



Planning Proposal- February 2016

Teven Road, West Ballina Transport & Logistics Precinct

Lots 2 and 3 DP749680, Lot 5 DP 1031875, Lots 227,
228 and 229 DP 1121079 and Lot 12 DP 1011575

Contents

INTRODUCTION	3
Summary of Planning Proposal	3
Planning Context	3
PART 1 – OBJECTIVES & INTENDED OUTCOMES.....	12
PART 2 – EXPLANATION OF THE PROPOSAL	12
PART 3 - JUSTIFICATION	13
Section A - Need for the Planning Proposal.....	13
Section B - Relationship to the Strategic Planning Framework.....	14
Section C - Environmental, Social and Economic Impact.....	17
Section D - State and Commonwealth interests.	18
PART 4 - MAPPING	20
PART 5 – COMMUNITY CONSULTATION	20
PART 6 – PROJECT TIMELINE.....	20
Appendices	21
Appendix 1 – Maps.....	21
Appendix 2 – Proponents’ Submissions.....	23
Appendix 3 – Section 117 Direction Checklist.....	32
Appendix 4 – Letter from RMS dated 4 December 2012.....	35
Appendix 5 – Site Selection Investigation – Freight Transport Facilities, Warehousing and Distribution Centres Report, January 2014.....	37
Appendix 6 – Report to Council dated 24 October 2013	38
Appendix 7 – Report to Council dated 27 February 2014	42
Appendix 8 – Report to Council dated 27 March 2014.....	50
Appendix 9 – Gateway Determination.....	55
Appendix 10 – Report to Council dated 28 May 2015.....	61
Appendix 11 – Summary Report of Key Issues Identified in Proponent’s Technical Reports.....	76
Appendix 12 – Draft Voluntary Planning Agreement.....	89
Appendix 13 – Ecological Assessment Report (EAR) & Supplementary Advice	90
Appendix 14 – Preliminary Contaminated Land Assessment.....	92
Appendix 15 – Preliminary Acid Sulfate Soil Investigation	93
Appendix 16 – Traffic Impact Study.....	94
Appendix 17 – Aboriginal Cultural Heritage Assessment	95
Appendix 18 – Flood Modelling Report.....	96
Appendix 19 – Engineering Services Report	108
Appendix 20 – Correspondence from Government Departments.....	109
Appendix 21 – Report to Council dated 25 February 2016.....	119
Appendix 22 – Environmental Scientist Comments	130

INTRODUCTION

Summary of Planning Proposal

This planning proposal applies to Lots 2 and 3 DP 749680, Lot 5 DP 1031875, Lots 227, 228 and 229 DP 1121079 and Lot 12 DP 1011575, being land located at Teven Road, West Ballina (referred to as the site). The site has an approximate area of 17 hectares.

The site is shown on the locality map provided at Appendix 1.

The purpose of this planning proposal is to enable *freight transport facility*, and *warehouse or distribution centre* to be permitted with development consent on the site. This will facilitate the establishment of a transport and logistics precinct at West Ballina near the junction of the Bruxner and Pacific Highways.

Planning Context

Proponent's Submission

Council received a proposal which seeks to permit with development consent additional transport oriented land uses within the RU2 Rural Landscape zone applicable to the site. The proposal has been submitted on behalf of the sites land owners.

The proponent has advised that the site has the following unique features which would support additional transport related land uses being permitted with consent:

- *The site already contains a number of land uses associated with rural industry, timber processing, mechanical repairs, wholesale distribution, agriculture and storage premises.*
- *The site has access from Teven Road via a controlled intersection with the Pacific Highway.*
- *The recently completed Pacific Highway upgrade and alignment of Teven Road creates a clearly identified precinct which is already utilised by a number of commercial / industrial land uses.*
- *The site is located at the junction of the Pacific Highway and Bruxner Highway, thereby providing opportunities for goods distribution in both a north- south and east –west alignment.*
- *The land area and configuration is suitable for transport orientated businesses in respect to storage and holding bays.*
- *There are no sensitive land uses in close proximity and therefore opportunities for extended operating hours exist.*
- *Parts of the site have already obtained development consent for filling.*

The proponent's submission is provided at Appendix 2.

Council Resolutions – Planning Proposal

Council considered the proponents submission at its meeting on 24 October 2013 and resolved to defer its decision pending independent advice being obtained in relation to the current and projected need for, and preferred location of, freight and logistics land uses in Ballina Shire.

The report considered by Council at its meeting on 24 October 2013 is provided at Appendix 6.

The independent advice was contained within a Site Selection Investigation (SSI) which reviewed the suitability of existing appropriately zoned sites within Ballina Shire, as well as the subject site, for transport related land uses. The SSI concluded that the site had a *Fair Suitability for freight transport facilities, warehouse or distribution centre* land uses subject to resolution of flooding constraints and further examination of traffic impacts. Had the site been appropriately zoned it would have received a *Good Suitability* ranking using the SSI's Site Evaluation Tool.

The SSI is provided at Appendix 5.

The Council considered the SSI at its Ordinary Meeting held on 27 February 2014 and resolved as follows [Minute No. 270214/10]:

1. *That Council endorses the preparation of a planning proposal which proposes the insertion of freight transport facilities, warehouse or distribution centre land uses as additional permitted uses within Schedule 1 of Ballina LEP 2012, in relation to Lots 2 and 3 DP 749680, Lot 5 and 12 DP 1031875, Lots 227, 228 and 229 DP 1121079 and Lot 12 DP 1011575, Teven Road, West Ballina.*
2. *That the proponent be requested to supply flood modelling information which details the impact of filling the subject lots to the 1:100 year flood level of RL 2.7 AHD, and a detailed traffic study which examines the issues specified by the RMS. Further, that additional technical studies be requested of the proponent in the event that Council staff form a view that additional environmental constraints may materially restrict the use of the land for the nominated purposes. This information is to be provided to advance the preparation of the planning proposal.*
3. *That the Council give further consideration to the planning proposal upon the submission of information referred to in point two above.*

The report considered by Council at its meeting on 27 February 2014 is provided at Appendix 7.

The Council again considered the planning proposal, together with flood modelling advice provided by BMT WBM, at its Ordinary Meeting on 28 May 2015, and resolved as follows [Minute No. 280515/7]:

1. *That Council advise the proponents that the 5 year ARI flood level for car parking and vehicle access areas may be used for the purpose of further documenting the merit approach to assessing the suitability of flood planning levels as outlined in the NSW Floodplain Development Manual, for the purpose of progressing the planning proposal.*
2. *That Council accept the increase in flood levels modelled as a consequence of Scenario 4 in the flood advice provided by BMT WBM.*
3. *That the proponents be required to advise Council how it is proposed to secure the Scenario 4 modelling parameters as detailed in this report. In the event that a voluntary planning agreement is proposed, such an agreement shall be prepared in draft form and be exhibited with the planning proposal.*
4. *That a further report be provided for the Council's consideration when the planning proposal has been fully documented and prior to it being publically exhibited.*

9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC

The report considered by the Council at its meeting on 28 May 2015 is provided at Appendix 10.

Following the submission of technical reports and consultation with Government authorities the Council further considered the planning proposal at its meeting on 25 February 2016, and resolved as follows [Minute No.250216/1]:

1. That the planning proposal (BSCPP 14/001) and the associated draft voluntary planning agreement, as attached to this report, be placed on public exhibition for a minimum period of 28 days.
2. That the matter be reported for further consideration by Council following the mandatory public exhibition period.

The report considered by the Council at its meeting on 25 February 2016 is provided at Appendix 21.

Site History

The table below provides details of current land uses and development consents granted in respect to the lots that comprise the site.

Lot Description	Date of Consent	Use / Consent Details
2, DP 749680	10/6/2003	Truck storage depot Consent 2003/1063 - Filling to minimum 2.3 metre AHD over 5200m ² and access driveway.
3, DP 749680	15/5/2006 12/12/2006 19/8/2010	Dwelling and shed Consent 2006/601 - Single storey dwelling and shed. Consent 2002/414 - Filling of approx.2500m ² to minimum 2.3 metres AHD. Consent 2010/713 -Filling to max. height of 2.7 metres AHD within nominated areas of the site.
Lot 5 DP 1031875		Timber yard
Lot 227, DP 1011575	22/8/1997 12/10/1998 13/6/2007 15/4/2009 14/8/2009	Bulk landscape products Consent 1998/7015 (on Lot 3 DP 733286) - Run-off water containment of bulk storage areas. Consent 1999/207 - Internal offices and storage room Consent 2007/520 4 lot rural subdivision. Consent 2009/292 Filling of 3040m ² (of total site area of 2.792ha). Consent 2010/10 – Extension of workshop and machinery shop.
Lot 228, DP 1011575	8/4/2010 23/8/2010	Vacant land Consent 2010/528 – Site filling to RL 1.0m AHD. Consent 2010/782 – Filling to RL 2.7 AHD of nominated site area.
Lot 229, DP1011575	14/7/2010 25/5/2011	Vacant land Consent 2010/612 – Site filling to maximum height of 1.0m AHD. Consent 2011/173 – Filling to 2.7m AHD over a triangular area 70m x 90m in south-east corner of site.
Lot 12, DP 1011575	9/3/2004 24/6/2009	Nursery Consent 2004/804 - Storage Shed Consent 2009/703 – Storage Shed

The site contains a number of non traditional rural land uses. The nature of current land uses, and the filling already undertaken on some lots, distinguishes the site from surrounding rural – agricultural land uses and provides it with a semi industrial / commercial character.

Consistency with Strategic Planning Policy

The proposal to permit additional land uses with development consent is generally consistent with both Council and State Government urban planning policy. The following provides an overview of the proposed amendment with respect to key planning policy documents.

NSW, Department of Planning – Far North Coast Regional Strategy

Ballina is identified in the Strategy as a *Developing Major Regional Centre*, with the Ballina Airport acting as a major entry point for tourism destinations throughout the Region. The Strategy states that strong tourism and population-driven employment base (retail and services sectors) within coastal areas will affect the availability of affordable employment lands.

The Economic Development and Employment Growth component of the Strategy specifies as an outcome that:

Councils should plan for future industrial needs within existing urban areas and take into account economic markets, South East Queensland pressures for employment lands, lifestyle opportunities, and transport improvements within and from the Region. Certain industries will need to be located away from existing urban centres due to their type, scale and nature. Councils will address this need through their Local Growth Management Strategies.

The site is located adjacent to an existing urban centre and in locational terms is a suitable location given the nature of transport and logistic land uses and their incompatibility with local road networks.

The SSI has found a shortage of suitable sites for transport logistic land uses within Ballina Shire. To that extent the planning proposal is consistent with the specified economic development and employment growth outcomes contained within the *Far North Coast Regional Strategy*.

The Ballina Shire Growth Management Strategy

The Ballina Shire Growth Management Strategy (BSGMS) provides the framework for managing the growth of Ballina Shire over the planning period 2012-2031. The BSGMS recognised that the Ballina bypass of the Pacific Highway will result in transition management issues for the West Ballina locality.

The planning proposal is considered to be consistent with the strategic action objective for West Ballina which relates to the reinforcement of this area as the 'edge' of and 'gateway' to Ballina.

The proposed transport logistics precinct is on land already used for a variety of industrial and commercial type uses, and is also in close proximity to the proposed highway service centre. Therefore the planning proposal is considered to be consistent with the BSGMS.

The Ballina LEP 2012

The subject land is currently zoned RU2 Rural landscape zone under the provisions of the Ballina LEP 2012. The zone objectives are:


9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC


- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To enable small-scale tourist-orientated development that is compatible with the rural nature of the land.
- To encourage development that involves restoration or enhancement (or both) of the natural environment if consistent with the production and landscape character of the land.
- To enable development that does not adversely impact on the natural environment, including habitat and waterways.
- To ensure that there is not unreasonable or uneconomic demands (or both) for the provision of public infrastructure.

Key Site Issues

Key planning issues identified in relation to the proposal are as follows:

Key Issue	Summary
Flooding impacts	<p>Flooding impacts have been extensively investigated and flood modelling undertaken by consultants BMT WBM utilising Council's Integrated Flood Model. The BMT WBM report forms Appendix 18 to this planning proposal. A summary of the report is contained within Appendix 11.</p> <p>So as to render the site suitable for development extensive filling will be required to be undertaken on approximately 8.5ha of the precinct. This will raise levels within these areas to the 100 year ARI flood level of RL 2.7m AHD. The remainder of the precinct, excluding land which serves as a floodway and land containing vegetation communities with ecological significance, is proposed to be reshaped and filled so that levels do not exceed the 1 in 5 year ARI flood level of RL 1.2m AHD.</p> <p>So as to secure the various parameters adopted for the purpose of flood modelling the proponents have proposed that a voluntary planning agreement (VPA) be prepared. A draft VPA has been prepared and forms Appendix 12 to this planning proposal.</p> <p>Council has also given detailed consideration to the flood prone nature of the precinct, the principles of the <i>NSW Flood Prone Land Policy</i> and the merit approach outlined in the <i>NSW Floodplain Development Manual 2005</i>. These issues were considered in the report to the Council's Ordinary Meeting on 28 May 2015. A copy of the report considered by the Council is contained within Appendix 10.</p>
Bushfire impacts	<p>Part of the site is Bushfire Prone Land and has a Category B – Buffer classification. Consultation has been undertaken with the NSW Rural Fire Service who have raised no concerns or issues in relation to bush fire. A copy of the response from the NSW RFS is contained within Appendix 20.</p>
Ecological impacts	<p>The impact of extensive site filling and flood water displacement has been investigated by Blackwood Ecological Services (BES). A copy of their report, including supplementary advice, is contained within Appendix 13.</p> <p>Development of the precinct as envisaged by flood modelling undertaken by BMT WBM will result in the removal of much of the sites existing vegetation. BES has found that vegetation community types are considered to be of</p>

Key Issue	Summary
	<p>low-moderate conservation significance and are widespread in the wider Study area, with varying degrees of disturbance. Phragmites reed land and Swamp oak forest are regenerating in the vicinity of the subject site, on farmland to the west of the new Teven Road alignment, and elsewhere in drains and wet areas where land is not actively managed.</p> <p>Following a review of the Ecological Assessment by the NSW Office of Environment and Heritage (OEH), BES was requested to further address issues raised relating to flora and fauna matters. It is important to note here that OEH comments were made in the absence of an inspection of the subject precinct.</p> <p>The supplementary advice provided by BES indicates that:</p> <p><i>The small patch of Swamp oak forest occurs within this area and should be retained with a suitable disturbance buffer around the perimeter. Also within this western area are patches of Phragmites and Cumbungi reed land where the recent upgrade of Teven Road has apparently resulted in localised impounding of stormwater along the western boundary of the subject site encouraging the growth of these wetland/wet grassland species. These areas may continue to support wetland species and should be retained within this western section of the subject site where they may be of supplementary habitat value for native fauna occurring in more extensive areas of wetland to the west of Teven Road.</i></p> <p>The location of the Swamp oak forest vegetation, in the far south – western corner of the site, is shown on the plan below:</p>  <p> Community 4 Mid-high Swamp oak forest</p> <p>Council's Environmental Scientist considers the reed land areas to be representative of a Freshwater Wetland which is listed as an Endangered Ecological Community pursuant to the Threatened Species Conservation Act (1995). In respect to this area it has been indicated that it will require protection from future development works. The comments of Council's Environmental Scientist are contained within Appendix 22.</p> <p>The extract below, from Figure 2 of the Vegetation Communities Plan contained within the BES Ecological Assessment, shows the location of the reed land area along the sites north – eastern most boundary. Much of this area is contained off site within the Pacific Highway road reserve.</p>

Key Issue	Summary
	 <p data-bbox="581 705 1271 737"> Community 3 Very tall rushland in drains (Phragmites/Cumbungi) </p> <p data-bbox="570 772 1279 915"> Further consideration of the location and extent of vegetation to be retained will be required at the DA stage. Notwithstanding this the retention of the areas nominated by BES, and Council's Environmental Scientist, are considered to be able to be accommodated within future development plans and are not considered to compromise the integrity of flood modelling undertaken. </p> <p data-bbox="570 926 1279 993"> In terms of fauna issues these are considered to have been satisfactorily dealt with both in the original report and within the supplementary information provided. </p> <p data-bbox="570 1003 1279 1094"> Having regard to the nature of this planning proposal, ie additional permitted uses, as opposed to a zoning change it is considered appropriate that further consideration of ecological issues take place at the DA stage of the process. </p>
<p>Contamination assessment</p>	<p data-bbox="570 1108 1279 1157"> A Preliminary Contaminated Land Assessment, prepared by Greg Alderson & Associates, is contained within Appendix 14. The report notes that: </p> <p data-bbox="613 1167 1279 1310"> <i>Potential contamination was evident on the site due to presence of fuel storage areas, machinery, and general uses of the sites. It was noted that some of the sites had large areas of concrete which would reduce the amount of leaching of fuel spills through the ground surface. It was further noted that the majority of the sites had been filled above the original ground surface.</i> </p> <p data-bbox="613 1320 1279 1388"> <i>However, future development applications may require additional assessment and remedial action, such as filling the sites, to reduce risk of contamination in accordance with NEPM 2013 requirements.</i> </p> <p data-bbox="570 1398 1279 1465"> Council's Environmental Health Officer has reviewed the report and has indicated that the document has adequately considered the relevant issues for this stage of the planning proposal. </p>

9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC

Key Issue	Summary
Aboriginal cultural issues	<p>An Aboriginal Cultural Heritage Due Diligence Assessment, prepared by Everick Heritage Consultants, is contained within Appendix 17. The findings of the assessment are as follows;</p> <p><i>As a result of the desktop study, field inspection and preliminary consultation with Jali LALC Sites Officer Marcus Ferguson, of the areas proposed for the Tevan Road Transport and Logistic Facility, the following were agreed to.</i></p> <ul style="list-style-type: none"> • <i>No Indigenous cultural heritage sites or relics were identified within Lots 2 & 3 DP749680, Lot 5 DP1031875, Lots 227,228 & 229 DP 1121079 and Lot 12 DP 1011575.</i> • <i>No areas have been identified that are considered to potentially contain subsurface deposits of significant Aboriginal heritage.</i> • <i>All of the Study Area has been disturbed in a manner which constitutes 'disturbance' within the meaning of the Due Diligence Code and is consistent with the Due Diligence Code.</i> • <i>It was agreed in discussion with Marcus Ferguson that no further Aboriginal cultural heritage investigation was required.</i> <p>Jali LALC have been provided with an opportunity to make comment on the report findings but have not made a submission.</p>
Geotechnical issues	<p>Soft and acid sulfate soils, as well as a high water table have been found within close proximity to the site. Such issues have the potential to impact on development and were therefore required to be examined by the proponent.</p> <p>A Preliminary Acid Sulfate Soil Assessment, prepared by Greg Alderson and Associates, is contained within Appendix 15. The conclusions reached in this report indicate that the proposed filling of the sites will not affect acid sulfate soil, which is most likely to be occurring within the natural soils of the site at an estimated 0.7 m to 1 m AHD.</p> <p>The report also concludes that development applications would be lodged as part of the future uses at the site, which may require a detailed acid sulfate soil assessment to be undertaken and a plan of management developed in accordance with ASSMAC (1998) if cutting or exposing natural soil at the site is proposed.</p> <p>In respect to the soft soil issue this is considered within the Engineering Services Report which is contained within Appendix 19. It is indicated that upwards of 12 metres of soft soils could be expected within the precinct and that preloading of the site is a feasible treatment option. Options available to address post construction settlement are also discussed. Options include light weight building construction, the sewer system be via a poly pressure line type and stormwater be conveyed by overland flow paths where-ever possible.</p>
Traffic impacts	<p>The impact of the proposed land uses on the performance levels of the local road network, as well the Teven Road interchange and intersection of the Teven Road and Bruxner Highway, has been examined in a Traffic Impact Study contained within Appendix 16.</p> <p>The RMS, in correspondence contained within Appendix 20, have reviewed the findings of the proponent's Traffic Impact Study and have advised that at this time there is insufficient information to support the proposal. It was also indicated that spot rezonings permitting small scale transport activities in the</p>

Key Issue	Summary
	<p>Teven Road area may be accommodated by the existing road network. It was in relation to the development of the transport and logistics precinct (8.5ha net area) the RMS required further traffic impact analysis to be satisfied that the precinct can be accommodated by the existing road network.</p> <p>The RMS also provided the following advice:</p> <p><i>Projecting existing Bruxner Highway volumes forward ten years, analysis indicates that significant operational difficulties will be experienced at the intersection of Teven Road with the Bruxner Highway. The impact of a transport and logistics precinct on the interchange with the Pacific Highway is unknown.</i></p> <p><i>It is recommended that prior to finalising the planning proposal that encompasses the whole precinct more detailed traffic analysis be undertaken to ensure that infrastructure requirements for the development are fully known.</i></p> <p><i>In all likelihood, it is thought at this time, a roundabout will be required to manage the proposed transport and logistics precinct traffic at the Teven Road intersection. Please note this opinion is based on the information available and is strategic in nature. Any final decision about intersection control would need to be verified by further detailed analysis of site compatibility and capacity analysis.</i></p> <p>Following the advice from the RMS Council's Traffic Engineer has undertaken SIDRA modelling to determine likely traffic impacts on the intersection of Teven Road and the Bruxner Highway. The conclusions reached after SIDRA modelling are as follows:</p> <p>Traffic</p> <p><i>For the purpose of the SIDRA model it has been assumed that all additional southbound traffic on Teven Rd will turn left (as it is not possible to achieve a satisfactory Level of Service (LOS) with a right turn). It has been assumed that the full development of the precinct will generate traffic at 360vph split 50/50 inbound/outbound and 2/3 cars, 1/3 heavy vehicles. The pm peak seems the most critical and has been analysed with the following results:</i></p> <p>2014 existing as per NDC survey 27/11/14</p> <p><i>Teven Rd left turn LOS B, 95% queue 3.5m, av delay 14.8s</i></p> <p><i>Teven Rd right turn LOS F, 95% queue 13.6, av delay 428.7s</i></p> <p>Full development plus 2014 existing as per NDC survey 27/11/14</p> <p><i>Teven Rd left turn LOS D, 95% queue 61.8m, av delay 45.3s</i></p> <p><i>Teven Rd right turn LOS F, 95% queue 30.4m, av delay 1077.6s</i></p> <p>Full development plus 10 years growth on Bruxner Hwy (NDC 2014) at 1.3% per year (2014)</p> <p><i>Teven Rd left turn LOS F, 95% queue 327.2m, av delay 275.5s</i></p> <p><i>Teven Rd right turn LOS F, 95% queue 40.9m, av delay 1296.1s</i></p> <p>Traffic Conclusion</p> <p><i>The Teven Road southbound leg of the intersection left turn will operate at an unsatisfactory LOS D with development traffic plus existing traffic volumes. It will deteriorate to LOS F with 10 years growth (at 1.3% per year) of other traffic.</i></p>

Key Issue	Summary
	<p><i>A satisfactory intersection performance can be achieved with a 2 circulating lane roundabout.</i></p> <p>The full development of the proposed road transport and logistics precinct is envisaged to take many years to achieve having regard to required filling and landform works. In the immediate future small road transport operations, utilising existing developed sites, are more likely to result. In terms of these small scale proposals the RMS has recognised that these may be accommodated by the existing road network.</p> <p>Large scale road transport proposals will be required to be assessed in accordance with the development application process. In this respect it may be the case that a specific proposal will, at some future time, trigger requirements to consider works at the intersection of Teven Road and the Bruxner Highway. This is also the case in relation to uses already permitted, with development consent, within the RU2 zone. For these reasons the planning proposal does not contain specific proposals to address the future traffic implications of the proposed Teven Road transport and logistics precinct.</p>

It is considered that the above issues have been satisfactorily addressed to the degree required for the planning proposal to now proceed to community consultation.

PART 1 – OBJECTIVES & INTENDED OUTCOMES

The objective and intended outcome of this planning proposal is to permit with development consent *freight transport facility and warehouse or distribution centre* as additional permitted uses on the site. Permitting these additional uses on the site will facilitate the establishment of a transport and logistics precinct at West Ballina.

The proposed additional uses will be permitted using the mechanism of clause *2.5 Additional permitted uses for particular land* and Schedule 1 of Ballina LEP 2012.

PART 2 – EXPLANATION OF THE PROPOSAL

The planning proposal seeks to create a transport and logistics precinct at the periphery of the existing Ballina urban area. The land area of the site is such that it has the potential to meet future demand for such uses.

The site is located near the junction of the Pacific and Bruxner Highways adjacent to the western most end of the Ballina urban area. Sites at this location are ideally suited to accommodate *freight transport facilities* and *warehouse or distribution centre* uses having regard to their proximity to the junction of two major highways. The separation provided by the realigned Pacific Highway also provides a buffer between uses compatible with urban development located to the east of the highway, and those uses which support urban development but are incompatible due to factors such as traffic impacts located to the west of the highway.

The Bruxner Highway provides an east – west link between the coast and north - western NSW whereas the Pacific Highway is a major north – south road freight transport route in the state.

The completion of the Pacific Highway upgrade work between Tintenbar and Ewingsdale has now brought the Brisbane market place to less than 2 hours drive time from Ballina.

Existing sites within Ballina Shire, which are appropriately zoned to accommodate *freight transport facilities*, and *warehouse or distribution centre* land uses, have been examined in the SSI. Such sites were generally found to be unsuitable or of low level suitability due to factors such as distance to a highway access point, potential traffic conflicts concerns and land availability issues.

The Draft NSW Freight and Port Strategy estimates that the amount of freight shipped throughout NSW is expected to double in volume by 2031.

Given the anticipated increase in freight, and the reduction in travel time between Ballina and the South – East Queensland market place and port facilities, it is anticipated that there will be a demand for sites suitable for use by the road transport logistics industry within Ballina Shire.

The subject site is located in a suitable location, has a land area which can accommodate future demand and is currently used for predominately non-agricultural purposes. It is recognised that as the precinct develops works at the intersection of Teven Road and the Bruxner Highway will be required to maintain LOS at acceptable levels. When such works will be triggered, and the manner in which they will be resolved, are matters more appropriate for the DA process to consider.

PART 3 - JUSTIFICATION

Section A - Need for the Planning Proposal

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

The Ballina Council's Site Suitability Investigation (SSI) examined site suitability and anticipated demand for land suitable for use by road transport logistic industries. The subject site was identified as one that would have a *good* level of suitability subject to being appropriately zoned.

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

The planning proposal is the best means of achieving the intended objectives. The subject site whilst being appropriately located is subject to a number of natural hazards and constraints. The land is affected by the 1:100 ARI flood (2.7m AHD), is mapped as containing Class 2 acid sulfate soils and is partly affected by a Bushfire Prone Land (Category B – Buffer) classification.

Land in close proximity to the site has also been found to be affected by geotechnical constraints related to soft soils and a high water table.

This planning proposal has resulted in the investigation of the above constraints as well as traffic impacts, flora and fauna issues and Aboriginal Cultural Heritage. The investigation of site constraints and related issues has not resulted in the identification of matters which are considered of such significance as to warrant the planning proposal being discontinued at this stage of the process.

The proposed additional uses are proposed to be permitted using the mechanism of clause 2.5 *Additional permitted uses for particular land* and Schedule 1 of Ballina LEP 2012. Utilising this

mechanism, as opposed to incorporating the proposed additional land uses generally within the RU2 zone, has the advantage of limiting the permissibility of the proposed uses to a defined geographical area with nearby State road access. In addition it limits the proposed uses to a site which already contains a number of non rural land uses as previously indicated.

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 specified economic development and employment growth outcomes contained within the *Far North Coast Regional Strategy*.

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

Although the land the subject of the planning proposal is not identified as a potential urban growth area, proposed additional uses are consistent with the prosperous economy objectives of the Community Strategic Plan (CSP). The CSP recognises that new businesses will seek to locate in Ballina Shire due to available land supply and due to the connectivity with South East Queensland. The fostering of new businesses and the creation of employment opportunities are encouraged.

The planning proposal is consistent with Objective PE 2.1 of the CSP which states:

"Develop plans that encourage business growth and diversification".

It is also considered that the proposed additional permitted land uses are compatible with key objectives of the RU2 zone. The site is currently not used for agricultural purposes and contains several non agricultural land uses which are more industrial or commercial in nature. The additional permitted uses proposed are not considered to impact adversely on the natural environment having regard to the developed nature of the site. The rural landscape character of surrounding land is considered to be unaffected by the proposed land uses. There is also little likelihood of land use conflicts arising given the vacant nature of land which adjoins the site and the associated ownership patterns.

It is noted that the RU2 zone permits with development consent a variety of intensive non agricultural or rural based land uses which may also have significant traffic impacts. These land uses include *Correction centre, Function centre, Crematoria, Depots, Liquid fuel depot, Passenger transport facilities and Recreation facilities (Major)*.

In the context of the range of land uses currently permitted within the RU2 zone the additional land uses proposed for the site are considered to be compatible with the strategic intent of this zone. That intent is to provide a zone in close proximity to existing urban areas which has the capacity to contain land uses required for the urban centres expansion.

The proposal is also considered to be somewhat unique in that major transport logistic uses appear best suited to out of centre locations (see SSI at Appendix 5).

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

Yes, the proposal is generally consistent with applicable State Environmental Planning Policies (SEPP). The relevant SEPP's are as follows:

SEPP Title	Compliance of Planning Proposal
SEPP (Rural Lands) 2008	<p>The subject land is currently zoned RU2 Rural landscape. The Rural Planning Principles contained within this SEPP are addressed below:</p> <p>(a) <i>the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas;</i> Comment: The planning proposal is consistent with this objective. The site is not used for agricultural activities. The proposed additional land uses will facilitate sustainable economic activity.</p> <p>(b) <i>recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State;</i> Comment: The planning proposal is not considered to be inconsistent with this principle.</p> <p>(c) <i>recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development;</i> Comment: The planning proposal is not considered to be inconsistent with this principle. The subject site is not designated as State or regional significant farmland within the Far North Coast Regional Strategy. The <i>Northern Rovers Farmland Protection Project – Final Recommendations, February 2005</i> report designates the site as <i>other rural land</i>.</p> <p>(d) <i>in planning for rural lands, to balance the social, economic and environmental interests of the community;</i> Comment: The planning proposal is not considered to be inconsistent with this principle. <i>Freight transport facilities warehouse or distribution centre</i> land uses are also required to support rural uses.</p> <p>(e) <i>the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land;</i> Comment: The site is considered to have low overall biodiversity value due to past development and partial land filling. Areas which have been identified as containing vegetation communities of importance such as Freshwater Wetland and Swamp Oak forest communities have been identified and are able to be retained with future development. The planning proposal is not considered to be inconsistent with this principle.</p> <p>(f) <i>the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities;</i> Comment: The site is not used for <i>rural lifestyle, settlement and housing</i> purposes whilst opportunities for such uses are maintained within the applicable zone. To that extent therefore the planning proposal is not considered to be inconsistent with this principle.</p>

9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC

SEPP Title	Compliance of Planning Proposal
	<p>(g) <i>the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing;</i></p> <p>Comment: This principle is not relevant to the planning proposal.</p> <p>(h) <i>ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.</i></p> <p>Comment: The planning proposal is not considered to be inconsistent with the Far North Coast Regional Strategy. The land will retain its rural zoning. The proposed additional land uses will support Ballina's designation as a Developing Major Regional Centre. The SSI has found that sites within the existing urban footprint of Ballina Shire are generally unsuitable for transport logistic and warehouse type uses.</p>
SEPP No. 55 - Remediation of Land	<p>The planning proposal is considered to be consistent with this SEPP. A Preliminary Contaminated Land Assessment, prepared by Greg Alderson & Associates, is contained within Appendix 14. The report notes that:</p> <p><i>Potential contamination was evident on the site due to presence of fuel storage areas, machinery, and general uses of the sites. It was noted that some of the sites had large areas of concrete which would reduce the amount of leaching of fuel spills through the ground surface. It was further noted that the majority of the sites had been filled above the original ground surface.</i></p> <p><i>However, future development applications may require additional assessment and remedial action, such as filling the sites, to reduce risk of contamination in accordance with NEPM 2013 requirements.</i></p>
SEPP No. 71 - Coastal Protection	<p>The subject site is located within the coastal zone but is not a sensitive coastal location.</p> <p>The matters for consideration listed in clause 8 of the SEPP have been considered. Of relevance is the requirement to give consideration to the <i>means to encourage compact towns and cities</i>. In this respect the emergence of Ballina as a Developing Major Regional Centre will require provision to be made for a variety of additional new land uses such as <i>freight transport facilities, and warehouse or distribution centres</i>. Such land uses are most appropriately located at the fringes of urban centres and close to highway access points due to traffic impacts associated with frequent large vehicle movements.</p> <p>The site already contains several non agricultural land uses and is in close proximity to the highway service centre site (Additional permitted land use C Ballina LEP 2012). The consolidation of facilities such as the highway service centre and freight transport facilities and warehousing within the one general location meets the objective of encouraging compact towns and cities.</p>

6. Is the planning proposal consistent with the applicable Ministerial Section 117 directions?

A number of Section 117 directions are relevant to the development of the planning proposal.

The Gateway determination has found that inconsistencies with S117 Direction 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.5 Rural Lands and 4.1 Acid Sulfate Soils are justified by the Site Selection Investigation Study or are of minor significance.

A copy of the Gateway determination dated 30 April 2014, together with the altered Gateway determination dated 22 October 2015, is contained within Appendix 9.

In respect to S117 Direction 4.3 Flood Prone Land the Secretaries agreement, prior to the plan being made, may be required to be obtained. It is proposed to seek the Secretaries agreement as part of the public notification and exhibition period.

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

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?

Potential ecological impacts have been considered by Blackwood Ecological Services in their report dated 24 August 2015 and in their supplementary advice dated 15 December 2015 (Appendix 13). Council's Environmental Scientist has also inspected the site and provided comments (Appendix 22).

Development of the precinct as envisaged by flood modelling undertaken by BMT WBM would result in the removal of existing site vegetation. BES has found that vegetation community types are considered to be of low-moderate conservation significance and are widespread in the wider Study area, with varying degrees of disturbance. Phragmites reed land and Swamp oak forest are regenerating in the vicinity of the subject site on farmland to the west of the new Teven Road alignment and elsewhere in drains and wet areas where land is not actively managed.

BES recommends that during development of the precinct the small patch of Swamp oak forest, Phragmites and Cumbungi reed land, which occurs within the western portion of the precinct, adjoining the upgraded Teven Road, be retained together with appropriate buffers.

Council's Environmental Scientist has indicated that the wetland community located in the north eastern portion of the site is representative of a Freshwater Wetland which is listed as an Endangered Ecological Community pursuant to the Threatened Species Conservation Act (1995). This area will require protection from future development works and is able to be retained.

The retention of vegetation on the site is a matter for more detailed consideration as part of the DA process. It is considered feasible to retain the recommended vegetation without otherwise compromising other elements of this planning proposal such as works required to mitigate flood impacts.

BES has also considered the impact of filling the precinct as modelled by BMT WBM and the impact this will have on habitat areas. The following comments contained within the BES report (page 19) indicate that proposed filling is considered to result in minor impacts:

Filling of the site will result in a minor increase in flooding in adjacent areas of habitat during a 100 Year ARI event including a small increase in the depth and duration of inundation. This increase is considered to be within the range of hydrological variation already experienced by these communities and is minor in the context of other changes in the floodplain to which the vegetation is still in the process of responding. A small increase in flood depth and duration will favour wetland species at the expense of grassland species.

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

Other potential environmental effects of the proposal are as follows:

- Filling within the flood plain and displacement of flood storage capacity;
- Acid sulfate soil and geotechnical impacts; and
- Bushfire hazard

Consideration of these issues is contained within Appendix 15, 18 and 19 and has already been discussed elsewhere within this planning proposal. All of these site constraints have been found to be resolvable to the extent required to facilitate the development of the site as a transport and logistics precinct.

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

The planning proposal is considered to provide benefits to the community via increased economic activity and employment derived from a clustering of transport logistic land uses. As such, any social and economic effects resulting from the proposed rezoning are considered to be positive.

Section D - State and Commonwealth interests.

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

Water, electricity and telephone services are currently available to service the site. Sewerage is not available but is located in close proximity and will be required to be extended to service this precinct with new development proposals.

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

Consultation has been undertaken with NSW Transport Roads and Maritime Services, NSW Rural Fire Service and NSW Office of Environment and Heritage (Appendix 4 and 20). Responses received are considered in the table below:

Organization	Summary of Comments / Issues Raised	Planning Comments
NSW Rural Fire Service	Indicate that plans and documents have been reviewed and no concerns or issues are raised by the RFS.	Noted.
NSW Roads and Maritime Services	Indicate that there is insufficient traffic information to support the proposal. Advise as follows: - Currently right turn from Teven Road into the Bruxner Highway is operating at capacity. - Spot rezoning permitting small scale transport activities in the Teven Road area may be accommodated by the existing road network. - Recommend that prior to finalizing the planning proposal for the whole precinct more detailed traffic analysis be undertaken. - Consider that based on	Council's Traffic Engineer has undertaken preliminary SIDRA modelling of the Teven Road / Bruxner Highway intersection. The modelling has found that right turn movements (From Teven Road into the Bruxner Highway) are already operating at an unsatisfactory level. Whilst left turn movements are currently satisfactory these too will deteriorate to unsatisfactory levels with the full development of the precinct and annual predicted Highway traffic growth The SIDRA modelling indicates that the Teven Road southbound leg of the intersection, left turn , will operate at an unsatisfactory Level of Service (LOS) D with full development traffic

9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC

Organization	Summary of Comments / Issues Raised	Planning Comments
	<p>available information a roundabout will be required at the intersection of Teven Road and Bruxner Highway to manage proposed traffic.</p>	<p>plus existing traffic volumes. Deterioration to LOS F will result within 10 years assuming traffic growth on the Bruxner Highway of 1.3% per annum. Right turn from Teven into Bruxner is already at a LOS F.</p> <p>Given that there is no specific development proposal for the precinct, apart from some discussion regarding the potential use of an existing site, the determination of the nature of traffic management measures and when these measures should be implemented is a matter for the DA process.</p> <p>Councils Traffic Engineer has advised that a satisfactory intersection performance can be achieved with a two circulating lane roundabout</p>
<p>NSW Office of Environment and Heritage (OEH)</p>	<p>OEH recommends / comments as follows:</p> <ul style="list-style-type: none"> - Provided that Jali LALC comments are consistent with the recommendations contained in the Aboriginal Cultural Heritage Assessment Report (ACHAR) OEH supports the four recommendations. - Prior to finalizing the planning proposal floodways should be clearly delineated. - Appropriate evacuation / emergency management action plans should be developed prior to finalizing the planning proposal. - A detailed ecological assessment is required prior to finalizing the planning proposal. - The potential impacts of acid sulfate soils must be assessed in the planning proposal in accordance with relevant guidelines. - Mitigation and management options related to acid sulfate soils should be described in the planning proposal. 	<p>The proponent's consultants (Everick) consulted with the Jali LALC Sites Officer during the preparation of the ACHAR. A copy of the report was subsequently submitted to Jali LALC but no additional comments were provided to Council.</p> <p>Floodways have been delineated on the plan which forms a part of the draft VPA.</p> <p>Evacuation and emergency management action plans are more appropriately developed as part of the DA process. At that stage they can take into account the design, scale and intensity of proposed development.</p> <p>A preliminary Acid Sulfate Soil Assessment has been prepared by Greg Alderson & Associates and forms a part of the planning proposal. The report estimates that acid sulfate soils are most likely to occur within natural soils at a depth of 0.7m and 1m AHD.</p> <p>Acid sulfate soil impacts are limited as the resolution of flooding impacts contemplates filling of the site to RL1.2m or 2.7m AHD as opposed to cut or mass excavation. Further consideration of acid sulfate soil issues should most appropriately take place as part of the DA process. BLEP 2012 contains provisions which will require this to occur at that time.</p> <p>The OEH has acknowledged that a site inspection has not been undertaken when preparing advice in respect to ecological matters. The planning proposal is supported by an Ecological Assessment prepared by Blackwood Ecological Services which included site surveys. Council's Environmental Scientist has also inspected the site. No threatened or significant flora or fauna species were recorded during the site surveys or are considered likely to occur on the subject site according to the Blackwood report. Following OEH comments additional comments were sought from Blackwoods. The additional advice indicates that a small patch of Swamp oak forest occurs within the western part of the site together with patches of Phragmites and Cumbungi reed land. These areas are recommended for retention together with suitable buffers. Retention of these areas and associated buffers is a matter for further consideration in the DA process.</p>

9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC

Organization	Summary of Comments / Issues Raised	Planning Comments
		No further ecological assessment work is considered to be required as part of the planning proposal process. The DA process will require additional work to be undertaken depending on the scale and impact of specific DA proposals.

PART 4 - MAPPING

The following maps (Appendix 1) have been prepared to support the planning proposal:

- Map 1 – illustrates the location of the subject land – Site Identification Map;
- Map 2 – is the Additional Permitted Use Map under the terms of the Ballina LEP 2012 (APU Map).

PART 5 – COMMUNITY CONSULTATION

Community consultation has not yet been undertaken.

Council has undertaken consultation with the Australian Logistics Council (ALC) and Roads and Maritime Services (RMS) during the process of preparing the SISl. Copies of correspondence received are contained within the SSI at Appendix 5.

Following Gateway determination consultation was undertaken with the NSW Office of Environment and Heritage (OEH), NSW Roads and Maritime Services, NSW Rural Fire Service, and the Jali Local Aboriginal Land Council.

PART 6 – PROJECT TIMELINE

Plan Making Step	Estimated Completion (Before)
Gateway Determination	April 2014
Altered Gateway Determination	December 2014
Government Agency Consultation	October 2015
Completion of Technical Assessment	January 2016
Public Exhibition Period	March 2016
Public Hearing	Not Required
Submissions Assessment	May 2016
RPA Assessment of Planning Proposal and Exhibition Outcomes	May 2016
Submission of Endorsed LEP to P&E for Finalisation	June 2016
RPA Decision to Make the LEP Amendment (if delegated)	June 2016
Forwarding of LEP Amendment to P&I for Notification (if delegated)	July 2016

Ballina Local Environmental Plan 2012 Proposed Additional Permitted Use Map



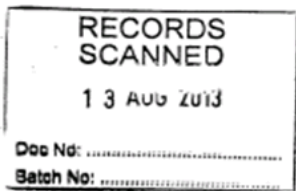
Appendix 2 – Proponents’ Submissions



Date: 12 August 2013
Our Ref: 13/151

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Mr Mathew Wood



Dear Sir,

Re: Teven Road Transport Precinct

Newton Denny Chapelle has been engaged by landowners on Teven Road, Ballina to consult with Ballina Shire Council in relation to their intention to lodge a Planning Proposal to permit additional permitted land uses orientated towards the transport and logistics industry upon the land.

Our clients are seeking to draw on the unique characteristics of the study area to promote the opportunity for the growth of the transport industry in this area. Our clients are committed to the submission of a Planning Proposal to Council, which would not seek to change the underlying zoning of the land, however draw on the characteristics of the study area to amend Schedule 1 of the Ballina LEP to permit additional transport orientated land uses.

The study area in question is located north of the Teven Road/Pacific Highway intersection. The Pacific Highway extends in a northerly fashion and thus wraps to the east of the area. Accordingly, the study area is bordered by Teven Road to the west and the Pacific Highway to the east. A plan detailing the study area is attached for Council's information.

The study area comprises a variety of land uses associated with rural industry, timber processing mechanical repairs, wholesale distribution, agriculture (low intensity) and storage premises [yard area].

With the development of the Pacific Highway upgrade and associated Ballina by-pass, we believe the study area presents the following unique features:

- Direct highway access from Teven Road which is developed with a controlled intersection with the Pacific Highway;
- The highway upgrade and alignment of Teven Road creates a clearly identifiable precinct which is already utilised for a number of commercial/industrial land uses;
- The site is located at the junction of the Pacific Highway and Bruxner Highway, thereby providing opportunities for distribution of goods in both a north-south and east-west alignment;
- The study area contains land being of a suitable area and configuration suitable for transport orientated businesses in respect to storage and holding bays;

JOHN NEWTON B. Surv. M.I.S. Aust. TONY DENNY B. Surv. (Hons) M.I.S. Aust. DAMIAN CHAPELLE B.Eng. QRP
Office: Suite 1, 31 Carrington Street, Lismore, Postal Address: PO Box 1138 Lismore NSW 2480
Phone (02) 6622 1011 Fax (02) 6622 4066 Email office@newtondennychapelle.com.au
Also at: Casino Court, 100 Barker Street, Casino NSW 2470 Phone/Fax (02) 6662 5000

- The study area is not located in an area in close proximity to sensitive receivers and as such presents the opportunity for extended operating hours which is a critical element for transport logistic businesses;
- The existence of Highway exposure provides the opportunity of implementing design standards and associated visual treatment on the approaches to Ballina; and
- Portions of the study area have obtained development consent for the filling of the land.

Under the Ballina Local Environmental Plan the study area is mapped as being zoned RU2 - Rural Landscape. Pursuant to Clause 2.3 of the Ballina LEP, *Depots, Liquid Fuel Depots and Passenger Transport Facilities* are currently identified as being permissible land uses subject to the receipt of development consent. In light of the ability to entertain the aforementioned transport orientated land uses, our Clients seek to introduce the following additional permitted land uses for the study area.

- **freight transport facility** means a facility used principally for the bulk handling of goods for transport by road, rail, air or sea, including any facility for the loading and unloading of vehicles, aircraft, vessels or containers used to transport those goods and for the parking, holding, servicing or repair of those vehicles, aircraft or vessels or for the engines or carriages involved.
- **warehouse or distribution centre** means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made.

The two land uses provide a logical extension of the transport orientated businesses currently permissible within the study area.

At this stage, our clients have not prepared a Master Plan for development of the site. Such plans will be developed as part of the Planning Proposal documentation, following receipt of "conceptual" support for the idea from the both Council Staff and the elected body. We are aware that any planning proposal over the site will need to be supported by a range of technical reports, including (as a minimum) flooding and geotechnical assessments.

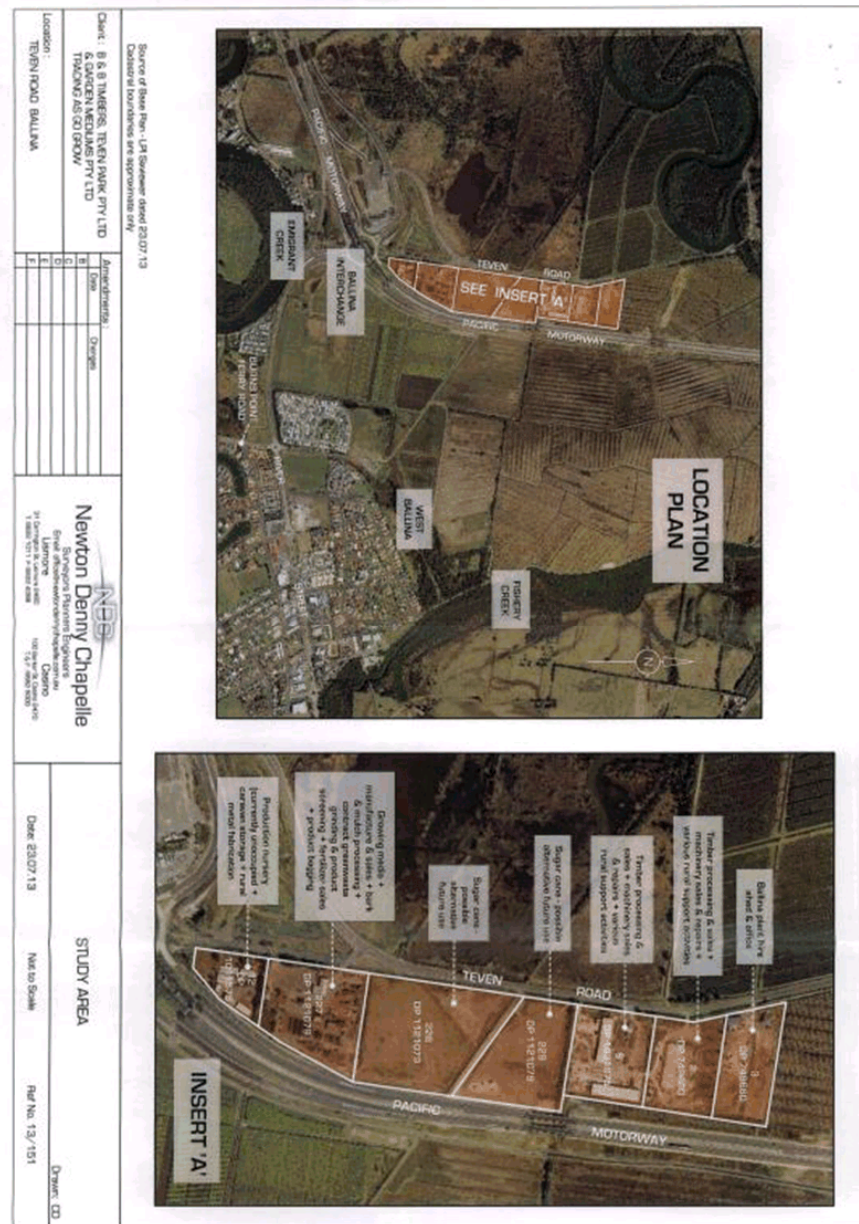
We recognise previous submissions made to the Ballina LEP 2012 during the exhibition period identified Council's preference to limit the western expansion of urban development for Ballina. We believe the development of the highway upgrade and by-pass has changed the way in which the Teven Road study area should be managed. Whilst the Highway has provided a form of delineation between urban and rural land, the road network has in fact opened opportunities for the study area to recognise the existing commercial/industrial uses through direct access to the Pacific Highway from Teven Road in a significantly improved fashion. As such we submit Teven Road now forms the logical western barrier to further expansion of urban development.

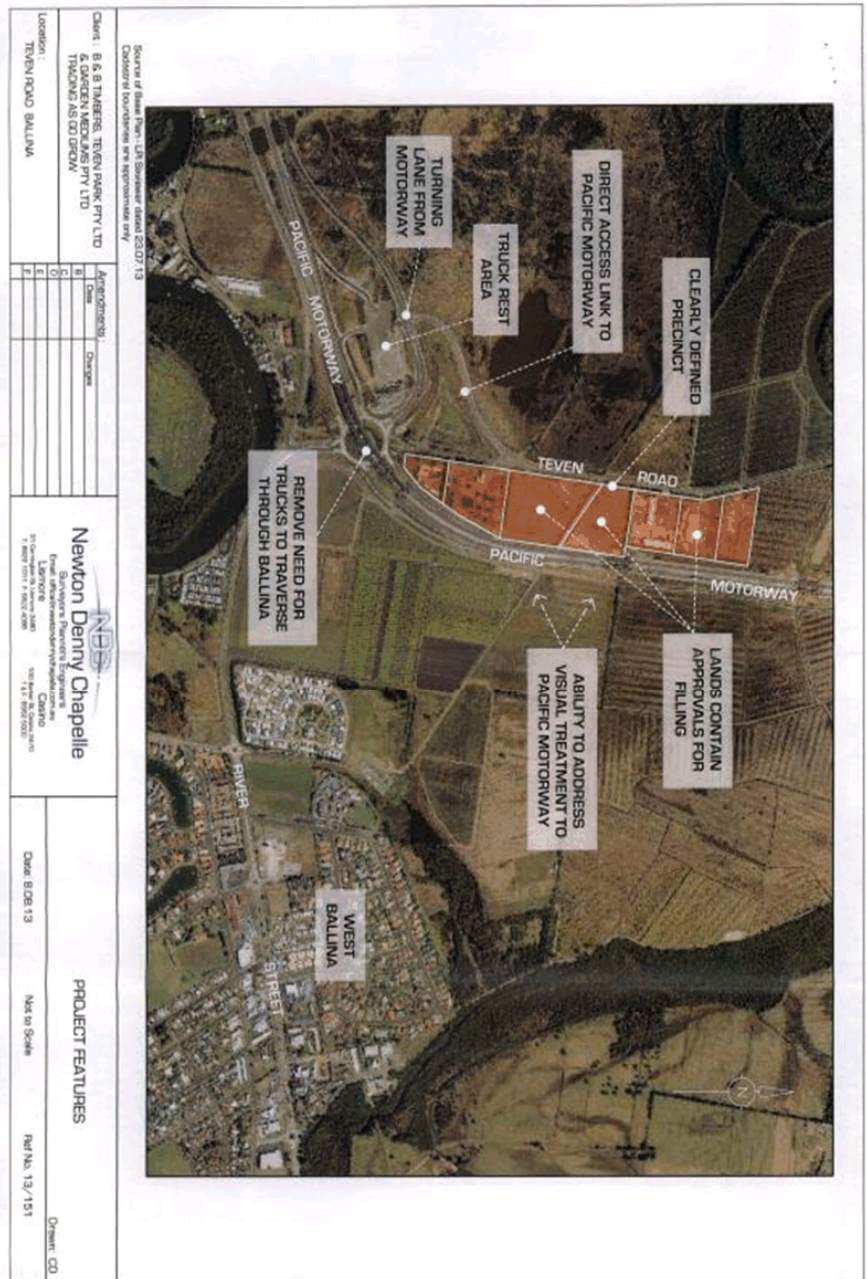
Given the above, we respectfully request that this matter be reported to the elected Council for consideration prior to the formal Planning Proposal being prepared. We would like to emphasise that our clients are not seeking to rezone the land. Rather, they are committed to seeking a modest expansion to the range of land uses permitted on the site to enable the unique locational features to be optimised.

Yours sincerely,
NEWTON DENNY CHAPELLE



DAMIAN CHAPELLE
Town Planner, BTP CPP.



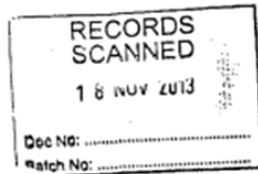




Date: 14 November 2013
Our Ref: 13/151

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Mr Klaus Kerzinger



Dear Sir,

Re: LEP Amendment Request - Teven Road Transport Precinct.

Thank you for your letter dated 5 November 2013 in regard to the LEP Amendment to facilitate additional permitted land uses orientated towards the transport and logistics industry at Teven Road, Ballina.

As outlined in our discussion last week, we have received information from the proponents and parties interested in establishing a transport freight business on Teven Road. Our Clients have agreed to pass onto to Council the primary elements of the information and in doing so trust the following information will assist Council in the preparation of the assessment so a report can be prepared back to the elected Council.

Project Components	Commentary
Potential Users	This is a specific area where all the activities relating to transport, logistics and goods distribution are carried out on a commercial basis. The facility would include ability for larger transport vehicles to access the site and offload goods under cover, for the goods to be consigned into a warehouse and then distributed on smaller vehicles.
Location	<ul style="list-style-type: none"> • The facility to be successful should be ideally located enough distance from major transport hubs to warrant the breakdown of the load for distribution by smaller vehicles. The proposed area is approximately 2.5 hours drive from Brisbane and 2.5 hours drive from Coiffs Harbour - it is not economical to send smaller trucks that distance. A distribution centre located within the proposed precinct gives the best economical outcome for freight traffic to the Ballina, Lismore, Byron Bay and surrounding areas. • The distribution hub should be central to the distribution area. The proposed site has ideal access from the Pacific Motorway and Bruxner highway and is very central to the distribution area. • There needs to be easy access from major roads that does not impact on local traffic. The proposed area has access designed by the RTA/BBA to accommodate truck access. • Of significant importance is the interstate transport need a location that minimises deviation from the major highways.

JOHN NEWTON B.Sc. M.S. A.M., TONY DENNY B.Sc. (Hons) M.S. A.M., DAMIAN CHAPELLE B.T.P. (CP)
Office: Suite 3, 31 Carrington Street, Lismore. Postal Address: PO Box 1128 Lismore NSW 2480
Phone (02) 9562 1011 Fax (02) 9562 4088 Email office@newtondennychapelle.com.au
Also at: Crossed Court, 100 Barker Street, Casino NSW 2470 Phone/Fax (02) 9562 5000

Ease of access for large transport vehicles	<p>The road network and associated design of Teven Road provides capacity for semi-trailer vehicles to have easy access to a facility located within the precinct.</p> <p>The access from the Pacific Highway is a controlled turning movement and as such sufficient exit and access arrangements exist for vehicles entering both Teven Road and the Pacific Highway.</p>
Economic Benefits	<ul style="list-style-type: none"> • Optimisation of larger truck transport utilisation; • Optimisation of warehouse utilisation; • Keeps transport and distribution costs to a minimum; • Business will generate other business; • Once one transport operator starts business other non-competitive, synergistic businesses will follow e.g. heavy vehicle maintenance facility is a synergistic business and there is already one located in the precinct.
Transport Industry Comments relating to a specific site of interest for transport within the nominated precinct	<ul style="list-style-type: none"> • Adequate filled land exists to locate a desired shed construction for freight deliveries. A shed size required for the development would be approximately 30m x 18m with a 12m awning running along the 30m side. With 4 roller doors at 5m high. • It is located in close proximity to both the Pacific Highway and the Bruxner highway making it very suitable for larger transport trucks (interstate transports) to access the site in all directions. • The site is central to the Northern Rivers distribution area being mid-way between Grafton and Tweed Heads, giving good access to local distribution areas. • It has good visibility from the Pacific Highway. • RMS & Ballina By Pass Alliance have already built a heavy vehicle access to service Go Grow and B & B Timbers which is one reason the Teven Road access was moved 200 metres from the interchange roundabout. • Flood Modelling by BMT WBM through Ballina Shire Council has already been completed and the subject land has already been filled to the one in two hundred year level as indicated by Council.
Review of Alternative Site Comments	<p>Bengalow</p> <ul style="list-style-type: none"> • No suitable land available and not as central to the distribution area. <p>Lismore</p> <ul style="list-style-type: none"> • Whilst existing transport facilities are located within Lismore, the access time to the Pacific Highway and the standard of road transport vehicles presents difficulties to deviate from the highway. <p>Smith's Drive Ballina</p> <ul style="list-style-type: none"> • No suitable land and development costs too high as well as transport access too limited without major road works and changes to the interchange. <p>Southern Cross Industrial Estate Ballina</p> <ul style="list-style-type: none"> • Access to the area south bound from the Pacific Highway is acceptable, however to continue south bound large vehicles would be forced to travel through Ballina and mix with local traffic. This causes recognised time delays are not suitable for interstate transport. The reverse situation applies north bound – for travel to the site transport is forced to travel through Ballina however the access to the Pacific Highway north bound is ok. This area has been discounted as being too far from the major highways and not suitable for large truck movements.

We trust the information included within this letter is of assistance to Council. However, should you have any questions regarding the contents of this letter please do not hesitate contacting the undersigned.

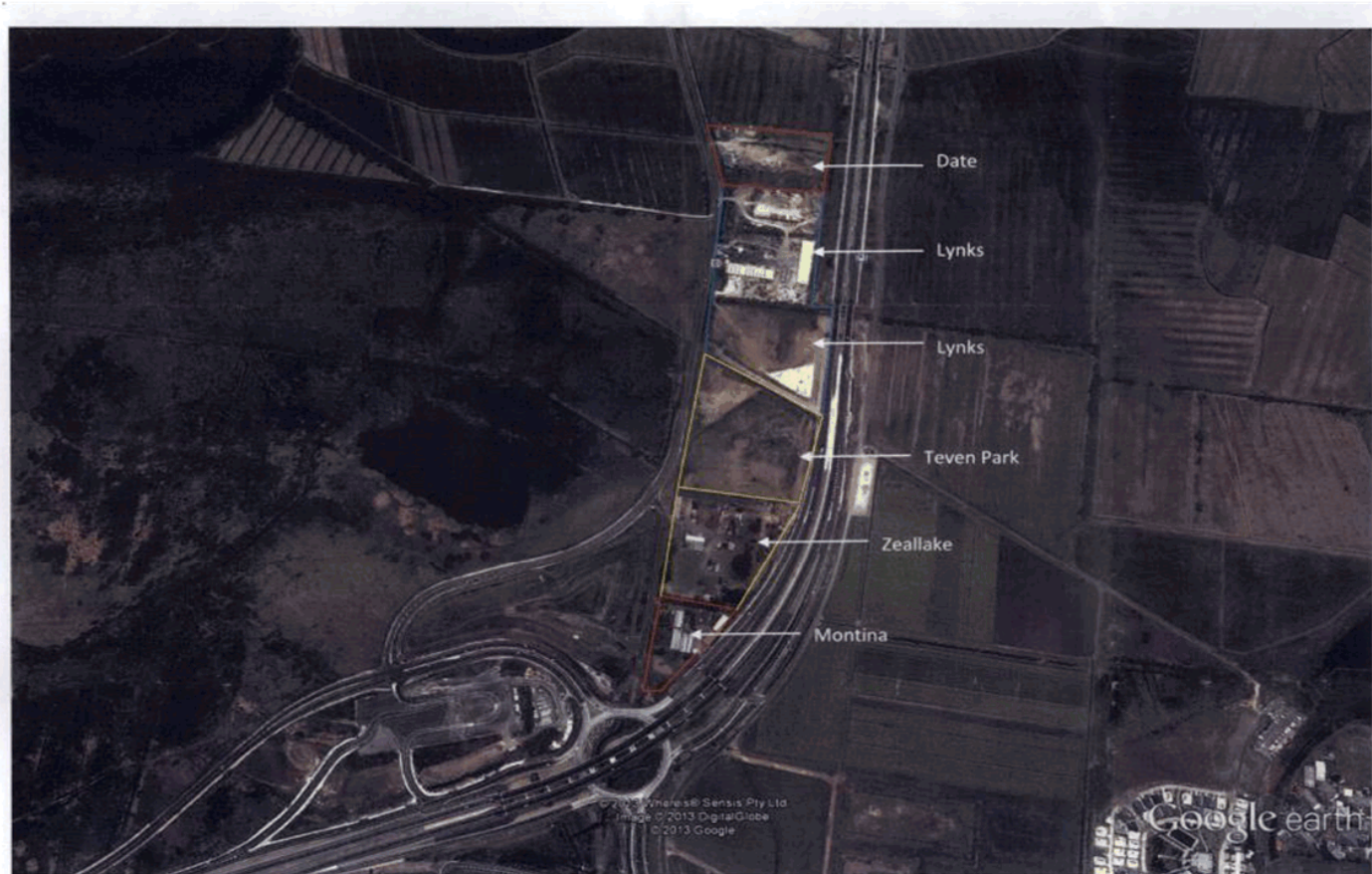
Yours sincerely,

NEWTON DENNY CHAPELLE



DAMIAN CHAPELLE
Town Planner, BTP CPP.

9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC



9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC

LOCATION



Appendix 3 – Section 117 Direction Checklist

Section 117 Direction Checklist	
Planning Proposal – Teven Road, West Ballina	
DIRECTION NO.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	The planning proposal is considered to be justifiably inconsistent with this direction as it does not relate to an existing or proposed business or industrial zone. The planning proposal is also considered to be consistent with the objective of this direction in so far as the proposed additional uses may encourage employment growth in suitable locations.
1.2 Rural Zones	The planning proposal is considered to be justifiably inconsistent with this Direction as it is not proposed to rezone the site. The planning proposal seeks to add additional uses permitted with development consent within the RU2 zone. These transport related uses will complement a broad range of land uses already permitted within the RU2 zone. In the context of the range of land uses already permitted and the availability of RU2 zoned land within Ballina Shire the planning proposal is also considered to be of overall minor significance.
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	The planning proposal is considered to be justifiably inconsistent with this direction. The selection of Teven Road Transport and Logistics Precinct has been based on a site selection investigation which has confirmed site suitability. The table in Section B5 of this report addresses the Planning Principles contained in State Environmental Planning Policy (Rural Lands).
2. Environment and Heritage	
2.1 Environmental Protection Zones	Does not apply to planning proposal.
2.2 Coastal Protection	This planning proposal is consistent with this Direction. The subject site will retain its RU2 zoning. The expansion of permissible uses is considered to have a minor impact having regard to the nature of uses already permitted within this zone.
2.3 Heritage Conservation	There are no items of environmental or cultural heritage identified by Council within the site that are considered to warrant specific LEP based protection based on the information currently available.
2.4 Recreation Vehicle Areas	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to planning proposal.
3.3 Home Occupations	This planning proposal is consistent with this Direction as home occupations are permitted in the RU2 zone without consent under the Ballina LEP 2012.

9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC

DIRECTION NO.	Compliance of Planning Proposal
3.4 Integrated Land Use and Transport	The planning proposal is consistent with this Direction as the land has been specifically identified to facilitate the efficient movement of freight.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	<p>The planning proposal is considered to be justifiably inconsistent with this direction. A Preliminary Acid Sulfate Soil Assessment forms a part of this planning proposal which has confirmed the probability that the site contains Class 2 acid sulfate soils.</p> <p>Preliminary Acid Sulfate Soil Assessment has considered the nature of works required to make the site suitable for development. The report concludes that the proposed filling of the sites will not affect acid sulfate soil, which is most likely to be occurring within the natural soils of the site at an estimated 0.7 m to 1 m AHD. The report also recommends that site specific management plans be undertaken as part of the DA process.</p> <p>It is noted that the site is subject to the provisions of Ballina LEP 2012 which contains the Model LEP acid sulfate soil provisions at clause 7.1. These provisions provide a trigger for the preparation of an acid sulfate soils management plan for works below natural ground level or works likely to lower the water table.</p>
4.2 Mine Subsidence and Unstable Land	<p>Does not apply to planning proposal.</p> <p>The site is not within a mine subsidence area nor has it been designated as unstable land. Council is however aware that development on land within close proximity to the site has required extensive geotechnical engineering input to resolve foundation challenges due to soft soils and a high water table. Further examination of these issues may be warranted as a requirement of Gateway determination.</p>
4.3 Flood Prone Land	<p>The planning proposal is considered to be justifiably inconsistent with this direction. The site is located within a flood planning area and is subject to the provisions of clause 7.3 <i>Flood planning</i> of Ballina LEP 2012. Clause 7.3 is consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).</p> <p>The proponent has demonstrate that filling of the land to the 1:100 year ARI flood level will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties.</p>
4.4 Planning for Bushfire Protection	The planning proposal is consistent with this Direction. The Rural Fire Service has been consulted post Gateway determination and have raised no concerns.
5. Regional Planning	
5.1 Implementation of Regional Strategies	The site's location is consistent with the outcomes specified within Economic Development and Employment Growth component of the Far North Coast Regional Strategy.
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	This direction does not apply as the site is identified as <i>other rural land</i> within Map 4 which forms a part of the " <i>Northern Rivers Farmland Protection Project - Final Recommendations, February 2005</i> " report.
5.4 Commercial and Retail Development along the Pacific Highway North Coast	This direction does not apply as the planning proposal does not provide for commercial or retail development. Whilst the direction does not apply it is also relevant that the site does not have direct access to the Pacific Highway nor is it able to obtain such access due to the elevated nature of the highway at this location. The proposed additional permitted uses are unlikely to impact on the safety or efficiency of the Pacific Highway.

9.1 **Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC**

DIRECTION NO.	Compliance of Planning Proposal
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked
5.6 Sydney to Canberra Corridor	Revoked
5.7 Central Coast 1)	Revoked
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire
5.9 North West Rail Corridor Strategy	Does not apply to Ballina Shire
6. Local Plan Making	
6.1 Approval and Referral Requirements	The planning proposal is consistent with this Direction in that it does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	The planning proposal is consistent with this provision as it does not include creation, altering or reduction of land for public purposes.
6.3 Site Specific Provisions	The planning proposal is consistent with this direction as it is proposed to allow additional permitted uses without imposing any development standards or requirements in addition to those already contained in the Ballina LEP 2012.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.

Appendix 4 – Letter from RMS dated 4 December 2012



File no. NTH13/00109 CR2013/008228
Your Reference: LEP Amendment Request – Teven Road Transport Precinct

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention Mr Klaus Kerzinger

Dear Sir

Proposed Teven Road Transport Precinct West Ballina.

I refer to your letter of 7 November 2013. A significant amount of community funds have been committed to the recently completed Ballina Bypass. With about 17 Ha under consideration for freight and logistics activities, there is a potentially significant traffic issue for the Teven Road Interchange with the Pacific Highway.

Any consideration for permitting logistic activities along Teven Road will have to examine potential traffic impacts. This would include the operation of the Teven Road Interchange and the traffic interaction between the Teven Road intersection with the Bruxner Highway and the interchange.

The design of the interchange has been prepared to manage future peak traffic flows. Any traffic assessment of the change in land use to logistics based activities will need to assess the likely impacts on the interchange in twenty years time with 100th highest hour traffic volumes. Freight and logistic centres have, depending on the type of activities carried out, a significant range of traffic generating potential. Without details of the type of activities intended, scenario testing of low, medium and high traffic generation potential should be considered.

To assess likely future traffic performance of the adjoining road network, a detailed traffic study should be undertaken that takes into account the key issues relevant to the scale of this proposal as set out in Table 2.1 of the Roads and Traffic Authority's current 'Guide to Traffic Generating Developments' (copy attached) for each proposal.

Roads & Maritime Services

31 Victoria Street, Grafton NSW 2460 | PO Box 576 Grafton NSW 2460
T 02 6640 1300 | F 02 6640 1304 | E development.northern@rms.nsw.gov.au

www.rms.nsw.gov.au | 13 17 82

- 2 -

The traffic studies should include information relating to:

- Total impact of existing and proposed development on the state road network. Including the Pacific and Bruxner Highways
- Intersection sight distances
- Existing and proposed access conditions
- Improvements for road junctions / intersections
- Detail of servicing and parking arrangements
- Connectivity to existing developments
- Impact on Transport (Public and School Bus Routes)
- Provisions for pedestrians, alternative transport modes such as bicycles
- Road Traffic Noise

Current AUSTROADS standards should be adopted for any necessary upgrading of the surrounding road infrastructure. The properties under consideration have direct frontage to the Ballina Bypass. Controlled access conditions exist across the road boundaries at this location. Direct access to the Pacific Highway will not be considered by Roads and Maritime at this time.

If you have any further enquiries regarding the above comments please do not hesitate to contact Michael Baldwin on 6640 1362 or email development.northern@rms.nsw.gov.au.

Yours faithfully



4 December 2013

John Alexander
Regional Manager Northern Region

**Appendix 5 – Site Selection Investigation – Freight Transport Facilities,
Warehousing and Distribution Centres Report, January 2014**

Provided under separate Cover

Appendix 6 – Report to Council dated 24 October 2013

9.2 LEP Amendment Request - Teven Road Transport Facility

Key Issues

- Processing of LEP amendment request and preparation of a planning proposal
- Appropriateness of specifying particular land uses as permitted on certain parcels of land
- Need for additional areas for freight and logistics land uses
- Expansion of urban land uses west of the Ballina Bypass

Information

The LEP amendment request is currently in initiation or concept stage. As such, staff have undertaken a preliminary assessment of the proposal to inform a decision on whether Council should progress to prepare a planning proposal suitable for submission to the Department of Planning and Infrastructure for Gateway determination.

In summary, the proposal seeks to enable transport and logistics land uses on seven parcels of rural zoned land through identification of freight transport facilities and warehouse or distribution centres land uses that would be permitted with consent on the subject land under Schedule 1 (Additional Permitted Uses) of the Ballina LEP 2012. These uses are currently prohibited on land within the prevailing zone.

As outlined above, the Council resolved to apply an RU2 Rural Landscape zone to the subject land under the Ballina LEP 2012. This zoning is consistent with Council's Ballina Shire Growth Management Strategy (GMS) and the Far North Coast Regional Strategy (FNCRS) in that the subject land is not identified as having potential for urban land uses (beyond the activities already being lawfully undertaken on the land).

The expansion of urban land uses to the west of the Ballina Bypass is of concern and is not advocated by any current local or State Government planning strategy applicable to Ballina Shire. However, given the type of use proposed and the specific characteristics of the subject land, the Council may determine that there is some justification to support the proposed transport and logistics outcome.

Further, the FNCRS identifies planning for industrial needs having regard for factors such as the growth of South East Queensland and improvements in transport infrastructure as an outcome of the strategy. The strategy also suggests that some types of industry could be located away from existing urban centres due to their type, nature and scale.

In considering the above, key issues that arise include:

- the extent to which additional area that permits establishment of freight transport and logistics land uses is needed in Ballina Shire;
- if additional areas are necessary, determining the optimal location and characteristics for the siting of such land uses; and
- the extent to which the specific characteristics of the subject land support its suitability for the location of freight transport and logistics land uses.

9.2 LEP Amendment Request - Teven Road Transport Facility

As the proposal is in the concept phase, the information submitted by the proponent provides a general overview of the reasoning for the proposed LEP amendment. Whilst this information is noted, Council would be urged to seek independent advice addressing the issues identified above to provide a broader consideration of freight transport and logistics activities before determining whether to advance the current LEP amendment request. It is envisaged that Council may seek advice in a form similar to that previously provided to it in relation to the need for, and preferred location of, bulky goods retailing facilities in Ballina Shire.

If the Council receives further independent advice and then decides to initiate the planning proposal, it is likely that further technical information from the proponents will be required addressing matters such as flooding in the locality, geotechnical conditions within the respective land parcels, road network capacity and servicing and infrastructure availability.

Sustainability Considerations

- **Environment**
Should the LEP amendment request proceed, environmental considerations will be assessed in further detail
- **Social**
Should the LEP amendment request proceed, social considerations will be assessed in further detail
- **Economic**
The proposed LEP amendment has the potential to provide a significant economic stimulus in the shire. These potential positive impacts will be further examined should the LEP amendment proceed

Legal / Resource / Financial Implications

There are no specific legal implications associated with this proposed LEP amendment at this time.

Independent advice in relation to the need for, and location of, freight transport and logistics land uses in Ballina Shire is expected to cost in the order of \$10,000. This cost can be met from within the existing Strategic and Community Facilities program budget.

Progress of this matter can be accommodated within the Strategic and Community Facilities Group work program.

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.

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

9.2 LEP Amendment Request - Teven Road Transport Facility

Options

1. Initiate a planning proposal.

Council may proceed to prepare a planning proposal suitable for Gateway determination. Having regard for the matters raised in this report, the preparation of a planning proposal that enables freight transport and logistics land uses on the land parcels that are the subject of this LEP amendment request is not immediately recommended.

It is considered that further information regarding freight transport and logistics land uses and the specific attributes of the subject land is warranted. Such information would be sought from an independent third party and through further engagement with the proponent of the current request.

In the absence of additional information to address the key issues identified in this report, it is difficult to fully assess the potential benefits and disadvantages of the proposed LEP amendment.

Notwithstanding the above, it is open to the Council to proceed to the preparation of a planning proposal and incorporate consideration of the key issues into a later phase of the amendment process.

2. Defer consideration of the LEP amendment request.

The Council may defer consideration of the LEP amendment request in order to seek additional independent information in relation to the proposed rezoning. This is the recommended approach.

Under this approach, it is suggested that independent advice would be sought to provide Council with guidance in relation to the proposed land use on a shire-wide basis. The outcomes of this work would then inform further consideration of the proposed LEP amendment for the land on Teven Road at West Ballina.

This approach would provide for an improved basis and rationale for assessing the concept of enabling freight transport and logistics land uses in areas outside those presently zoned for these purposes.

Additional information in relation to freight and logistics land uses in Ballina Shire will likely be beneficial on a broader basis as this type of land use may be the subject of ongoing enquiry in the short to medium term.

Continued interest in this land use in Ballina Shire is likely due to population growth, proximity to South East Queensland and the enhancements to the Pacific Highway and access and transport corridors to the west.

Under this option, upon receipt of the additional information sought by Council, the LEP amendment request would be reported to the Council to determine whether the matter should proceed.

In the event that the independent advice clearly supports the subject proposal, the further reporting could include a planning proposal to enable the Council to progress the matter to Gateway determination at the time the matter is reconsidered.

9.2 LEP Amendment Request - Teven Road Transport Facility

3. Decline to initiate the LEP amendment request.

It is open to Council to decline the requested LEP amendment. Endorsement of this option would mean that no further action would be taken by Council with respect to the processing of the request.

This course of action is not recommended given that it is difficult to fully evaluate the potential disadvantages of the proposal in the absence of additional information about freight and logistics land uses in relation to Ballina Shire.

RECOMMENDATIONS

1. That the Council defer its decision concerning the request from Newton Denny Chapelle to amend the Ballina Local Environmental Plan 2012 to enable freight and logistics land uses on land located between Teven Road and the Ballina Bypass at West Ballina, pending the outcomes of item two below.
2. That Council obtain independent advice in relation to the current and projected need for, and preferred location of, freight and logistics land uses in Ballina Shire.

Attachment(s)

1. LEP Amendment Request - Teven Road Freight and Logistics - Newton Denny Chapelle (August 2013)

Appendix 7 – Report to Council dated 27 February 2014

9.2 LEP Amendment Request - Teven Road Transport Facility

Delivery Program Strategic Planning

Objective To provide an overview of a proposal for an LEP amendment that would enable transport and logistic landuses on certain land at West Ballina and seek direction on the further processing of the request.

Background

The Council, at its Ordinary Meeting held on 24 October 2013, considered a request to amend the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) from Newton Denny Chapelle on behalf of several landowners with holdings between Teven Road and the Ballina Bypass in West Ballina.

The request sought an amendment to the Ballina LEP 2012 to enable transport and logistics land uses to be undertaken on the respective properties, subject to development consent being obtained.

A copy of the submission from Newton Denny Chapelle is contained in Attachment One.

In relation to this matter, Council resolved as follows [Minute No. 241013/4]:

1. *That the Council defer its decision concerning the request from Newton Denny Chapelle to amend the Ballina Local Environmental Plan 2012 to enable freight and logistics land uses on land located between Teven Road and the Ballina Bypass at West Ballina, pending the outcomes of item two below.*
2. *That Council obtain independent advice in relation to the current and projected need for, and preferred location of, freight and logistics land uses in Ballina Shire.*

The land parcels the subject of the Ballina LEP 2012 amendment request are:

- Lot 3 DP 749680 (Date)
- Lot 2 DP 749680 (Boyes)
- Lot 5 DP 1031875 (Lynks Pty Ltd)
- Lot 229 DP 1121079 (Lynks Pty Ltd)
- Lot 228 DP 1121079 (Teven Park Pty Ltd)
- Lot 227 DP 1121079 (Zeallake Pty Ltd)
- Lot 12 DP 1011575 (Montina Pty Ltd)

A map showing the location of the listed land parcels is contained in the information submitted by Newton Denny Chapelle at Attachment One.

The information submitted by Newton Denny Chapelle also includes an overview of the current uses of the subject land parcels.

The future use of the land located between Teven Road and the Ballina Bypass was considered by the Council during the preparation of the Ballina LEP 2012.

9.2 LEP Amendment Request - Teven Road Transport Facility

Council resolved to apply an RU2 Rural Landscape zone in that locality and this is the zone that presently applies to the subject land. The RU2 zone enables a variety of rural land uses, some of which require prior development consent.

The LEP amendment request does not seek to change the prevailing land use zone, but rather proposes the inclusion of "freight transport facility" and "warehouse or distribution centre" as permitted land uses on the specified land parcels (through use of the Additional Permitted Uses Schedule in the LEP).

This would have the effect of creating a defined precinct of RU2 zoned land where freight and logistics type land uses would be permitted with development consent.

The purpose of this report is to provide further information in accordance with the Council's October 2013 decision. Further, to seek Council's direction on whether it now considers it appropriate for a planning proposal to be prepared.

Key Issues

- Processing of LEP amendment request and preparation of a planning proposal
- Appropriateness of specifying particular land uses as permitted on certain parcels of land
- Need for additional areas for freight and logistics land uses
- Expansion of urban land uses west of the Ballina Bypass

Information

Attachment Two contains a report which examines the current and projected need for, and preferred location of, freight and logistics land uses in Ballina Shire. The report was able to be prepared in-house and contains independent advice from The Australian Logistics Council and Roads and Maritime Services. The report was also peer reviewed by local planning consultant Mike Sviki. Mr Sviki is also the current chairperson of the Northern NSW Branch of the Planning Institute of Australia (PIA).

Staff investigated engagement of a consultant or "expert" to prepare an analysis report. However, third party involvement of this type by a suitably qualified organization could not be obtained within the available financial resources. As a result staff prepared an analysis of key issues and potential sites and engaged a peer reviewer to provide additional expertise and independent assessment. As outlined above, the analysis also included consultation with relevant parties.

Following an analysis of relevant Government policy documents dealing with transport and road freight logistics matters it became evident that there was no definitive way to determine the quantum of demand for road freight logistic facilities on a local government area basis. Demand for such land is primarily driven by broader state and national locational considerations and industry growth factors.

The availability of suitable land in adjoining local government areas may also influence what demand for land is likely to exist in Ballina Shire.

3.4 LEP Amendment Request - Teven Road Transport Facility

The above situation is very different to the demand for retail and bulky goods land which can be estimated through modelling by examining variables such as population, income and spending patterns.

Significant information is, however, available in relation to freight movement. This information suggests that by 2031 freight moved in NSW is estimated to double. In information contained within the 2012 *Draft NSW Freight and Port Strategy*, prepared by Transport for NSW, it was estimated that in 2011 the freight and logistics industry contributed \$58 billion (13.8%) to the NSW Gross State Product with approximately 14% of the NSW workforce being employed in logistics.

Existing IN1 General Industrial sites within Ballina Shire were examined for suitability for road freight logistics purposes using a site evaluation tool. The IN1 General industrial zone is the only existing zone in the Ballina LEP 2012 that permits, with consent, *freight transport facilities, warehouse or distribution centres*. The tool was then used to also evaluate the suitability of the Teven Road properties.

Evaluation of the suitability of existing appropriately zoned industrial sites is required by the Far North Coast Regional Strategy prior to rezoning sites that do not currently permit such land uses.

The table below provides a summary of the results obtained from the use of the site evaluation tool. The table includes evaluation of the Teven Road properties which are the subject of the LEP amendment proposal (See site One).

Table 1: Summary of site evaluation results

Site	Score	Suitability	Comments
One - Teven Road, West Ballina	42 (70%)	Fair	Requires rezoning, significant filling up to 3 metres may be required on some lots. Some lots already filled. Teven Road at RL 1.4m AHD - below RL 2.7m AHD 1:100 year flood level. (If site were already appropriately zoned then suitability ranking would have been Good.)
Two - Russellton, Alstonville	44 (73%)	Good	Topography and limited land supply issues would hamper development of this site for large scale road freight logistic uses.
Three - Smith Drive, West Ballina	48 (80%)	Good	Access to Pacific Highway via Smith Drive may require upgrade. Extensive filling required up to RL 2.3 AHD - previously approved to be filled to RL 1.9 AHD. Limited land supply will hamper future expansion.
Four - Southern Cross Drive near Airport, Ballina	32 (53%)	Low	Size of sites, regional accessibility and fragmented land ownership issues are primary constraints.
Five - Southern Cross Drive Industrial and Business Park, Ballina	38 (63%)	Fair	Regional accessibility constraints due to distant highway access.
Six - Clark Street Industrial Estate Ballina	31 (52%)	Low	Lack of vacant land, fragmented ownership and regional accessibility are main constraints.

9.2 LEP Amendment Request - Teven Road Transport Facility

The evaluation found that there are numerous sites available within Ballina Shire where transport and logistic land uses are permitted. However, when evaluated, the majority of these sites, such as those located within the Southern Cross Industrial Estate, received "low" suitability rankings. This was primarily related to distance to highway access, fragmented ownership and small vacant land parcels.

The Russellton Industrial Estate, at Alstonville, was found to have "good" level of suitability using the evaluation tool criteria due primarily to its Bruxner Highway proximity. Restricted land supply and the topography of vacant land are limiting factors. In addition, heavy vehicles accessing sites within this estate, which contains primarily small scale industrial development, is considered to be a key disadvantage of this site.

The Smith Drive Industrial Estate at West Ballina also received a "good" evaluation ranking. Suitable vacant appropriately zoned land is available, however such land is constrained by flooding and would require extensive filling. Filling of land on what has been known as the "Homeworld" site at Smith Drive has been considered and approved previously by the Council (DA2007/71 approved 13/12/2007).

The proposed Teven Road site received a "fair" evaluation ranking. The fact that it is currently not appropriately zoned reduced its suitability score. Had it been appropriately zoned it would have received a "good" evaluation ranking. Flooding and site filling requirements are the major constraints impacting on the land.

It is suggested that Ballina Shire may be well placed to take advantage of the projected growth in the logistics industry over the next 20 year period if suitable sites were available. The most highly valued sites, based on the analysis undertaken, are those in close proximity to direct highway access. The Smith Drive and Teven Road sites are considered to be the most suitable sites given that they are in relatively close proximity to two major highways.

The designation of Casino and Kyogle for industrial and residential growth in the Far North Coast Regional Strategy also reinforces the value of sites near to the Pacific / Bruxner Highway interchange at Ballina to service these areas.

A case to support the proposed LEP amendment in relation to the Teven Road site could therefore be made subject to the proponents demonstrating to the Council's satisfaction (and State agencies) that they have the capacity to adequately assess and address key issues, particularly flooding and traffic management.

In respect to the flooding issue, additional investigative modelling work is required to establish the consequences of raising the approximate 17 hectare Teven Road site to the 1:100 year flood level of RL 2.7AHD. If it can be shown that the land can be filled to this level without creating unsatisfactory flood related impacts on other properties in the floodplain then this concern may be alleviated. The alternative to achieving the nominated fill level may be for the proponents to demonstrate why, in the particular circumstances of a future development proposal, the Council's adopted policies should be set aside.

Council will recall that it previously did not support a proposal for a Masters bulky goods retail use at a site in close proximity to the Teven Road site at

9.2 LEP Amendment Request - Teven Road Transport Facility

West Ballina. The Masters site may however be differentiated from the Teven road site in so far as that site was vacant land whereas the Teven Road site already contains a variety of 'industrial' type uses. In addition, following retail modelling, more suitable sites were found for bulky goods retail uses within the established Ballina industrial estate.

Consolidation of bulky goods uses within the established Ballina urban area provides certain locational advantages; whereas in the case of logistics uses it is preferable that such uses be located outside established urban areas. This is because of the associated frequent heavy traffic impacts.

The NSW Roads and Maritime Services (RMS) has highlighted a need for an examination of traffic issues associated with the proposed logistics centre land uses. This is to ensure that there is adequate capacity for traffic at the Teven Road interchange and intersection performance is not unduly compromised.

If the Council elects to progress to the preparation of a planning proposal, it is recommended that further work be undertaken by the proponent to demonstrate that flooding and traffic impacts are acceptable or can be suitably managed and mitigated.

Sustainability Considerations

- **Environment**
To enable the LEP amendment request to proceed, environmental considerations such as flood impact should be assessed in further detail.
- **Social**
Subject to the qualifications within this report, the allocation of land suited to future logistics centre-type land uses activates the potential to deliver significant employment opportunities to the shire and region
- **Economic**
The proposed LEP amendment has the potential to provide a significant economic stimulus in the shire.

Legal / Resource / Financial Implications

There are no specific legal implications associated with this proposed LEP amendment at this time.

The matters arising from this report can be attended to within existing resources.

In the event that the Council wishes to advance this proposal the proponent will be required to meet various processing costs in accordance with Council's adopted schedule of fees and charges, as well as providing the necessary additional technical information, as indicated above. It is conceivable that other issues may arise which will require detailed examination, however the two key matters identified at this time are flooding and traffic management.

Progress of this matter can be accommodated within the Strategic and Community Facilities Group work program.

9.2 LEP Amendment Request - Teven Road Transport Facility

Consultation

During the preparation of the site evaluation report consultation was undertaken with the Australian Logistic Council and RMS. This was done in an endeavour to secure independent advice and improve Council's understanding of what this industry entails and its relevance to our region.

The Australian Logistic Council (ALC) is the peak body for the freight logistics industry in Australia. It has advised that it supports the proposal to permit the establishment of a freight and logistics hub at West Ballina due to its strategic location at the junction of the Pacific and Bruxner Highways. This is a broad-based response, and does not have particular regard for the particular properties in question.

The RMS has advised that any consideration of logistics activities along Teven Road would have to examine potential traffic impacts. These impacts include traffic interaction between the Teven Road intersection with the Bruxner Highway and the interchange with the Pacific Highway. In this respect the RMS has indicated that a detailed traffic study should be undertaken. Various issues of relevance to the traffic study have been detailed.

The advice provided by the ALC and RMS is contained within Attachment Two (Annexures 4 and 7).

Additional agency and community engagement may be required to be undertaken if this proposal is advanced by way of a planning proposal.

Options

1. Initiate a planning proposal.

Council may proceed to prepare a planning proposal suitable for Gateway determination. By initiating the planning proposal, Council would be signalling its in-principle support for the broad concept proposed, subject to the outcomes of detailed site assessment and community/agency engagement.

Having regard for the information obtained since the Council's initial consideration of this enquiry in October last year, and for the matters raised in this report, the preparation of a planning proposal that specifically enables freight transport and logistics land uses on the subject lots through use of the additional permitted uses schedule in the LEP may have a degree of merit. It is suggested that a higher level of confidence might be obtained through flood modelling of the impacts associated with filling the sites as well as an examination of traffic related impacts.

Due to the costs associated with flood modelling, and the determination of traffic impacts, it is considered reasonable that Council endorse the preparation of a planning proposal prior to the proponent being requested to undertake such work. Subject to the submission of information which establishes that flooding and traffic impacts are satisfactory or can be adequately mitigated, a planning proposal would then be prepared.

9.2 LEP Amendment Request - Teven Road Transport Facility

In the absence of additional information to address the key issues identified in this report, it is difficult to fully assess the potential impacts of the proposed LEP amendment.

The above approach is recommended. Although additional information is required to competently assess the suitability of the site for the proposed uses, option one is the recommended approach on the basis that the required information would be provided by the proponent to inform the planning proposal.

Notwithstanding the above, it is also open to the Council to proceed to the preparation of a planning proposal and incorporate consideration of the key issues (i.e. flooding and traffic) into a later phase of the amendment process.

2. Defer consideration of the LEP amendment request.

The Council may defer consideration of the LEP amendment request pending the proponent establishing the impacts of flooding and traffic associated with the proposal.

This approach is not recommended as it will result in the proponent incurring significant costs without formal indication of the Council's position regarding the concept underpinning the proposal.

3. Decline to initiate the LEP amendment request.

It is open to Council to decline the requested LEP amendment. Endorsement of this option would mean that no further action would be taken by Council with respect to the processing of the request.

This course of action is not recommended as the work already undertaken has established that there may well be increasing demand for sites suitable for use by the freight and logistics industry. In addition, the proposed site is suitably located near the junction of two major highways and therefore has certain strategic locational advantages over other sites that are more appropriately zoned at present.

The main site-related issues concern flooding and traffic impacts and whether these can be satisfactorily resolved. It is considered reasonable that the proponent be given an opportunity to examine these issues (as well as any other matters that might arise as more information about the land becomes known – eg geotechnical constraints). If these key issues are able to be suitably resolved then a planning proposal could reasonably be prepared.

RECOMMENDATIONS

1. That Council endorses the preparation of a planning proposal which proposes the insertion of freight transport facilities, warehouse or distribution centre land uses as additional permitted uses within Schedule 1 of Ballina LEP 2012, in relation to Lots 2 and 3 DP 749680, Lot 5 and 12 DP 1031875, Lots 227, 228 and 229 DP1121079 and Lot 12 DP 1011575, Teven Road, West Ballina.
2. That the proponent be requested to supply flood modelling information

9.2 LEP Amendment Request - Teven Road Transport Facility

which details the impact of filling the subject lots to the 1:100 year flood level of RL 2.7 AHD, and a detailed traffic study which examines the issues specified by the RMS. Further, that additional technical studies be requested of the proponent in the event that Council staff form a view that additional environmental constraints may materially restrict the use of the land for the nominated purposes. This information is to be provided to advance the preparation of the planning proposal.

3. That the Council give further consideration to the planning proposal upon the submission of information referred to in point two above.

Attachment(s)

1. Attachment One - Submission from Newton Denny Chapelle
2. Attachment Two - Report Site Selection Investigation - Freight Transport Facilities, Warehousing and Distribution Centres

9.2 LEP Amendment Request - Teven Road Transport Facility

270214/1 RESOLVED

(Cr Sharon Cadwallader/Cr Susan Meehan)

1. That Council endorses the preparation of a planning proposal which proposes the insertion of freight transport facilities, warehouse or distribution centre land uses as additional permitted uses within Schedule 1 of Ballina LEP 2012, in relation to Lots 2 and 3 DP 749680, Lot 5 and 12 DP 1031875, Lots 227, 228 and 229 DP 1121079 and Lot 12 DP 1011575, Teven Road, West Ballina.
2. That the proponent be requested to supply flood modelling information which details the impact of filling the subject lots to the 1:100 year flood level of RL 2.7 AHD, and a detailed traffic study which examines the issues specified by the RMS. Further, that additional technical studies be requested of the proponent in the event that Council staff form a view that additional environmental constraints may materially restrict the use of the land for the nominated purposes. This information is to be provided to advance the preparation of the planning proposal.
3. That the Council give further consideration to the planning proposal upon the submission of information referred to in point two above.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Williams, Cr Keith Johnson, Cr Susan Meehan, Cr Ken Johnston, Cr Paul Worth, Cr Robyn Hordern and Cr Ben Smith
AGAINST VOTE - Cr Jeff Johnson

Ballina Shire Council

Ordinary Meeting of Ballina Shire Council

Appendix 8 – Report to Council dated 27 March 2014**9.5 LEP Amendment Request - Teven Road Transport and Logistics Precinct****9.5 LEP Amendment Request - Teven Road Transport and Logistics Precinct****Delivery Program** Strategic Planning**Objective** To obtain the Council's endorsement for the submission of a planning proposal for the proposed Teven Road transport and logistics precinct at West Ballina for Gateway determination.**Background**

The Council, at its Ordinary Meeting held on 27 February 2014, considered a request to amend the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) from Newton Denny Chapelle on behalf of several landowners with holdings located between Teven Road and the Ballina Bypass in West Ballina. The Council also considered a Site Selection Investigation (SSI) report which examined the current and projected need for, and preferred location of, freight and logistics land uses in Ballina Shire. The request sought an amendment to the Ballina LEP 2012 to enable transport and logistics land uses to be undertaken on the respective properties, subject to development consent being obtained.

In relation to this matter, Council resolved as follows [Minute No. 270214/10]:

1. *That Council endorses the preparation of a planning proposal which proposes the insertion of freight transport facilities, warehouse or distribution centre land uses as additional permitted uses within Schedule 1 of Ballina LEP 2012, in relation to Lots 2 and 3 DP 749680, Lot 5 and 12 DP 1031875, Lots 227, 228 and 229 DP 1121079 and Lot 12 DP 1011575, Teven Road, West Ballina.*
2. *That the proponent be requested to supply flood modelling information which details the impact of filling the subject lots to the 1:100 year flood level of RL 2.7 AHD, and a detailed traffic study which examines the issues specified by the RMS. Further, that additional technical studies be requested of the proponent in the event that Council staff form a view that additional environmental constraints may materially restrict the use of the land for the nominated purposes. This information is to be provided to advance the preparation of the planning proposal.*
3. *That the Council give further consideration to the planning proposal upon the submission of information referred to in point two above.*

The planning proposal has been prepared and forms Attachment One to this report. The purpose of this report is to obtain the Council's endorsement to submit the planning proposal to NSW Planning and Infrastructure to obtain a Gateway determination. Council's established practice in relation to this type of LEP amendment is for the Council to receive the planning proposal documentation for consideration (following initial commencement of an LEP amendment process) with a view to determining whether the matter should progress to Gateway determination. That is, the February decision commenced the amendment process, with the endorsement of the planning proposal being the next step in progressing the matter.

9.5 LEP Amendment Request - Teven Road Transport and Logistics Precinct

The additional information required will be sought from the proponent after Gateway determination. The planning proposal would be reported to the Council for consideration again, with the benefit of this further information, before public exhibition.

Key Issues

- Processing of LEP amendment request and submission of planning proposal for Gateway determination
- Appropriateness of specifying particular land uses as permitted on certain parcels of land
- Need for additional areas for freight and logistics land uses
- Expansion of urban land uses west of the Ballina Bypass

Information

The planning proposal has been prepared on the basis of information already available to Council. At this stage the degree to which known land constraints such as flooding impacts, acid sulfate soil issues, drainage and geotechnical factors as well as bushfire hazard will impact on the planning proposal is not known. Additionally the traffic concerns raised by Roads and Maritime Services (RMS) during preparation of the SSI report have also not been further examined.

The attached planning proposal documents the degree to which the proposal complies with the applicable strategic planning framework. Consideration has been given to the planning proposal's consistency with the Far North Coast Regional Strategy, the Ballina Shire Growth Management Strategy, the Ballina LEP 2012, applicable State Environmental Planning Policies and the Minister's Section 117 Directions.

It has been concluded that the planning proposal is generally consistent with the applicable strategic planning framework.

Gateway determination requirements will specify the range of investigations and studies that P&I will require to advance the planning proposal. Such information will then be required to be submitted to Council for incorporation within the planning proposal prior to consultation with public authorities or the community.

It is intended that the planning proposal will be reported to the Council for further consideration, having regard for the assessment of additional information provided by the proponent, prior to public exhibition. This will be another opportunity for the Council to consider whether the matter should continue to progress following more detailed technical assessment of the subject land.

Sustainability Considerations

- **Environment**
Environmental impacts such as flooding and bushfire hazard require further assessment following Gateway determination.

9.5 LEP Amendment Request - Teven Road Transport and Logistics Precinct

- **Social**
Positive social impacts are anticipated from the employment opportunities that have the potential to be created from the proposed transport and logistics precinct.
- **Economic**
The proposed LEP amendment has the potential to provide a significant economic stimulus in the shire.

Legal / Resource / Financial Implications

There are no specific legal implications associated with this proposed LEP amendment at this time.

The matters arising from this report can be attended to within existing resources.

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

Importantly, Council's applicable fee for the preparation of a planning proposal had not been paid by the proponent at the time of writing this report. However, given the short timeframe between Council's February decision and this report, this is not considered to be problematic at present. In this circumstance, if the Council resolves to proceed to submit the planning proposal for Gateway determination, staff will not submit the planning proposal until the required fee is paid.

Progress of this matter can be accommodated within the Strategic and Community Facilities Group work program.

Consultation

Consultation requirements will be specified within the Gateway determination.

Council has already undertaken preliminary consultation with the RMS and the Australian Logistics Council during the preparation of the SSI report.

Options

1. Endorse the planning proposal for submission to Planning and Infrastructure for Gateway determination.

This is the preferred and recommended option. Requiring the submission of technical information after a favorable Gateway determination has been obtained provides the proponent with additional certainty to justify the expenditure of funds to meet the cost of specified technical reports and studies.

2. Require the proponent to submit additional information for incorporation into the planning proposal prior to submission to Planning and Infrastructure for Gateway determination.

9.5 LEP Amendment Request - Teven Road Transport and Logistics Precinct

The preparation of the planning proposal has highlighted a number of land and locality constraints that will require detailed examination to determine associated impacts. The submission of additional information prior to Gateway determination would provide a clearer indication as to whether known land constraints are resolvable.

It is open to the Council to pursue this option but it would represent a change of approach from the intent expressed in discussion associated with the February resolution. That is, the understanding of staff arising from the meeting is that the Council does not require the detailed assessment of the site until after Gateway determination.

3. Cease or defer processing of the LEP amendment request.

The Council may decline or defer the consideration of the requested LEP amendment.

This course of action is not recommended as the work already undertaken has established that there may well be increasing demand for sites within the shire suitable for use by the freight and logistics industry. In addition, the proposed site is suitably located near the junction of two major highways and therefore has certain strategic locational advantages over other sites that are more appropriately zoned at present.

Proceeding with the proposal at this time will enable the completion of further technical assessment following Gateway determination. Importantly, Council will have other opportunities during the processing of the amendment request to cease progress of the matter should it determine this to be the appropriate course of action in the future.

RECOMMENDATIONS

1. That Council authorises the submission of a planning proposal which provides for the insertion of freight transport facilities and warehouse or distribution centre land uses as additional permitted uses within Schedule 1 of Ballina LEP 2012 to NSW Planning and Infrastructure for review and Gateway determination.
2. That upon an affirmative Gateway determination being received from NSW Planning & Infrastructure, the proponent be required to submit the technical documentation necessary to enable a comprehensive assessment of the proposal and potential environmental, social and economic implications.
3. That a further report be presented to the Council in relation to this matter prior to proceeding to public exhibition.

Attachment(s)

1. Attachment One - Planning Proposal

9.5 LEP Amendment Request - Teven Road Transport and Logistics Precinct

Ballina Shire Council
27/03/14

Ordinary Meeting of Ballina Shire Council
Page 4

9.5 LEP Amendment Request - Teven Road Transport and Logistics Precinct

270314/1 RESOLVED

(Cr Sharon Cadwallader/Cr Ben Smith)

1. That Council authorises the submission of a planning proposal which provides for the insertion of freight transport facilities and warehouse or distribution centre land uses as additional permitted uses within Schedule 1 of Ballina LEP 2012 to NSW Planning and Infrastructure for review and Gateway determination.
2. That upon an affirmative Gateway determination being received from NSW Planning & Infrastructure, the proponent be required to submit the technical documentation necessary to enable a comprehensive assessment of the proposal and potential environmental, social and economic implications.
3. That a further report be presented to the Council in relation to this matter prior to proceeding to public exhibition.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Williams, Cr Keith Johnson, Cr Susan Meehan, Cr Ken Johnston, Cr Paul Worth, Cr Robyn Hordern and Cr Ben Smith

AGAINST VOTE - Cr Jeff Johnson

Appendix 9 – Gateway Determination



Contact: Katrina Burbidge
Phone: (02) 6541 6600
Fax: (02) 6541 6601
Email: Katrina.Burbidge@planning.nsw.gov.au
Postal: Locked Bag 9022, Grafton NSW 2460

Our ref: PP_2014_BALLI_001_00 (14/06157)
Your ref: LEP Amendment Request
Teven Road Transport Precinct (14/20841)

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

Dear Mr Hickey,

Planning proposal to amend Ballina Local Environmental Plan 2012

I am writing in response to your Council's letter dated 1 April 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 permit 'freight transport facility and warehouse and distribution centre' as an additional permitted use on land at Teven Road, West Ballina.

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 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.5 Rural Lands and 4.1 Acid Sulfate Soils are justified by the Site Selection Investigation Study or are of minor significance. No further approval is required in relation to these Directions.

Council may still need to obtain the Secretary's agreement to satisfy the requirements of relevant S117 Directions, such as S117 Direction 4.3 Flood Prone Land. Council should ensure this occurs prior to the plan being made.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has now 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 9 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.

Bridge Street Office: 23-33 Bridge Street, Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney
Telephone: (02) 9228 6111 Facsimile: (02) 9228 6455 Website: www.planning.nsw.gov.au

Should you have any queries in regard to this matter, I have arranged for Ms Katrina Burbidge of the Department of Planning and Environment's regional office to assist you. Ms Burbidge can be contacted on (02) 6641 6600.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Richard Pearson', followed by the date '30/4/14' written in the same ink.

Richard Pearson
Deputy Director General
Growth Planning and Delivery

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



Gateway Determination

Planning proposal (Department Ref: PP_2014_BALLI_001_00): to permit freight transport facility and warehouse and distribution centre on land at Teven Road, West Ballina.

I, the Deputy Director General, Growth Planning and Delivery 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 permit 'freight transport facility' and 'warehouse and distribution centre' as an additional permitted use on land at Teven Road, West Ballina should proceed subject to the following conditions:

1. Council is to undertake a traffic study which considers the operation and potential traffic issues of the Tavern Road interchange with the Pacific Highway, given previous concerns raised by Roads and Maritime Services. The planning proposal is to be updated to take into consideration the outcomes of the study which is also to be placed on public exhibition with the planning proposal.
2. Prior to undertaking public exhibition, flood investigations are to be carried out to address the proposal's inconsistency with S117 Direction 4.3 Flood Prone Land. Council is to update the planning proposal to take into consideration the outcomes of this investigation.
3. 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 must be made publicly available for a minimum of **28 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 (Department of Planning and Environment 2013)*.
4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
 - Transport for NSW - Roads and Maritime Services
 - NSW Rural Fire Service (S117 Direction 4.4 Planning for Bushfire Protection)Each public authority 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.
5. 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).

BALLINA PP_2014_BALLI_001_00 (14/06157)



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_001_00	Planning proposal to permit 'freight transport facility' and 'warehouse and distribution centre' as an additional permitted use on land at Teven Road, West Ballina.

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

Dated 30 Apr 14 2014

A handwritten signature in blue ink, appearing to read 'R. Pearson', written over a horizontal line.

Richard Pearson
Deputy Director General
Growth Planning and Delivery
Department of Planning and Environment



6. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

Dated 30 day of April

2014

A handwritten signature in blue ink, appearing to read 'Richard Pearson', written over the year '2014'.

Richard Pearson
Deputy Director General
Growth Planning and Delivery
Department of Planning and Environment

Delegate of the Minister for Planning

BALLINA PP_2014_BALLI_001_00 (14/06157)



Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2014_BALLI_001_00)

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(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 30 April 2014 (as since altered) for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Delete:

Condition 6, "The timeframe for completing the LEP is by 7 November 2015."

and replace with:

New Condition 6, "The timeframe for completing the LEP is by 7 August 2016."

Dated *22nd* day of *October* 2015


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

Delegate of the Minister for Planning

Appendix 10 – Report to Council dated 28 May 2015

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

Delivery Program Strategic Planning

Objective To obtain direction from the Council with respect to an acceptable flood policy and planning approach in relation to the proposed Teven Road Transport and Logistics Precinct prior to further processing of the planning proposal.

Background

The Council, at its Ordinary Meeting held on 27 February 2014 initially considered a request from Newton Denny Chapelle to amend the Ballina Local Environmental Plan 2012 (BLEP 2012). The request was made on behalf of several landowners with holdings located on the eastern side of Teven Road immediately north of the Teven Pacific Highway interchange and backing onto the Ballina Bypass at West Ballina.

The proposal submitted was for the Council to initiate an amendment to BLEP 2012 so as to enable transport and logistics land uses to be undertaken on the respective properties, subject to development consent being obtained.

The map below shows by red outline the location of the development site.

Map 1 – Proposed Teven Road Transport and Logistics Precinct



9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

The subject properties are zoned RU2 Rural Landscape zone under the provisions of BLEP 2012. It is proposed that *freight transport facility*, and *warehouse or distribution centre* be included as additional permitted uses within the subject properties. The site has an approximate area of 17 hectares.

Attachment One to this report contains the land use table for the RU2 Rural Landscape zone as contained in BLEP 2012. In this respect it is noted that the RU2 zone permits, with consent, a significant number of intensive non-agricultural type land uses which include caravan parks, cellar door premises, crematoria, correctional centres, depots, function centres, information and education facilities, passenger transport facilities, markets, restaurants or cafes, vehicle repair stations and veterinary hospitals.

At its Ordinary Meeting held on 27 March 2014 the Council considered the planning proposal that had been prepared for the Teven Road Transport and Logistics Precinct and resolved as follows [Minute No. 270314/12]:

1. *That Council authorises the submission of a planning proposal which provides for the insertion of freight transport facilities and warehouse or distribution centre land uses as additional permitted uses within Schedule 1 of Ballina LEP 2012 to NSW Planning and Environment for review and Gateway determination.*
2. *That upon an affirmative Gateway determination being received from NSW Planning & Environment, the proponent be required to submit the technical documentation necessary to enable a comprehensive assessment of the proposal and potential environmental, social and economic implications.*
3. *That a further report be presented to the Council in relation to this matter prior to proceeding to public exhibition.*

The NSW Department of Planning and Environment issued a Gateway determination on 30 April 2014 which forms Attachment Two to this report. The Gateway determination required, amongst other matters, the undertaking of flood investigations to address the proposal's inconsistency with the EP&A Act Section 117 Direction 4.3 relating to Flood Prone Land. The planning proposal was required to be updated to reflect these investigations prior to public exhibition.

The timeframe for the completion of the LEP amendment was set at 9 months from the week following 30 April 2014. This time period was subsequently extended by an additional 9 month period until 7 November 2015.

Attachment Three to this report contains a copy of S.117 Direction 4.3 Flood Prone Land. Of particular relevance is the following requirement contained within the direction:

- (4) *A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).*

Attachment Four contains a copy of the NSW Flood Prone Land Policy. Importantly, the policy objective is based on the recognition of the following two facts:

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

- *Flood prone land is a valuable resource that should not be sterilised by unnecessarily precluding its development; and*
- *If all development applications and proposals for rezoning of flood prone land are assessed according to rigid and prescriptive criteria, some appropriate proposals may be unreasonably disallowed or restricted, and equally quite inappropriate proposals may be approved.*

The NSW Flood Prone Land Policy requires a merit approach to be adopted for all development decisions in the floodplain and to take into account social, economic and ecological factors as well as flooding considerations.

Following the Gateway determination Newton Denny Chapelle was formally advised in May 2014 that a number of detailed studies and investigations were required so as to enable the planning proposal to be further considered. These studies were as follows:

- *Flora and Fauna Impact Assessment*
- *Bushfire Threat Assessment Report*
- *Preliminary Contamination Site Investigation*
- *Acid Sulfate Soils Investigation*
- *Geotechnical Investigation*
- *Traffic Impact Report*
- *Aboriginal Cultural Heritage Assessment*
- *Flood Impact Assessment.*

It was determined that the *Flood Impact Assessment* was the most critical, the results of which would ultimately determine the feasibility of proceeding with the planning proposal.

To that end Newton Denny Chapelle submitted detailed site level information in September 2014 for the site which then enabled flood modelling to be undertaken for various development scenarios. Modelling was undertaken in the period October 2014 to April 2015.

To enable the proponents and their consultants to consider the merit of undertaking additional studies and investigations, direction from the Council is now required in respect of departures from its current flood policy position.

This report has been prepared by the Strategic and Community Facilities Group with respect to the planning proposal, in conjunction with Council's Civil Services Group.

Key Issues

- Acceptability of a 1 in 5 year ARI flood planning level for car parking and vehicle access areas, and
- Acceptability of modelled flood increase impacts on the Ballina floodplain.

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

Information

Flood modelling was undertaken on behalf of the proponents (at their cost) by BMT WBM using Council's Integrated Flood Model. Various scenarios were required to be modelled to arrive at a development option which meets the needs of the proponents, and which also minimises flood impacts.

Attachment Five contains a copy of the finalised flood advice received from BMT WBM following the modelling of various development scenarios.

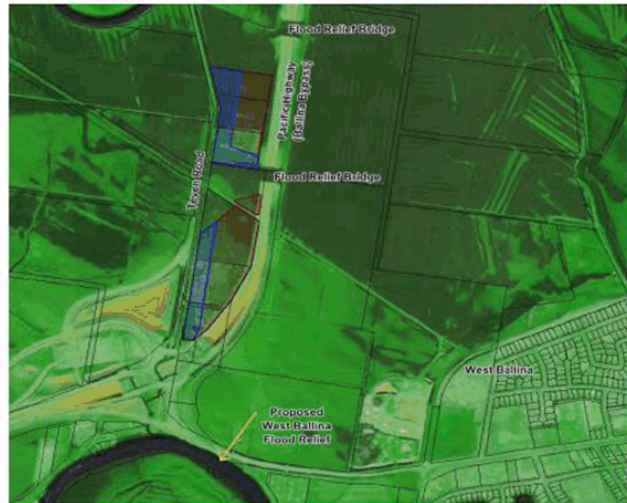
Scenario 4, as shown on Map 5B within Attachment Five, minimises flood level increase impacts within the floodplain to the greatest degree. This scenario makes provision for 40% of the site (western sections fronting Teven Road) to be filled to the 5 year ARI flood level (RL 1.2m AHD) and to be used for car parking and vehicle access purposes.

The remaining 60% of the site is proposed to be filled to the 100 year ARI flood level (RL 2.7m AHD) and would potentially be available for building purposes. Scenario 4 is also based on a 2 cell West Ballina Flood Relief Structure (WBFR - culverts under River Street) being in place. It also assumes appropriate site contouring of fill around the flood relief bridge under the Ballina Bypass so as to maintain effective connectivity between the floodplain on each side of the Bypass.

The 40/60 ratio was selected based on information supplied by Newton Denny Chapelle and is considered to reflect the relative proportion of open site areas and buildings associated with freight transport and warehouse type uses.

Map 2 below shows the development site and indicates, through the use of the blue colour, the section of the site modelled at the 5 year ARI flood level.

Map 2 – Development site showing proposed 5 year ARI flood fill level in blue



9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

Map 3 – Extract from Map 5B – Scenario 4 Flood Impacts



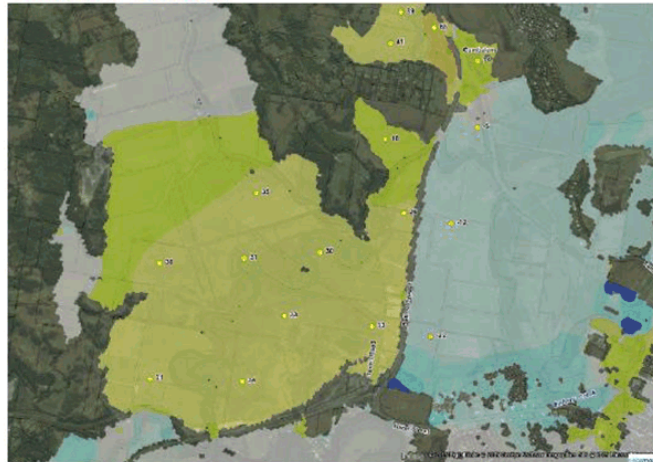
Map 3 above also shows the location of the development site and provides some spot impact increase levels, in millimetres, resulting from the Scenario 4 modelled development. The light green areas immediately to the north and south of the development site represent the areas of highest impact from the proposed development where peak flood levels have been modelled by BMT WBM to increase by between 5mm and 25mm.

Council's current policy position was developed following the 2008 Ballina Flood Study Update and required that development projects be assessed on a cumulative impact basis and not cause an increase of more than 50mm to peak flood levels based on 2005 floodplain conditions. Prior to the acceptance of the 2008 update study the same policy applied, based on the 1997 Ballina Floodplain Management Study, which defined acceptable impact on flood behaviour as one that did not increase cumulative design flood levels by more than 50mm.

Map 4 below shows cumulative flood increase levels for the 100 year ARI event, from approved developments, excluding the Teven Road proposal, from 2005 floodplain conditions, based on a 2 cell WBFR structure being in place. Modelling incorporating a 3 cell WBFR structure (Scenario 5) was also undertaken and showed no substantive differences to the modelling for the 2 cell scenario.

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

Map 4 – 100 year ARI flood increase modelling results from approved developments – 2 cell WBFR



The addition of the spot impacts levels shown in Map 3 to the spot impact levels shown in Map 4 provides an indication as to the degree to which the proposed development impacts on the 50mm maximum cumulative impact policy standard. In this respect it is noted that it is only in respect to Cumbulam, western side of the Ballina Bypass, where the 50mm increase policy standard will be exceeded. In that case there is currently already an exceedance of the standard.

Consideration of the 5 year ARI Flood Level for Open Car Parking and Vehicle Access Purposes

Advice from BMT WBM

BMT WBM state that the filling of parking areas to the 5 year ARI should be considered by Council on a 'merit' based approach in accordance with the NSW Floodplain Development Manual (2005). The relevant comments made by BMT WBM in its flood advice are reproduced below:

Use of the lower level parking facilities fulfils the objective for maintaining flood storage, however, comes at the cost of flood immunity. To compensate for the

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

reduced flood immunity, certain additional emergency management measures must be considered by the developer.

Should the multi-level filling scenario be adopted for this development, consideration should be given to the following in relation to emergency management of the site:

- *Emergency Action Plans should be prepared and actioned when flooding is expected. This should involve monitoring rainfall and creek / river levels, including monitoring BoM Flood Watches and Flood Warnings. A similar approach was adopted by the Ballina Bypass Alliance for construction of the road embankment. An Emergency Action Plan was developed, which included the following:*
 - *Identification of roles and responsibilities*
 - *Monitoring of rainfall and river levels*
 - *Evacuation management planning*
- *Consideration should be given to evacuation, particularly from the northern part of the site. The aerial survey used for the flood modelling and terrestrial survey provided by Council indicates Teven Road to be higher than the 5 year ARI flood level assigned to the parking area, so this will support effective evacuation.*
- *Detailed modelling should be undertaken to establish the lead time expected for flash flood scenarios. This shall include identification of hydrologic thresholds (rainfall depths / times and water level) that will trigger the flood action process.*

Strategic Context - NSW Floodplain Development Manual 2005 (FPDM) – Merit Approach

The merit approach is described in the FPDM as follows:

The merit approach weighs social, economic, ecological and cultural impacts of land use options for different flood prone areas together with flood damage, hazard and behaviour implications, and environmental protection and well being of the State's rivers and floodplains.

The merit approach operates at two levels. At the strategic level it allows for the consideration of social, economic, ecological, cultural and flooding issues to determine strategies for the management of future flood risk which formulate into council plans, policy and EPIs (environmental planning instruments). At a site specific level, it involves consideration of the best way of conditioning development allowable under the floodplain risk management plan, local flood risk management policy and EPIs.

At this stage of the process a merit-based approach to the determination of the suitability of a 5 year ARI flood level for car parking and site access area has not yet been documented.

Council's Civil Services Group has advised that the subject site is within the lower catchment of Emigrant and Maguires Creeks. The main flood hazard here appears to be associated with flash floods in the upper catchment. Floodwaters from such floods typically take less than 8 hours to reach the

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

lower catchment, however, more precise information is not currently available. This issue is the subject of a recommendation by BMT WBM for detailed modelling to be undertaken so as to establish available lead times.

Council's Civil Services Group is of the view that appropriate emergency management plans can be developed for the subject site and that such plans, and the associated additional modelling, would be more appropriately undertaken as part of the development application process following completion of the planning proposal and associated LEP amendment.

In terms of the appropriateness of the 5 year ARI flood level for car parking and vehicle access purposes on the subject site, the following comments summarise the case to support the use of this standard:

1. 60% of the site is proposed to be filled to the 100 year ARI flood level and the floor level within buildings will have at least an additional 200mm freeboard. Buildings associated with freight transport uses are generally large and have the capacity to act as a refuge for vehicles that would otherwise be parked at the lower 5 year ARI level car park and also as a safe refuge for staff.
2. The upper reaches of the Emigrant and Maguires Creek catchments have in place a SMS early warning system linked to rain gauges within the upper catchments. This system was installed in 2008 with grant assistance. The valley is identified in the State Emergency Service's local flood plan. This system has the capacity to be expanded to include the lower catchment and in particular, development proposed for the subject site. When triggered it would enable response from specific Emergency Management Plans which would provide for the relocation of vehicles out of the 5 year ARI flood prone area to higher ground and, if necessary, the evacuation of staff from the site.
3. Teven Road, adjacent to the southern part of the site, is at a level above the 5 year ARI flood level (approx. road level of 1.5m AHD). Lots which front this section of Teven Road which is above the 1.2m AHD level suggested for car parking areas would be able to access Teven Road for evacuation purposes (this does not apply to the northern part of the site where the level of Teven Road is approximately 1m AHD).

Strategic Context - NSW Floodplain Development Manual 2005 (FPDM) – Strategic Planning Considerations

The FPDM sets out the strategic planning considerations for rezoning proposals for uses outside of those identified as appropriate by the existing flood risk management plan. The FPDM indicates that development is to be assessed both on a cumulative and individual basis to ensure:

- It will not increase the flood risk experienced by *other current floodplain occupants. This includes not altering the danger to personal safety of existing floodplain inhabitants or flood damage to other properties, or adversely affecting them in any way (such as elongation of inundation times) during flooding;*
- *It has to be designed and constructed in such a manner as to ensure that potential loss of life in an extreme flood event is minimal. The*

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

development does not adversely impact upon emergency response management of other sites or areas.

- *It has been undertaken, designed, and constructed in such a manner as to hold potential financial losses from flooding at an acceptably low level; and*
- *It will also not adversely impact on the social, cultural or environmental requirements of the floodplain.*

In respect to the above considerations it is relevant to note that the draft Ballina Floodplain Risk Management Plan (draft BFRMP) was exhibited concurrently with the draft Floodplain Management Development Control Plan between February and March 2015. These documents are being reported elsewhere in this business paper and provide for merit-based assessments such as those being proposed.

The use of the 5 year ARI flood level for open car parking and vehicle manoeuvring areas does not however comply with the Flood Planning Level (FPL) nominated by the draft DCP for open car parking areas. The FPL nominated is the 50 year flood level. It is in terms of this issue that BMT WBM recommended the appropriateness of the 5 year ARI flood level to be assessed using the merit approach detailed in the FPDM.

Strategic Context - Ballina DCP 2012 – Chapter 2b – Floodplain Management

The current DCP Chapter 2b sets out requirements for site filling and building floor levels within flood prone areas of the shire. For the purposes of the DCP the subject site falls within the classification of rural zoned land that is currently vacant. Minimum site filling to the 1 in 100 year ARI flood (mAHD) is required plus 0.5m AHD minimum for building floor levels. In the subject case the 1 in 100 year ARI flood level is 2.7m AHD.

The DCP does not specifically reference open car parking. There have been previous merit assessments which required such areas to be no lower than the 1 in 50 year flood level. The DCP designates the 1 in 50 year flood level as the minimum applicable fill level for farm sheds. In the subject case the 1 in 50 year ARI flood level is 2.4m AHD.

The Council, at its Ordinary Meeting held on 27 February 2014, when considering a nearby Section 96 modification application related to DA2010/962 – Highway Service Centre, accepted a minimum fill level for car parking and vehicular access of 2.4m AHD. The minimum fill level under buildings, fuel bowser, fuel delivery and storage areas remained set at 2.7m AHD and the freeboard for buildings was reduced from 500mm to 200mm i.e. to 2.9m AHD. The acceptance by Council of the 1 in 50 year ARI flood level for vehicle access and car parking clarified the policy position that had previously been applied but not specifically referenced within the DCP.

The draft Ballina Floodplain Management Development Control Plan was publicly exhibited between 4 February 2015 and 6 March 2015 and at the time of preparing this report has not yet been adopted by the Council (these matters are subject to reporting elsewhere in this business agenda). Using information contained within the *2012 Ballina Floodplain Risk Management Study*, the draft DCP locates the subject site within a High Flood Risk Precinct.

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

The draft DCP describes the High Flood Risk Precinct as 'Areas outside of Extreme Flood Risk areas which, if completely filled or developed, would cause an unacceptable change in flood behaviour. Filling or development would not normally be acceptable. Dangerous flood conditions occur here.

The applicable relevant prescriptive development controls for the High Flood Risk Precinct are as follows:

Development	Flood Planning Level (FPL)
Commercial or Industrial Buildings	FPL 2 (2100 Climate Change 1 in 100 year flood level plus 200mm freeboard). In the subject case this is equivalent to 2.9m AHD.
Open car parking or car ports	The minimum surface level of open car parking spaces or carports shall be as high as <i>practical</i> , and not below: FPL 1 (2100 Climate Change 1 in 50 year flood level). In the subject case this is equivalent to 2.4m AHD.

Strategic Context – Conclusions - Use of 5 year ARI Flood Level

The FPDM provides a means whereby the merit based approach can be further considered by the proponents' planning consultants to determine the suitability of the 5 year ARI standard, should Council see merit in its use. An examination of the appropriateness of the 5 year ARI flood level standard for car parking and vehicle access purposes by Council's Civil Services Group, based on information currently available, has tended to indicate that on this particular site it may prove to be acceptable.

The use of the 5 year ARI flood standard as indicated above is however, a significant departure from Council's current policy position and the draft policy position as contained in the exhibited *draft DCP Chapter 2b – Floodplain Management*.

Consideration of Acceptability of Flood Level Increase Resulting from Proposed Filling Levels

Background

The 1997 Ballina Flood Management Study defined an acceptable impact on flood behaviour, as a consequence of filling, as one which did not increase the design flood level by more than 5cm (50mm). In that study various future development areas to the north and west of Ballina were assessed. These areas had a combined area of approximately 700ha and were modelled to determine flood increase impacts and the broad nature of flood alleviation measures required to meet the 50mm flood level increase limit.

The 1997 study noted that policy within NSW and other states at that time related to acceptable impacts on flood levels varying from zero to 10cm. A zero impact was suggested as being applicable to minor development; a 5cm impact for major development and a 10cm impact was suggested as being acceptable where the impact is confined to the property under consideration.

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

The current policy management position was re-established following the 2008 Ballina Flood Study Update, and required that development projects be assessed on a cumulative impact basis, and not cause an increase of more than 50mm to peak flood levels based on 2005 floodplain conditions. Given that the 50mm increase threshold has been exceeded for Cumbulam (including non-Council projects) no additional impact on Cumbulam is permitted by the Council's current policy position.

In respect to the situation at Cumbalum it is noted that the approval granted by the Department of Planning for the Ballina Bypass in 2003 permitted a maximum increase of 50mm in inundation levels upstream of the project for the 1 in 100 year ARI rainfall event. The majority of the flood increase impacts at Cumbalum, west of the Ballina Bypass, can be attributed to the Ballina Bypass works.

Impact of Filling Development Site

The development site was originally modelled in December 2014 as being filled to the 100 year ARI flood level of 2.7m AHD. Modelling results for the 20 year and 100 year ARI flood event indicated increases to peak flood levels of between 5mm and 25mm over a large area (4.9km² to 5.4km²). Increases at Cumbulam were in the order of 2mm and 3mm for the 20 and 100 year events respectively.

BMT WBM suggested two options to mitigate the impacts of the development as follows:

- Reduction in development footprint (to maintain flood storage) and or
- Shaping of development footprint, especially around the flood relief bridge to maximize efficiency of the flood relief bridge).

The mapping for Scenario 4 and 5 shows that during a 100 year ARI flood event, there is a small area that will experience an increase in peak flood levels of between 5mm and 25mm. These areas are located immediately to the north of the Teven Road site and on the southern side of the site in the vicinity of the Teven Pacific Highway interchange. In both cases they are located on the western side of the Ballina Bypass. At Cumbulam, modelling indicates that peak flood levels increase by 2mm on the eastern side of the Ballina Bypass and less than 1 mm on the western side.

It appears that the Scenario 4 development will only exceed the 50mm cumulative impact limit on the western side of the Ballina Bypass at Cumbulam. At this location the cumulative impact of existing approved development is estimated to be 66mm. The Scenario 4 development has been estimated to add an additional 1mm to the 100 year ARI flood level at this point. Considering the inherent accuracy limitations within any model, the 1mm increase could be considered as no change.

In the event that the Council determines that the increases resulting to the 100 year ARI flood level, as a consequence of the Scenario 4 development are acceptable, this will have the following consequences for the proposed development:

- Development which requires additional site filling cannot proceed until the WBFR structure (2 or 3 cell) has been constructed;

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

- That part of the site shaped and not filled, located within Lots 228 and 229 DP 1121079, adjacent to the flood relief bridge under the Ballina Bypass being designated as a floodway and appropriately protected through restrictions on title; and
- Shaping of development sites to create the lower level 5 year ARI car park and access areas. In some cases this will require a lowering of current site level at the front of existing lots.

An appropriate mechanism, to ensure that these outcomes are able to be achieved as part of the LEP amendment process, is a voluntary planning agreement.

Sustainability Considerations

- **Environment**
Ecological factors relating to floodplain impacts must be considered under the provisions of the NSW Flood Prone Land Policy. Whilst it is considered unlikely that there will be any significant adverse ecological impacts as a consequence of the increase in flood levels resulting from proposed filling, this has not yet been examined by the proponents' consultant.
- **Social**
Social factors are also required to be considered under the NSW Flood Prone Land Policy. Social impact issues include the physical and mental impacts on residents whose households are flooded and impacts associated with social disruption. Whilst the proponents' consultant has not yet examined the issue of social impacts, it is considered, given the minor increase in flood levels associated with Scenario 4, that social issues will not be significant.
- **Economic**
Flooding of properties can give rise to significant economic consequences for individuals directly affected and the broader community. Economic consequences are also required to be considered under the NSW Flood Prone Land Policy. As is the case with ecological and social impacts, the proponents' consultant would be required to consider economic impacts associated with the proposed filling and flood level increase in detail prior to the public exhibition of the planning proposal. That is in the event that the Council supports changes to current flood policy as outlined in this report.

Legal / Resource / Financial Implications

Section 733 of the Local Government Act provides an exemption from liability for anything done or omitted to be done in good faith by the Council in so far as it relates to the likelihood of land being flooded or the nature or extent of any such flooding.

The exemption from liability is applicable to the preparation or making of an environmental planning instrument, including a planning proposal for the proposed environmental planning instrument, or a development control plan. A council is considered to have acted in good faith in respect to flooding

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

matters if it has substantially acted in accordance with the principles contained within the NSW Flood Plain Development Manual 2005.

All costs associated with the further documentation of the planning proposal are required to be met by the proponent and this includes any associated staff time.

Consultation

In accordance with the Gateway determination requirements, consultation is required with NSW Roads and Maritime Services and the Rural Fire Service. Community consultation for a minimum period of 28 days is also required. At this stage of the process no post Gateway consultation has been undertaken.

Options

1. Accept the 5 year ARI flood level for car parking and vehicle access purposes on the subject site as being a suitable criteria for a more in depth evaluation in accordance with the merit based approach detailed in the FPDM. Accept also modelling Scenario 4 which provides for a 1 mm flood level increase at Cumbulam, west of the Ballina Bypass, and other flood level increases as indicated in the report from BMT WBM contained in Attachment Five.

This is the recommended option. Acceptance of this option will enable the proponents' consultants to document in greater detail the relevant ecological, economic, cultural and social factors required to be considered in accordance with the merit approach outlined in the FPDM. In addition, consideration will also be required on the manner in which it is proposed to secure modelling parameters relating to lowering 40% of the site to the 5 Year ARI level, shaping of land adjacent to the flood bridge under the Ballina Bypass and restricting development to after the construction of the West Ballina flood relief structure.

2. Require additional flood modelling to be undertaken, as part of the planning proposal process, to determine a lead time for expected flash flood scenarios. This option is not recommended as part of the planning proposal process. Additional modelling is considered to be more appropriately undertaken as part of any future DA process. Information available to Council staff, at this stage of the process, suggests that there is sufficient lead time in the lower catchment of Maguires and Emigrant Creeks to be able to satisfactorily document Emergency Action Plans based on modelling required to be undertaken at the DA stage.

3. Reject the 5 year ARI flood level for car parking and vehicle access purposes on the subject site as being unsuitable. The unsuitability could be based on inconsistency with Council's current and draft DCP provisions. Reject also the flood level increases modelled in Scenario 4 and in particular the 1mm level increase at Cumbulam as being unacceptable and contrary to Council's current policy.

This option is not recommended as it would effectively sterilise the use of the subject site for more intensive land uses beyond those that currently exist. Sterilisation of land resources is contrary to the NSW Flood Prone Land Policy. This approach should also be considered in relation to the

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

potential economic benefits to the broader community that may arise from transport and logistics uses on the land and the broader suitability of the subject land for such a facility, being located adjacent to the Pacific Highway interchange at Teven.

The FPDM advocates the use of a merit approach to the determination of suitable flood planning levels which has not yet been undertaken. In respect to the 1mm increase at Cumbulam this is at a level within the accuracy limits of the model.

RECOMMENDATIONS

1. That Council advise the proponents that the 5 year ARI flood level for car parking and vehicle access areas may be used for the purpose of further documenting the merit approach to assessing the suitability of flood planning levels as outlined in the NSW Floodplain Development Manual, for the purpose of progressing the planning proposal.
2. That Council accept the increase in flood levels modelled as a consequence of Scenario 4 in the flood advice provided by BMT WBM.
3. That the proponents be required to advise Council how it is proposed to secure the Scenario 4 modelling parameters as detailed in this report. In the event that a voluntary planning agreement is proposed, such an agreement shall be prepared in draft form and be exhibited with the planning proposal.
4. That a further report be provided for the Council's consideration when the planning proposal has been fully documented and prior to it being publically exhibited.

Attachment(s)

1. Land Use Table RU2 Zone
2. Gateway Determination
3. Section 117 Direction 4.3 Flood Prone Land
4. NSW Flood Prone Land Policy
5. BMT WBM Flood Advice

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

280515/1 RESOLVED

(Cr Sharon Cadwallader/Cr Paul Worth)

1. That Council advise the proponents that the 5 year ARI flood level for car parking and vehicle access areas may be used for the purpose of further documenting the merit approach to assessing the suitability of flood planning levels as outlined in the NSW Floodplain Development Manual, for the purpose of progressing the planning proposal.
2. That Council accept the increase in flood levels modelled as a consequence of Scenario 4 in the flood advice provided by BMT WBM.

Ballina Shire Council
28/05/15

Ordinary Meeting of Ballina Shire Council
Page 14

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

3. That the proponents be required to advise Council how it is proposed to secure the Scenario 4 modelling parameters as detailed in this report. In the event that a voluntary planning agreement is proposed, such an agreement shall be prepared in draft form and be exhibited with the planning proposal.
4. That a further report be provided for the Council's consideration when the planning proposal has been fully documented and prior to it being publically exhibited.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Williams, Cr Keith Johnson, Cr Susan Meehan, Cr Ken Johnston, Cr Paul Worth, Cr Robyn Hordern and Cr Ben Smith
AGAINST VOTE - Cr Jeff Johnson

Appendix 11 – Summary Report of Key Issues Identified in Proponent’s Technical Reports.

BSCPP 14/001 – Teven Road, West Ballina Summary of Key Issues Identified in Proponent’s Technical Reports

(Based on document prepared by Newton Denny and Chapelle)

Flora & Fauna Impact Assessment

An Ecological Assessment has been completed by Blackwood Ecological Services (BES). The assessment forms Appendix 13 to the planning proposal.

The BES assessment includes a description of ecological values within and adjacent to the subject land and assesses the potential impacts on these values associated with the future land use activity.

A summary of the key BES assessment and recommendations are provided in the table below:

Issue	Comments
Flora	<ul style="list-style-type: none"> • Five vegetation communities were identified within the area surveyed by BES, consisting of: <ol style="list-style-type: none"> 1. Tall grassland/rushland (Pigeon grass/Phragmites/Mixed species), 2. Mid-high grassland/herbland (Pigeon grass/Rhodes grass/Mixed species), 3. Very tall rushland in drains (Phragmites/Cumbungi) 4. Mid-high Swamp oak forest, and 5. Landscape plantings • The proposed development will result in the removal of all existing vegetation on the site to allow for the filling of the site. Vegetation removal will result in the loss of approximately: <ul style="list-style-type: none"> - 4.6ha of exotic grassland with Phragmites in Community 1 - 2.4ha of exotic grassland/herbland in Community 2 - 0.5ha of Phragmites dominated reedland with Cumbungi in Community 3 - 620m2 of Swamp oak in Community 4 - Areas of landscape plantings These vegetation community types are considered to be of low-moderate conservation significance and are widespread in the wider Study area, with varying degrees of disturbance. Phragmites reedland and Swamp oak forest are regenerating in the vicinity of the Subject site on farmland to the west of the new Teven Road alignment and elsewhere in drains and wet areas where land is not actively managed. <p>Direct Removal of Vegetation</p> <ul style="list-style-type: none"> • The loss of native vegetation on the subject lands is considered minor in the context of the availability of similar vegetation communities in the study area.

	<ul style="list-style-type: none"> BES found future construction works have little potential to result in indirect impact on areas of native vegetation adjacent to the development area as a result of accidental damage or excavation of root zones. The subject lands are easily accessed by construction vehicles and no areas of native vegetation occur immediately adjacent to the site.
	<p>Hydrological impacts on neighbouring habitats</p> <ul style="list-style-type: none"> BMT WBM (2015) categorise the site as a flood storage zone, as floodwaters are generally deep and slow moving. Flood modelling shows that, with the site filled to 2.7m and no West Ballina Flood Relief (WBFR), a 20 year ARI event would result in an area of approximately 4.9 square km experiencing an increase in flood levels of between 5mm and 25mm. For most of the area afflux does not exceed 6mm, although for the area to the north of the site (west of the Highway) afflux is up to 10mm. For this 20 year flood event, increases of greater than 5mm in flood level are generally experienced on the eastern side of the Highway, rather than on the western side where the more developed areas of wetland and Swamp oak forest occur. The BMT WBM report notes that “the low level filling previously assessed has only affected the flood storage, thus has caused minor increases to peak flood levels”. These recent changes to flood storage in the precinct will, over time, have some impact on the relative distribution of plant species and community types, generally favouring wetland species more tolerant of inundation at the expense of grasses and other species. These changes in the relative distribution of plant species and community types will take some years to become evident and are dependent on annual variations in rainfall and other factors, including the frequency of flooding. Analysis of aerial photography by BES over the last decade or so shows the existing distribution of species in the precinct, and particularly the relative extent of grassland, wetland and open water, is still responding to successive alterations to floodplain topography resulting from filling for the Ballina bypass and other factors. Wetland communities such as those present on the western side of Teven Road are dynamic ecosystems and readily adapt to minor alterations in hydrological conditions by the relative expansion and contraction of areas of aquatic plants, sedges and rushes and woody plants (primarily Swamp oak and Broad-leaved paperbark). Filling of the site will result in a minor increase in flooding in adjacent areas of habitat during a 100 Year ARI event including a small increase in the depth and duration of inundation. This increase is considered to be within the range of hydrological variation already experienced by these communities and is minor in the context of other changes in the floodplain to which the vegetation is still in the process of responding. A small increase in flood depth and duration will favour wetland species at the expense of grassland species.

<p>Fauna</p>	<p>Loss of fauna habitat</p> <ul style="list-style-type: none"> The loss of vegetation across the Subject site is unlikely to have an impact on the population of any locally occurring fauna species as it provides habitat for only the most common disturbance adapted fauna and provides little connectivity with nearby areas of suitable habitat. <p>Direct impacts on fauna</p> <ul style="list-style-type: none"> Trees to be removed are unlikely to be used by hollow dwelling or other arboreal mammals. There is little potential for native fauna to be killed or injured as a result of site clearing activities or other construction works. <p>Impacts on corridor values</p> <ul style="list-style-type: none"> The proposed works are unlikely to have any significant negative impact on fauna movement opportunities or sever any important wildlife corridors. Areas to be subject to future development generally provide movement habitat only for the most mobile fauna groups.
<p>Flora and Fauna Conclusions</p>	<p>Through the completion of the ecological assessment and adoption of the nominated ameliorative measures, BES has reached the following key conclusions.</p> <ul style="list-style-type: none"> <i>Vegetation communities on the Subject site were compared with descriptions of vegetation communities listed as Endangered Ecological Communities under the Threatened Species Conservation Act (1995) and Threatened Ecological Communities under the EPBC Act (1999).</i> <i>The Subject site is considered to include a small patch of Swamp oak on Coastal Floodplains EEC, which is widespread in the wider Study area. The Subject site contains species that are typical of Freshwater wetland habitats but is not considered to support any areas of Freshwater wetlands on Coastal floodplains EEC. Both of these EECs occur within the wider Study area and a 7 part test has been completed for each of these EECs. No Threatened (NSW TSC Act 1995, Commonwealth EPBC Act 1999) or significant flora species were recorded during the site surveys or are considered likely to occur on the Subject site.</i> <i>No Threatened (TSC Act 1995, EPBC Act) fauna species were recorded during the site assessment and the site provides limited value as fauna habitat. The Subject site is considered to have very little function as a wildlife corridor. The discontinuous riparian vegetation of Emigrant Creek to the west provides the most intact movement corridor. The Pacific Highway forms a major barrier to movement to the east and on either side of the Highway for a distance of about 1.5km to the north, habitats are limited to tall sugar cane, grassland and reedland communities with only scattered trees.</i> <i>Wetland communities such as those present on the western side of Teven Road are dynamic ecosystems and readily adapt to minor alterations in hydrological conditions by the relative expansion and contraction of areas of aquatic plants, sedges and rushes and woody plants (primarily Swamp oak and Broad-leaved paperbark). Filling of the site will result in</i>

	<p><i>minimal impacts on areas west of Teven Road during a 20 Year ARI event and a minor increase in Flooding in adjacent areas of habitat during a 100 Year ARI event including a small increase in the depth and duration of inundation. This increase is considered to be within the range of hydrological variation already experienced by these communities and is minor in the context of other changes in the floodplain to which the vegetation is still in the process of responding. A small increase in flood depth and duration will favour wetland species at the expense of grassland species.</i></p> <ul style="list-style-type: none"> • <i>Prior to site clearing, sediment fencing and other sediment control measures should be installed on the downslope edge of fill areas to prevent sedimentation of low-lying wetland habitats to the west of the site. Erosion and sedimentation control measures should not be removed until disturbed areas have stabilised.</i> • <i>Assessments of significance (7 part tests) were completed for a number of EECs and species of Threatened fauna considered possible occurrences on the site over time. The proposed development is unlikely to result in a significant impact on any Threatened (TSC Act 1995) species, population or ecological community. A Species Impact Statement is not required. The proposed development is unlikely to result in a significant impact on any matters of National Environmental Significance as defined under the Commonwealth EPBC Act 1999. A referral to the Commonwealth under the EPBC Act (1999) is not considered necessary.</i>
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Preliminary Contaminated Site Investigation

Greg Alderson and Associates (GAA) prepared a preliminary contaminated land assessment of the land subject to the Planning Proposal. The assessment forms Appendix 14 to the planning proposal. The assessment is required to determine the suitability of the land for potential freight terminal or warehouse and distribution centre land use activity.

As required under Section 7 of SEPP 55, the assessment was conducted to determine if the site was contaminated from past or present land uses. A review of the sites history and soil testing was undertaken to determine if contamination was present.

A preliminary soil contamination assessment (Tier 1) was undertaken in accordance with NEPM 1999 (2013), DUAP and EPA (1998) and NSW EPA (1995). The investigation involved a site visit, interviews and review of available documentation. Soil sampling was not undertaken for this assessment, as there is no proposed change of use or increase in sensitivity of use at the site.

Areas of potential contaminating activities were identified at the site, being storage and use of chemicals, particularly being chromium, copper and arsenic for the treatment and preservation of timber on Lot 5 DP 1031875 (B and B Timbers) and storage of fuels on that site and Lot 227 DP 1121079 and general spillage of hydrocarbons from vehicles. Most of the sites have previously been filled and certification of clean fill has been provided for some sites, however, the source of fill on Lot 3 DP 749680 was not known.

Although there are potentially contaminating activities at some of the sites, GAA have advised as the LEP is only proposed to be altered and there is no rezoning or development application at this stage, it is considered that no further assessment is warranted. It is noted that remedial action is feasible, such as filling the sites, to reduce risk of contamination in accordance with NEPM 1999 (2013) requirements.

Although the LEP is proposed to be altered, it is understood that there is no immediate change of use for any of the sites and hence in accordance with SEPP 55 objectives, remedial action is not required to be undertaken as part of this application. However, future development applications may require additional assessment and remedial action, such as filling the sites, to reduce risk of contamination in accordance with NEPM 2013 requirements.

Acid Sulfate Soils Investigation

Greg Alderson and Associates (GAA) prepared a preliminary Acid Sulfate Soil Assessment of the land subject to the Planning Proposal. The assessment forms Appendix 15 to the planning proposal. The investigation was required to determine the suitability of the subject lands for future transport orientated land uses.

The preliminary investigation for acid sulfate soils has considered the subject sites for a proposed change to the Ballina Council's LEP to allow a freight transport facility, and warehouse and distribution centre on the subject sites. The subject sites have had a substantial amount of fill placed over the majority of the area and it is considered that the natural soils would be actual acid sulfate soils overlying potential acid sulfate soils.

It is understood that the consideration of the LEP for the additional uses at the site will propose additional land filling at the site. A development application would be lodged as part of the future uses at the site, which may require a detailed acid sulfate soil assessment to be undertaken and a plan of management developed in accordance with ASSMAC (1998) if cutting or exposing natural soil at the site is proposed. The proposed filling of the sites will not affect acid sulfate soil, which is most likely to be occurring within the natural soils of the site at an estimated 0.7 m to 1 m AHD.

Geotechnical Investigation

Newton Denny Chapelle Chapelle (NDC) has completed a preliminary geotechnical assessment for the subject lands party to the proposed LEP Amendment.

The assessment is contained within the Engineering Services Report which forms Appendix 19 to the planning proposal.

The assessment has identified that significant geotechnical investigations have been undertaken in the locality by Coffey Geotechnics Pty Ltd as to the presence of soft soils. In this regard NDC has regard to documentation furnished for the Ballina Bypass, Ballina Highway Service Centre (DA2010/962) and Home World Site (DA2007/71) at Smiths Drive.

The assessment by NDC identified these past DA assessment have advised that upwards of 12m of soft soils could be expected and that preloading of the site is a feasible treatment option to minimise longer term 'post construction' settlements over the land which would arise as a consequence of placing fill to meet flood protection requirements. Past experience shows these post construction settlements could be in the range of 100mm to 400mm dependent upon final embankment heights and the height of preload able to be placed (ie. to a max of 6m above current ground levels, being 2m of fill and 4m of preload).

The expected extent of settlement that would occur during the preload period would be in the order of 0.9m to 1.1m. To ameliorate the issues of post construction settlement, it is

proposed that the warehouse type developments be as light weight type as possible, the sewer system be via a poly pressure line type, stormwater be conveyed by overland flow paths where-ever possible or using rubber-ring joints for piped drainage and that other services be constructed with flexible jointing methods.

The permanent fill volumes required to achieve flood level compliance of minimum RL2.7m AHD are in the order of 23,000m³ of cut to fill (to relocate existing filled areas so as to locally improve flood storage) and 67,000m³ of additional fill within the building footprint areas. This excludes preload volumes which would vary depending upon the staging and timing of the works. This volume of material can be readily sourced from nearby local quarries.

In respect to existing settlement, a preliminary assessment has been undertaken of 1.5m of fill placed in 2012 upon Lot 228 DP 1121079. In comparing the RMS filled WAX survey levels to more recent survey levels in 2015, an average difference of 300mm has been observed – however given the installation of geotechnical settlement plates were not undertaken, it is not clear as to how much of the 300mm settlement is related to soft ground settlement and how much to consolidation of the fill itself.

Given that 95% standard compaction of the fill would typically be achieved with relatively limited compaction work required, it would be reasonable to assume that 80% to 90% of the settlement (ie say 250mm) would be attributable to underlying soft soils. Given this fill was not placed upon wick drained ground treatments, this amount of settlement is consistent with the neighbouring geotechnical advice, to which Council have satisfactorily conditioned developments in the past.

Access and Traffic Impact Report

NDC has completed a Traffic Impact Study (TIS) in accordance with the Roads and Maritime Services (RMS) format contained within the *Guide To Traffic Generating Developments Section 2 – Traffic Impact Studies*.

The TIS report forms Appendix 16 to the planning proposal.

The key elements considered within the NDC TIS are outlined below.

Site Access

Access to the development precinct is proposed by means of the existing Teven Road, being a two lane rural collector road. In accordance with the Northern Rivers Local Government Development & Design Manual (NRLGDDM), the existing Teven Road is below the pre-requisite 7.5m carriageway width plus 1.5m shoulders. It was identified in the TIS that, depending upon the traffic generating potential of new developments, localised widening maybe required of Teven Road to comply with current development standards.

The southern 650m of Teven Road has been upgraded (via the Ballina Bypass works) to a standard that exceeds the rural collector standard, given that shoulders of these new works have been sealed to a 2.5m width, as compared to the NRLG design specification of 1.5m.

No upgrade works are proposed to Paperbark Close given it is currently of a rural local access road standard.

Traffic Generation

The proposed gross floor area of the subject precinct sites is not definitively known (i.e. across the total of 7 lots within the precinct). Based upon the flood modelling criteria used for the precinct which was a maximum of 60% filled to flood level, an then allowing a

further 10% of this filled area for loading docks/interface to buildings and the like, it is reasonable to assign an upper limit assumption that 50% of site could become GFA, therefore 8.5Ha of GFA could ultimately eventuate within the precinct. However given the practicalities of maintaining some of the existing uses and with differing ownerships, if one uses the current GFA density for existing individual holdings (being at nominal 15% GFA) based on an entire Teven Road precinct being developed at this current density = 2.6Ha of GFA being generated.

Peak traffic demands are as per the *RTA Guide to Traffic Generating Developments* which nominates peak hour rates of 0.5 trips per 100m² GFA for warehousing uses. Using these rates, the development has a traffic demand as per the following Table 3.1 - Trip Generation.

Table 3.1 – Trip Generation

Location	Future Developed GFA [Ha]	Peak Hour Trips (0.5/100m ²)
Teven Road Precinct (Low Density)	2.6	130 Trips
Teven Road Precinct (High Density)	8.5	425 Trips
Existing Generation	-	70 Trips (Site Survey Count)

The peak hour additional trip generation has the potential to be upwards of 425 – 70 = 355vph.

The Traffic Impact Study found that the existing Teven Road / Bruxner Highway intersection had spare capacity to absorb 120vph (trucks) or 400vph (cars) from Teven Road. However, dependent upon the vehicle types generated (ie if significant articulated vehicles service the new proposals) the auxiliary right turn storage lane may require lengthening to meet the queued demand. The current right turn configuration can store three (3) articulated vehicles. There is sufficient existing median width available to facilitate lengthening if / when required.

To achieve compliance with Ballina Shire Council rural collector road requirements, Teven Road will be required to be upgraded to a 7.5m wide sealed surface with 1.5m sealed shoulders. No upgrade works would be proposed for Paperbark Close.

Teven Road Intersection Performance

The TIS intersection assessment for peak hourly traffic at the Bruxner Highway / Teven Road intersection found that the spare practical absorption capacity into the intersection (left turn out of Teven Road into the Bruxner Highway) would range between a minimum of 120 trucks/hr or up to 400 car/hr. This compares favourably with the high density trip generation peak hour of 355 additional trips (i.e. nominal 180 trips in and 180 trips out of Teven Road) based upon 8.5Ha of warehouse development.

Right Turn Into Teven Road.

The current auxiliary right turn lane into Teven Road is 80m in length (inclusive of tapers). Pending the type of development to occur within the Transport and Logistics' precinct, it is reasonable to foreshadow significant use of articulated vehicles. A review of the available queuing potential of the right turn auxiliary lane, based upon a gap acceptance criteria of $T_a = 8$ sec and $T_f = 7$ sec it is found that three (3) articulated vehicles can be serviced up to turning flows of 195vph based upon a 30% of HV in the turning lane traffic. Refer to Figure 3.3 as follows



Figure 3.3 – Bruxner Highway Right Turn HV Storage Availability

A review of the existing geometry of the Teven Road / Bruxner Highway intersection shows there is sufficient median space to extend the length of the right turn auxiliary lane should future development type generates a queuing demand in excess of the available storage.

Pedestrian and Public Transport Accessibility

With the proposed Teven Road precinct being located over 1.5km west of the residential areas of Ballina, this distance separation together with the type of land use being proposed (ie transport industry) which is vehicular based, the demand for pedestrian activity to the site is assessed to be very low to negligible.

It is recognised that within the precinct itself there will be interconnection between landholdings, to which road verge/pathway formations will be required.

Details of public transport availability have been identified within the TIS in **Appendix A**, with only school bus services running on Teven Road. There are more regular services on the Bruxner Highway which is 500m south of precinct, however similar to the reasoning's raised for pedestrian activity, it is assessed that very low to negligible demand for public transport use will be generated.

Aboriginal Cultural Assessment

A Cultural Heritage Due Diligence Assessment of Aboriginal Cultural Heritage for the subject land completed by Everick Heritage Consultants Pty Ltd.

The assessment forms Appendix 17 to the planning proposal.

As a result of the desktop study and field inspection, of the areas proposed for the Teven Road Transport and Logistic Facility, and preliminary consultation with Jali LALC Sites Officer Marcus Ferguson the following were agreed to:

- No Indigenous cultural heritage sites or relics were identified within Lots 2 & 3 DP749680, Lot 5 DP 1031875, Lots 227,228 & 229 DP 1121079 and Lot 12 DP 1011575.
- No areas have been identified that are considered to potentially contain subsurface deposits of significant Aboriginal heritage.
- All of the Study Area has been disturbed in a manner which constitutes 'disturbance' within the meaning of the Due Diligence Code and is consistent with the Due Diligence Code.
- It was agreed in discussion with Marcus Ferguson that no further Aboriginal cultural heritage investigation was required.

The Consultant is of the opinion that given the low lying terrain, pre disturbances and the minimal impact upon the existing ground surfaces of up to 3m of additional imported fill, the proposed Amendment to the Ballina LEP and the proposal for a Teven Road Transport and Logistic Precinct are highly unlikely to result in harm to Aboriginal Heritage. There is therefore no demonstrated need for an Aboriginal Heritage Impact Permit.

Everick Heritage Consultants have outlined a series of recommendations which are able to be applied to any future development application lodged for the subject land.

Flood Modelling

Flood modelling was undertaken by BMT WBM using Council's Integrated Flood Model. Various scenarios were required to be modelled to arrive at a development option which meets the needs of the proponents, and which also minimises flood impacts.

Appendix 18 to the planning proposal contains a copy of the finalised flood advice received from BMT WBM following the modelling of various development scenarios.

Scenario 4, as shown on Map 5B within Appendix 18, minimises flood level increase impacts within the floodplain to the greatest degree. This scenario makes provision for 40% of the site (western sections fronting Teven Road) to be filled to the 5 year ARI flood level (RL 1.2m AHD) and to be used for car parking and vehicle access purposes.

The remaining 60% of the site is proposed to be filled to the 100 year ARI flood level (RL 2.7m AHD) and would potentially be available for building purposes. Scenario 4 is also based on a 2 cell West Ballina Flood Relief Structure (WBFR - culverts under River Street) being in place. It also assumes appropriate site contouring of fill around the flood relief bridge under the Ballina Bypass so as to maintain effective connectivity between the floodplain on each side of the Bypass.

The 40/60 ratio was considered to reflect the relative proportion of open site areas and buildings associated with freight transport and warehouse type uses.

Council's current policy position was developed following the 2008 Ballina Flood Study Update and required that development projects be assessed on a cumulative impact basis and not cause an increase of more than 50mm to peak flood levels based on 2005 floodplain conditions. Prior to the acceptance of the 2008 update study the same policy applied, based on the 1997 Ballina Floodplain Management Study, which defined acceptable impact on flood behaviour as one that did not increase cumulative design flood levels by more than 50mm.

Map 4 of the BMT WBM advice shows cumulative flood increase levels for the 100 year ARI event, from approved developments, excluding the Teven Road proposal, from 2005 floodplain conditions, based on a 2 cell WBFR structure being in place. Modelling incorporating a 3 cell WBFR structure (Scenario 5) was also undertaken and showed no substantive differences to the modelling for the 2 cell scenario.

The addition of the spot impacts levels shown in Map 3 to the spot impact levels shown in Map 4 provides an indication as to the degree to which the proposed development impacts on the 50mm maximum cumulative impact policy standard. In this respect it is noted that it is only in respect to Cumbulam, western side of the Ballina Bypass, where the 50mm increase policy standard will be exceeded. In that case there is currently already an exceedance of the standard.

BMT WBM state that the filling of parking areas to the 5 year ARI should be considered by Council on a 'merit' based approach in accordance with the *NSW Floodplain Development Manual (2005)*.

Ballina Shire Council considered the completed flood modelling at the Council's Ordinary Meeting on 28 May 2015. At this meeting the Council resolved as follows (Minute No: 260515/7) in respect to this matter:

- 1. That Council advise the proponents that the 5 year ARI flood level for car parking and vehicle access areas may be used for the purpose of further documenting the merit approach to assessing the suitability of flood planning levels as outlined in the NSW Floodplain Development Manual, for the purpose of progressing the planning proposal.*
- 2. That Council accept the increase in flood levels modelled as a consequence of Scenario 4 in the flood advice provided by BMT WBM.*
- 3. That the proponents be required to advise Council how it is proposed to secure the Scenario 4 modelling parameters as detailed in this report. In the event that a voluntary planning agreement is proposed, such an agreement shall be prepared in draft form and be exhibited with the planning proposal.*
- 4. That a further report be provided for the Council's consideration when the planning proposal has been fully documented and prior to it being publically exhibited.*

Impact of Filling Development Site

The development site was originally modelled in December 2014 as being filled to the 100 year ARI flood level of 2.7m AHD. Modelling results for the 20 year and 100 year ARI flood event indicated increases to peak flood levels of between 5mm and 25mm over a large area (4.9km² to 5.4km²). Increases at Cumbulam were in the order of 2mm and 3mm for the 20 and 100 year events respectively.

BMT WBM suggested two options to mitigate the impacts of the development as follows:

- Reduction in development footprint (to maintain flood storage), and or
- Shaping of development footprint, especially around the flood relief bridge to maximize efficiency of the flood relief bridge).

The mapping for Scenario 4 and 5 by BMT WBM show that during a 100 year ARI flood event, there is a small area that will experience an increase in peak flood levels of between 5mm and 25mm. These areas are located immediately to the north of the Teven Road

precinct and on the southern side of the precinct in the vicinity of the Teven Pacific Highway interchange. In both cases they are located on the western side of the Ballina Bypass.

At Cumbulam, modelling indicates that peak flood levels increase by 2mm on the eastern side of the Ballina Bypass and less than 1 mm on the western side.

The modelling for the Scenario 4 development will only exceed the 50mm cumulative impact limit on the western side of the Ballina Bypass at Cumbulam. At this location the cumulative impact of existing approved development is estimated to be 66mm. The Scenario 4 development has been estimated to add an additional 1mm to the 100 year ARI flood level at this point. Considering the limitations within any model, the 1mm increase could be considered as no material change.

As Council determined the the increases resulting to the 100 year ARI flood level are acceptable, this will have the following consequences for the proposed development will result:

- Development which requires additional site filling cannot proceed until the WBFR structure (2 or 3 cell) has been constructed;
- That part of the site shaped and not filled, located within Lots 228 and 229 DP 1121079, adjacent to the flood relief bridge under the Ballina Bypass being designated as a floodway and appropriately protected through restrictions on title; and
- Shaping of development sites to create the lower level 5 year ARI car park and access areas. In some cases this will require a lowering of current site level at the front of existing lots.

Implementation of Fill Design Standards

Ballina Shire Council has requested further consideration be given to the process in which the flood modelling parameters endorsed by Ballina Shire Council at its Ordinary Meeting on 28 May 2015 could be implemented for future development of the precinct. As reported to NDC, Ballina Shire Council through flood modelling completed by BMT WBM would seek to include the following design parameters for the future development activity for the precinct.

Impact of Filling Development Site

The development site was originally modelled in December 2014 as being filled to the 100 year ARI flood level of 2.7m AHD. Modelling results for the 20 year and 100 year ARI flood event indicated increases to peak flood levels of between 5mm and 25mm over a large area (4.9km² to 5.4km²). Increases at Cumbulam were in the order of 2mm and 3mm for the 20 and 100 year events respectively.

BMT WBM suggested two options to mitigate the impacts of the development as follows:

- Reduction in development footprint (to maintain flood storage) and or
- Shaping of development footprint, especially around the flood relief bridge to maximize efficiency of the flood relief bridge).

The mapping for Scenario 4 and 5 by BMT WBM show that during a 100 year ARI flood event, there is a small area that will experience an increase in peak flood levels of between 5mm and 25mm. These areas are located immediately to the north of the Teven Road precinct and on the southern side of the precinct in the vicinity of the Teven Pacific Highway interchange. In both cases they are located on the western side of the Ballina Bypass. At Cumbulam, modelling indicates that peak flood levels increase by 2mm on the eastern side of the Ballina Bypass and less than 1 mm on the western side.

The modelling for the Scenario 4 development will only exceed the 50mm cumulative impact limit on the western side of the Ballina Bypass at Cumbulam. At this location the cumulative impact of existing approved development is estimated to be 66mm. The Scenario 4 development has been estimated to add an additional 1mm to the 100 year ARI flood level at this point. Considering the limitations within any model, the 1mm increase could be considered as no material change.

As Council determined the increases resulting to the 100 year ARI flood level are acceptable, this will have the following consequences for the proposed development:

- Development which requires additional site filling cannot proceed until the WBFR structure (2 or 3 cell) has been constructed;
- That part of the site shaped and not filled, located within Lots 228 and 229 DP1121079, adjacent to the flood relief bridge under the Ballina Bypass being designated as a floodway and appropriately protected through restrictions on title; and
- Shaping of development sites to create the lower level 5 year ARI car park and access areas. In some cases this will require a lowering of current site level at the front of existing lots.

Implementation of Fill Design Standards

Ballina Shire Council has requested further consideration be given to the process in which the flood modelling parameters endorsed by Ballina Shire Council at its Ordinary Meeting on 28 May 2015 could be implemented for future development of the precinct.

As reported to NDC, Ballina Shire Council through flood modelling completed by BMT WBM would seek to include the following design parameters for the future development activity for the precinct.

- Delaying development, for the purposes proposed to be permitted by the planning proposal, on sites which require additional site filling, until after the construction of the West Ballina Flood Relief Structure (WBFR Structure);
- Securing the shaping and non-filling of that part of the site located within Lots 228 and 229, DP 11211079, adjacent to the flood relief bridge under the Ballina Bypass. This area would be required to be designated as a floodway and afforded appropriate protection through restrictions as to user being placed on title; and
- Securing the shaping of the development site to create the 5 year ARI flood level area applicable to future car parking and site access areas.

A draft Voluntary Planning Agreement has been prepared to secure the above outcomes and will be exhibited concurrently with the planning proposal. Appendix 12 to the planning proposal contains a copy of the draft VPA.

Bushfire Assessment

The Teven Road precinct is mapped, in part, as being subject to bushfire risk within the south-western corner of the precinct and within the front setback areas of the respective lots as illustrated in Plate 1 below.

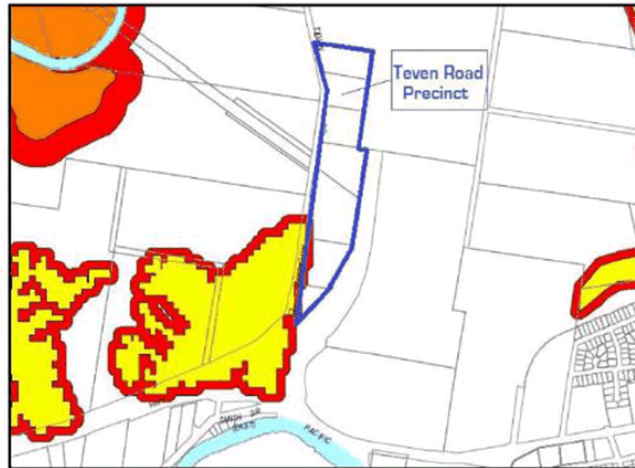


Plate 1: Ballina Shire Council Bushfire Mapping extract [source www.ballina.nsw.gov.au]

Flood modelling completed for the precinct has identified the western portion of each individual site will be utilised for parking purposes given the land is unable to be filled. Accordingly, all structures located on the southern lands will be located within the eastern portion of the land where the opportunity exists to fill the land to position future structures. This will result in the fact no structure capable of being located within the mapped bushfire hazard area.

Matters relating to access, services and property maintenance will accord fully with the Planning for Bushfire Protection Guidelines and demonstrated upon lodgement of a development application for the future development and land use activities.

Appendix 12 – Draft Voluntary Planning Agreement

(Under Separate Cover)

Appendix 13 – Ecological Assessment Report (EAR) & Supplementary Advice

(EAR Under Separate Cover)



File No: 1417/let1
15th December 2015

Damian Chapelle
Newton Denny Chapelle
PO Box 1138
Lismore NSW 2480

Dear Damian,

RE: OEH COMMENTS ON ECOLOGICAL ASSESSMENT, TEVEN ROAD TRANSPORT AND LOGISTICS PRECINCT

Thank you for providing me with correspondence from the NSW Office of Environment and Heritage (OEH) dated 5th December 2015 regarding the Planning Proposal for the Teven Road Transport Precinct in West Ballina. Blackwood Ecological Services completed an Ecological Assessment report for the site in August 2015.

I have discussed aspects of the OEH comments with Clyde Treadwell from OEH. Neither Clyde nor his colleague Krister Waern, who provided input to the comments, had visited the site or were available to meet on site with me to discuss the ecological issues raised.

The purpose of this letter is to provide clarification of some issues raised by OEH related to Biodiversity on the site.

OEH identified four threatened fauna species that should be considered in the planning proposal. These species are:

- Cudlew sandpiper
- Black-necked stork
- Red-tailed tropicbird
- Eastern grass owl

It is not clear why these four species are of particular concern in this context. The Red-tailed tropicbird is an oceanic species that, in NSW, breeds only on the coastal cliffs of Lord Howe Island. Very rarely tropicbirds may be blown onshore by unusual weather patterns but even vagrant birds would not have any dependence on habitats such as those present at Teven. The Cudlew sandpiper breeds in the northern hemisphere and migrates to Australian coastal habitats (and occasionally inland wetland systems) in the southern hemisphere summer. On the NSW North Coast this bird forages in or at the edge of shallow water on mudflats and non-tidal swamps, lakes and lagoons and roosts on beaches, rocky shores or saltmarsh. The Richmond River estuary provides suitable habitat but the subject site and wider study area for the planning proposal do not provide any areas of suitable foraging or roosting habitat.

Both the Black-necked stork and Eastern grass owl were considered in more detail in the Ecological assessment (Blackwood ES 2015). For the Black-necked stork, it was considered that the proposed development has little potential to impact on this species, as habitats in the planning proposal area are very marginal for this bird and the development of the Subject site is unlikely to have any degree of impact on surrounding areas of freshwater wetland and flooded grassland habitats. For the Eastern grass owl, a 7 part test was completed and concluded that "Areas of taller grassland, redgeland and Cumbungi within the Study area may provide suitable habitat for this species, which is known from the area. Grass owls are unlikely to have any degree of historic site fidelity to the subject site as these habitats have only developed in the last few years.

M | (0431)233331
P/F | (02)66871562
E | mark@blackwoodecology.com.au

www.blackwoodecology.com.au
PO Box 336
BANGALOW NSW 2479

Similar habitat is relatively widespread in the Study area. The Proposed development will result in a minor loss of habitat and the local populations of rodents are unlikely to be substantially affected. The Proposed development is likely to have a negligible impact on the local population of this species and on areas of suitable habitat in the Study area”.

OEH comments that “the ecological report...has identified two Endangered Ecological Communities (EECs) on site”. This is not correct. The Ecological assessment report considers that the *Swamp oak on coastal floodplain* EEC occurs on site but that, despite the presence of some species that occur in the *Freshwater wetlands on coastal floodplains* EEC, this EEC type does not occur on the site. The Ecological assessment report does include a 7 part test (Assessment of significance) for each of these EEC types which are widespread in the immediate vicinity of the Subject site.

Review of proposed flood fill mapping for the site (Site Identification Map part of map tile: 0250_COM_LZN_006_040_20140307) indicates that the maximum site level for the western part of the site is 1.2m AHD. The small patch of Swamp oak forest occurs within this area and should be retained with a suitable disturbance buffer around the perimeter. Also within this western area are patches of Phragmites and Cumbungi reedland where the recent upgrade of Teven Road has apparently resulted in localised impounding of stormwater along the western boundary of the Subject site encouraging the growth of these wetland/wet grassland species. These areas may continue to support wetland species and should be retained within this western section of the Subject site where they may be of supplementary habitat value for native fauna occurring in more extensive areas of wetland to the west of Teven Road.

Please contact me if you require any further information.

Yours sincerely,



Mark Fee
MANAGER / PRINCIPAL ECOLOGIST

Appendix 14 – Preliminary Contaminated Land Assessment

(Under Separate Cover)

Appendix 15 – Preliminary Acid Sulfate Soil Investigation

(Under Separate Cover)

Appendix 16 – Traffic Impact Study

(Under Separate Cover)

Appendix 17 – Aboriginal Cultural Heritage Assessment

(Under Separate Cover)

Appendix 18 – Flood Modelling Report



Our Ref: L.B17123.022_Teven_Rd.docx

13 April 2015

Ballina Shire Council
PO Box 450
BALLINA
NSW 2478

BMT WBM Pty Ltd
Level 8, 200 Creek Street
Brisbane 4000
Queensland Australia
PO Box 203 Spring Hill 4004

Tel: +61 7 3831 0744
Fax: +61 7 3832 3627

ABN 54 010 830 421

www.bmtwbm.com.au

Attention: Paul Busmanis

Dear Paul

**RE: REVISED FLOOD ADVICE FOR THE PROPOSED TEVEN ROAD TRANSPORTATION
PRECINCT AT WEST BALLINA**

We have prepared this letter in response to your e-mail dated 5 November 2014 requesting assessment of flood impacts associated with the proposed Teven Road Transportation Precinct at West Ballina and subsequent discussions and meetings with Council and NDC Surveyors. The site is shown in Figure 1 below. The brown and blue hatched area represents the development site. Contained in this letter is a summary of flood impacts associated with the proposed filling of the site.



Figure 1 Teven Road Transportation Precinct

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A part of BMT in Energy and Environment

Site Location and Background

The subject site is located between the Pacific Highway (Ballina Bypass) and Teven Road at West Ballina. The site covers the following properties:

- Lot 3 on DP 749680
- Lot 2 on DP 749680
- Lot 5 on DP 1031875
- Lot 229 on DP 1121079 (part)
- Lot 228 on DP 1121079 (part)
- Lot 228 on DP 1121079
- Lot 12 on DP 1011575 (part)

Various flood impact assessments have previously been undertaken for these sites, as surplus material has been made available from the construction of the Ballina Bypass. The flood impact assessments have generally comprised qualitative analyses of expected flood impacts due to minor filling. The low level filling previously assessed has only affected the flood storage, thus has caused minor increases to peak flood levels. Only partial filling of Lots 228 and 229 on DP 1121079 has previously been recommended to ensure the adjacent Ballina Bypass flood relief bridge is not blocked.

Scenarios Assessed

For this assessment, two fill scenarios have been considered:

- complete filling to the specified minimum fill level of 2.7m AHD (brown and blue areas in Figure 1).
- partial filling to the minimum fill level of 2.7m (brown area in Figure 1) with the remainder of the site filled to the 5 year ARI flood level of 1.2m AHD (blue area in Figure 1). The lower level areas would be used for parking and truck manoeuvring.

Both scenarios include partial filling of the properties adjacent to the flood relief bridge to maintain connectivity of the floodplain on each side of the Ballina Bypass. Following the preliminary assessment, the question was raised in relation to how flood impacts may vary if and when the West Ballina Flood Relief culverts (under River Street) are implemented. Therefore, the above two fill scenarios have been simulated for the following WBRF scenarios:

- no West Ballina Flood Relief;
- 2 cells of the WBFR culverts; and
- 3 cells of the WBFR culverts.

The following 5 scenarios have, therefore, been assessed:

- Scenario 1: Complete site filling to 2.7m AHD with no WBFR
- Scenario 2: Complete site filling to 2.7m AHD with 2 cells of the WBFR
- Scenario 3: Complete site filling to 2.7m AHD with 3 cells of the WBFR
- Scenario 4: Multi-level filling with 2 cells of the WBFR
- Scenario 5: Multi-level filling with 3 cells of the WBFR

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Flood Modelling

Hydraulically, the site is located on the Emigrant Creek / Lower Richmond River floodplain. The dominant sources of flooding in this part of the floodplain are from the Richmond River and local catchment runoff (Emigrant and Maguires Creeks). Most of the site is categorised as a flood storage zone, as floodwaters are generally deep and slow moving. However, there is a flood conveyance zone between Teven Road and the Ballina Bypass flood relief bridge.

Simulations have been undertaken using Ballina Shire Council's 'Integrated Flood Model'. As per typical flood impact assessments, the 20 year and 100 year ARI flood events have been assessed. Due to the location, only two sources of flooding have been assessed; Richmond River and local catchment. The results of the simulations have been merged, to produce a single peak flood level surface representing the maximum of the two sources of flooding. This 'envelope' of peak flood levels has been used for the impact assessment by comparing post development and pre development scenarios.

Flood Impacts due to Complete Site Filling

Peak flood level impacts for Scenario 1 are shown on Map 1 for the 20 year ARI event. The mapping shows that during the 20 year ARI event, there is a large area (approximately 4.9km²) that will experience an increase in peak flood levels of between 5mm and 25mm. For most of this area, afflux does not exceed 6mm, although the area to the north of the site (on the western side of the Ballina Bypass) afflux is up to 10mm. During the 20 year ARI event, increases of greater than 5mm are generally experienced on the eastern side of the Ballina Bypass.

Peak flood level impacts for Scenario 1 are shown on Map 2 for the 100 year ARI event. The mapping shows that during the 100 year ARI event, there is a large area (approximately 5.4km²) that will experience an increase in peak flood levels of between 5mm and 25mm. For most of this area, afflux does not exceed 10mm. During the 100 year ARI event, increases of greater than 5mm are generally on the western side of the Ballina Bypass (opposite side from the 20 year ARI event impacts). To provide context to the 10mm afflux shown to the west of the site, Map 7 is included, showing the cumulative impacts associated with floodplain development. The impacts shown on Map 7 exclude the Teven Road Transportation Precinct site impacts.

Scenario 1 (Map 2), Scenario 2 (Map 3) and Scenario 3 (Map 4) can be compared to assess whether the impacts vary according to whether the WBFR is excluded from the assessment, or whether it is included as 2 cells (interim configuration), or 3 cells (ultimate configuration). Comparison between these scenarios shows minimal difference.

At Cumbalum, peak flood levels for the complete site filling scenarios increase by 2mm and 3mm during the 20 year and 100 year ARI events respectively. On the private land to the west of the Ballina Bypass, increases are less than 1mm.

Mitigation Scenario

The afflux is attributed to:

- Significant reduction in flood storage area due to the large area of filling; and
- Reduction in flood conveyance from one side of the Ballina Bypass to the other due to filling around the flood relief bridges.

Since publication of the Ballina Flood Study Update (BMT WBM, 2008), the impacts of infrastructure and land development projects have been considered on a cumulative basis. Council's policy is for a

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maximum impact of 50mm during a 100 year ARI event, when considering all floodplain development. With several projects already having been implemented, including the Ballina Bypass, the cumulative impact at Cumbalum has reached the maximum threshold. Therefore, to comply with the policy and to protect the community, subsequent development must result in a zero impact at Cumbalum.

To mitigate the impacts of this proposed development (both at Cumbalum and to the west of the site), two options were suggested following the preliminary assessment:

- Reduction in development footprint (to maintain flood storage zone); and/or
- Shaping of development footprint, especially around the flood relief bridge to maximise efficiency of the flood relief bridge).

As noted above, a multi-level fill scenario has been assessed with 60% of the site filled to the minimum fill level of 2.7m AHD, with the remainder of the site left at a lower level of 1.2m, being equivalent to the 5 year ARI flood level.

Peak flood level impacts for Scenario 4 (2 cell WBFR) and Scenario 5 (3 cell WBFR) are shown on Map 5 and Map 6 respectively for the 100 year ARI event. The mapping shows that during the 100 year ARI event, there is a small area that will experience an increase in peak flood levels of between 5mm and 25mm. During the 100 year ARI event, increases of greater than 5mm are generally on the western side of the Ballina Bypass. Again, there is minimal difference between the 2 cell and 3 cell WBFR scenarios. At Cumbalum, peak flood levels increase by 2mm on the eastern side of the Ballina Bypass and less than 1mm on the western side.

Emergency Management

The option discussed here for filling parking facilities to the 5 year ARI should be considered by Council on a 'merits' based approach in accordance with the NSW Floodplain Development Manual (2005). Use of the lower level parking facilities fulfils the objective for maintaining flood storage, however, comes at the cost of flood immunity. To compensate for the reduced flood immunity, certain additional emergency management measures must be considered by the developer.

Should the multi-level filling scenario be adopted for this development, consideration should be given to the following in relation to emergency management of the site:

- Emergency Action Plans should be prepared and actioned when flooding is expected. This should involve monitoring rainfall and creek / river levels, including monitoring BoM Flood Watches and Flood Warnings. A similar approach was adopted by the Ballina Bypass Alliance for construction of the road embankment. An Emergency Action Plan was developed, which included the following:
 - Identification of roles and responsibilities
 - Monitoring of rainfall and river levels
 - Evacuation management planning
- Consideration should be given to evacuation, particularly from the northern part of the site. The aerial survey used for the flood modelling and terrestrial survey provided by Council indicates Teven Road to be higher than the 5 year ARI flood level assigned to the parking area, so this will support effective evacuation.
- Detailed modelling should be undertaken to establish the lead time expected for flash flood scenarios. This shall include identification of hydrologic thresholds (rainfall depths / times and water level) that will trigger the flood action process.

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Should you require any additional information or wish to discuss the contents of this letter, please do not hesitate to contact the undersigned on 07 3831 6744.

Yours faithfully

BMT WBM Pty Ltd



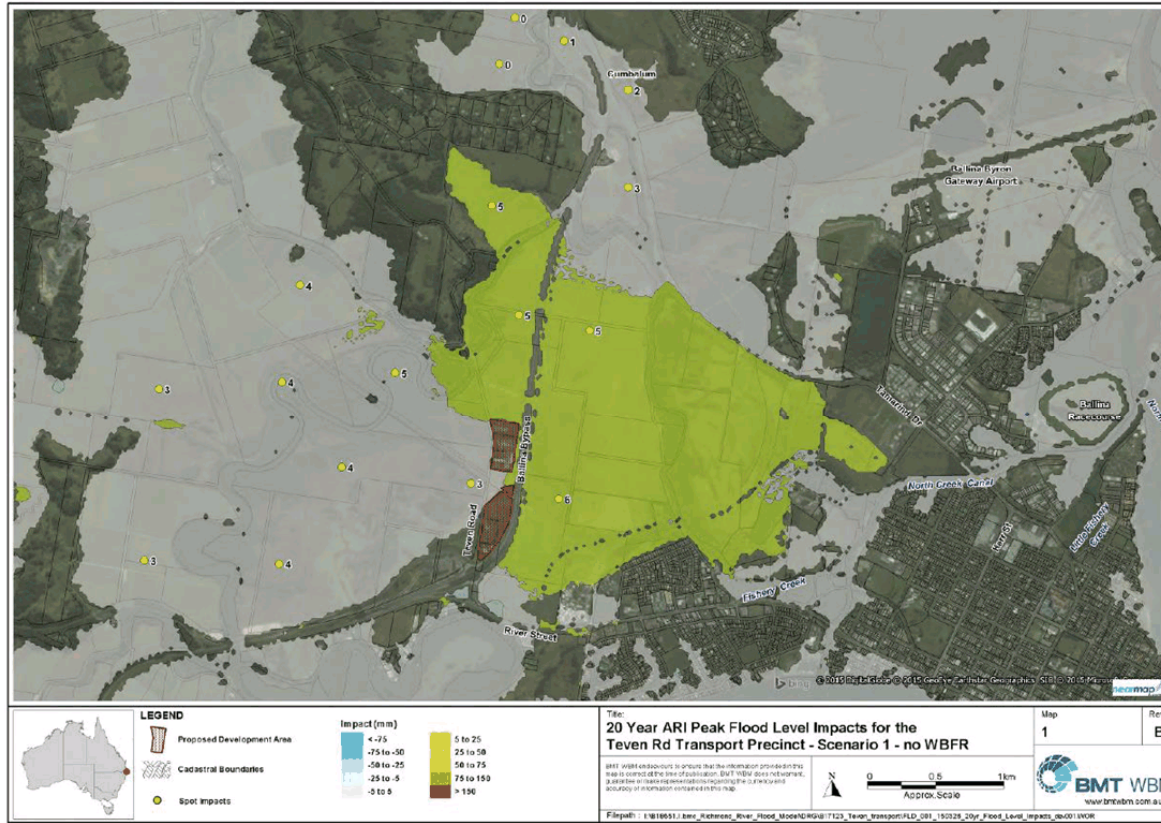
Ben Caddis

Associate, Senior Flood Engineer

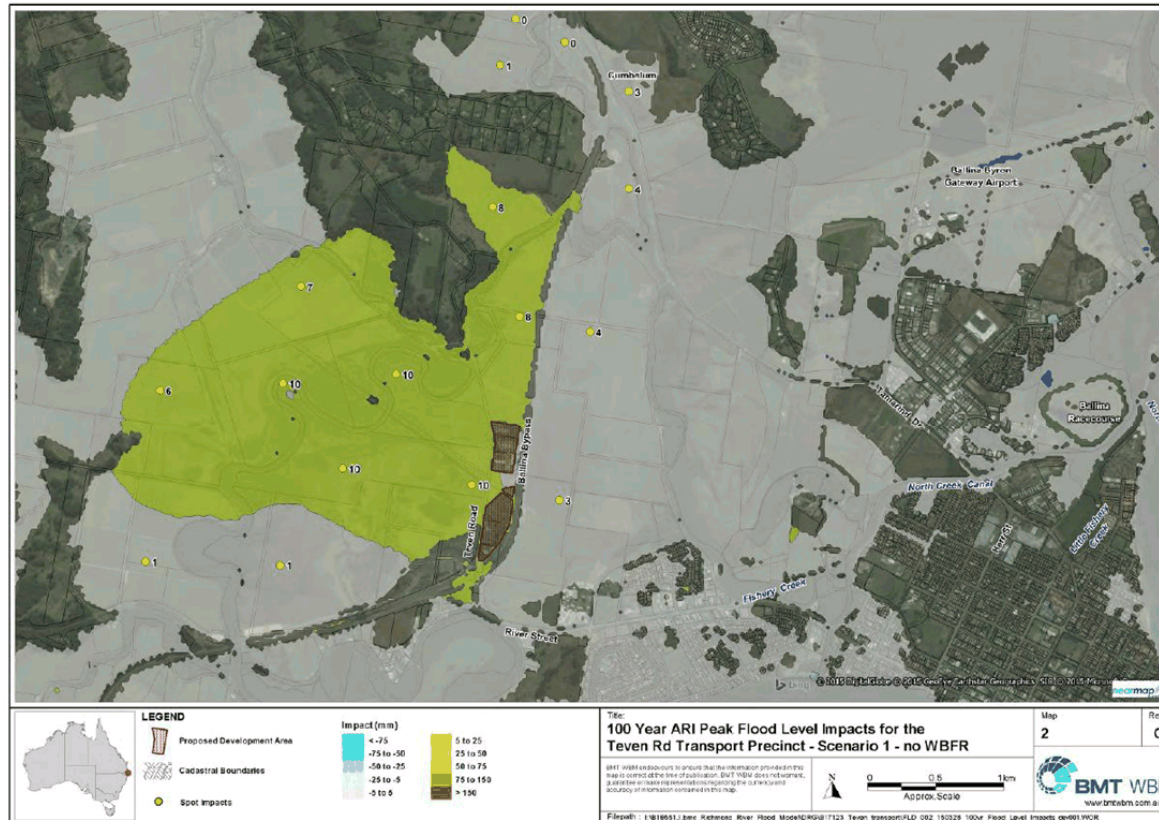
cc Toong Chin and Phillip Buchanan (NSW Office of Environment and Heritage)

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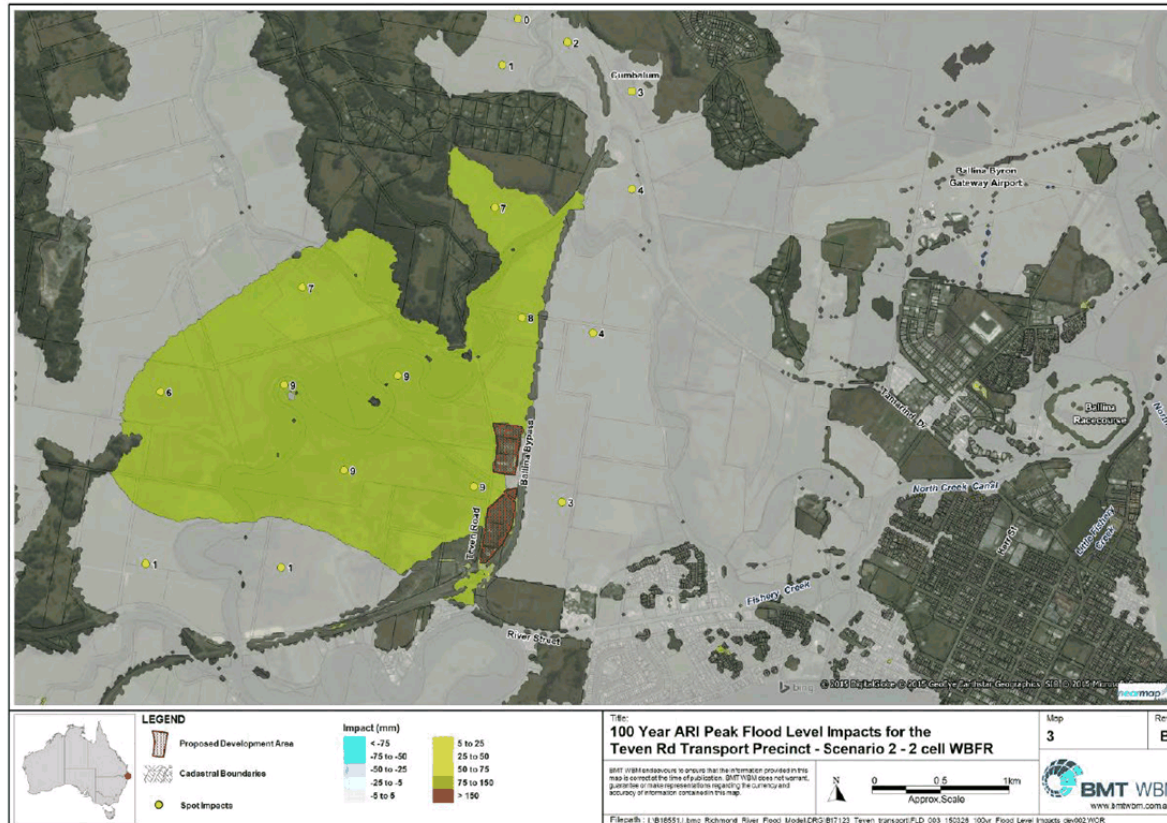
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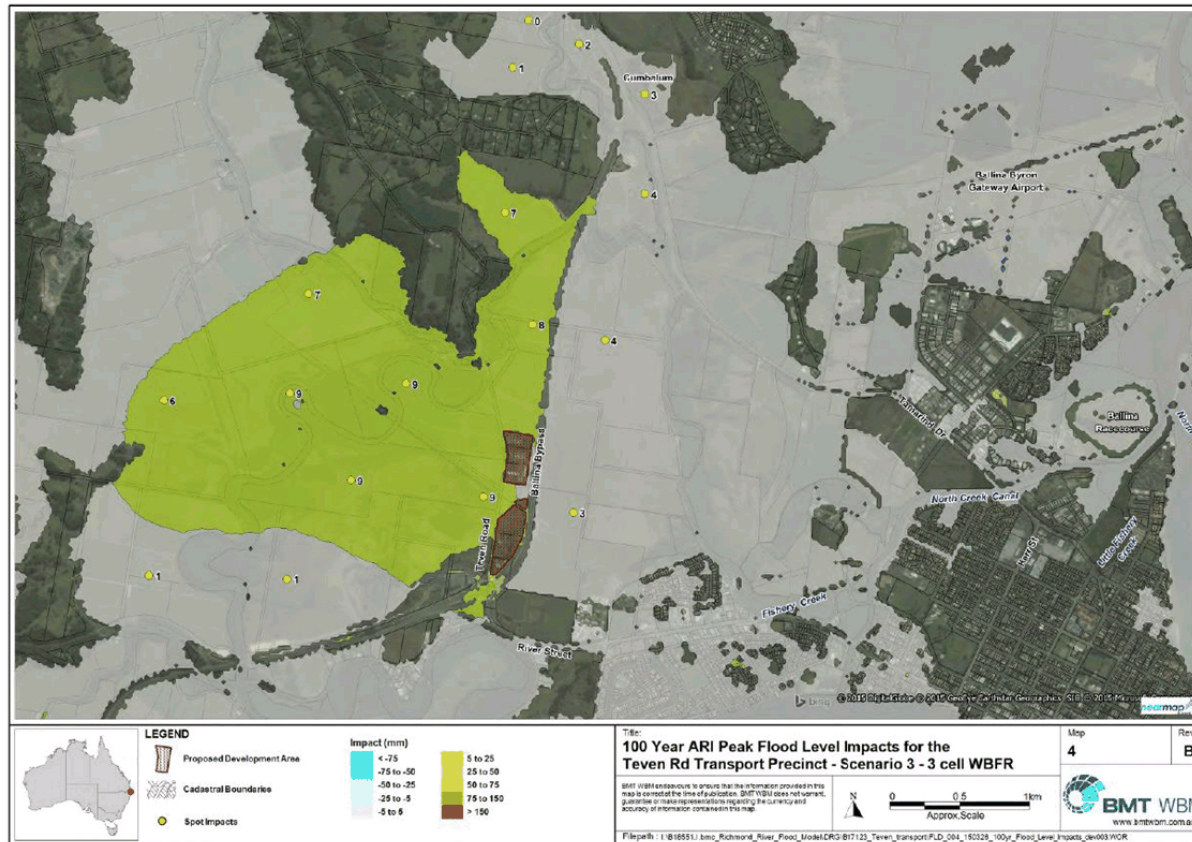
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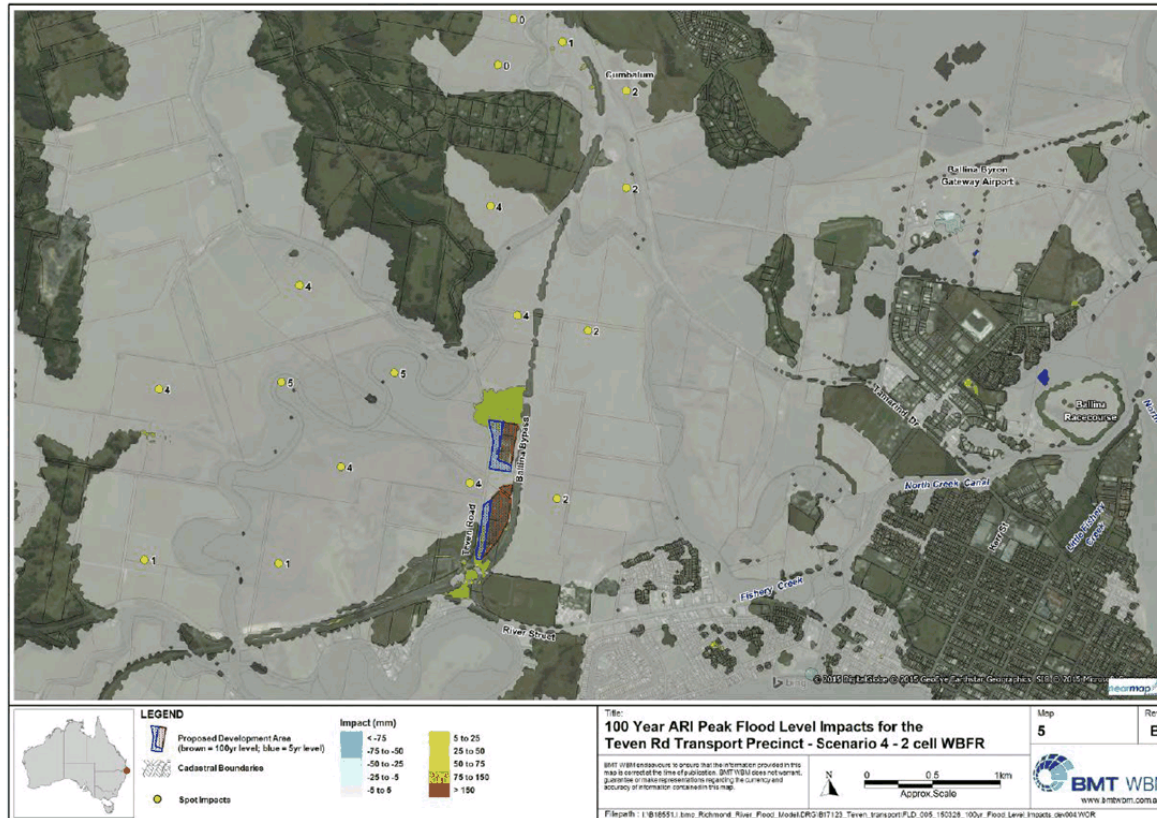
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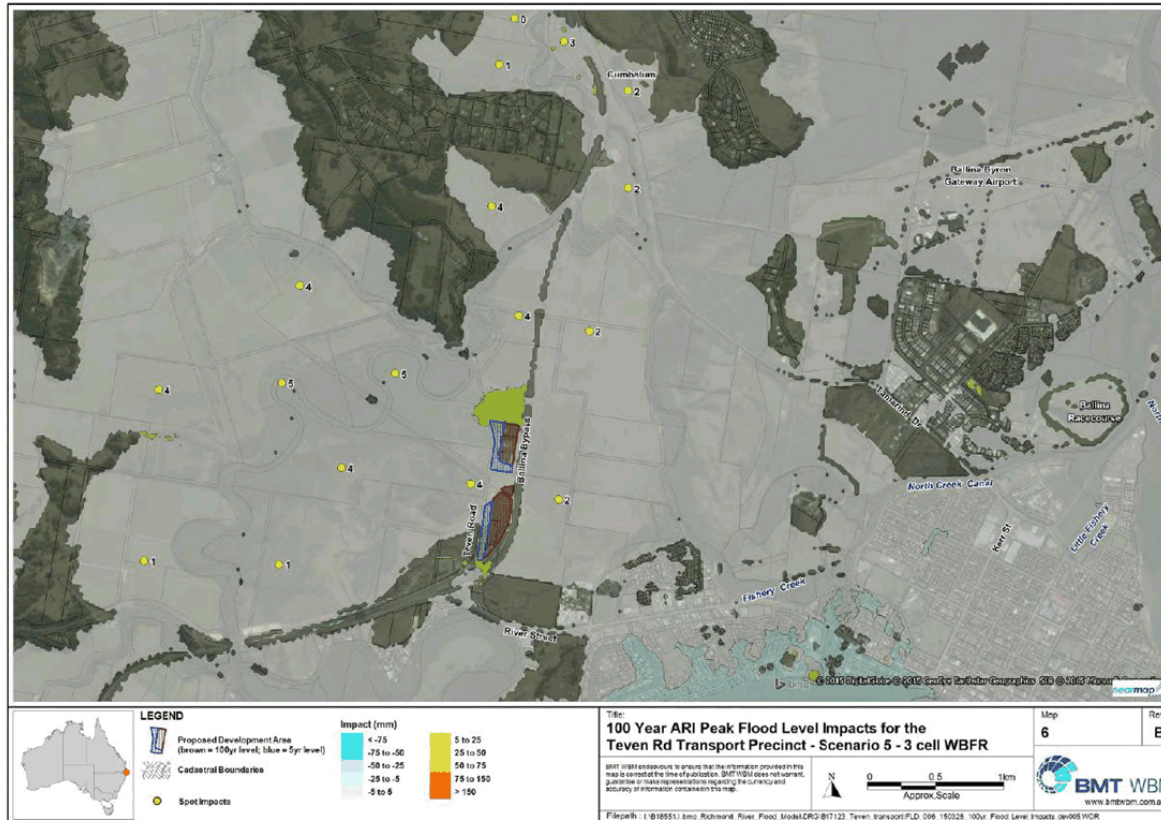
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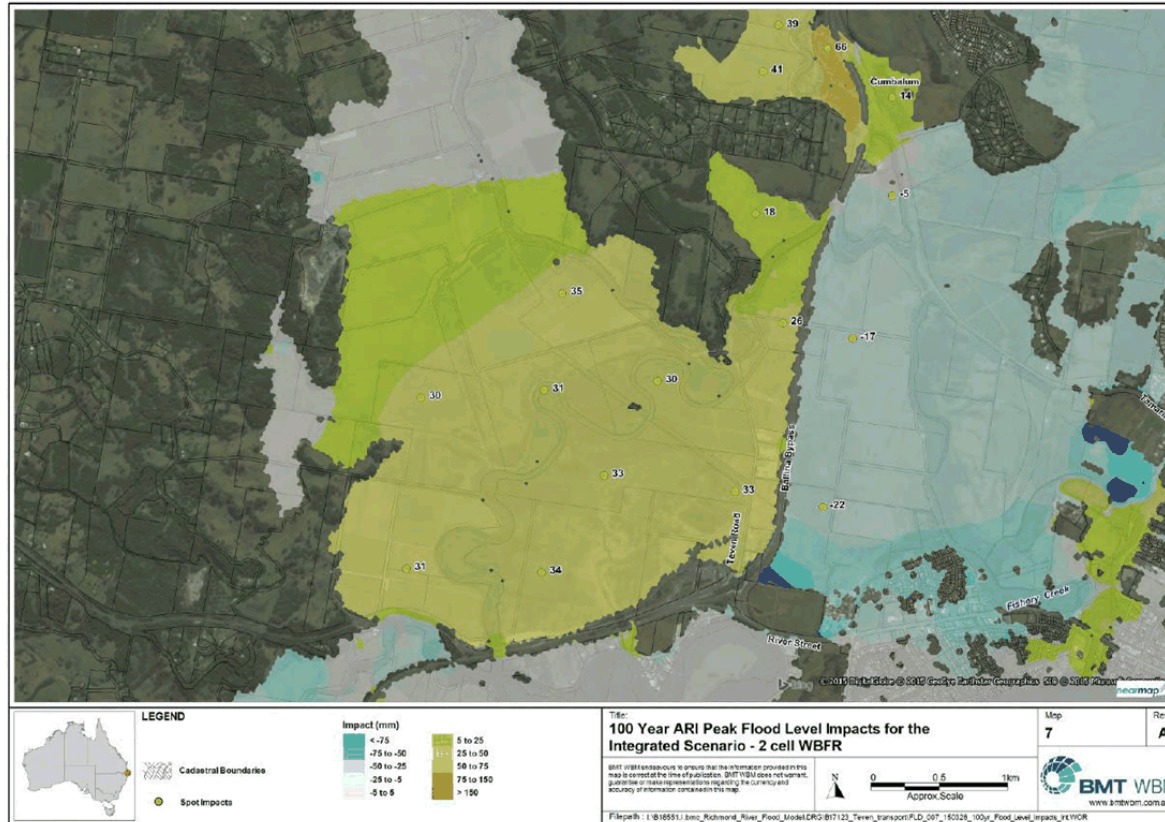
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9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC



Appendix 19 – Engineering Services Report

(Incorporates Geotechnical Investigation)

(Under Separate Cover)

Appendix 20 – Correspondence from Government Departments

(Roads and Maritime Services, Rural Fire Service, Office of Environment and Heritage)



File No: NTH 13/00067
Your Ref: Planning Proposal – Teven Road Transport Precinct (Trim 1572/02)

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Sir

Planning Proposal - Teven Road West Ballina - Transport and Logistics Precinct

I refer to your letter of 2 October 2015 regarding a Planning Proposal for a Transport and Logistics Precinct on Teven Road at West Ballina.

Roles and Responsibilities

The key interests for Roads and Maritime Services are the safety and efficiency of the road network, traffic management, the integrity of infrastructure assets and the integration of land use and transport.

Council has delegated authority to consider the Transport and Logistics Precinct Planning Proposal.

Roads and Maritime Response

Roads and Maritime has reviewed the traffic implications of the proposed Transport and Logistics Precinct at Teven Road. At this time there is insufficient traffic information to support the proposal.

Currently the right turn from Teven Road onto the Bruxner Highway is operating at capacity during peak hours. Whilst it is acknowledged that traffic can turn left and use the Pacific Highway interchange roundabout to do a u-turn this is not considered a desirable long term traffic solution.

Spot rezoning permitting small scale transport activities in the Teven Road area may be accommodated by the existing road network however further traffic impact analysis will be required to satisfy Roads and Maritime that the traffic generation of a transport and logistics precinct can be accommodated by the existing road network.

In 2012 Roads and Maritime commissioned updated traffic generations surveys for Business Parks and Industrial Estates. These surveys included sites with a mix of uses including warehousing. The new surveys found a strong correlation between peak hour traffic generation and the total site area.

Roads and Maritime Services

76 Victoria Street, Grafton NSW 2460 |
PO Box 576, Grafton NSW 2460 |

www.rms.nsw.gov.au | 13 22 13

- 2 -

Using the new rates for an 8.5 Ha site and projecting existing Bruxner Highway volumes forward ten years, analysis indicates that significant operational difficulties will be experienced at the intersection of Teven Road with the Bruxner Highway. The impact of a transport and logistics precinct on the interchange with the Pacific Highway is unknown.

It is recommended that prior to finalising the planning proposal that encompasses the whole precinct more detailed traffic analysis be undertaken to ensure that infrastructure requirements for the development are fully known.

In all likelihood, it is thought at this time, a roundabout will be required to manage the proposed transport and logistics precinct traffic at the Teven Road intersection. Please note this opinion is based on the information available and is strategic in nature. Any final decision about intersection control would need to be verified by further detailed analysis of site compatibility and capacity analysis.

If you require further information please contact Liz Smith on 66401362 or email Development.Northern@rms.nsw.gov.au.

Yours faithfully



6 November 2015
for Monica Sirol
Network and Safety Manager, Northern Region



Our Ref: DOC15/404369
Your Ref: Planning Proposal Teven Road (Trim 1572/02)

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

Attention: Mr Klaus Kerzinger – Strategic Planner – Strategic and Community Facilities Group

Dear Mr Hickey

Re: Planning Proposal – Teven Road Transport Precinct, West Ballina

Thank you for your letter dated 2 October 2015 regarding the planning proposal for the Teven Road Transport Precinct in West Ballina. I appreciate the opportunity to provide input and apologise for the delay in responding.

The OEH has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), Aboriginal and historic heritage, National Parks and Wildlife Service estate, flooding, acid sulfate soils and estuary management.

We have reviewed the documents supplied and advise that, although we have no concerns about NPWS estate or historic heritage, a number of issues are apparent with respect to the assessments for Aboriginal cultural heritage, flooding, biodiversity and acid sulfate soils. These issues are discussed in detail in **Attachment 1** to this letter.

In summary, the OEH recommends that:

1. Providing the recommendations detailed in the Aboriginal cultural heritage assessment report (ACHAR) are consistent with the intent of the comments from the Jali Local Aboriginal Land Council, the OEH supports the four (4) recommendations made in the documentation provided regarding the management of Aboriginal cultural heritage within the planning area.
2. Prior to finalising the planning proposal, floodways in the planning area should be clearly delineated on the appropriate plan, with appropriate restrictions that do not allow development within the delineated floodway areas.
3. Appropriate evacuation / flood emergency management action plans must be developed to ensure the risk to life due to potential isolation by inundation can be adequately managed, prior to finalising the planning proposal.

Locked Bag 914 Coffs Harbour NSW 2450
Federation House, Level 8, 24 Moonie Street
Coffs Harbour NSW 2450
Tel: (02) 6659 8200 Fax: (02) 6651 5356
ABN 30 841 387 271
www.environment.nsw.gov.au

Planning Proposal – February 2016
Teven Road West Ballina Transport Precinct

Page 111 of
130

4. The preparation of a detailed ecological assessment, prior to finalising the planning proposal, is required to determine the extent of EECs existing in the planning area and enable adequate assessment of the biodiversity impacts of future development to be enabled by the planning proposal, the identification of appropriate parts of the planning area where such additional uses should not be permitted in order to protect biodiversity values, and suitable offset proposals. The OEH recommends use of the Biobanking Assessment Methodology to determine the type and quantum of offsets required and ensuring the offset is in accordance with 'OEH principles for the use of biodiversity offsets in NSW'.
5. The potential impacts of the proposal on acid sulfate soils must be assessed in the Planning proposal in accordance with the relevant guidelines in the *Acid Sulfate Soils Manual* (Stone et al. 1998) and the *Acid Sulfate Soils Laboratory Methods Guidelines* (Ahern et al. 2004).
6. The planning proposal should describe mitigation and management options that will be used to prevent, control, abate or minimise potential impacts from the disturbance of acid sulfate soils associated with the proposal and to reduce risks to human health and prevent the degradation of the environment. This should include an assessment of the effectiveness and reliability of the measures and any residual impacts after these measures are implemented.

If you have any further questions about this issue, Mr Clyde Treadwell, Conservation Planning Officer, on 6659 8288, or via email clyde.treadwell@environment.nsw.gov.au. Please note that Clyde works Tuesday, to Friday each week.

Yours sincerely

 5 November 2015

DIMITRI YOUNG
Senior Team Leader Planning, North East Region
Regional Operations

Contact officer: CLYDE TREADWELL
6659 8288

Enclosure: Attachment 1 - Detailed OEH Comments – Planning Proposal Teven Road Transport Precinct.

Attachment 1: Detailed OEH Comments – Planning Proposal Teven Road Transport Precinct

The Proposal

This planning proposal applies to Lots 2 and 3 DP 749680, Lot 5 DP 1031875, Lots 227, 228 and 229 DP 1121079 and Lot 12 DP 1011575, being land located at Teven Road, West Ballina. The site has an approximate area of 17 hectares

The subject land is currently zoned RU2 Rural landscape zone under the provisions of the *Ballina Local Environmental Plan (LEP) 2012*.

The purpose of this planning proposal is to enable *freight transport facility, and warehouse or distribution centre* to be permitted with development consent on the site by amending the LEP. This will facilitate the establishment of a transport and logistics precinct at West Ballina near the junction of the Bruxner and Pacific Highways.

Aboriginal cultural heritage

An important component of the environmental assessment process undertaken in support of planning proposals is the consideration of 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 is fully assessed and considered. Planning proposals need to provide opportunities to reduce future impacts to Aboriginal cultural heritage by applying appropriate land-use zones to parts of a planning area with important Aboriginal cultural heritage values.

The OEH's preference is to avoid impacting Aboriginal cultural heritage values as a component of any planning proposal and to ensure appropriate long term protection mechanisms are in place in perpetuity.

Accordingly, the OEH has reviewed the Aboriginal cultural heritage assessment report (ACHAR) prepared to support of the planning proposal. The OEH notes the assessment and consultation undertaken with the local Aboriginal community and also notes that evidence of the finalisation of the process has not been provided. However, provided that the comments from the Jali Local Aboriginal Land Council are consistent with the intent of the recommendations detailed in the ACHAR, the OEH supports the four (4) recommendations made regarding the management of Aboriginal cultural heritage within the planning proposal area.

It is noted that the ACHAR is mistakenly entitled *Aboriginal Cultural Heritage Due Diligence Assessment. Teven Road Transport and logistics Precinct, Tevon (sic) Road, Ballina NSW*. The document is an Aboriginal cultural heritage assessment report – it is not a due diligence assessment. Also there is a minor spelling error in the in the document's title in the word "Teven".

The OEH would like to remind the applicant that while undertaking a due diligence assessment, utilising the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* to determine whether a proposal will harm Aboriginal objects may provide a defence against prosecution for the strict liability offence if later unknowingly an object is harmed without an Aboriginal Heritage Impact Permit (AHIP), a due diligence assessment is not the same as an Aboriginal cultural heritage assessment. An Aboriginal cultural heritage assessment is a requirement to inform an ACHAR to support a planning proposal.

Recommendation

- Providing the recommendations detailed in the ACHAR are consistent with the intent of comments from the Jali Local Aboriginal Land Council, the OEH supports the four (4) recommendations made in the documentation regarding the management of Aboriginal cultural heritage within the planning proposal area.

Flooding, Stormwater and Coastal Erosion

The OEH has reviewed the planning proposal for the Teven Road West Ballina Road Transport Precinct with regard to the flooding issues and provides the following comments:

As prescribed in the Minister's Section 117 Direction - cl 4.3 - a planning proposal must not contain provisions that apply to the flood planning areas which permit development in floodway areas. The report from the BMT WBN mentions "flood conveyance zone" but not floodways. The floodway should be clearly delineated on the appropriate plan, with appropriate restrictions that do not allow development within the delineated floodway areas.

As discussed in the BMT WBN assessment, a flood emergency management action plan needs to be developed for the site before any development is approved. The proposed development will have the evacuation routes cut before the development area is inundated in larger flood events, which is classified as low flood island islands in DECC's "Flood Emergency Response Planning Classification Of Communities".

DECC describes low flood islands as "The flood island is lower than the limit of flooding (i.e. below the PMF) or does not have enough land above the limit of flooding to cope with the number of people in the area. During a flood event the area is isolated by floodwater and property will be inundated. If floodwater continues to rise after it is isolated, the island will eventually be completely covered. People left stranded on the island may drown and property will be inundated."

Recommendations

The OEH recommends that

- Floodways in the planning area should be clearly delineated on the appropriate plan, with appropriate restrictions that do not allow development within the delineated floodway areas.
- Appropriate evacuation / flood emergency management action plans need to be developed to ensure the risk to life due to potential isolation by inundation can be adequately managed prior to determining the planning proposal.

Acid Sulfate Soils

A preliminary investigation for acid sulfate soils was prepared to accompany the planning proposal and that investigation considered the subject sites for a proposed change to the Ballina LEP to allow a freight transport facility, and warehouse and distribution centre on the subject sites.

The OEH acknowledges that the subject site has had a substantial amount of fill placed over the majority of the area and it is considered that the natural soils would be actual acid sulfate soils underlying potential acid sulfate soils.

It is understood that the consideration of the LEP for the additional uses at the site will propose additional land filling at the site.

A development application would be required to be lodged as part of the future uses at the site, which may require a detailed acid sulfate soil assessment to be undertaken and a plan of management developed in accordance with ASSMAC (1998) if cutting or exposing natural soil at the site is

proposed. The proposed filling of the sites will not affect acid sulfate soil, which is most likely to be occurring within the natural soils of the site at an estimated 0.7 m to 1 m AHD.

Recommendation

The planning proposal should address the following:

- The potential impacts of the proposal on acid sulfate soils must be assessed in accordance with the relevant guidelines in the *Acid Sulfate Soils Manual* (Stone et al. 1998) and the *Acid Sulfate Soils Laboratory Methods Guidelines* (Ahern et al. 2004).
- Describe mitigation and management options that will be used to prevent, control, abate or minimise potential impacts from the disturbance of acid sulfate soils associated with the proposal and to reduce risks to human health and prevent the degradation of the environment. This should include an assessment of the effectiveness and reliability of the measures and any residual impacts after these measures are implemented.

Biodiversity

The planning proposal should consider the presence of the following threatened species that are known to exist in proximity to the planning area:

- Curlew Sandpiper (*Calidris ferruginea*)
- Black-necked stork (*Ephippiorhynchus asiaticus*),
- Red-tailed tropicbird (*Phaethon rubricauda*)
- Eastern Grass Owl (*Tyto longimembris*)

The ecological report accompanying the planning proposal has identified two Endangered Ecological Communities (EEC) on site. Although the OEH has not undertaken a site inspection to verify the EECs on site, there is a potential that the extent of the EECs may be larger than that currently mapped. Although some areas are in a degraded state, these areas may still form part of the EECs. It appears the ecological report has relied on the degraded state of some areas to determine that these areas are not the EEC. This should be resolved prior to determining the planning proposal so that this issue does not recur during the development assessment stage.

It appears that the filling of the site will impact on native vegetation and the EEC's. The ecological report also assessed the potential for adjoining areas of biodiversity to be impacted by the proposal, however it was unclear whether there would be offsite impacts. This potential impact should be addressed prior to determining the planning proposal.

The ecological report further acknowledges that there will be impacts to biodiversity, however the report concludes that these impacts will not be significant. All direct and indirect impacts to biodiversity should be offset regardless of whether the impact is deemed significant or not. The offset requirements of the proposal should be agreed to prior to finalisation of the planning proposal.

The applicant should be required to develop a biodiversity offset proposal in accordance with the quantified direct and indirect impacts of the proposal to support the planning proposal.

In considering planning proposals the OEH promotes the 'avoid mitigate and offset' approach for impacts on biodiversity. Consideration should be given to the in-situ protection of the habitat of threatened species and ecological communities identified on the sites subject to the planning proposal and for a suitable vegetated buffer to be provided between these areas and the proposal to reduce indirect impacts. The avoidance of biodiversity impacts will reduce offset requirements for any future development proposals.

If the in-situ protection of the biodiversity features of the individual sites is not achievable through avoiding these areas, the OEH recommends that these features are appropriately offset.

Attachment 1: Detailed OEH Comments – Planning Proposal Teven Road Transport Precinct

All impacts to biodiversity should be offset, regardless of whether it has been determined to be significant or not. Further, the OEH does not accept opinion-based verification of the suitability of a proposed offset. The OEH requires greater certainty that acceptable environmental outcomes will be achieved and advocates that all impacts on biodiversity should be adequately offset in a transparent and repeatable manner.

The proposed offset should accord with the '*OEH principles for the use of biodiversity offsets in NSW*'.

These principles have been developed by the OEH to provide the framework for considering biodiversity impacts and appropriate offset requirements and can be accessed at:
<http://www.environment.nsw.gov.au/biodivoffsets/oehoffsetprincip.htm>

A suitable metric should be used to calculate the biodiversity values of the losses and gains associated with the proposal in a repeatable and transparent way. Without a suitable metric the offsetting discussion and negotiation will be arbitrary. We recommend use of the BioBanking Assessment Methodology to identify the type and quantum of offsets needed to compensate for the direct and indirect impacts of the proposal on biodiversity.

The OEH is also willing to assist council in determining a suitable offset for the proposal to ensure biodiversity values are improved or maintained.

Recommendation:

- The preparation of a detailed ecological assessment, prior to determining the planning proposal, is required to enable an adequate assessment to determine the extent of EECs existing in the planning area.
- The preparation of the detailed ecological assessment is required, prior to finalising the planning proposal, to enable an adequate assessment of the total biodiversity impacts in relation to suitable offset proposals.
- An offset proposal be developed, prior to finalising the planning proposal, for the expected biodiversity impacts to be enabled by the planning proposal. The OEH recommends use of BioBanking Assessment Methodology to identify the type and quantum of offsets needed to compensate for the direct and indirect impacts of the proposal on biodiversity ensuring the offset is in accordance with the '*OEH principles for the use of biodiversity offsets in NSW*'.

Page 4 of 4

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Headquarters
Locked Bag 17
Granville NSW 2142

Telephone: 1300 NSW RFS
e-mail: csc@rfs.nsw.gov.au

Facsimile: 8741 5433



The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Your Ref: PP-TEVEN ROAD
Our Ref: L12/0003
DA15100898847 AB

ATTENTION: Klaus Kerzinger

5 November 2015

Dear Mr Kerzinger

Planning Instrument for Planning Proposal Consultation - Teven Road West Ballina Road Transport Precinct

I refer to your letter dated 2 October 2015 seeking advice for the above Planning Instrument in accordance with the 'Environmental Planning and Assessment Act 1979'.

The Service has reviewed the plans and documents received for the proposal and subsequently raise no concerns or issues in relation to bush fire.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Ball', on a light blue background.

John Ball
Manager

ID:98847/92479/5

Page 1 of 2

9.1 Planning Proposal BSCPP 14/001 - Teven Road, West Ballina.DOC

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.

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Planning Proposal – February 2016
Teven Road West Ballina Transport Precinct

Appendix 21 – Report to Council dated 25 February 2016

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

Delivery Program Strategic Planning

Objective To outline the status of planning proposal BSCPP 14/001 and seek direction from the Council concerning the public exhibition of the proposal and an associated draft voluntary planning agreement.

Background

The Council initially considered a request from Newton Denny Chapelle to amend the Ballina Local Environmental Plan 2012 (BLEP 2012) to enable transport and logistics related uses on land along Teven Road in West Ballina at its Ordinary Meeting held on 27 February 2014. The request was made on behalf of five landowners with holdings located on the eastern side of Teven Road, immediately north of the Teven Pacific Highway interchange, and backing onto the Ballina Bypass at West Ballina.

The proposal is based on the use of the additional permitted uses schedule in the BLEP 2012 to enable the proposed uses within the RU2 Rural Landscape zone that is currently applicable to the land.

The diagram below illustrates by red outline the location of the land the subject of the planning proposal.

Diagram 1 – Proposed Teven Road Transport and Logistics Precinct



9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

The NSW Department of Planning and Environment issued a Gateway determination on 30 April 2014. The Gateway determination related to the insertion of *freight transport facilities and warehouse or distribution centre* as additional uses permitted on the land, subject to development consent, within Schedule 1 of BLEP 2012.

The Gateway determination required, amongst other matters, the undertaking of flood investigations to address the proposal's inconsistency with Ministerial Section 117 Direction 4.3, which relates to Flood Prone Land.

The Council at its Ordinary Meeting held on 28 May 2015 considered detailed flood modelling associated with the planning proposal and the impact on flood prone land as required by the Gateway determination. Following consideration of these issues the Council resolved as follows [Minute No. 280515/7]:

1. *That Council advise the proponents that the 5 year ARI flood level for car parking and vehicle access areas may be used for the purpose of further documenting the merit approach to assessing the suitability of flood planning levels as outlined in the NSW Floodplain Development Manual, for the purpose of progressing the planning proposal.*
2. *That Council accept the increase in flood levels modelled as a consequence of Scenario 4 in the flood advice provided by BMT WBM.*
3. *That the proponents be required to advise Council how it is proposed to secure the Scenario 4 modelling parameters as detailed in this report. In the event that a voluntary planning agreement is proposed, such an agreement shall be prepared in draft form and be exhibited with the planning proposal.*
4. *That a further report be provided for the Council's consideration when the planning proposal has been fully documented and prior to it being publically exhibited.*

Following the Council's resolution, the proponent's representative Newton Denny Chapelle (NDC) advised that a voluntary planning agreement (VPA) was proposed to be negotiated to ensure that the required modelling parameters are achieved. The draft VPA was finalised in late January 2016 and forms Attachment One to this report.

Following the submission of requested technical reports by NDC, in September 2015, consultation with Transport for NSW Roads and Maritime Services, NSW Rural Fire Service, NSW Office of Environment and Heritage and JALI Local Aboriginal Land Council took place. A summary of issues raised in responses received, as well as comments made by relevant Council staff, is contained within the Information section of this report. Copies of submissions received are contained within the planning proposal document which forms Attachment Two to this report.

The timeframe for the completion of the LEP amendment was originally set by the Department at 9 months from the week following 30 April 2014. This time period has subsequently been extended by the Department of Planning and Environment on two occasions and now expires on 7 August 2016.

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

Key Issues

- Consideration of submissions relating to submitted technical reports,
- Suitability of planning proposal for public exhibition purposes, and
- Acceptability of draft VPA.

Information

The subject site has an approximate area of 17 hectares. Excluding land required for floodway and car parking purposes, the planning proposal will facilitate the development of buildings on approximately 8.5 hectares of land for road transport and logistics related uses.

In order to limit increases to flood levels elsewhere within the floodplain to predetermined modelled maximum levels, the flood modelling made certain assumptions. The impacts associated with modelling Scenario 4 were accepted by the Council following consideration of independent advice provided by BMT WBM in April 2015. Scenario 4 relied upon the West Ballina Flood Relief Structure (WBFRS) under River Street being in place and only minor filling of parts of Lots 228 and 229 DP 1121079 to ensure that the Ballina Bypass flood relief bridge is not obstructed.

Scenario 4 also required that 40% of areas designated as suitable for development (excluding floodway area) be filled no higher than the 1 in 5 year ARI flood event level (RL 1.2m AHD) and the remaining 60% be filled to the 1 in 100 year ARI flood event level (RL 2.7m AHD). The 8.5ha development site estimate relates to that part of the site proposed to be filled to the 1 in 100 year ARI flood event level. This issue and associated flood modelling results were the subject of the report to the Council's Ordinary Meeting held on 28 May 2015.

The draft VPA provides the mechanism through which the future filling and land form modifications, upon which flood modelling (Scenario 4) is based, are to be achieved in a coordinated manner. It also provides for the protection of the floodway area through a Restriction as to User being registered on the title of impacted lots, under s88E of the Conveyancing Act 1919, within six months of the VPA becoming operative. Finally, the VPA provides that no development of the site shall occur, other than for defined *minor development*, until after the WBFRS has been constructed.

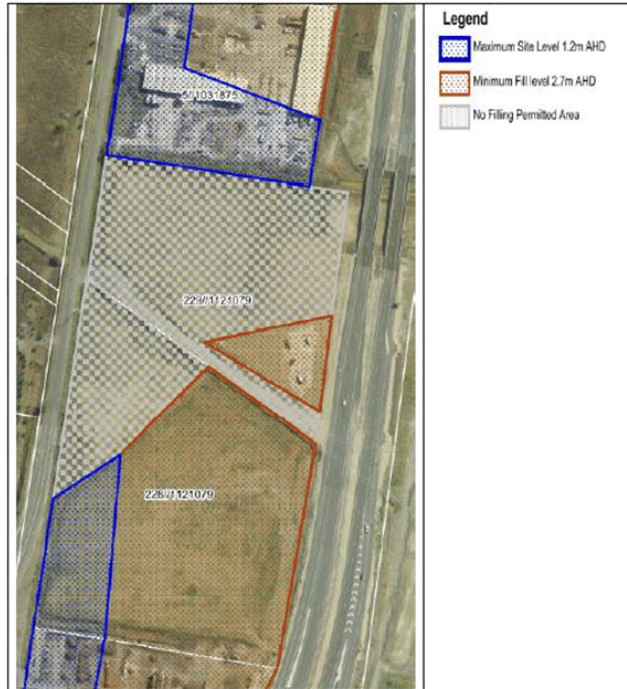
Diagram 2 is an extract from the map which forms a part of the draft VPA. It shows the extent of the area located within Lots 228 and 229 DP 1121079 which is proposed to be subject to a no filling restriction. It is this area that is also proposed to be protected for floodway purposes through a s88E Restriction as to User.

Diagram 2 – Extract from draft VPA Map

Ballina Shire Council
25/02/16

Ordinary Meeting of Ballina Shire Council
Page 3

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven



Minor development is defined in the draft VPA as:

Minor Development means development that is exempt development under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, changes of use, demolition, interior or exterior building alterations, building extensions and rebuilding proposals which do not increase the gross floor area by more than 10% of the gross floor area of a building as it existed as at the date of this Deed, site filling approved by the Council which does not extend the filled area on any lot by more than 10% of the area filled on that lot as at the date of this Deed, and any other development approved by the Council which, in the Council's opinion, does not compromise flood levels within the flood plain.

The minor development definition has been negotiated on the basis that it will permit existing buildings to be utilised for road transport and logistics related purposes without triggering site filling and landform adjustment requirements and prior to the WBFRS being constructed.

Consideration of Consultation Submissions

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

The technical reports submitted by NDC in September 2015 (Ecological Assessment, Preliminary Contaminated Land Site Assessment, Acid Sulfate Soil Investigation, Engineering Services Report and Aboriginal Cultural Heritage Assessment) together with flood modelling advice provided by BMT WBM were the subject of consultation with Government authorities and Council staff during October and November 2015.

Attachment Three to this report contains a summary of key issues identified by NDC within their technical reports.

A brief summary of comments received is contained in the table below:

Organisation	Summary of Comments / Issues Raised	Planning Comments
NSW Rural Fire Service	Indicate that plans and documents have been reviewed and no concerns or issues are raised by the RFS.	Noted.
NSW Roads and Maritime Services	<p>Indicate that there is insufficient traffic information to support the proposal. Advise as follows:</p> <ul style="list-style-type: none"> - Currently right turn from Teven Road into the Bruxner Highway is operating at capacity. - Spot rezoning permitting small scale transport activities in the Teven Road area may be accommodated by the existing road network. - Recommend that prior to finalising the planning proposal for the whole precinct more detailed traffic analysis be undertaken. - Consider that based on available information a roundabout will be required at the intersection of Teven Road and Bruxner Highway to manage proposed traffic. 	<p>Council's Traffic Engineer has undertaken preliminary SIDRA modelling of the Teven Road / Bruxner Highway intersection.</p> <p>The modelling has found that right turn movements (from Teven Road into the Bruxner Highway) are already operating at an unsatisfactory level. Whilst left turn movements are currently satisfactory, these too will deteriorate to unsatisfactory levels with the full development of the precinct and annual predicted Highway traffic growth.</p> <p>Further discussion of this issue is contained within the Civil Services comments section elsewhere in this Table.</p> <p>The comments made by Council's Traffic Engineer have been incorporated within the planning proposal document. When considering this matter it is important to note that the RMS has recognised that small scale transport activities may be accommodated by the existing road network. Only small scale proposals, upon existing developed sites (Go Grow site), have been discussed to date. Should a large scale proposal be contemplated then it will be subject to the DA process. At that time appropriate traffic management facilities, which may include a roundabout, will need to be considered.</p>

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

Organisation	Summary of Comments / Issues Raised	Planning Comments
NSW Office of Environment and Heritage (OEH)	<p>OEH recommends / comments as follows:</p> <ul style="list-style-type: none"> - Provided that Jali LALC comments are consistent with the recommendations contained in the Aboriginal Cultural Heritage Assessment Report (ACHAR) OEH supports the four recommendations. - Prior to finalising the planning proposal floodways should be clearly delineated. - Appropriate evacuation / emergency management action plans should be developed prior to finalising the planning proposal. - A detailed ecological assessment is required prior to finalising the planning proposal. - The potential impacts of acid sulfate soils must be assessed in the planning proposal in accordance with relevant guidelines. - Mitigation and management options related to acid sulfate soils should be described in the planning proposal. 	<p>The proponent's consultants (Everick) consulted with the Jali LALC Sites Officer during the preparation of the ACHAR. A copy of the report was subsequently submitted to Jali LALC but no additional comments have been provided to Council. It is proposed that Council again invites comment from Jali LALC during the public exhibition of the planning proposal.</p> <p>Floodways have been delineated on the plan which forms a part of the draft VPA.</p> <p>Evacuation and emergency management action plans are more appropriately developed as part of the DA process. At that stage they can take into account the design, scale and intensity of proposed development.</p> <p>A preliminary Acid Sulfate Soil Assessment has been prepared by Greg Alderson & Associates and forms a part of the planning proposal. The report estimates that acid sulfate soils are most likely to occur within natural soils at a depth of 0.7m and 1m AHD. Further consideration of acid sulfate soil issues should most appropriately take place as part of the DA process. BLEP 2012 contains provisions which will require this to occur at that time.</p> <p>The OEH has acknowledged that a site inspection has not been undertaken when preparing advice in respect to ecological matters. The planning proposal is supported by an Ecological Assessment prepared by Blackwood Ecological Services which included site surveys. Council's Environmental Scientist has also inspected the site.</p> <p>No threatened or significant flora or fauna species were recorded during the site surveys or are considered likely to occur on the subject site according to the Blackwood report. Following OEH comments additional comments were sought from Blackwood which have been incorporated within the planning proposal. The additional advice indicates that a small patch of Swamp oak forest occurs within the western part of the site together with patches of Phragmites and Cumbungi reed land. These areas are recommended for retention together with suitable buffers. Retention of these areas and associated buffers is a matter for further consideration in the DA process.</p> <p>No further ecological assessment work is considered to be required as part of the planning proposal process. The DA process will require additional work to be undertaken depending on the scale and impact of specific DA proposals.</p>

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

Organisation	Summary of Comments / Issues Raised	Planning Comments
Ballina Shire Council – Civil Services	<p>Prior to rezoning the proponent should be required to identify how stormwater is to be conveyed from the site and whether the conveyance route to the point of discharge is lawful and of sufficient capacity.</p> <p>In terms of traffic, a SIDRA analysis has been undertaken which indicates that the Teven Road southbound leg of the intersection, left turn, will operate at an unsatisfactory Level of Service (LOS) D with full development traffic plus existing traffic volumes. Deterioration to LOS F will result within 10 years assuming traffic growth on the Bruxner Highway of 1.3% per annum. Right turn from Teven into Bruxner is already at a LOS F.</p> <p>A satisfactory intersection performance can be achieved with a two circulating lane roundabout.</p>	<p>NDC is investigating the lawful point of discharge issue. It is understood that lots will be filled and shaped so that stormwater runoff is conveyed to the Teven Road table drain west of the lots and then by a series of open channels and under road culverts to the Richmond River.</p> <p>At this stage this matter is still under investigation. In the circumstances this is not considered to be a matter that should prevent the planning proposal from proceeding to public exhibition. The Council will be in a position to further consider this issue and any additional information submitted by NDC following public exhibition of the planning proposal.</p> <p>The SIDRA modelling has confirmed that the Bruxner Hwy/ Teven Rd intersection is already operating at an unsatisfactory level for right turn movements from Teven Road into the Bruxner Highway. Left turn movements, whilst currently within satisfactory levels (LOS B) of service, will deteriorate with annual traffic growth and also as a consequence of further development in Teven Road.</p> <p>Given that there is no specific development proposal for the precinct, apart from some discussion regarding the potential use of an existing site, the determination of the nature of traffic management measures and when these measures should be implemented is a matter for the DA process.</p> <p>A significant apportionment argument also exists as to the degree to which new development should fund the resolution of a pre-existing problem. The consideration of this issue can only reasonably take place when the traffic implications of a specific development proposal are known. For this reason the rezoning process has not addressed further the traffic impact issue.</p>
Ballina Shire Council – Environmental Health Officer	<p>Indicates that the Preliminary Contaminated Land Assessment, and the Preliminary Acid Sulfate Soil Assessment, prepared by Greg Alderson & Associates have been considered. Both documents have adequately considered the relevant issues for this stage of the planning proposal. They also further identify that further detailed assessment of both issues will be required at development application stage to determine any remediation or management required to protect the environment and human health.</p>	<p>Noted.</p>

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

Organisation	Summary of Comments / Issues Raised	Planning Comments
Ballina Shire Council – Development Services Town Planner	<p>The proponent (NDC) appears to have outlined the key issues/documents we would raise at this point.</p> <p>The lots involved obviously need an enabling clause for the permissibility of the proposed uses in the RU2 zone.</p> <p>Further detailed assessment of merits would occur at DA stage once further details/assessments are known.</p>	Noted.
Ballina Shire Council – Environmental Scientist	<p>EEC's located on western side of Teven Road. Hydrology of these areas needs to remain unaffected by any development and/or filling of the land identified for transport hub.</p> <p>The existing stormwater drainage system to the east of Teven Road affected by the extensive growth of Common Reed. This reed growth is restricting conveyance of stormwater towards the Richmond River. Increased stormwater arising from this development is likely to exacerbate this issue. Any future development of this area should ensure this issue is adequately addressed.</p> <p>The sustainability of rezoning flood affected land is an important issue for careful consideration, as it appears that Ballina has only a limited amount of fill located within approved quarries.</p> <p>Considers that the wetland community located in the north eastern portion is representative of a Freshwater Wetland which is listed as an Endangered Ecological Community pursuant to the Threatened Species Conservation Act (1995). This area will require protection from future development works.</p>	<p>Blackwood Ecological Services have considered proposed increases in flood levels as modelled by BMT WBM. They have concluded that the increase in levels is considered to be within the range of hydrological variation already experienced by these communities and is minor in the context of other changes in the floodplain to which the vegetation is still in the process of responding.</p> <p>Suitable provision for site drainage and conveyance to the Richmond River will be required to be considered at the DA stage.</p> <p>NDC have estimated that 67,000m³ of additional fill may be required to achieve the 2.7m AHD site level. NDC maintain that this amount of material can readily be sourced from local quarries.</p> <p>The wetland community can be required to be retained without compromising future development options for the site. It appears that the majority of this community is not located within the site but forms a part of land owned by the RMS.</p>

Sustainability Considerations

- **Environment**

The future development of the proposed road transport precinct will result in the substantial removal of existing site vegetation as a consequence of site filling and reshaping requirements. An ecological assessment has been undertaken which has found that vegetation communities on the site are of low to moderate conservation significance and widespread in the wider study area.

Retention of some vegetation and the creation of suitable buffer areas has, however, been recommended by the proponent's ecological consultant in supplementary advice. Council's Environmental Scientist has also recommended that certain vegetation, which is considered to be representative of a Freshwater Wetland Endangered Ecological

Ballina Shire Council
25/02/16

Ordinary Meeting of Ballina Shire Council
Page 8

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

Community should be retained. The retention of this vegetation is considered to be feasible without compromising future development options for the site given its location adjoining site boundaries. This can be achieved at the development application stage.

The submitted ecological assessment indicates that no threatened or significant flora species were recorded during site surveys or are considered likely to occur on the subject site. In addition no threatened fauna species were recorded during the site assessment and the site provides limited value as fauna habitat.

Ecological factors relating to floodplain impacts must be considered under the provisions of the NSW Flood Prone Land Policy. The submitted ecological assessment has confirmed that the alterations to offsite hydrological conditions (increased flood levels and duration) are considered to be minor and within the range of hydrological variations already experienced by impacted vegetation communities.

• **Social**

The planning proposal is not considered to give rise to any immediate social factors of significance. In the longer term, and assuming that the proposed road transport precinct is developed, it is anticipated that net positive social impacts will result through employment opportunities and the diversion of associated heavy traffic outside of the Ballina township area.

Social factors are required to be considered under the NSW Flood Prone Land Policy. Social impact issues include the physical and mental impacts on residents whose households are flooded and impacts associated with social disruption. The modelled increase in flood levels are at the minor level and are considered unlikely to result in any social issues of significance.

• **Economic**

The planning proposal in the longer term is anticipated to generate net economic benefits related to the establishment within Ballina Shire of a road transport hub near the junction of the Bruxner and Pacific Highways.

Economic consequences are required to be considered under the NSW Flood Prone Land Policy. As indicated above, the development of this proposed road transport precinct is considered to generate net economic benefits for the Shire.

Legal / Resource / Financial Implications

There is no significant resourcing or financial implications associated with the proposed LEP amendment. The processing of the amendment has been accommodated within the work program of the Strategic and Community Facilities Group.

The processing of the amendment does not involve specific legal implications beyond compliance with the *Environmental Planning and Assessment Act*. It is noted here that as part of the Gateway determination, the then Deputy Director General of the Department of Planning and Environment, issued an

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

authorisation for Council to exercise delegation to make the plan. The issue of the acceptance of the delegation of authority, to enable the planning proposal to be finalised, is proposed to be further considered in the report to the Council after public exhibition.

Consultation

Consultation has already been undertaken with the RMS and RFS as required by the Gateway determination. Additional consultation has been undertaken with the OEH and the Jali LALC. Responses received have been incorporated into the planning proposal document.

It is proposed as part of the public exhibition process that comments again be invited from the RMS, OEH and Jali LALC.

Options

When giving consideration to this matter options available to the Council include the following:

1. That the Council authorise the public exhibition of the planning proposal and draft VPA.
2. That the Council require additional technical reports or examination of issues prior to committing to exhibit the planning proposal and draft VPA.
3. That the Council defers or discontinues the planning proposal and draft VPA process.

Option 1 is the preferred option. Issues relevant to the planning proposal have been examined in the level of detail considered to be required for the planning proposal process. It is important to recognise that what is proposed is to permit a limited range of additional land uses, in addition to uses already permitted with development consent, within the applicable RU2 zone. Additional consideration of relevant issues such as ecological, traffic and acid sulfate soil implications are more appropriately undertaken as part of the DA assessment stage.

Option 2 is not recommended as it is considered that Council has sufficient information to support the planning proposal being placed on public exhibition. If the Council is of the view that an issue has not been sufficiently examined then the proponent may be requested to supply additional information. It is suggested that if this is the case then the proponent be requested to supply the information during the period of the public exhibition. This would then enable the Council to give consideration to the information when it considers submissions after public exhibition.

Option 3 is not recommended as there have been no issues identified which are considered to be of such significance as to warrant the deferral or discontinuation of the planning proposal.

RECOMMENDATIONS

Ballina Shire Council
25/02/16

Ordinary Meeting of Ballina Shire Council
Page 10

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

1. That the planning proposal (BSCPP 14/001) and the associated draft voluntary planning agreement, as attached to this report, be placed on public exhibition for a minimum period of 28 days.
2. That the matter be reported for further consideration by Council following the mandatory public exhibition period.

Attachment(s)

1. Attachment One - Draft VPA
2. Attachment Two - Planning Proposal (Exhibition)
3. Attachment Three - Summary of Technical Reports

9.2 Planning Proposal (BSCPP 14/001) - Logistics Precinct, Teven

250216/1 **RESOLVED**

(Cr Sharon Cadwallader/Cr Paul Worth)

1. That the planning proposal (BSCPP 14/001) and the associated draft voluntary planning agreement, as attached to this report, be placed on public exhibition for a minimum period of 28 days.
2. That the matter be reported for further consideration by Council following the mandatory public exhibition period.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Williams, Cr Ken Johnston, Cr Paul Worth, Cr Ben Smith and Cr Robyn Hordern
AGAINST VOTE - Cr Jeff Johnson
ABSENT. DID NOT VOTE - Cr Keith Johnson and Cr Susan Meehan

Appendix 22 – Environmental Scientist Comments

The vegetation communities located on the western side of Teven Road consist of a number of Endangered Ecological Communities (EEC's) listed under the Threatened Species Conservation Act (1995). Consequently, the hydrology of these areas needs to remain unaffected by any development and or filling of the land identified for transport hub. The greatest threat to these vegetation communities is changes to flow events (increased/decreased) associated with regular rainfall events rather than large scale flood events as is described within the submitted Flora and Fauna Report.

Site inspections and discussions with Council's Coordinator of Operations have confirmed the existing stormwater drainage system to the east of Teven Road affected by the extensive growth of Common Reed. This reed growth is restricting conveyance of stormwater towards the Richmond River. Increased stormwater arising from this development is likely to exacerbate this issue. Any future development of this area should ensure this issue is adequately addressed.

It is considered the wetland community (Community 3) located in the north eastern portion is representative of a Freshwater Wetland which is listed as an Endangered Ecological Community pursuant to the Threatened Species Conservation Act (1995). This area will require protection from future development works.

As with many other sites in Ballina, the land requires filling to make it suitable for development. The sustainability of rezoning flood affected land is an important issue for careful consideration, as it appears that Ballina has only a limited amount of fill located within approved quarries. The majority of this fill would be consumed by the various approved developments such as, Riveroaks, Sovereign Gardens and Homeworld.

In addition, NSW EPA has provided Council with the results of a regional quarry audit. The audit covers a geographic area from Kempsey to the NSW/Qld border. The audit confirms the number and resource type of approved quarries within these areas. The audit appears to confirm the region only has limited resources suitable to be used as fill.

It is expected that Council's Development and Environmental Health Group will, in the near future, provide Strategic and Community Services with an initial assessment of the existing sustainability of the fill resources within the Shire.

Ian Gaskell
Environmental Scientist
Development and Environmental Health Group

THIS Deed of Agreement is made the day of 2016 between
the following Parties:

PARTIES

1. **Ballina Shire Council** of 40 Cherry Street BALLINA NSW 2478 ("Council")
2. **Raymond James Date and Carolyn Joan Date** of 132 Teven Road West Ballina NSW 2478 (owners of Lot 3 DP 749680); **Lynks Pty Limited** of 58 Molesworth Street Lismore NSW 2480 (owner of Lot 2 DP 749680; Lot 5 DP 1031875 and Lot 229 DP 1121079); **Teven Park Pty Ltd** of Unit 33 1 Macquarie Street Sydney NSW 2000 (owner of Lot 228 DP 1121079); **Zeallake Pty Ltd** of 60 Teven Road Ballina NSW 2478 (owner of Lot 227 DP 1121079) and **Montina Pty Ltd** of c/- Collins Hume First Floor 97 Tamar Street Ballina NSW 2478 (owner of Lot 12 DP 1011575) ("Developers")

Background

- A. In early 2014 the Developers requested the Council to initiate a planning proposal to amend Ballina Local Environmental Plan 2012 ("LEP") to alter the Additional Permitted Uses Map Sheet 006A as it applies to the Land.
- B. The purpose of the amendment is to permit *freight transport facilities* and *warehouse or distribution centre* as additional permitted uses on the Land.
- C. In order to develop the Land for those uses and to minimise flooding impacts it is necessary for site filling and landform modification to be undertaken on the Land in a co-ordinated manner.
- D. The flood modelling which has informed the proposed lot levels of the Land is based on an assumption that a flood relief structure will be constructed under River Street, West Ballina. As a consequence that structure must be constructed prior to any development of the Land for *freight transport facilities* or *warehouse or distribution centre*.

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- E. Each of the Developers is willing to have this Planning Agreement registered on the title of their land until such time as earthworks are undertaken on that land in accordance with this Deed.
- F. Each of the Developers is willing to permit a Restriction as to User pursuant to s.88E *Conveyancing Act 1919* in favour of the Council to be registered on the title of their land restricting the use of part of that land for drainage and floodway purposes.
- G. In entering into this Agreement the Council does not intend to fetter its discretion with respect to any future development application relating to the Land.

THIS DEED WITNESSES

1. Planning Agreement Under the Act

The Parties agree this Deed is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2. Application of this Deed

The Planning Agreement constituted by this Deed applies to the Land.

3. Operation of this Deed

3.1 Until this Deed operates, this document constitutes the Developers' irrevocable offer to enter into the Deed if the LEP is amended generally in accordance with the Planning Proposal.

3.2 This Deed becomes operative from the date on which the LEP is amended generally in accordance with the Planning Proposal.

4. Definitions and Interpretations

4.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979*.

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Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering, or otherwise dealing with the Land but does not include the registration of a plan of subdivision relating to the Land.

Developers means Raymond James and Carolyn Joan Date, Lynks Pty Limited, Teven Park Pty Ltd, Zeallake Pty Ltd and Montina Pty Ltd, or their servants, successors, agents or assigns.

Development has the same meaning as in the Act.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Environmental Planning Instrument has the same meaning as in the Act.

Land means:

Lot 2 DP 749680;

Lot 3 DP 749680;

Lot 5 DP 1031875;

Lot 227 DP 1121079;

Lot 228 DP 1121079;

Lot 229 DP 1121079 and

Lot 12 DP 1011575

being land at Teven Road West Ballina

LEP means Ballina Local Environmental Plan 2012.

Material Public Benefit means the material public benefit described in Schedule 1 to this Deed.

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Minor Development means development that is exempt development under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, changes of use, demolition, interior or exterior building alterations, building extensions and rebuilding proposals which do not increase the gross floor area by more than 10% of the gross floor area of a building as it existed as at the date of this Deed, site filling approved by the Council which does not extend the filled area on any lot by more than 10% of the area filled on that lot as at the date of this Deed, and any other development approved by the Council which, in the Council's opinion, does not compromise flood levels within the flood plain.

Occupation Certificate has the same meaning as in the Act.

Party means a Party to this Deed including its successors and assigns.

Planning Proposal means planning proposal PP_2014_BALLI_001_00 as registered with the New South Wales Department of Planning & Environment in relation to the Land.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

4.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires.

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

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- (d) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- (e) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment, or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or Government Agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word "include" or "including" are to be construed without limitation.
- (l) A reference to this Deed includes the agreement recorded in this Deed.

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(m) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, and the Parties successors and assigns.

(n) Any Schedules and attachments form part of this Deed.

4.3 In the interpretation of this Deed terms defined in the Act or the LEP have the same meaning as in these instruments unless elsewhere defined in this Deed.

5. Material Public Benefit to be Provided under this Deed

The Parties agree that:

5.1 Prior to the issue of any Occupation Certificate for any Development for *freight transport facilities or warehouse or distribution centre*, other than Minor Development as defined in this Deed, the Developers will provide the Material Public Benefit set out in Schedule 1 of this Deed.

5.2 The Developers agree to register a Restriction as to User pursuant to s.88E *Conveyancing Act 1919* in favour of the Council to be registered on the title of their land restricting the use of part of that land for drainage and floodway purposes.

5.3 No Development for *freight transport facilities or warehouse or distribution centre*, other than Minor Development as defined in this Deed, shall take place on the Land until the flood relief structure has been constructed under River Street, West Ballina.

6. Registration of this Deed

This Deed is required to be registered.

7. Assignment and Dealings

The Developers or any of them shall not sell, transfer, assign or novate or similarly deal with ("Dealing") their right, title or interest in the Land (if any) or any of their rights or obligations under this Deed, or allow any interest in them to arise or be varied unless the Developer(s):

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7.1 Gives the Council no less than 28 days' notice in writing of the proposed

Dealing; and

7.2 Procures that the transferee, assignee or novatee executes and delivers to the Council prior to any such dealing taking effect a deed in favour of the Council in form and substance acceptable to the Council, acting reasonable whereby the transferee, assignee or novatee becomes contractually bound with the Council to perform all of the Developer's obligations and have the benefit of the Developer's rights under this Deed.

8. Review of this Deed

Any amendment or revocation of this Deed shall be by agreement in writing and in compliance with section 93G of the Act.

9. Dispute Resolution

9.1 Notice of dispute

If a Party claims that a dispute has arisen under this Deed ("Claimant"), it must give written notice to the other Party ("Respondent") stating the matters in dispute and designating as its representative a person to negotiate the dispute ("Claim Notice").

No Party may start Court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause.

9.2 Response to notice

Within ten business days of receiving the claim notice, the respondent must notify the Claimant of its representative to negotiate the dispute.

9.3 The nominated representative must:

- (i) Meet to discuss the matter in good faith within five business days after services by the Respondent of notice of its representatives;

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- (ii) Use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

9.4 Further notice if not settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute ("Dispute Notice") by mediation under clause 10.5 or by expert determination under clause 10.6.

9.5 Mediation

If a Party gives a Dispute Notice calling for the dispute to be mediated:

- (i) The Parties must agree to the terms of reference of the mediation within five business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules and the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (ii) The mediator will be agreed between the Parties, or failing agreement within five business days of receipt of the Dispute Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (iii) The mediator appointed pursuant to this Clause 10.5 must:
 - (a) Have reasonable qualifications and practical experience in the area of disputes; and
 - (b) Have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;

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- (iv) The mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (v) The Parties must within five business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation.
- (vi) The Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement.
- (vii) In relation to costs and expenses
 - (a) Each Party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (b) The cost for the mediator will be shared equally by the Parties unless the mediator determines a Party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full cost of the mediation to be borne by that Party.

9.6 Expert Determination

If the dispute is not resolved under clause 10.3 or 10.5 the dispute may, by agreement between the Parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- (i) The dispute must be determined by an independent expert in the relevant field:
 - (a) Agreed upon and appointed jointly by the Council and the Developer; or

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- (b) In the event that no agreement is reached or appointment made within 30 business days, appointed on application of a Party by the then current President of the Law Society of New South Wales;
- (ii) The expert must be appointed in writing and terms of the appointment must not be inconsistent with this clause;
- (iii) The determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and containing reasons for the determination;
- (iv) The expert will determine the rules of the conduct for the process, but must conduct the process in accordance with the rules of natural justice;
- (v) Each Party will bear its own costs in connection with the process and the determination by the expert together with and equal proportion of the expert's fees and costs; and
- (vi) Any determination made by an expert pursuant to this clause is final and binding upon the Parties except where the determination is in respect of, or relates to, termination or purported termination of this Deed by any Party, in which event the expert is deemed to be giving a non-binding appraisal and any Party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

9.7 Litigation

If the dispute is not finally resolved in accordance with this clause 10, either Party is at liberty to litigate the dispute.

9.8 Continue to Perform Obligations

Each Party must continue to perform its obligations under this Deed, notwithstanding the existence of a dispute.

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10. Enforcement

Nothing in this Deed prevents either Party from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Deed or any matter to which this Agreement relates.

11. Notices

11.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below:
- (b) Faxed to that Party at its fax number set out below;
- (c) Emailed to that Party at its email address set out below.

Council

Attention: General Manager

Address: 40 Cherry Street BALLINA NSW 2478

Fax Number: 02 6686 7035

Developers

Attention: Damian Chapelle

Address: Newton Denny Chapelle Suite 1 31 Carrington Street
LISMORE 2480

Fax Number: 02 6622 4088

11.2 If a Party gives the other Party three business days' notice of a change of its address or fax number, any notice, consent, information, application or requests is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

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11.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

11.4 If any notice, consent, information, application or request is delivered, or any error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5:00pm on that day in the place of the Party to whom it is sent, it is to be treated as being given or made at the beginning of the next business day.

12. Approvals and Consent

Accept as otherwise set out in this Deed, and subject to any Statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

13. Assignment and Dealings

Until the Material Public Benefit is provided in full, the Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempt or purport to do so unless the Developer:

13.1 Gives Council no less than ten (10) Business Days' notice in writing of the proposed sale, transfer, assignment, novation, charge, encumbrance or other dealing with its rights in respect of the Land;

13.2 Procures that any buyer, transferee, assignee or novatee promptly executes a Deed in favour of Council whereby the buyer, transferee,

assignee or novatee becomes contractually bound with Council to perform the Developer's obligations under this Deed.

14. Costs

Council's costs of and incidental to the preparation and execution of this Deed and any related documents and registration of same shall be borne by the Developer.

15. Entire Deed

This Deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

16. Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Deed and all transactions incidental to it.

17. Governing law and jurisdiction

This Deed is governed by the law of New South Wales. The Parties submit to the nonexclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

18. Joint and individual liability and benefits

Except as otherwise set out in this Deed, any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

19. No fetter

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Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

20. Representations and warranties

The Parties represent and warrant that they have power to enter into this Deed and comply with their obligations under the Deed and that entry into this Deed will not result in the breach of any law.

21. Severability

If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal.

22. Modification

No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

23. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

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EXECUTED by the Parties as a Deed.

EXECUTED BY **THE COUNCIL OF THE**)
SHIRE OF BALLINA)
Date.....)
.....)

EXECUTED BY **RAYMOND JAMES**)
DATE and CAROLYN JOAN DATE)
Date.....)
.....)
.....)

EXECUTED BY **LYNKS PTY LIMITED**)
Date.....)
.....)
Director / Secretary)

EXECUTED BY **TEVEN PARK PTY LTD**)
Date.....)
.....)
Director / Secretary)

EXECUTED BY **ZEALLAKE PTY LTD**)
Date.....)
.....)
Director / Secretary)

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EXECUTED BY **MONTINA PTY LTD**)
)
Date.....)
)
.....)
Director / Secretary

DRAFT

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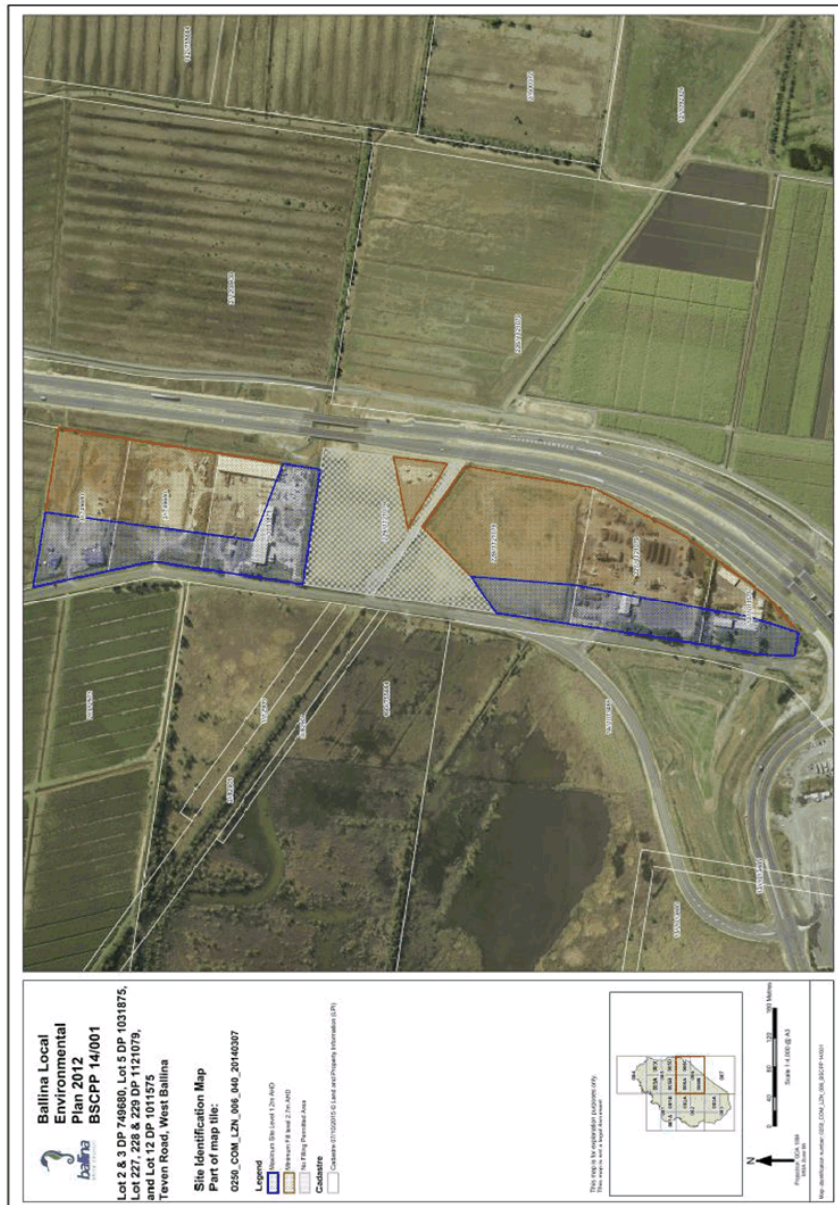
SCHEDULE 1 – DEVELOPMENT CONTRIBUTIONS SCHEDULE

The Developers agree to provide the following material benefits:

MATERIAL PUBLIC BENEFIT TO BE PROVIDED BY THE DEVELOPERS		
Column 1	Column 2	Column 3
Development Contribution for Material Public Benefit	Intended Use/purpose	Date to be provided by the Developer
1. Grant a Restriction as to User in favour of Council and free of cost to Council pursuant to section 88E <i>Conveyancing Act 1919</i> restricting the use of part of that land for drainage and floodway purposes.	The provision of public infrastructure relating to the Land	Within 6 months of this Deed becoming operative
2. Prior to or as part of any Development for <i>freight transport facilities</i> or <i>warehouse or distribution centre</i> (other than Minor Development as defined in this Deed) being carried out on the Land, earthworks shall be undertaken on the Land (or part of it) to achieve the site levels nominated in the map described as Ballina Local Environmental Plan 2012 BSCPP 14/001 which is Annexure A to this Deed. Such earthworks shall be undertaken in accordance with the sequence described in the table which is Annexure B to this Deed.	The provision of public infrastructure relating to the Land	Earthworks to be undertaken prior to the issue of any Occupation Certificate in respect of the development consent for the Land (or any part of it) for <i>freight transport facilities</i> or <i>warehouse or distribution centre</i> (other than Minor Development as defined in this Deed).

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ANNEXURE A - Ballina Local Environmental Plan 2012 BSCPP 14/001



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ANNEXURE B - SEQUENCE OF EARTHWORKS

	Site Precincts
	<i>Northern Precinct</i>
1.	Lot 3 DP 749680
2.	Lot 2 DP 749680
3.	Lot 5 DP 1031875
4.	Lot 229 DP 1121079
	<i>Southern Precinct</i>
1.	Lot 228 DP 1121079
2.	Lot 227 DP 1121079
3.	Lot 12 1011575

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Environmental Planning and Assessment Regulation 2000
(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Ballina Shire Council ABN 53 929 887 369 of cnr Tamar and Cherry Streets, Ballina, NSW 2478
(Council)

Raymond James Date and Carolyn Joan Date of 132 Teven Road West Ballina NSW 2478
(Landowner of Lot 3 DP 749680)

Lynks Pty Limited of 58 Molesworth Street Lismore NSW 2480 (Landowner of Lot 2 DP 749680; Lot 5 DP 1031875 and Lot 229 DP 1121079)

Teven Park Pty Ltd of Unit 33 1 Macquarie Street Sydney NSW 2000 (Landowner of Lot 228 DP 1121079)

Zeallake Pty Ltd of 60 Teven Road Ballina NSW 2478 (Landowner of Lot 227 DP 1121079)

Montina Pty Ltd of c/- Collins Hume First Floor 97 Tamar Street Ballina NSW 2478 (Landowner of Lot 12 DP 1011575)

Description of Land to which this Draft Planning Agreement applies:

Lot 3 in Deposited Plan 749680

Lot 2 in Deposited Plan 749680

Lot 5 in Deposited Plan 1031875

Lot 229 in Deposited Plan 1121079

Lot 228 in Deposited Plan 1121079

Lot 227 in Deposited Plan 1121079

Lot 12 in Deposited Plan 1011575

Description of Proposed Change to Environmental Planning Instrument/Development Application

An amendment to Ballina Local Environmental Plan 2012 to alter the Additional Permitted Uses Map Sheet 006A as it applies to the Land, and Schedule 1 of the plan, so as to permit *freight transport facilities* and *warehouse or distribution centre* as additional permitted uses on the Land

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

- H. The Objective of the Draft Planning Agreement is to minimise flood impacts associated with future development of the Land by coordinated site filling and land form modification.

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- I. A Restriction as to User pursuant to s.88E *Conveyancing Act* 1919 in favour of the Council will be registered on the title of the Land restricting the use of part of that Land for drainage and floodway purposes.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Planning Agreement

The Planning Agreement reasonably provides for the achievement of the following planning purposes:

- promote the orderly and economic use and development of the Land to which the agreement applies.

How the Planning Agreement Promotes the Public Interest

Provides for local development in a manner that protects environmental and social values.

For Planning Authorities:

Development Corporations - How the Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Planning Agreement Promotes the Elements of the Council's Charter

The Planning Agreement, by making provision for coordinated site filling and landform modifications, and the registration of a Restriction as to User over land required for drainage and floodway purposes benefits the wider community and promotes the following elements of the Council's charter:

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

All Planning Authorities – Whether the Planning Agreement Conforms with the Authority's Capital Works Program

The Planning Agreement does not affect or conflict with Council's Capital Works Program.

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

Our ref: PP_2014_BALLI_001_00(14/06157)

**Planning Proposal to amend Ballina Local Environment Plan 2012:
PP_2014_BALLI_001_00**

I refer to Council's correspondence of 29 February 2016 regarding the proposal and Section 117 Direction 4.3 Flood Prone Land.

I have considered this matter, and as a delegate of the Secretary, I have agreed that the proposal's inconsistency with Section 117 Direction 4.3 Flood Prone Land is justified.

I have also reviewed the comments provided by the NSW RFS on the proposal, and as a delegate of the Secretary, have agreed that the proposal's inconsistency with Section 117 Direction 4.4 Planning for Bushfire Protection is justified.

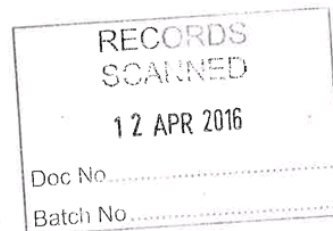
Council can now continue to process the proposal.

If you have any questions in relation to this matter, I have arranged for Mr Daniel Summerhayes to assist you. Mr Summerhayes can be contacted on (02) 6641 6614.

Yours sincerely

 6 April 2016

Craig Diss
Acting Director Regions, Northern
Planning Services



**Attachment Four – Submissions to Planning Proposal 14/001 Teven Road
Transport and Logistics Precinct**



File No: NTH 13/00109
Your Ref: Planning Proposal – Teven Road Transport Precinct (Trim 1572/02).

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Klaus Kerzinger

Dear Sir

Exhibition of Planning Proposal BSCPP 14/001 – Teven Road West Ballina Road Transport and Logistics Precinct, and Draft Voluntary Planning Agreement (VPA).

I refer to your letter of 4 March 2016 regarding the abovementioned planning proposal referred to Roads and Maritime Services for consideration.


The key interests for Roads and Maritime Services are the safety and efficiency of the road network, traffic management, the integrity of infrastructure assets and the integration of land use and transport.

Roads and Maritime has reviewed the documents supporting the Teven Road planning proposal and now has no concerns with the proposal proceeding. To manage future development traffic, Roads and Maritime agrees with the recommendation by Council's traffic engineer's that development of the transport precinct will need to be supported by the construction of a two lane roundabout at the intersection of Teven Road with the Bruxner Highway.

Roads and Maritime has no issues with the Voluntary Planning Agreement (VPA) which is required to limit potential flooding in the area due to site filling.

If you have any further enquiries regarding the above comments please do not hesitate to contact Liz Smith, Manager Land Use Assessment on (02) 6640 1362 or via email at: development.northern@rms.nsw.gov.au

Yours faithfully


24 March 2016
for Monica Siroi
Network & Safety Manager

Roads and Maritime Services

76 Victoria Street, Grafton NSW 2460 |
PO Box 576, Grafton NSW 2460 |

www.rms.nsw.gov.au | 13 22 13

34 Keith Hall Lane

BALLINA. 2478

1ST APRIL 2016

THE GENERAL MANAGER

BALLINA SHIRE COUNCIL.

Dear Sir,

Re; BSCPP 14/001

Teven Road Transport and Logistics Precinct.

ATTENTION: KLAUS KERZINGER



I submit the following for your consideration.

I am the owner of 18.13 ha of agriculture zoned land adjoining the Riverbend retirement village, the proposed Highway service centre and other associated proposals and the Pacific Highway Ballina Bypass.

I have made many submissions to council over an extended period concerning the encroachment of development on my agriculture zoned land, presently used for the production of sugar cane. These submissions have included a request for rezoning and more recently a request for inclusion of my land in the West Ballina urban land release strategy.

Council officers have previously expressed a preference for contiguous development in this area.

I already experience major difficulties in carrying out the farming activities on my land due to the encroachment of development.

Sugar cane farming is an intensive form of agriculture requiring cultivation producing dust, herbicide application, pre harvest burning with the associated smoke, harvest activities producing noise, dust and the general operation of machinery to maintain the crops and property.

This proposal BSCPP 14/ 001 should also include my property.

As one of the very few privately held properties in this locality and adjoining the previously mentioned existing developments and proposed developments, as well as frontage to the Pacific Highway , I believe this property more than meets the criteria for inclusion.

I am available to discuss this matter at almost any time and would also request the opportunity to address the council when this matter is considered.

Yours Faithfully



TONY ELLIS

To: Klaus Kerzinger
Cc:
Subject: Teven Rd

Klaus
As discussed strongly support proposal.
John Budden 6 Broadwater Pl West Ballina
Sent from Samsung Mobile

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>
