek consent for the coastal protection works within the subject land. The foreshore area is currently zoned W1 under the provisions of the Ballina Local Environmental Plan 2012 (BLEP 2012) within which coastal protection works are currently prohibited. The proposal seeks to amend the BLEP 2012 by adding coastal protection works to Schedule 1 as an additional permitted use on the subject lots in response to the particular circumstances that apply to the land.

### Planning Context

#### Ballina Local Environmental Plan 2012

The land is currently zoned part R2 Low Density Residential and part W1 Natural Waterway under the *Ballina Local Environmental Plan 2012* (BLEP 2012) as shown in Figure 2. The landowners seek to amend the BLEP 2012 to enable coastal protection works within the W1 zoned portions of the subject lots. Coastal protection works are currently prohibited in the W1 zone. To achieve this, it is proposed to add coastal protection works as an additional permitted use to the subject lots through the addition of provisions in Schedule 1 of the BLEP 2012. The Council resolved to proceed to seek a Gateway determination on this basis at its Ordinary Meeting held on 26 June 2014.

The Department of Planning and Environment (DP&E) has issued a Gateway determination authorising the proposal to proceed conditionally. Further, the Gateway determination authorises the Council to exercise delegation to finalise the LEP amendment, should it be resolved to proceed with the planning proposal following public exhibition. A copy of the Gateway determination, including the authorisation to exercise delegation, is provided in Appendix B.

#### Site History

The initial configuration of the subject lots was created in a plan of subdivision registered in 1955. The shoreward boundary of the lots was based on the mean high water mark (MHWM) of North Creek at the time of subdivision. Over time, natural coastal processes have resulted in shoreline accretion in this location. Subsequent redefinition surveys of the lots have enabled the eastward shift of the property boundaries resulting in the current lot configuration.

The BLEP 2012 zone boundary (see Figure 2) reflects the same zone boundary as specified in the *Ballina Local Environmental Plan 1987* (BLEP 1987) that formerly applied to the subject land. The BLEP 1987 zone boundary was based on the shoreline boundary in place for the lots at the time of the preparation of the BLEP 1987. The zoning of the land was considered and reviewed during the preparation of the BLEP 2012. At the time, it was determined appropriate to apply the waterway zone to this component of the land given the environmental qualities of the site and to maintain an historic building setback on the land.



Figure 1. Land to which the planning proposal relates



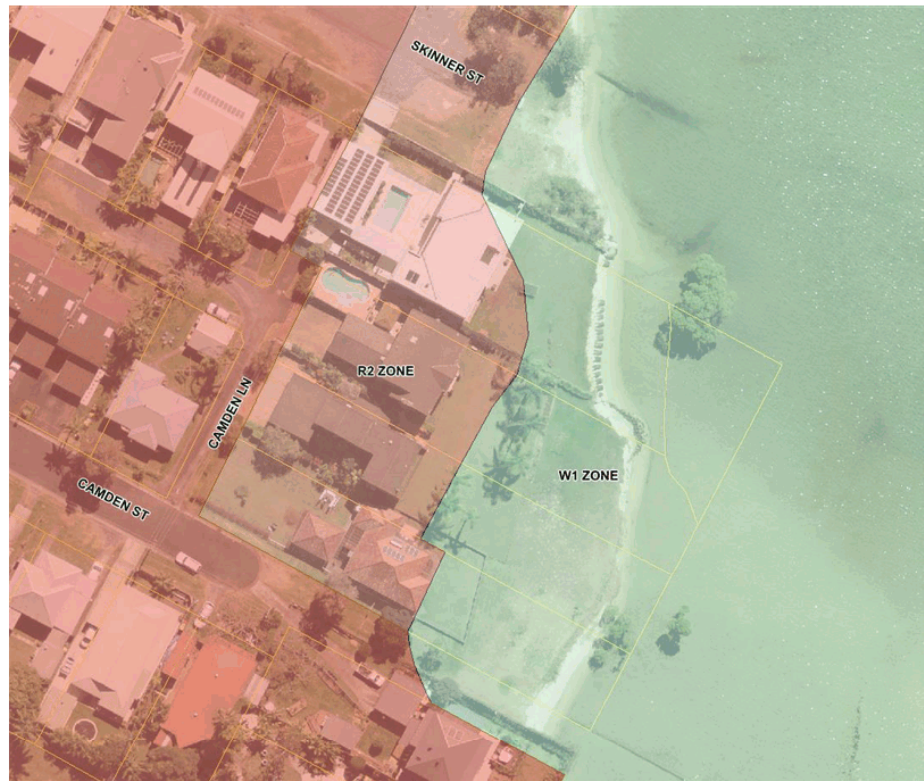


Figure 2. Current Zone Boundary

## PART 1 – OBJECTIVES & INTENDED OUTCOMES

The objective of this planning proposal is to amend the provisions of the BLEP 2012 to enable coastal protection works on the subject land with development consent.

## PART 2 – EXPLANATION OF THE PROPOSAL

This planning proposal relates to four separate lots adjacent to the North Creek foreshore in Ballina as illustrated in Figure 1. The details of the lots covered by this planning proposal are specified in Table 1.

**Table 1 – Subject Lots**

Address	Lot/DP
1 Camden Street	Lot 33 DP 872966
3 Camden Lane	Lot 3 DP 1079380
5 Camden Lane	Lot 1 DP 1119099
2 Skinner Street	Lot 10 DP 1126929

To enable coastal protection works on the subject land, it is proposed that the BLEP 2012 be amended as follows:

1. Insert reference to the subject land and permissibility of coastal protection works into Schedule 1, Additional Permitted Uses; and
2. Identify the subject land on the Additional Permitted Uses Map that supports Schedule 1.

## PART 3 – JUSTIFICATION

### Section A - Need for the Planning Proposal

**1. Is the planning proposal a result of any strategic study or report?**

The proposal is not the result of any strategic study or report.

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

The Council considered various options to address the issue of permitting coastal protection works on the subject lots at its Ordinary Meeting on 26 June 2014. In the circumstances, the Council resolved to proceed with the proposal to amend the BLEP 2012 to add coastal protection works to Schedule 1 as an additional permitted use on the subject lots.

The proposed approach provides for a targeted application of the permissibility of coastal protection works to the subject land without enabling the wider permissibility of private protection works in the W1 Natural Waterways zone.

#### Section B - Relationship to the Strategic Planning Framework

3. **Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

The proposal is consistent with the Far North Coast Regional Strategy (FNCRS) as it relates to the management of residential land uses in an existing urban area under the strategy. The proposal is not in conflict with the outcomes or actions of the strategy.

4. **Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plans?**

The planning proposal is generally consistent with the Council's Community Strategic Plan and the Ballina Shire Growth Management Strategy 2012 as it relates to management of residential land uses in the Ballina urban area.

5. **Is the planning proposal consistent with applicable State Environmental Planning Policies?**

##### State Environmental Planning Policy No 71—Coastal Protection

The land subject to this planning proposal is within the coastal zone and the provisions of this policy are applicable.

Amending the BLEP 2012 to make coastal protection works on the subject land will not result in any direct inconsistencies with the provisions of this SEPP. If it proceeds, this planning proposal will result in coastal protection works being permissible with consent on the subject lots. Any future proposals to provide coastal protection works on the lots will require appropriate levels of impact assessment in accordance with the approval and consent requirements specified in the *Environmental Planning and Assessment Act 1979*.

6. **Is the planning proposal consistent with the applicable Ministerial Directions (S. 117 directions)?**

The proposal is consistent with the relevant Section 117 Directions. A Section 117 Direction checklist for the planning proposal is contained in Appendix A.

#### Section C - Environmental, Social and Economic Impact

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

It is not expected that there will be any significant adverse ecological outcomes arising from the planning proposal. Impacts associated with any subsequently proposed coastal protection works would be subject to assessment through the development application process.



**8. Are there any other likely environmental effects as a result of the planning proposals and how are they proposed to be managed?**

No immediate or direct environmental effects will occur as a result of the planning proposal. The stability of the site, particularly the accreted area, was assessed by Coffey Geotechnics in May 2012. The site was not found to be geologically unstable.

This proposal will amend the BLEP 2012 to allow coastal protection works on the land as development permissible with consent. Any future additional development of the land facilitated by the proposal will be subject to applicable impact assessment and development consent requirements in accordance with the *Environmental Planning and Assessment Act 1979*.

**9. How has the planning proposal adequately addressed any social and economic effects?**

The planning proposal is being undertaken generally at the request of the owners of the subject lots. Coastal protection works are consistent with the existing and expected future uses of the subject land. The proposal is not expected to result in any negative social or economic effects. Any future proposals to provide coastal protection works on the lots will require appropriate levels of impact assessment in accordance with the approval and consent requirements specified in the *Environmental Planning and Assessment Act 1979*.

**Section D - State and Commonwealth interests.**

**10. Is there adequate public infrastructure for the planning proposal?**

The planning proposal does not create the need for any additional public infrastructure.

**11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

The planning proposal was referred to the Office of Environment and Heritage for comment in accordance with the requirements of the Gateway determination. A copy of the response is included in Appendix C.

In their response, the Office of Environment and Heritage response recommends that an Aboriginal cultural heritage assessment report is prepared in support of the planning proposal. This recommendation is based on the principle that any planning proposal is to include the assessment and consideration of tangible and intangible Aboriginal cultural heritage values and how the proposal may impact on these.

This planning proposal does not seek to alter the existing zoning provisions affecting the land but seeks to enable coastal protection works as an additional permitted use. As with any permitted land uses, a proposal to undertake the use or works associated with a use will require development consent and the assessment of the environmental effects of the proposal. This assessment will require the consideration of any likely impacts of the proposal on Aboriginal cultural heritage.

Further to the above, the May 2012 geotechnical assessment of the subject land obtained by the proponent indicates that the shoreward areas of the subject land has formed since the 1950s by processes of natural accretion. Based on this, the

likelihood of the subject land having Aboriginal cultural heritage significance at or immediately below the surface is significantly reduced.

In the subject circumstances, it is not known if or when the landowners will proceed to seek development consent for coastal protection works on the subject land. Neither is the scale, intensity and specific location of these works yet known.

On this basis, the development application process provides a reasonable framework for the assessment of Aboriginal cultural heritage matters having specific regard for the nature and location of any future proposed coastal protection works.

Should the proposal proceed as drafted and coastal protection works are enabled on the subject land, any future proposals to undertake these works would be required to assess likely impacts of the proposal on Aboriginal cultural heritage. Undertaking the assessment at the development application stage enables appropriate consideration to be given to the specifics of the proposal and its likely environmental impacts.

The above principles also apply to the potential for future coastal protection works to impact on the National Parks estate downstream. Given the distance of the site from the Richmond River Nature Reserve, the scale of any future coastal protection works on the subject land are considered unlikely to result in impacts on this reserve.

#### **PART 4 – MAPPING**

This planning proposal seeks to add the subject lots to Schedule 1 of the BLEP 2012 to allow coastal protection works as an additional permitted use on the land. This will require an amendment to the Additional Permitted Uses Map.

The following maps have been prepared to support this planning proposal and its desired land use and development outcomes:

- Map 1 – Site Identification Map;
- Map 2 – Proposed Additional Permitted Uses Map (Sheet APU\_005D);

Copies of the above maps are included in Appendix D.

#### **PART 5 – COMMUNITY CONSULTATION**

This planning proposal was exhibited for public comment from 24 September 2014 to 15 October 2014 in accordance with the Gateway determination (Appendix B) and the terms of the *Environmental Planning and Assessment Act 1979*. No submissions were received in response to the public exhibition.

**PART 6 – TIMELINE**

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

<b>Plan Making Step</b>	<b>Estimated Completion (Before)</b>
Gateway Determination	July 2014
Government Agency Consultation	September 2014
Public Exhibition Period	October 2014
Public Hearing	N/A
Submissions Assessment	November 2014
RPA Assessment of Planning Proposal and Exhibition Outcomes	November 2014
Submission of Endorsed LEP to P&I for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	December 2014
Forwarding of LEP Amendment to P&I for Notification (if delegated)	December 2014

<b>APPENDICES</b>
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**Appendix A – Section 117 Direction Checklist**

Section 117 Direction Checklist Planning Proposal Lot 10 DP 1126929, Lot 1 DP 1119099, Lot 3 DP 1079380 and Lot 33 DP 872966 No. 2 Skinner Street, Nos. 3-5 Camden Lane and No. 1 Camden Street, Ballina	
Direction No.	Compliance of Planning Proposal
<b>1. Employment and Resources</b>	
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	Consistent. The subject site is not in the vicinity of an identified Priority Oyster Aquaculture Area. The outcomes of this proposal are not expected to adversely affect any Priority Oyster Aquaculture areas.
1.5 Rural Land	Does not apply to planning proposal.
<b>2. Environment and Heritage</b>	
2.1 Environmental Protection Zones	Consistent. The proposal does not directly impact on areas of high ecological value or sensitivity.
2.2 Coastal Protection	Consistent. The proposal does not raise any significant inconsistencies with the policies referred to under this direction.
2.3 Heritage Conservation	Consistent. The proposal will not result in impacts on any known heritage items.
2.4 Recreation Vehicle Areas	Consistent. The proposal will not enable development for a recreational vehicle area.
<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. The proposal does not alter the permissibility of caravan parks or manufactured home estates.
3.3 Home Occupations	Consistent. The proposal does not alter the permissibility of home occupations.
3.4 Integrated Land Use and Transport	Consistent. The application of transport planning principles is not applicable in the subject circumstances.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.
3.6 Shooting Ranges	Does not apply to planning proposal.

### 9.3 Planning Proposal - North Creek Foreshore (Camden Lane), Ballina.DOC

<b>4. Hazard and Risk</b>	
4.1 Acid Sulfate Soils	Consistent. The subject land is identified as containing potential acid sulfate soils. The consequences of this planning proposal in relation to increased risks from exposure of acid sulfate soils are considered to be of minor significance in the circumstances. Any future development on the sites that is enabled by the planning proposal will be subject to the standard impact assessment requirements in relation to acid sulfate soils as provided in the Ballina LEP 2012. As such, the proposal is considered to be of minor significance in relation to acid sulfate soils.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Consistent. The proposal does not alter the flood planning provisions for the site under the BLEP 2012. The proposed permissibility of coastal protection works is not expected to result in significant adverse flooding impacts. Any future proposed coastal protection works on the subject land enabled by this planning proposal will be subject to the development assessment process which will require sufficient assessment of potential flooding impacts prior to the issue of development consent.
4.4 Planning for Bushfire Protection	Does not apply to planning proposal.
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies	Consistent. The subject land is located within the urban footprint of Ballina.
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	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Repealed
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Repealed
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Repealed
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire
<b>6. Local Plan Making</b>	
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 proposal does not alter the zoning or reservation requirements for public land.

**9.3 Planning Proposal - North Creek Foreshore (Camden Lane), Ballina.DOC**

6.3 Site Specific Provisions	Consistent. The proposal enables an additional permitted use on the subject land, with no special associated provisions proposed.
<b>7. Metropolitan Planning</b>	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.



**Appendix B – Gateway determination**



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

Our ref: PP\_2014\_BALLI\_006\_00 (14/11781)  
Your ref: BSCPP 14/007

Attention: Lachlan Sims

Dear Mr Hickey

**Planning proposal to amend Ballina Local Environmental Plan 2012**

I am writing in response to your Council's letter dated 15 July 2014 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to include coastal protection works as an additional permitted use on Lot 33 DP 872966, Lot 3 DP 1079380, Lot 1 DP 1119099 and Lot 10 DP 1126929, North Creek, Ballina, under Schedule 1 of Ballina Local Environmental Plan 2012.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed the planning proposal's inconsistencies with S117 Directions 2.2 Coastal Protection, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are of minor significance. No further approval is required in relation to these Directions.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 6 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

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Northern Region 49 Victoria St Grafton NSW 2460 Locked Bag 9022 Grafton NSW 2460  
Telephone: (02) 6641 6600 Facsimile (02) 6641 6601 Website [planning.nsw.gov.au](http://planning.nsw.gov.au)

9.3 Planning Proposal - North Creek Foreshore (Camden Lane), Ballina.DOC

I would also encourage Council to give consideration in any future strategic planning exercise for the North Creek area to assess whether an alternate zone to the existing W1 Natural Waterways Zone may be more appropriate and reflective of the existing and likely future land uses on the accreted land.

Should you have any queries in regard to this matter, I have arranged for Ms Tamara Prentice of the Grafton regional office to assist you. Ms Prentice can be contacted on (02) 6641 6616.

Yours sincerely

 24 July 2014  
**Stephen Murray**  
General Manager, Northern Region  
Growth Planning

Encl:  
Gateway Determination  
Written Authorisation to Exercise Delegation  
Attachment 5 – Delegated Plan Making Reporting Template



### Gateway Determination

*Planning proposal (PP\_2014\_BALLI\_006\_00): to include coastal protection works as an additional permitted use on Lot 33 DP 872966, Lot 3 DP 1079380, Lot 1 DP 1119099 and Lot 10 DP 1126929, North Creek, Ballina, under Schedule 1 of Ballina Local Environmental Plan 2012.*

I, the General Manager, Northern Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to include coastal protection works as an additional permitted use on Lot 33 DP 872966, Lot 3 DP 1079380, Lot 1 DP 1119099 and Lot 10 DP 1126929, North Creek, Ballina, under Schedule 1 of Ballina Local Environmental Plan 2012 should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
  - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Planning & Infrastructure 2013)* and must be made publicly available for a minimum of 14 days; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Planning & Infrastructure 2013)*.
2. Consultation is required with the Office of Environment and Heritage under section 56(2)(d) of the EP&A Act. The Office of Environment and Heritage is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
3. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
4. The timeframe for completing the LEP is to be 6 months from the week following the date of the Gateway determination.

Dated 24<sup>th</sup> day of July 2014.

  
Stephen Murray  
General Manager, Northern Region  
Growth Planning  
Department of Planning and Environment  
  
Delegate of the Minister for Planning

Ballina Shire Council PP\_2014\_BALLI\_006\_00 (14/11781)



**WRITTEN AUTHORISATION TO EXERCISE DELEGATION**

Ballina Shire Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2014_BALLI_006_00	Planning proposal to include coastal protection works as an additional permitted use on Lot 33 DP 872966, Lot 3 DP 1079380, Lot 1 DP 1119099 and Lot 10 DP 1126929, North Creek, Ballina, under Schedule 1 of Ballina Local Environmental Plan 2012.

In exercising the Minister's functions under section 59, the Council must comply with the Department's "A guide to preparing local environmental plans" and "A guide to preparing planning proposals".

Dated *24 July* 2014

  
**Stephen Murray**  
General Manager, Northern Region  
Growth Planning  
Department of Planning and Environment

Appendix C – Office of Environment and Heritage response



Your reference 14/65941  
Our reference: DOC14/215826  
Contact: Marcy Mills 6659 8233

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

Attention: Mr Lachlan Sims

Dear Mr Sims

**Re: Planning Proposal BSCPP 14/007 – North Creek Foreshore, Ballina**

Thank you for your letter of 19 September 2014 requesting comments from the NSW Office of Environment and Heritage (OEH) in accordance with s56(2)(d) of the *Environmental Planning and Assessment Act 1979* on the above planning proposal. I appreciate the opportunity to provide input.

OEH has reviewed the planning proposal and associated documentation to amend the provisions of the *Ballina Local Environmental Plan (BLEP) 2012* to enable coastal protection works on four residential sites in Ballina with frontage to North Creek. Detailed OEH comments are provided in Attachment 1 to this letter relating to the statutory responsibilities of OEH, which include Aboriginal cultural heritage, historic heritage, biodiversity values including threatened flora and fauna, OEH estate and potential impacts on flooding, coasts and estuaries.

On the basis of this review OEH recommends that an Aboriginal cultural heritage assessment report is prepared in support of the planning proposal addressing the matters specified in Attachment 1 to this letter.

If you require further information or clarification, or should Council be in possession of information that suggests that OEH's statutory interests may be affected, please contact Conservation Planning Officer, Ms Marcy Mills, on (02) 6659 8233, or via email at [marcelle.mills@environment.nsw.gov.au](mailto:marcelle.mills@environment.nsw.gov.au). Please note that Marcy works Thursdays and Fridays only.

Yours sincerely

 17 October 2014

**Dimitri Young**  
Senior Team Leader Planning - North East Region  
Regional Operations

Locked Bag 914, Coffs Harbour NSW 2450  
Federation House Level 7, 24 Moonee Street,  
Coffs Harbour NSW 2450  
Tel: (02) 6651 5946 Fax: (02) 6651 6187  
ABN 30 841 387 271  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

**Attachment 1: Detailed OEH Comments – North Creek Foreshore, Ballina**

**Aboriginal Cultural Heritage**

An important component of the environmental assessment process undertaken in support of planning proposals is the consideration of potential impacts to Aboriginal cultural heritage values. The importance of protecting Aboriginal cultural heritage is reflected in the provisions of the *National Parks and Wildlife Act 1974* (NPW Act).

The NPW Act clearly establishes that Aboriginal objects and places are protected and may not be damaged, defaced or disturbed without appropriate authorisation. Importantly, approvals under Part 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) do not absolve the proponent of their obligations under the NPW Act.

As part of any planning proposal, it is critical that tangible and intangible Aboriginal cultural heritage values are fully assessed and considered. Planning proposals provide opportunities to reduce future impacts to Aboriginal cultural heritage by ensuring that appropriate land use zones are applied where important Aboriginal cultural heritage values exist.

OEH's preference is to avoid impacting Aboriginal cultural heritage values and to ensure that appropriate long term protection mechanisms are in place in perpetuity. Accordingly, OEH recommends that an Aboriginal cultural heritage assessment report is prepared in support of the planning proposal comprising the following:

- A description of any Aboriginal objects and declared Aboriginal places located in or associated with the planning area; and
- A description of the Aboriginal cultural heritage values of the planning area and the immediate locality, including the significance of any Aboriginal objects and declared Aboriginal places that exist in the planning area and the significance of these values to Aboriginal people who have a cultural association with the land; and
- A description of any consultation with Aboriginal people regarding the planning proposal and the significance of any Aboriginal cultural heritage values identified. OEH advises that the proponent may utilise OEH's best practice guidelines *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010) for such consultation; and
- Analysis of the Aboriginal cultural heritage values of the planning area to justify coastal protection works in this location.

Note: OEH's preference is for areas of high Aboriginal cultural heritage significance to be suitably zoned for environmental conservation purposes to protect such values.

In addressing these requirements, the applicant is encouraged to refer to the following documents:

- a) *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (OEH, 2010) - <http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>. These guidelines identify the factors to be considered in Aboriginal cultural heritage assessments for proposals.
- b) *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (OEH, 2010) - <http://www.environment.nsw.gov.au/licences/consultation.htm>. This document further explains the consultation requirements that are set out in clause 80C of the *National Parks and Wildlife Regulation 2009*. The process set out in this document must be followed and documented.
- c) *Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales* (OEH, 2010) - <http://www.environment.nsw.gov.au/licences/archinvestigations.htm>. The process



Attachment 1: Detailed OEH Comments – North Creek Foreshore, Ballina

described in this Code should be followed and documented where the assessment of Aboriginal cultural heritage requires an archaeological investigation to be undertaken.

**Biodiversity**

OEH has not identified any specific issues in the planning proposal relating to biodiversity values, including threatened flora and fauna.

Consideration should however be given as part of any subsequent Part 4 processes under the *Environmental Planning and Assessment Act 1979* to potential habitat for *Coastal Saltmarsh in the NSW North Coast, Sydney Basin and South East Corner Bioregions*, which is listed as an Endangered Ecological Community under the *Threatened Species Conservation Act 1995*.

**OEH Estate**

Richmond River Nature Reserve lies approximately 1.5km to the south of the land to which the planning proposal applies.

In this regard, the planning proposal should adequately demonstrate that the proposal to allow coastal protection works as a permissible activity on the subject land will not result in any direct or indirect impacts on this reserve.

**Flooding, Coasts and Estuaries**

The planning proposal does not raise any issues in relation to flooding, coasts and estuaries.

**Recommendation**

On this basis, OEH recommends that an Aboriginal cultural heritage assessment report is prepared in support of the planning proposal addressing the matters specified above.

9.3 Planning Proposal - North Creek Foreshore (Camden Lane), Ballina.DOC

Appendix D – Maps



9.3 Planning Proposal - North Creek Foreshore (Camden Lane), Ballina.DOC

