

| Date | Action |
|------------------|---|
| November 1995 | Council resolved to prepare an amendment to the Ballina Local Environmental Plan for the area "bounded generally by the Pacific Highway, Emigrant Creek, the Richmond River and Burns Point Ferry Road, with the purpose of the plan being to facilitate the urban development of the site". |
| June - July 1997 | Exhibition of draft amendment 39 to the Ballina Local Environmental Plan 1997 |
| June 1999 | Amended concept plan submitted by Steel & Associates Pty Ltd that attempted to address community and public authority submissions to the public exhibition. |
| July 1999 | Council resolved to exhibit the revised rezoning proposal. |
| September 1999 | Exhibition of the revised proposal deferred pending submission of further geotechnical information. |
| 1999 - 2005 | Ongoing work relating to resolving technical issues on the site. |
| November 2005 | Rezoning request received seeking support from Council to rezone the land to facilitate residential development in the northern half of the site, with the remainder of the area to be zoned for environmental protection purposes. The request was worded as if it were a fresh application (i.e. not reliant on the previous decisions of Council) and an application fee was paid. |
| January 2006 | Council resolved as follows: <ol style="list-style-type: none"> 1. That the Council proceed to commence the formal processing of the requested amendment to the Ballina Local Environmental Plan 1997 relating to 1 of 4 DP 537417 with the matter to be the subject of a further report to the Council providing additional technical detail with respect to the proposed amendment. 2. The Council workshop proposed on developer agreements will further define Council's expectations with respect to this particular development and the potential for a marina. <p>The report included the following statement: <i>This report is essentially to inform the Council with respect to whether or not it is considered the request is consistent with the adopted criteria for the commencement of formal processing, and to seek direction from the Council as to whether the formal processing of the request should commence.</i></p> <p><i>It is important to note that the commencement of the formal amendment process in no way binds the Council to rezone the land. Commencement of the process merely means that more detailed technical assessment of the proposal will start. Should Council wish to continue consideration of this proposed amendment, the next step will be the presentation of a more detailed report to the Council regarding the technical aspects of the proposal based on an initial review of the material provided by the proponent.</i></p> <p>The Council resolution was not forwarded to the Department of Planning under S54(4) of the Act.</p> <p>The following advice was provided to the proponent: <i>Please note that Council's consideration of the matter to date stops short of a decision to prepare a draft local environmental plan, as required under Section 54 of the Environmental Planning and Assessment Act.</i></p> <p>This is the origin of draft LEP Amendment No.93.</p> |
| July 2006 | Council considered an update report concerning the rezoning. The report advised that there were a range of constraints over the land which were still being assessed. Council resolved as follows: <i>That the report concerning the current status of the request for rezoning of Allotment 1 DP 537417 Burns Ferry Road, West Ballina be received and noted.</i> |
| October 2008 | Response from Landpartners (formerly Aspect North) to Council's list of issues, withdrawing the concept plan and requesting: <ul style="list-style-type: none"> • That the 4.76 ha area adjacent to the Pacific Highway be rezoned for urban development. • The potential to explore further development options over the balance of the land be preserved by maintaining the current zone or equivalent and that it be considered for urban expansion in the Urban Land Release Strategy. |

| Date | Action |
|---------------|---|
| December 2008 | <p>Council resolved as follows: <i>That in respect to the subject land matters Council resolves to proceed with option two as identified in the body of this report.</i></p> <p>Option 2 is reproduced below:</p> <ol style="list-style-type: none"> 1. <i>Advise the various land owners that Council is supportive of rezoning the 4.76 ha area of the Ballina Waterways site adjacent to the Pacific Highway and the immediately adjoining lands for urban purposes as part of the comprehensive Draft Local Environmental Plan, provided that:</i> <ol style="list-style-type: none"> a. <i>An integrated rezoning strategy is provided in conjunction with the Ferry Boat Motel site.</i> b. <i>The proposed zoning facilitates the development of the land for low key tourist accommodation, aged care, manufactured home estate, business or low key/impact industrial or a mix, rather than conventional residential allotments.</i> c. <i>A zoning strategy includes areas to be set aside for environmental protection, compensatory environmental measures and strategies for long term maintenance of environmental protection areas.</i> d. <i>The owners of the Ballina Waterways and former Ferry Boat Motel site provide commitments towards access being provided to and across the site in accordance with the NSW Roads & Traffic Authority recommendations i.e. extension of Kalinga Street across the site to give alternative access to Emigrant Lane.</i> e. <i>A planning agreement is provided that outlines all undertakings/proposals that cannot be secured or delivered via the proposed zoning, or</i> (Note: It is envisaged that the owners of the adjoining Emigrant Lane Properties would be contacted to ascertain their preference for the future zoning of their land.) <p>The Report to Council included the following advice: <i>Council has the ability to include the subject land and the other adjoining land in a draft plan under the terms of Council's original resolution at its Ordinary Meeting held on 23 November 1995:</i> <i>"to prepare a local environmental plan to amend the provisions of the Ballina Local Environmental Plan 1987. The amending plan shall apply to that area in West Ballina bounded generally by the Pacific Highway, Emigrant Creek, the Richmond River and Burns Point Ferry Road, with the purpose of the plan being to facilitate the urban development of the site".</i> <i>Recent advice from the Department of Planning suggests that Council can continue to act on this original resolution if it wishes to prepare a draft plan for this land. Council will, however, need to obtain a Section 65 Certificate from the Director-General of Planning for the public exhibition of a draft plan.</i> <i>If Council is to support any rezoning of part of the land for urban purposes, it may have to be undertaken as part of the comprehensive new Draft Local Environmental Plan, given the timing of both matters.</i> Consideration of the amendment proceeded under draft LEP Amendment No.39.</p> |
| July 2009 | Presentation to Councillors by S.I Connelly concerning revised concept for the site |
| March 2010 | Draft Ballina Local Environmental Plan 2010 placed on public exhibition proposing entire site to be zoned RU2 Rural Landscape. |
| April 2010 | <p>Council request for clarification regarding proponent's progress in relation to the amendment. Request sought clarification in relation to the following:</p> <ol style="list-style-type: none"> a. <i>whether or not your client intends to proceed with the current rezoning request; and</i> b. <i>should your client still be proceeding with the rezoning proposal, the likely timeframe for the submission of the required technical information connected to the rezoning.</i> <p>No specific response was received.</p> |

| Date | Action |
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| May 2010 | Council request to Department of Planning for entry of LEP amendment no.39 into the Gateway planning system. Amendment could not continue under the previous LEP amendment system. |
| June 2010 | Department of Planning advice that conversion of the existing draft to a planning proposal under the Gateway system was not supported. This advice closed the consideration of the LEP amendment request (39) previously presented to Council. |
| October 2010 | Advice from SJ Connelly that Part 3A submission lodged with Department of Planning. Council advised of a mixed urban/ environmental concept for the land (including biobanking). |
| May/ June 2011 | Project identified as not being received into the Part 3A assessment system under reforms to Part 3A. |
| September 2011 | Draft Ballina Local Environmental Plan 2011 placed on public exhibition proposing entire site to be zoned E2 Environmental Conservation. |
| December 2011 | Submission received from SJ Connelly in relation to proposed environmental conservation zoning for the site in Draft Ballina Local Environmental Plan 2011. In response, Council resolved to grant the proponent additional time to prepare a rezoning proposal and to zone part of the site rural in accordance with its December 2008 resolution. This resolution included the applicable land use zoning for the site would be reviewed in 12 months. |
| May 2012 | LEP amendment request received to rezone Lot 1 DP 522558 (former Ferry Boat Motel site) to allow medium density residential development. |
| July 2012 | LEP amendment request received from SJ Connelly to rezone Lot 4 DP 537419 (Ballina Waterways site) comprising a mix of urban and environmental conservation land uses (including biobanking). |
| September 2012 | LEP amendment request for Lot 1 DP 522558 (former Ferry Boat Motel site) reported to Council with recommendation to proceed with preparation of a planning proposal for Lot 1 only. Proposal for Lot 4 to be assessed and reported separately. |
| October 2012 | Council request to SJ Connelly for additional information in relation to rezoning proposal for Lot 4, including request for proponent agreement to engage third party ecological consultant to review ecological characteristics of site. No specific response received. |
| February 2013 | Ballina Local Environmental Plan 2012 is made and zones the 4.76 hectare area (identified in the December 2008 Council resolution) as RU2 Rural Landscape. The remainder of the site (proposed for E2 Environmental Conservation under the Draft LEP) is deferred and remains zoned 1(d) – Rural (Urban Investigation) as per the Ballina Local Environmental Plan 1987. |
| June 2013 | Matter reported to Council for direction as to how to proceed in relation to current proposal having regard to Council's previous (December 2011) resolution and the proponent's failure to respond to Council's October 2012 correspondence. Council resolved to defer consideration of the matter for up to 6 months allowing the proponent to submit additional information. |
| January 2014 | Matter reported to Council for direction as to how to proceed following the lapsing of 6 months from the June 2013 resolution and the absence of additional information from the proponent. Council resolves to continue processing the amendment subject to the following: - undertaking of an independent ecological review at cost of applicant (to be completed by May 30), and, - Council seeking advice from the (then) Department of Planning and Infrastructure in relation to the ability to apply environmental protection zones to the site. |
| May 2014 | Independent ecological consultant (Blackwood Ecological Services) provides report on the assessment of the ecological values of the site. |

9.2 Planning Proposal - Burns Point Ferry Road, West Ballina.DOC

| Date | Action |
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| June 2014 | The proponent acknowledges the findings and recommendations of the Blackwood Ecological Services report and makes a written commitment to enter a voluntary planning agreement with Council to achieve satisfactory ecological outcomes for the site should the LEP amendment proposal proceed. |
| July 2014 | Matter reported to Council addressing items in January 2014 resolution. Council resolved to submit the proposal to the Department of Planning and Environment for Gateway determination and to engage a consultant to undertake a third party review of the proposal following government agency consultation. |
| September 2014 | Gateway determination issued by Department of Planning and Environment in favour or the proposal subject to additional assessment undertaken prior to public exhibition. |
| December 2014 | Additional information supporting the proposal submitted by the proponent in response to the requirements of the Gateway determination. |
| February 2015 | Consultation with government agencies and Council technical staff. |
| August 2015 | Additional information submitted by proponent suitable to enable third party review of planning proposal to proceed. |
| March 2016 | Peer Review and Gap Analysis Report prepared by GeoLINK |
| April 2016 | Alteration to Gateway determination issued by the Department of Planning and Environment. The altered Gateway determination related to the part R2 and part RU2 zones, proposed planning controls and the proposed additional permitted uses. The period in which the LEP was required to be completed was also extended until 1 April 2017. |
| May 2016 | Submission of supplementary information addressing previously identified information gaps related to Stormwater Management and Traffic Impact. Submission of this information enabled the planning proposal to proceed to public exhibition. |



CUT15/4234

23 February 2015

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Lachlan Sims

Dear Sir/Madam

Re: Planning Proposal – BSCPP 14/008, Burns Point Ferry Road, West Ballina

Thank you for the opportunity to provide comments on the proposal to amend the Ballina LEP with respect to the rezoning of Lot 4 DP537419 as per your letter dated 23 January 2015. Agriculture NSW, a division of NSW Department of Primary Industries (DPI), provides the following comments.

No major implications for agriculture are identified within the proposal documents. Consultation with NSW Office of Water, the Fisheries unit within DPI and the local cane industry is recommended to discuss any implications associated with the flood gate adjacent to the subject site.

Should you wish to discuss further, please contact me on (02) 66261215 or Melissa Kahler on 86503125.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Selina Stillman'.

Selina Stillman
Resource Management Officer – North Coast

NSW Department of Primary Industries
Wollongbar Primary Industries Institute, 1243 Bruxner Highway, Wollongbar NSW 2477
Tel: 02 66261215 Fax: 02 66281744 www.dpi.nsw.gov.au ABN: 72 189 919 072

**BSCPP 14/008 – Burns Point Ferry Road Planning Proposal
Submissions as at 25 July 2016**



Contact: Christie Jackson
Phone: 02 6763 1426
Email: christie.jackson@dpi.nsw.gov.au
Our Ref: QUT16/23362

Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Email: klaus@ballina.nsw.gov.au

Your ref: BSCPP 14/008 – Burns Point Ferry Road (1624)

Attention: Klaus Kerzinger

Dear Mr Kerzinger,

**Planning Proposal – BSCPP 14/008 Burns Point Ferry Road, West Ballina
Draft Voluntary Planning Agreement (DOC15/29397)**

I refer to your letter dated the 24 May 2016 seeking the Department of Primary Industries – Water's (DPI Water) comments on the Planning Proposal for Lot 4 DP537419, Burns Point Ferry Road, West Ballina.

DPI Water understands the planning proposal seeks to rezone part of the land as R2 Low Density Residential Zone to enable part of the land for live-work (residential and employment) purposes. The remainder of the site will be zoned RU2 Rural Landscape zone.

DPI Water has reviewed the planning proposal and our comments are outlined as follows.

The planning proposal outlines a draft layout for future development on the site but does not provide detailed information therefore DPI Water's comments will be general.

Water Supply and Licensing: The planning proposal does not outline the intended water supply to service any future developments on the site. DPI Water recommends Council carefully consider the water supply to service this area to ensure there will be a secure (quality and quantity) reliable and manageable water supply for any future developments.

Any proliferation of residential living in the local government area will increase the demand and use of water resources, affect other users of the resource including the environment and contribute to declining river health (for example decline in aquatic habitat, geomorphic stability, water quality and riparian areas etc) unless properly managed. The potential future subdivision of the site requires a strategic understanding of the water needs of different allotments by size and location.

Basic Landholder Rights: The *Water Management Act 2000* provides that landholders with land overlying an aquifer, or with river or lake frontage, can access water for domestic (household) purposes, without the requirement for an access licence, through a domestic and stock right. Landholders can also capture a portion of rainfall from their property under a harvestable right. These rights are known as basic landholder rights (BLRs). DPI Water

NSW Department of Primary Industries
Level 11, 323 Castlereagh Street Sydney NSW 2000
Tel: 02 9934 0864 landuse.enquiries@dpi.nsw.gov.au ABN: 72 189 919 072

notes that where landholdings are subdivided, creating new basic landholder rights for water extraction, there is the potential to impact on existing water users, including the environment. The planning proposal does not outline an intended water supply to service any future developments on the site. However, consideration should be given to the potential increase in basic landholder rights and the impacts on other users and the environment.

Groundwater: Groundwater information contained in the planning proposal indicates that groundwater levels within the vicinity of the site typically occur at about 0.5m to 1.0m depth below ground surface, however will fluctuate with variations in climatic conditions. There is the potential to intercept groundwater as a result of the future development proposed on the site.

Council should consider the impacts of future developments on the site on groundwater. In coastal areas the groundwater is quite shallow and there is the potential for contamination. Council should consider locating future settlement intensification (in particular new subdivisions) away from vulnerable groundwater resources and existing groundwater users. This minimises land use conflict, maintains existing industries reliant on water supply and achieves important environmental outcomes for the systems connected to these sources.

Watercourse Management: Aerial photographs and maps of the site show watercourses traversing the site. DPI Water has concerns about the impacts of future development on the site on these watercourses. Plans showing the proposed layout of the development show works located on these watercourses and within the riparian zone such as roads, dwelling blocks and stormwater infrastructure. The management of these watercourses will need to be outlined in detail during the development application process. It is recommended that Council incorporate appropriate buffers to maintain the integrity of the watercourse on the site.

Any works proposed within 40 metres of the high bank of the watercourses on site should be carried out in accordance with the Department of Primary Industries – Water's Guidelines for Controlled Activities. A Controlled Activity Approval under the *Water Management Act 2000* may be required for works undertaken as part of any future development on the site. Any future development application submitted to Council will be required to outline any works proposed within 40 metres of the high bank of a watercourse in detail.

DPI Water understands the environmental protection zones have been removed from the Ballina Local Environmental Plan 2012 due to the Department of Planning and Environment's northern council E Zone Review. It is understood a voluntary Planning Agreement between Council and the proponent has been proposed, involving biobanking to achieve environmental offsets. It is unclear if the management of the riparian zone will be incorporated into this agreement.

Sewer Infrastructure: The planning proposal does not outline any detail on the proposed sewer infrastructure for the site. DPI Water assumes the proponent would provide detailed information at the development application stage however consideration should be given to the potential increase of effluent disposal systems as a result of additional dwellings. There is the potential for groundwater impacts if onsite sewerage disposal systems are used. The Environment and Health Protection Guideline: On site Sewage Management for Single Households (1998) recommends appropriate buffer widths between potential contamination sources and water supply sources.

Future Development Application: It is expected any future development applications for the site should include information on the following issues, including, but not limited to:

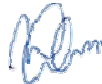
NSW Department of Primary Industries
Level 11, 323 Castlereagh Street Sydney NSW 2000
Tel: 02 9934 0804 landuse.enquiries@dpi.nsw.gov.au ABN: 72 189 919 072

- Impacts of the development on surface water and groundwater;
- Impacts on any watercourses/ wetlands on or adjacent to the site;
- Management of stormwater;
- Consideration and provision of adequate setbacks or buffers to sensitive areas such as watercourse, wetlands;
- Management of Acid Sulfate Soils;
- Provision of infrastructure and services;
- Consideration of potential off-site impacts;
- Consideration of all relevant guidelines.

DPI Water would like the opportunity to review any future development applications proposed for this land.

If you require clarification on any of the above please contact Christie Jackson on (02) 6763 1426 at the Tamworth office.

Yours sincerely,



Mitchell Isaacs
Director Planning Policy and Assessment Advice
8 July 2016

NSW Department of Primary Industries
Level 11, 323 Castlereagh Street Sydney NSW 2000
Tel: 02 9934 0804 landuse.enquiries@dpi.nsw.gov.au ABN: 72 189 919 072



Department of
Primary Industries

Our Ref: FE19/77

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2476

14 July 2016

Attention: Mr Klaus Kerzinger

Dear Mr Kerzinger

Re: Burns Point Ferry Road Planning Proposal

Thank you for your email of 20 May 2016 advising DPI Fisheries, of the public exhibition period for the above mentioned planning proposal. I apologise for the delay in my response

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is "no net loss" of key fish habitats upon which they depend. To achieve this, the Aquaculture and Aquatic Ecosystems Unit assesses activities under Part 5 of the *Environmental Planning and Assessment Act 1979* in accordance with the objectives of the *Fisheries Management Act 1994*, the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)*. In addition DPI Fisheries is responsible for ensuring the sustainable management of commercial, quality recreational fishing and viable aquaculture within NSW.

DPI Fisheries note that the planning proposal has been slightly amended and now incorporates several of the matters highlighted in DPI Fisheries' correspondence dated 27 February 2015. DPI Fisheries takes this opportunity identify several of the matters previously raised that remain generally inconsistent with DPI Fisheries' policy and guideline requirements.

While the refined proposal incorporates an Asset Protection Zone it is noted that this component of the development has been proposed to be mainly outside of the perimeter of the proposed development and within the ~40ha Conservation Block which is to be the subject of a Voluntary Conservation Agreement between the proponent and Council. It is highlighted that the freshwater wetland and marine vegetation occurring on Lot 4 DP 537419 within the Conservation Block are considered Key Fish Habitats. Under the current proposal it would appear that habitat buffers, commencing from beyond the APZ further into the Conservation Block would be inconsistent with the DPI Fisheries policy and guideline requirements for buffers to key fish habitats. Council and the proponent should note that the GeoLINK peer review concurs with DPI Fisheries position.

Division of Primary Industries, DPI Fisheries
1243 Bruxner HWY WOLLONGBAR NSW 2477
Tel: (0407) 264 331 ABN 72 185 613 072 www.dpi.nsw.gov.au

1 of 2

DPI Fisheries highlighted in earlier correspondence that the use of perimeter roads is a technique recommended in the NSW Coastal Design Guidelines and could be incorporated particularly at the southern boundary of the proposal. Mosquito and bushfire zones can be used for water sensitive urban design features and beyond these infrastructure items a habitat buffer can be established and maintained.

Finally it is DPI Fisheries view that the proposed location of the restaurant should be determined and specified before the rezoning stage is finalised.

If you have any further enquiries please contact me on 0407 264 391 or via email: patrick.dwyer@dpi.nsw.gov.au

Yours sincerely



Patrick Dwyer
Senior Fisheries Manager - Aquatic Ecosystems (North Coast)



**RICHMOND RIVER CANE GROWERS'
ASSOCIATION LTD**

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Monday 4th July 2016

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Dear General Manager,

Planning Proposal BSCPP 14/008 – Burns Point Ferry Road, West Ballina and draft Voluntary Planning Agreement

Thank you for the opportunity to respond the **BSCPP 14/008 – Burns Point Ferry Road, West Ballina Planning Proposal**.

The Executive of the Richmond River Cane Growers Association's (RRCGA) would like to reiterate to the Council that the land in subject borders cane fields.

From June to December each year pre harvest burning of sugar cane occurs to allow a continuous and reliable harvest and milling of the cane.

Whilst development within the Ballina Shire strengthens the local economy, it **MUST** be emphasised to the developer and to prospective new land holders that an agricultural industry exists within the surrounds of this parcel of land.

The Executive in principle, do not have any objection to the development, we are **Just concerned** that any further development of this nature may seriously impact the viability of an industry that has been part of the local community for over 120 years.

Yours faithfully

Mark Lovati
Chairman

RICHMOND RIVER CANE GROWERS' ASSOCIATION LTD
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Page 1 of 1



Date: 7th July 2015
Our Ref: 11/308

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Mr Klaus Kerzinger

Dear Sir,

**Re: Planning Proposal BSCPP 14/008 & Draft Voluntary Planning Agreement
Burns Point Ferry Road, West Ballina**

Newton Denny Chapelle is writing on behalf of our clients, Mr Chris Elliot and Mr David Westaway, who are the owners of the former Ferry Boat Motel site located at Lot 1 DP 522553, 8 Burns Point Ferry Road, West Ballina.

Our clients wish to advise that they have reviewed the exhibition materials relating to Planning Proposal 14/008 and do not object to the development outcomes foreshadowed therein.

Furthermore, our clients wish to advise that they are happy to work with the owners or developers of the adjoining property with the view to providing improved road access to the development site from Burns Point Ferry Road over part of our clients property.

Should you have any queries in relation to the above matter, please do not hesitate to contact Karina Vikstrom of this office.

Yours sincerely,
NEWTON DENNY CHAPELLE

DAMIAN CHAPELLE
Town Planner, BTP CPP.

Ballina Waterfront Village & Tourist Park
586 River Street
West Ballina NSW 2478
Ph: 6686 2934
Email: ballinawaterfront@gmail.com

6 July 2016

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

RE: SUBMISSION OBJECTING TO PLANNING PROPOSAL BSCPP 14/008 (AND DRAFT VOLUNTARY PLANNING AGREEMENT) TO REZONE LOT 4 537419 BURNS POINT FERRY ROAD, WEST BALLINA

The purpose of this submission is to put forth/address the crucial concerns that the above planning proposal BSCPP 14/008 raises, if council approves a live/work development on the northern section of Lot 4 537419 (and BioBanking scheme for the residue).

This parcel of land has a 20 year controversial history which highlights the constraints and importance of the site.

This brings the following points into question:

Is the concept of a live/work development suitably appropriate for not only the site but for the town of Ballina?

Ballina doesn't need another industrial site when there are already two major industrial sites in the town and what is the potential for this development to become even more industrial?

What effect would this type of development have on the existing businesses in Ballina?

Traffic is a major problem for Ballina, particularly West Ballina, what effect would a development of this size have on traffic? Has a more recent traffic assessment been done?

Consideration must be given to neighbouring existing developments, east and west of the site, in terms of the noise impact, amenity, parking requirements and signage.

Potential for this development to attract crime.

Stormwater drainage and flooding are of major concern for Ballina, particularly West Ballina, and given the amount of fill required for this type of development, it is imperative that existing developments, and particularly the stark differences in fill heights between new development and existing development, be taken into account when considering approval for this proposal. The Conceptual Stormwater Management Plan for the Live/Work Village does not address the impact stormwater runoff would have on existing developments due to the height of the development. A rigorous assessment of potential run-off should be conducted prior to any further consideration of the proposal.

Regarding social impact assessments, the documentation states that an information session with 11 Ballina citizens was held in 2009. How can the proponent possibly consider any outcomes from that session in 2009, (7 years ago), to be relevant now?

When reading the exhibited documents regarding Planning Proposal BSCPP 14/008 it is noted that several State Government departments have raised significant issues relating to the suitability and appropriateness of this development proposal, these include:

Roads and Maritime Services – concerns regarding traffic impacts.

NSW Office of Environment and Heritage –

OFH recommendations:

Prior to the planning proposal being finalised Ballina Shire Council should:

1. Resolve mapping inconsistencies for Freshwater Wetland Ecological Community (EEC) within the planning area.
2. Undertake additional investigation to confirm or discount the presence of Freshwater Wetland EEC on land within the western portion of the planning area.
3. Undertake additional investigation to confirm or discount the presence of Freshwater Wetland EEC and suitable habitat for the Eastern Grass Owl on land within the south-western portion of the planning area.
4. Apply an E2 Environmental Conservation zone (or other suitable land use zone) to any land within the planning area containing high conservation values (i.e Freshwater Wetland EEC and habitat for the Eastern Grass Owl).
5. Ensure that land containing high conservation values is protected in perpetuity via a suitable land management agreement.
6. Ensure that bushfire APZ's and storm water management measures do not impact on land set aside for environmental purposes and that adequate buffers are provided between future development area and adjoining high conservation value land. Alternatively offsets for such impacts should be quantified and offset at the planning proposal stage.
7. Apply an RE1 Public Recreation zone to the riparian buffer area of the mixed use community title precinct and ensure that the land is managed appropriately in perpetuity via the implementation of a plan of management.
8. Ensure that a revised BioBanking Statement and BioBanking Agreement is provided, addressing the matters raised above.
9. Ensure that the planning proposal is not inconsistent with the draft Ballina Floodplain Risk Management Plan which is currently on exhibition.

Department of Primary Industries – Fisheries and Aquaculture –

Concerns of the impact on Priority Oyster Aquaculture Areas.

In addition to the above State Government departments' concerns, an internal Ballina Shire Council memo prepared by Andrew Smith, Manager Development Services raises the following issues as **crucial** in the determination of Planning Proposal 14/008:

Concept

Site Constraints and Future Development

Existence of Freshwater Wetland Endangered Ecological Community on Lot 4

BioBanking Statement

Grass Owls

Hydrology

Long Term Environmental Management

Stormwater discharge

A UK report, titled "Does Live/Work?", was commissioned for the London Borough of Hammersmith & Fulham, by Cutting Edge Planning & Design. The study highlights problems that arise from Live/Work Development in London and among its conclusions finds:

"Initially Live/Work proposals were by individuals and artists, however developers soon became involved as it became seen as a means of securing planning permission in areas where existing zonings made development difficult."

"There was a gradual disillusionment with the concept and many planners began to see the concept as a 'fig leaf' for primarily housing schemes. Policies in most boroughs have significantly tightened."

"Some developers are quite open that Live/Work is simply a ruse for securing planning permission. There is widespread evidence of large scale residential reversion and little evidence of continued employment occupancy, other than in areas where there is a strong market for small offices where units are more likely to revert to employment use. The search for examples of good Live/Work practice has proven a largely barren one."

"The key concern from planners is that the key planning objectives, of protecting/securing affordable employment and affordable housing uses are undermined by applications for Live/Work circumventing policy."

"The key issue emerging from this research is the nebulous and diffuse nature of the 'use'. As one developer put to us 'It is a concept, almost a state of mind'. However, can this be precisely defined, and if not how can it be controlled?"

"The study found little case for a 'Live/Work' use class. It would not prevent residential reversion as ceasing of an element of a use would not be development. "

"Live/Work does pose enforcement problems, requiring internal inspection of how rooms are used, which is always problematic. Design can help, but not eliminate such problems."

"The study examined the economic development issues and claimed employment benefits of Live/Work development. There are potential savings to the cost base of businesses, but these are likely to be small and are more likely to involve convenience in terms of reduced commuting time rather than genuine gains to the national economy."

"Although Live/Work is supported by some for simultaneously meeting employment and housing policy objectives the study found that the vast majority of proposals have performed poorly against government policy objectives in these fields and that they are not leading to sustainable mixed communities."

The report adds that the British experience is not unique. Similar negative outcomes are reported in the United States.

In conclusion, the proposal as it stands gives one the unsettling feeling that council is adopting the approach that it is acceptable to approve the proposal now and sort out the detail in a later development application. However, as outlined previously, empirical evidence across the world suggests that this approach is akin to handing the proponents a "blank canvas" on which to start what is, in our opinion at best a dubious venture into live/work developments. Therefore, we urge council to address the concerns raised by the State Authorities and council staff prior to consideration. Finally, as the "Does live/work" report highlights, council must develop a robust policy on live/work developments to avert the inherent problems experienced in other countries before any further action is taken on this proposal.

Yours Sincerely

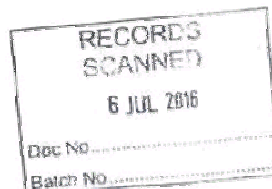
Tracy Burke
Ballina Waterfront Village & Tourist Park



Our Ref: DCC16248725
Your Ref: BSCPP 14/008

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Attention: Mr Klaus Kerzinger



Dear Mr Hickey

Re: Planning Proposal – BSCPP 14/008, Burns Point Ferry Road, West Ballina

Thank you for your e-mail dated 20 May 2016 about the public exhibition of the planning proposal at Burns Point Ferry Road West Ballina requesting comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide input.

Please note that the OEH has previously provided advice on this planning proposal in a letter to the council dated 6 March 2015.

We have reviewed the exhibited planning proposal and advise you that a number of issues are apparent with respect to the assessments of biodiversity. These issues are discussed in detail in **Attachment 1** to this letter.

In summary the OEH recommends that:

1. The council should consider reducing the rezoning area to limit the biodiversity impacts associated with subsequent development to be enabled by the planning proposal.
2. The council should ensure that the proposed rezoning area is suitable and able to contain all impacts associated with future development scenarios.
3. After considering avoiding biodiversity impacts for the site, a revised BioBanking statement should be obtained prior to finalising the planning proposal.
4. The Voluntary Planning Agreement should ensure that all biodiversity credits required to offset the impacts of the future development to be enabled by the planning proposal are retired prior to any development application being approved for the site.

If you have any further questions about this issue, Mr Kristor Waern, Senior Operations Officer, Regional Operations, OEH, can be contacted on 6640 2503 or at kristor.waern@environment.nsw.gov.au.

Locked Bag 914, Coffs Harbour NSW 2450
Federation House, Level 6, 24 Monree Street
Coffs Harbour NSW 2450
Tel: (02) 6659 8300 Fax: (02) 6651 5356
ABN 99 841 387 271
www.environment.nsw.gov.au

Yours sincerely

Dimitri Young 30 June 2016

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

Contact officer: KRISTER WAERN
8640 2503

Enclosure: Attachment 4: Detailed DEH comments – Burns Point Ferry Road, West Ballina PP

Attachment 1: Detailed OEH Comments – PP – Burns Point Ferry Road, West Ballina.

Biodiversity matters

The OEH has reviewed the updated planning proposal (PP) prepared by the Ballina Shire Council dated May 2016.

The mapping of the freshwater wetland Endangered Ecological Community (EEC) appears to be still unresolved. However there is some agreement between the ecological reports that certain parts of the proposed rezoning area can be identified as an EEC.

The OEH previously recommended that areas of EEC and high conservation value land should be protected for their ecological values and rezoned accordingly for conservation purposes. The current proposal has increased in area since the last version and has not attempted to exclude high conservation value land from intensive land use zoning.

The council should consider reducing the rezoning area to limit the biodiversity impacts associated with subsequent development to be enabled by the PP. It currently appears that the rezoning application is focusing on offsets whereas the first step should be to try to avoid biodiversity impacts. The PP does not discuss options for avoiding impacts.

It is unclear how the vegetation outside of the proposed rezoning area will be subject to indirect impacts from stormwater, bushfire protection and edge effects. Any proposed rezoning area would need to accommodate suitable buffers to ensure that all impacts are retained within the development footprint.

It is noted that the Peer Review undertaken by Gealink dated 3 March 2016 state that *'the buffers as proposed are not appropriate given the occurrence of sensitive wetland and estuarine communities south of the village zone'*. It should be made clear, perhaps in the Voluntary Planning Agreement (VPA) that all direct and indirect impacts of future development applications need to be contained within the rezoned area by using appropriate buffers or other suitable measures.

The OEH agrees with the proposed use of BioBanking to calculate the amount of impact associated with the rezoning for this particular scenario. The current BioBanking statement for the site does not take into account the revised rezoning footprint (including the café/dwelling). After considering avoiding biodiversity impacts for the site, an updated BioBanking statement should be sought for the site.

If a revised BioBanking statement is obtained then the VPA should ensure that all credits as per the approved BioBanking statement are retired prior to any development application being approved for the site. The council should consider the scenario that the developer may source and retire credits from another site and not from the remainder of the property outside of the rezoned area.

Due to the presence of BioBanking 'red flags' (EEC's and Threatened species) on the site and the increased uncertainty of a BioBanking statement being issued, the OEH recommends that a revised BioBanking statement is approved prior to finalising the planning proposal. Where a proposed development is on land that is a 'red flag' area, a BioBanking statement may still be issued where the Director General of the OEH makes a determination that it is possible for the development to be regarded as improving or maintaining biodiversity values.

The OEH understands that this proposal is complex and would be happy to meet with the council and the applicant to discuss our comments in more detail.

Attachment 1: Detailed OEH Comments – Burns Point Ferry Road PP

Recommendations:

- Council should consider reducing the rezoning area to limit the biodiversity impacts associated with subsequent development.
- Council should ensure that the proposed rezoning area is suitable and able to contain all impacts associated with future development scenarios.
- After considering avoiding biodiversity impacts for the site, a revised BioBanking statement should be obtained prior to finalising the planning proposal.
- The VPA should ensure that all credits are retired prior to any development application being approved for the site.



Our Ref: OUT16/25158

1 July 2016

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Klaus Kerzinger

Dear Sir/Madam

Re: Planning Proposal – ESCPP 14/008, Burns Point, Ballina

Thank you for the notification of the public exhibition of the proposal to amend the Ballina Local Environment Plan (LEP) with respect to the rezoning of Lot 4 DP537419 as per your letter dated 20 May 2016.

NSW Department of Primary Industries (DPI), Agriculture, has reviewed the exhibition documents for this proposal. DPI Agriculture provides no additional comments to our previous correspondence on this matter (email dated 26 February 2015).

If you have any further questions with respect to the proposal, please contact Selina Stillman on (02) 66261215 or Alex Wells on (02) 66503125.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'W Dougherty'.

Warwick Dougherty
A/Manager, Agricultural Land Use Planning

NSW Department of Primary Industries, Agricultural Land Use Planning Unit
Locked Bag 21, Grange NSW 2060 Tel: 02 6391 3494 Fax: 02 6391 3551
Email: landuse.ag@dpi.nsw.gov.au www.dpi.nsw.gov.au

9.2 Planning Proposal - Burns Point Ferry Road, West Ballina.DOC

From: Timothy Gipeel [mailto:tim.gipeel@dpi.nsw.gov.au]
Sent: Tuesday, 28 June 2016 4:12 PM
To: Nilsus Kerlinger
Subject: BWP14/008, Burns Point Ferry Road

Hi Nilsus,

NSW DPI Aquaculture has reviewed the proposed planning proposal and has no objection provided the resultant lots are connected to reticulated sewerage and that construction and operational impacts on water quality in Emigrant Creek and the Richmond River does not adversely affect the Priority Oyster Aquaculture Areas located both upstream and downstream of the site.

Regards

Tim Gipeel | Senior Policy Officer Aquaculture
Fisheries NSW | Commercial Fishing and Aquaculture
Department of Primary Industries
Port Stephens Fisheries Institute | Taylors Beach Rd Taylors Beach | Locked Bag 1 Nelson Bay NSW 2315
T: 02 4216 3822 | M: 0417 455992
E: tim.gipeel@dpi.nsw.gov.au
W: www.dpi.nsw.gov.au

Conserve, Share, Provide



[Download DPI Strategic Plan and witness slides](#)

This message is intended for the address(es) named and may contain confidential information. If you are not the intended recipient, please do not read or reply to the sender. Views expressed in this message are those of the individual sender, and are not necessarily the views of their organisation.



File No: NTH06/00002
Your Ref: BSCPP 14/008 – Burns Point Ferry Road 91624

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Klaus Kerzinger

Dear Sir

Exhibition of Planning Proposal BSCPP 14/008 – Burns Point Ferry Road, West Ballina

I refer to your letter of 20 May 2010 regarding the abovementioned Planning Proposal forwarded to Roads and Maritime Services for consideration and comment.

Roles and Responsibilities

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

River Street is a classified (Regional) road and in accordance with Section 7 of the *Roads Act 1999* Ballina Shire Council is the Roads Authority for this road. Council sets standards and priorities for this road. Roads and Maritime is the Roads Authority for freeways and has responsibilities for freeways and classified roads in accordance with the Act.

Council is reminded of its responsibility under *State Environmental Planning Policy (Infrastructure) 2007* (SEPP) that as the Consent Authority council is to have consideration for the safety, efficiency and ongoing operation of the classified road as the development has frontage to a classified road.

Roads and Maritime's role with regard to this planning proposal is to provide advice about road safety and traffic efficiency.

Roads and Maritime Response

Roads and Maritime has reviewed the documents supporting the Burns Point Ferry Road Planning Proposal. It would be beneficial to both road safety and traffic efficiency to remove the delay created by u turns at the Pacific Highway interchange roundabout due to the proposed left in / left out access treatment on River Street.

Roads and Maritime Services


78 Victoria Street, Grafton NSW 2460 |
PO Box 578, Grafton NSW 2460 |

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

It is understood that Council propose a roundabout on River Street in the future however the timing of this is unknown. Roads and Maritime would like to suggest that a connection to Burns Point Ferry Road be considered as an interim measure until such time as the River Street roundabout is constructed.

If you have any further enquiries regarding the above comments please do not hesitate to contact Liz Smith, Manager Land Use Assessment on (02) 8840 1882 or via email at: development.northern@rms.nsw.gov.au

Yours faithfully

 21 July 2016
for Monica Sirel
Network & Safety Manager

BALLINA SHIRE COUNCIL – MEMORANDUM

MEMO TO: Klaus Kerzinger, Strategic Planner
COPY:
MEMO FROM: Andrew Smith, Manager Development Services
DATE: 22 July 2016
SUBJECT: BSCPP 14/008 – Planning Proposal, Burns Point Ferry Road, West Ballina

Klaus,

I refer to the public exhibition for planning proposal 14/008. The DEHG raise the following issues as crucial in the determination of Planning Proposal 14/008:

1. Concept

It is acknowledged that the exhibited planning proposal is different to that which has been previously commented on by the DEHG for the subject site – refer to our memo of 9 March 2015. The proposal, whilst still encompassing the 'Live- Work' concept, now seeks to provide such via an R2 land zoning – the concept comprising both a residential land use and an office/business use or light industry use. It is noted that the planning proposal seeks to restrict the area of the office, business or light industrial use) and that this is to be achieved through the use of Schedule 1 – Additional Permitted Uses.

The issues raised previously by the DEHG in relation to this concept have been, in part, addressed through the proposed controls and information. In this regard, it is noted that:

- The proposed minimum lot size for each allotment in the proposed R2 zoned land will be 450m²;
- A dwelling can be erected on the land, with a FSR not exceeding 0.6:1.
- The 'work' component maximum floor area cannot exceed either 120m² or 0.2:1 FSR (whichever is the greater).
- Other uses permissible in the R2 zone can occur on the land (i.e. – the land may not be exclusively utilised as a live-work precinct and may be utilised for dwelling house + secondary dwelling).

The public exhibition material does not provide any modelling of the above controls (and as such it is unknown as to what types of developments the controls may achieve).

It is also noted that the applicant's submissions provide for a maximum FSR of 0.7:1. This is also shown on the proposed FSR map for the site.

When reviewing the possibilities for development under the proposed provisions, the following scenarios could be possible:

- For a 450m² allotment – dwelling size of 225m² + 'work' size of 120m².
This would result in a total area of 345m² and therefore a FSR of 0.76:1.
- For a 450m² allotment – dwelling size of 225m² + 'work' size of 60m²/FSR of 0.2:1.
This would result in a total area of 315m² and therefore a FSR of 0.7:1.
- For a 600m² allotment – dwelling size of 300m² + 'work' size of 120m² (which equates to FSR of 0.2:1).
This would result in a total area of 420m² and therefore a FSR of 0.7:1.

There could also be instances where a dwelling is proposed of an area smaller than the maximum allowable via the FSR provisions. Would this result in the work use being of a larger scale than the residential use of the land? The current provisions do not specify that the main use of the site is to be residential purposes. This should be clarified in the new provisions.

Under the proposed provisions, could there be an instance where an allotment is proposed to contain a dwelling house, secondary dwelling and a 'work use'? In this regard, the overall density of landuses on the site may be significantly higher than that expected (or as described in the exhibition documentation).

Using the provisions (and not the FSR map) that are currently proposed in relation to a 450m², this could result in an overdevelopment of the site, with a possible scenario as follows:

- dwelling size of 225m² + secondary dwelling size of 112.5m² (as per Clause 5.4 of BLEP) + work size of 120m² = overall development area of 457.5m² and FSR of 1.02:1.

Will the default come back to the FSR Map, which states that the max FSR for the subject land will be 0.7:1? Also, if a dwelling has been approved on the land at 0.5:1, it appears that an approval cannot be granted for a secondary dwelling.

If we expect the above scenarios to be possible (and something we want to consider), it may be prudent to increase the minimum lot size or include in the controls that a secondary dwelling cannot be established on lots where a 'work' use has been approved.

The proposed changes to Schedule 1 include a description of the 'live-work' requirements. Is it possible for a dwelling house to be approved without the other uses? If so, this alone may cause a level of conflict between uses.

These issues would need to be resolved to ensure that there is clear guidance as to what is allowable upon the subject land, to ensure compatibility between future allotments (and their uses) in the 'Live-Work' precinct.

On review of the documentation prepared by Planners North and the report prepared by GeoLINK, the appropriateness of the subject land for the proposed future use has still not been addressed. The documentation should address the amenity issues for surrounding existing and future (approved) permanent residential accommodation (both along Burns Point Ferry Road and River Street West), including the caravan park to the west. An assessment has not been provided in relation to the potential land use conflicts which could be created between residential, business, and industrial uses.

Whilst the documentation has not addressed any implications with respect to the Codes SEPP and the change of provisions contained therein, it is noted that one of the criteria under the Codes SEPP for an exempt change of use is that the new use must be permissible with consent. Given the list of uses in Category 3, Clause 2.20A (of Subdivision 10A of the Codes SEPP) are all prohibited in the R2 zone, it is unlikely that a situation would eventuate whereby the 'work use' would be anything other than the use that had been approved as part of the DA.

The documentation prepared by Planners North still offers a limited analysis of the need and/or market demand for this form of land use concept and of the suitability of this location for such a use. Should the demand for this type of development not be realised, then the development outcome may be very different to that envisaged.

In addition, the proposed maximum sizing for the 'work' use of 120m² is likened to that of a typical industrial unit or a large office tenancy. Is a building (?) of this size appropriate in a

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22 July 2016

residential zone? Will this create a conflict with the objectives of the R2 zone? Should the size of the 'work' use be restricted to 80m²? It is noted that a home industry can be approved at 50m², would this be appropriate for the light industrial type uses, with office/business premises permissible up to 80m²?

Further matters of concern for the DEHG:

- the potential compliance issues with business/industry operations expanding into dwelling houses.
- Character of the precinct – the documentation has not addressed the desired character for the area. Is there an expectation for a residential appearance from the street, with an industrial/office/business presentation at a rear lane? Will the business/office premises be located at the street front, with residential uses accessed from a rear lane?
- Will there be any additional site specific development standards/controls proposed to guide design for the precinct? The documentation has also not addressed this. Should a DCP be prepared which addresses car parking (numbers and location) for customers/employees/residents, separation of land uses, a cap on the number of staff/employees (that do not reside in the dwelling), waste collection (domestic services and business/office/industrial uses), access to the site and road system by MRV's, loading/unloading areas on site?

The Growth Management Strategy depicts a smaller area of the subject site to be potentially rezoned/suitable for future development. The planning proposal provides for an expanded area, but the exhibition documentation does not adequately describe or justify why an expanded area is required or the extent of likely impacts on the site and surrounding locality (and environment) and whether this type of development is appropriate for the gateway to West Ballina.

There is also ambiguity in the controls proposed regarding the restaurant/café/dwelling etc. site. It is not understood why the proposed location for the restaurant/café/dwelling etc. site can't be locked in at this stage, with detailed planning to occur now. Ultimately, there will be a shift in this assessment to the DEHG, unless it is a token request which will not be taken up.

In addition, concerns are raised as to the proposed RU2 zoning of the entire residue allotment, at which there is limited discussion in the exhibition documentation as to the suitability of the application of this zoning to the land, other than to say that a VPA (restoration and rehabilitation) will apply to the land.

2. Site Constraints and Future Development

It is reiterated that the technical reports, for the most part, pre-date the proposal and therefore do not give specific consideration to the current planning proposal. These reports have not been 'pulled together' or sufficiently analysed by the Planners North documents. In this regard, there are conflicts between the varying reports and there will be conflicts between Council's requirements (such as those relating to mosquito buffers, Asset Protection Zones, retention of vegetation, and the filling of land).

The documentation does not discuss the issues relating to the interface between the surrounding developments (which include a caravan park, dwelling houses and approved residential units) and the proposal, such as land use conflicts, required buffers, and differences in fill levels. All buffers required for the development should be provided within the confines of the new zoning, rather than placed on the adjoining land which is to be utilised for bio-banking. In addition, there appears to have been little consideration given to the location of stormwater infrastructure within the proposed development area. These issues are likely to reduce the overall developable area. It should be clearly resolved at the planning proposal stage where the

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buffers will be provided and not deferred to the development assessment stage where environmental protection areas will inevitably be sought to be allocated for buffer use.

It appears that the fill levels required for the land are in the order of 1.7m on top of existing ground level, which is a large contrast to the existing surrounding development. Impacts of the additional fill should be considered (including impact on aesthetic and stormwater management) and also whether the land is capable of holding the fill (including settling issues).

Note: In addition to the planning related issues raised above, the DEHG agrees that that the required additional information referred to on page 22 of the GeoLINK report should be provided (where relevant, noting that the exhibited proposal has changed to that proposed by Planners North).

3. Ecological Issues

Distribution of Freshwater EEC

Page 13 of the Planning proposal report states:

"It is noted here that the Blackwood did not include a section of the site located to the south – west of the land proposed to be zoned to R2. Part of this area was initially considered to contain Freshwater Wetland EEC by Council staff. It has been concluded following assessment by Melaleuca Consulting (Appendix H), and the subsequent assessment by GeoLINK that the area contains disturbed grassland and does not contain Freshwater EEC. The following extract from the GeoLINK report (Appendix Sp10) relates to this land.

An area of the site west of the development areas flanking Emigrant Creek was not included in the vegetation mapping by Blackwood (2014) but was examined in the report by Melaleuca Consulting. This area was briefly inspected and comprises more elevated disturbed grassland which is subject to grazing. The rationale discussed above also applies to this land (i.e. It comprises a mosaic of disturbed pasture) and is not considered to support the Freshwater Wetland EEC.

On the basis of the above assessment the subject area has been assigned a R2 zone."

To clarify this matter, the area referred to above and referenced as Assessment point BP4 (J-A) was never considered by Council's Environmental Scientist to be representative of a Freshwater EEC. The area considered to comply with the Scientific Determination is located in north western portion of Lot 4 (Refer Figure 1).

In relation to the existence of Freshwater Wetland EEC in the north western corner of Lot 4, it is noted that Section 3.1.3.1 (Page 10) and Figure 3.1 of the GeoLINK peer review refers to the area depicted in Figure 1.

The Peer Review Report states; *"On this basis, these areas appear to resemble disturbed freshwater wetlands; however, it is doubtful that they would support standing water at any frequency or for any duration".*

To address the issue of standing water, the north-western corner of Lot 4 was inspected on 28 June 2016. The site inspection confirmed, despite no significant rainfall within the preceding week (refer Plates 1 - 6), that standing water does occur within the area in question. In addition, during site inspection the native frog species *Crinia signifera* and *Crinia parinsignifera* were heard calling from the subject area.

Consequently, it is again concluded the area mapped in Figure 1 is representative of a Freshwater Wetland EEC. It is noted however, the extent of the EEC has reduced primarily

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associated with clearing activities described in Developments Services Memo dated 6 March 2015.

In determining if Freshwater Wetland EEC occurs on Lot 4, the Planning Proposal in part relies on the conclusions derived from the Melaleuca Consulting report. The reliance of the Planning Report on this report is questioned, given it concluded Freshwater Wetland EEC does not occur on Lot 4 and this finding is inconsistent with the later Blackwood (May 2014) and GeoLINK (2016) reports which correctly confirm the existence of subject EEC on Lot 4.

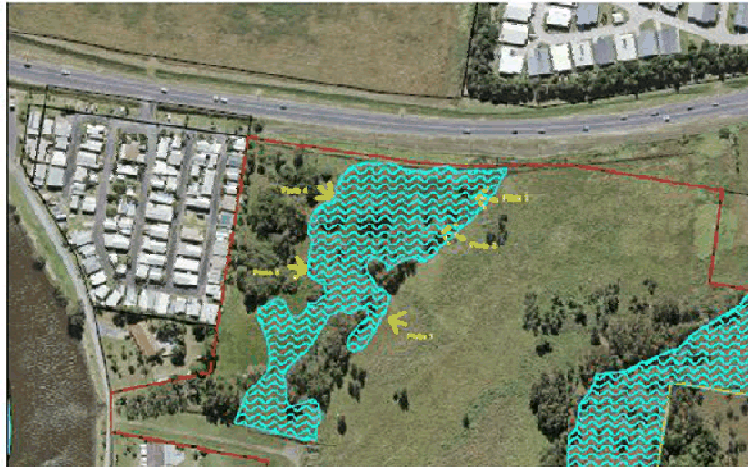


Figure 1: Regenerating Freshwater Wetland EEC growing in the north-western corner of Lot 4.

Grass Owl Occurrence

Both the Blackwood and GeoLINK reports conclude that due to slashing works, Grass Owls are no longer expected to occur within the development site. However, as is demonstrated by Figure 2, the historic Grass Owl records (detected by Council and the applicant) are located to the south of the recently established rural fence which is located outside of the areas currently slashed by the landowner.

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22 July 2010



Figure 2: Depicting the location of Grass Owl records detected by the applicant and Council 2005-2006

It is noted that in reaching the above conclusions, neither consultant has undertaken any detailed review of the site to determine the species long-term association with Lot 4. This issue was discussed in a 2008 file note which stated:

"Grass Owls were also flushed by myself at two (2) additional locations on Lot 4 different days during May 2006 (See Figure 2). Furthermore, historical records indicate that up to four Grass Owls have been recorded on the subject property (Maciejewski 1996). P. Scheitzer, (pers. comm.) confirmed that two to three Grass Owls have been consistently flushed from the site over the years up until 2005".

And

"Far North Coast County Council has undertaken Groundsel control on Lot 4 for over 15 years. During these works Grass Owls were always observed. Furthermore, over a six (6) to seven (7) year period prior to 2005 Grass Owls were constantly flushed from the same area of habitat on Lot 4".

In addition, the GeoLINK report is somewhat confusing in the manner it deals with the species presence and/or absence on Lot 4. While the review states the site should be considered as potential habitat for the species, it does not propose to additional survey work to answer this question. It is also noted that GeoLINK states "it should be noted Grass Owls may potentially roost in the reed-dominated vegetation to the east of the site". This area, which is the Freshwater Wetland habitat, is included within the development footprint.

Whilst it is acknowledged Mr Parker undertook additional Grass Owl surveys in 2011 and 2012, the rigour of these surveys are questioned given:

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- each survey period was restricted to one night of call playback (inconsistent with DEC Guidelines);
- when surveyed, at least two call broadcast sites were used for each night of survey (inconsistent with DEC Guidelines); and
- the majority of the survey effort was undertaken outside of the species breeding season, which coincides with peak detection rates.

This, coupled with the issues raised in the Blackwood report of Mr Parker's ecological assessment of Lot 4, raises significant queries of the rigour of that survey work.

Threatened species Habitat

The GeoLINK Peer Review Report appears not to have any regard for the range of threatened species of fauna considered within the Aspect North (2005) and Blackwood (2014) ecological assessments, as potentially occurring on the subject site. Instead, the Peer Review Report only addresses the issues raised in OEH's submission from March 2015.

In addition, upon reviewing Section 3.1.1 of the Peer Review Report, it is unclear whether GeoLINK has been provided with Council's historical ecological file notes associated with the development site.

Predicted impacts to EEC Habitat

To date, neither the rezoning proposal and/or the Peer Review Report documents have compiled and/or identified what impact the development will have on the EEC. Figure 3 depicts the location of the development footprint, as it relates to mapped EEC habitat. The direct impacts of the proposed development on EEC habitat are depicted in Table 1.

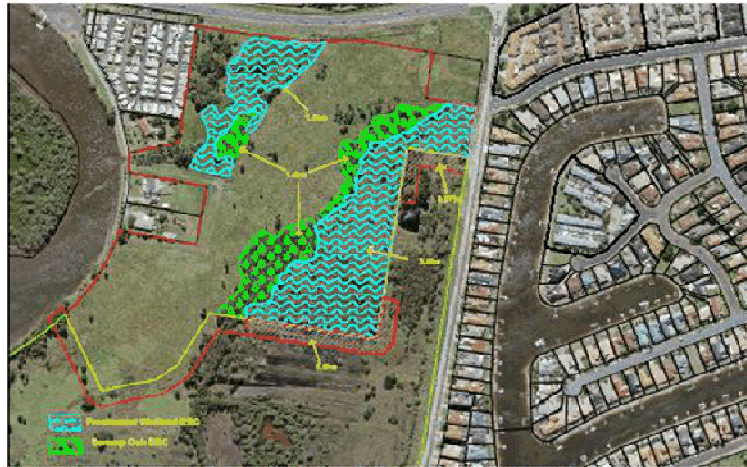


Figure 3: EEC habitat to be directly impacted by the proposed development.

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| Vegetation Community | Location | Area Impacted |
|----------------------|-----------------------|---------------|
| Freshwater Wetland | Eastern Wetland | 3 ha |
| | North western wetland | 1 ha |
| | APZ wetland | 0.77ha |
| Swamp Oak Forest | Central corpses | 1.4 ha |
| | Total EEC Loss | |

Table 1: EEC habitat to be directly impacted by the proposed rezoning

Review Government Submissions

While Section 1.2 of the Peer Review Report refers to public authority consultation, it remains unclear where the Peer Review Report has addressed the issues raised by the agencies.

For instance, the OEH concludes that *“Apply an E2 Environmental Conservation zone (or other suitable landuse zone) to any land within the planning area containing high conservation values (i.e. Freshwater Wetlands EEC and habitat for the Grass Owl). However, the Peer Review Report does not provide any commentary on this issue and/or any of the other recommendations contained within the OEH submission.*

Similarly, when discussing buffering of adjacent ecologically important habitats, the Peer Review Report is equally non-committal. Given that the development will directly remove over 5.4ha of EEC habitat, is questioned whether any buffers are being provided to the high conservation valued vegetation communities growing on Lot 4.

In relation to buffer suitability, the Peer Review Report is somewhat unclear, given it confirms the buffers have *“not been determined from any ecological perspective, but have been determined by bushfire requirements”*. Despite not knowing the final form of the buffer, the Peer Review Report concludes the 21m wide buffer is generally considered adequate if stormwater is not discharged into the conservation area.

Given the proposed buffers are well below the buffer widths recommended by the state government agencies, and given it is not based on the ecological values of the land, it remains unclear how the Peer Review Report can conclude the proposed buffer distance can be considered to be adequate.

One of the fundamental questions the rezoning process needs to establish is *“what are the ecological significance/constraints of Lot 4?”*. In addressing this matter, the indirect impacts of the proposed rezoning also need to be identified and assessed. Indirect impacts include:

- The sustainability of rezoning land that requires a significant amount of fill material given the limited fill material located within the Shire;
- What hydrological impact will the fill have on the remainder of the Freshwater Wetland EEC;
- The functionality of stormwater discharge from the development. In addressing this matter it is noted the owner of Lot 4 does not have direct access to the river;
- The potential for the buffer zones (inclusive of fill) to import and promote weed growth into the adjacent wetland EEC;
- Loss of Grass roosting and foraging habitat in relation to home ranges; and
- Increased predation of domestic animals on wildlife within the offset area.

Based on identifying the full range ecologically constraints associated with Lot 4, the ecological Peer Review Report should assess whether the land is suitable to be rezoned for residential purposes. To date, it would appear, this step has been overlooked given the Peer Review Report and planning report appear to focus directly on proceeding to biobank offsetting, rather than avoiding areas of environmental constrained lands. These outcomes can primarily be

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22 July 2016

achieved by reducing the development footprint to reflect the area of land current zoned RU2 in the BLEP 2012.



Plate 1: Looking south west. Standing water within *Phragmites australis* dominating the wetland.

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Plate 2: Looking west. Eastern edge of the Freshwater wetland EEC.

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Plate 3: Looking west. Standing water within *Phragmites australis* dominated wetland.

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Plate 4: Looking east. Standing water within *Phragmites australis* dominated wetland



Plate 5: Looking east. Standing water within *Phragmites australis* dominated wetland

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4. Public and Environmental Health Comments

Mosquito Management

As previously outlined in the memo dated 24 February 2015, conclusions outlined in the Mosquito Impact Assessment (MIA) prepared by Darryl McGinn dated 30 September 2005 (16/20233) relate to a different site layout and development area to that which is currently proposed.

The assessment discusses the developments ability to remove a large portion of the known breeding site and the inclusion of 20 – 30 m buffers by way of road corridors between housing allotments. This varies to that which is currently proposed.

Figures 1 to 4 show the differences in the current proposal, to that assessed at the time the mosquito assessment was carried out. In addition the management of stormwater from the site has been amended.

The objectives of Chapter 2 Section 3.6 of Council's Development Control Plan 2012 are to:

- Minimise nuisance and health risk associated with mosquitoes; and
- Minimise human contact with mosquitoes.

The site is located on land identified as Coastal Plains and Lowlands and high risk area on Council's Mosquito Management Map. These areas are much more likely to be affected by significant mosquito outbreaks.

Due to the differences between the former and current proposal and DCP requirements, an additional mosquito assessment is necessary to take into consideration aspects of the most recent proposal. This will enable the entomologist to assess current stormwater management system design, revegetation, vegetated buffer design and present-day potential for mosquito nuisance, and health risk associated with the proposed development. This should also include the area to the south proposed to be used for a restaurant/café, education facility and dwelling. This assessment must reflect the mosquito management requirements outlined in Chapter 2 Section 3.6 of Council's Development Control Plan 2012.

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Figure 1. Conceptual Layout of Proposal Included in Mosquito Impact Assessment 2005

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Figure 4 – Concept Plan of the proposed subdivision and development (August 2015)

Figure 2. Extract from Burns Point Ferry Road Planning Proposal May 2016

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Figure 3. Known Mosquito Breeding Area at Proposal Site



Figure 4. Impact of Known Mosquito Breeding Area of 2005 Development Footprint

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Although the Peer Review Report prepared by GeoLink, dated March 2016, states no further assessment is necessary at this stage, it is at this early stage of the development process where mosquito management controls can be incorporated into the development design, such as nominating mosquito buffers.

Completing the required additional assessment and incorporating adequate controls at this time will also assist with the assessment process at development application stage.

The need for further entomological assessment was also identified in the NSW Planning and Environment Gateway Determination dated 25 September 2014.

Acid Sulphate Soil

The Acid Sulphate Soil Planning Maps show the site as Class 2, which indicates there is a high likelihood of acid sulphate soils occurring. Although the results of soil sampling did not indicate the presence of acid sulphate soils, an Acid Sulphate Soil Management Plan has been prepared as a precautionary measure. Although an acid sulfate soil assessment was not undertaken for the site to the south proposed to be used for a restaurant/café, education facility and dwelling this could be carried out as part of the development application stage.

The submitted information is sufficient for the current planning proposal with the need for the implementation of an Acid Sulfate Soil Management Plan at the construction works stage.

Land Contamination

Preliminary investigations outlined in the Contaminated Site Investigation prepared by EA Systems, dated 5 September 2015, indicates the site has been used for potentially contaminating activities. Sampling has indicated lead levels exceeded the health investigations levels in the north western portion of the site. This was likely due to the area being used for garbage disposal.

Additional investigations are required to further determine the extent of land contamination. Ground water contamination investigations need to be carried out due to the high ground water levels. These investigations also need to take into account the area of land on the southern portion of the site proposed to be used for commercial and residential purposes.

These investigations need to comply with the requirements of current EPA guidelines, SEPP No. 55 Remediation of Land and Council's Management of Contaminated Land Policy, to ensure the site is suitable for the proposed use and will pose no unacceptable risk to human health or the environment.

I agree with the conclusions outlined in the Civil Engineering Assessment prepared by Hammond & Associates Civil & Structural Engineers, dated December 2014, and Peer Review Report prepared by GeoLink, dated March 2016, that the abovementioned information is adequate and that further information can be provided at the development application stage. This is with the exception of the site in the southern portion of the property. SEPP 55 outlines that risks associated with land contamination should be assessed at the earliest stage of the planning process. Therefore a land contamination assessment of the proposed site should be carried out in accordance with current EPA guidelines, SEPP No. 55 Remediation of Land and Council's Management of Contaminated Land Policy

In relation to your questions of 20 July 2016: "is there any flexibility at the planning proposal stage to defer further consideration of the land contamination issue relating to the proposed 1300m² site pending the location of the site being determined?", please refer to the previous comments in this memo on page 3 which request that detailed planning occur as part of the planning proposal for the proposed restaurant/café/dwelling etc. site.

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Groundwater Extraction

Due to the high ground water level, an application for a Groundwater Licence from the Department of Primary Industries – Office of Water may be required. This is something that may be required at development application stage.

Controlled Activity Approval

A controlled activity approval may be required from the Department of Primary Industries – Office of Water should works be carried out with 40 meters of a water course (Emigrant Creek). Again this can be conditioned at development application stage. However, depending on the works and who carries out the work an exemption may apply.

Aircraft Noise

The development site is not impacted by Australian Noise Exposure Forecast Contour Map and therefore is not subject to aircraft noise.

Impact on Amenity/Land Use Conflict

The proposal involves incorporating development for live-work purposes in the R2 Zone. This is to include each development containing a dwelling and one of the following:

- Light Industry, or
- Business premises, other than a funeral home, or
- Office premises.

This includes restrictions on the work component of the development which must not exceed whichever of the following is the greater:

- 120m²,
- 0.2:1 floor space ratio

With the requirement for the associated dwelling to not have a floor space ratio exceeding 0.5:1.

It is understood that under the Ballina Local Environmental Plan 2012 light industry is defined as:

light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- (a) high technology industry,
- (b) home industry.

It is understood that this could include any of the following:

industrial activity means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.

high technology industry means a building or place predominantly used to carry out an industrial activity that involves any of the following:

- (a) electronic or micro-electronic systems, goods or components,
- (b) information technology (such as computer software or hardware).

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- (c) instrumentation or instruments of a scientific, industrial, technological, medical or similar nature,
- (d) biological, pharmaceutical, medical or paramedical systems, goods or components,
- (e) film, television or multi-media technologies, including any post production systems, goods or components,
- (f) telecommunications systems, goods or components,
- (g) sustainable energy technologies,
- (h) any other goods, systems or components intended for use in a science or technology related field, but does not include a building or place used to carry out an industrial activity that presents a hazard or potential hazard to the neighbourhood or that, because of the scale and nature of the processes involved, interferes with the amenity of the neighbourhood.

Note. High technology industries are a type of light industry—see the definition of that term in this Dictionary

home industry means a dwelling (or a building ancillary to a dwelling) used by one or more permanent residents of the dwelling to carry out an industrial activity that does not involve any of the following:

- (a) the employment of more than 2 persons other than those residents,
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise,
- (c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter,
- (d) the exhibition of any signage (other than a business identification sign),
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building, but does not include bed and breakfast accommodation or sex services premises.

Note. See clause 5.4 for controls relating to the floor area used for a home industry.
Home industries are a type of light industry—see the definition of that term in this Dictionary.

Although the definition for light industry includes an industrial activity that does not interfere with the amenity of the neighbourhood, the potential to mitigate the potential impacts on the amenity from the proposed development must be considered at this early stage. Such controls could be to restrict the permitted activities on the site close to residential areas on Burns Point Ferry Road and residents and caravan park to the west of the proposed development, to those uses that are less likely to impact on the amenity, such as business or office premises.

The installation of acoustic fencing to the eastern and western site boundaries could also be an option for mitigating noise impacts on nearby residents.

business premises means a building or place at or on which:

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
- (b) a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a

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minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

Other controls could include building design, individual lot layout including setbacks to reduce the potential impacts on neighbouring residents within the development. Site specific controls such as these could be included in Council's Development Control Plan.

It may be irresponsible to disregard such controls at this early stage and leave the management of amenity issues to individual lot owners and Council staff to follow-up on amenity complaints.

It appears the submitted planning proposal fails to adequately address potential land use conflict issues that may arise as a result of the proposed live-work development.

In addition the Infrastructure SEPP includes internal noise goals for new sensitive developments along major roads. For new residential developments adjacent to busy roads, internal noise levels of 35 dB(A) have been set for bedrooms during the night time and 40 dB(A) for other habitable rooms (LAeq).

While these requirements in the Infrastructure SEPP apply to specific highly trafficked roads [roads with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RTA)] the NSW Road Noise Policy outlines the information in the SEPP can be used when designing developments near other highly traffic roads.

The potential noise impacts, goals and mitigation measures were not adequately addressed as part of the proposal and should be considered to allow appropriate noise mitigating measures to be applied.

After reviewing the relevant documentation relating the current planning proposal and history of the site, it is our opinion that the above issues must be considered and adequately addressed at the planning proposal stage.

Please contact me if you require clarification on any of the matters raised.

Andrew Smith
Manager Development Services

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. **Ballina Waterways Pty Limited** of 46 Evan Street SOUTH PENRITH NSW 2750 (owner of Lot 4 DP 537419)("Developer")

Background

- A. In 2012 the Developer requested the Council to initiate a Planning Proposal to amend Ballina Local Environmental Plan 2012 ("LEP").The original request was amended to provide for an amendment to the LEP to zone the Land part R2 Low Density Residential and part RU2 Rural Landscape and to apply appropriate planning controls to enable as additional permitted uses "work" related uses in the R2 zone and a restaurant or café incorporating information and education facilities and a dwelling in the RU2 zone.
- B. In order to develop the Land for those uses it is necessary:
 - a. to reserve part of the Land as a Biobank Site for the purpose of a Biobanking Agreement; and
 - b. for detailed geotechnical investigations to be carried out on that part of the Land proposed to be developed for purposes other than environmental protection.
- C. The Developer is willing to have this Planning Agreement registered on the title of the Land.
- D. 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.

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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 Developer's 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*.

Biobanking Agreement means an agreement under Division 2 of Part 7A of the *Threatened Species Conservation Act 1995*.

Biobank Site has the same meaning as in the *Threatened Species Conservation Act 1995*.

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.

Developer means Ballina Waterways Pty Limited or its servants, successors, agents or assigns.

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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 4 DP 537419 being land at Burns Ferry Point 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.

Complying Development Certificate has the same meaning as in the Act.

Construction 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_BALL007_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.

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- (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.
- (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.

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(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.

(m) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, and the Party's 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 grant of any Development Consent for any Development of the Land pursuant to and permitted in the R2 Low Density Residential or RU2 Rural Landscape zone or pursuant to the Additional Permitted Use provisions of Schedule 1 of the LEP (other than a Development Application for the subdivision of the Land to create an allotment for the intended Biobank site or other activities in pursuit of the registration of the Biobanking Agreement), the Developer will provide the Material Public Benefit set out in Clause 1 of Schedule 1 of this Deed.

5.2 Prior to the lodgement of any Development Application for any Development of the Land pursuant to and permitted in the R2 Low Density Residential or RU2 Rural Landscape zone or pursuant to the Additional Permitted Use provisions of Schedule 1 of the LEP relating to the Land (other than a Development Application for the construction of a trial fill embankment with settlement monitoring plates), the Developer will provide the Material Public Benefit set out in Clause 2 of Schedule 1 of this Deed.

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6. Registration of this Deed

This Deed is required to be registered.

7. Assignment and Dealings

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

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 reasonably 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 93C 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").

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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 representatives must:

- (i) Meet to discuss the matter in good faith within 5 business days after services by the Respondent of notice of its representative;
- (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 9.5 or by expert determination under clause 9.6.

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 5 business days of receipt of the Dispute Notice, either Party may request the President of the Institute of

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Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator:

- (iii) The mediator appointed pursuant to this clause 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;
- (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 5 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

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If the dispute is not resolved under clause 9.3 or 9.5 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
 - (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 an 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

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has not been resolved within 20 business days of the expert giving his decision.

9.7 Litigation

If the dispute is not finally resolved in accordance with this clause, 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.

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; or
- (b) Faxed or emailed to that Party at its fax number or email address set out below.

Council

Attention: General Manager

Address: 40 Cherry Street BALLINA NSW 2478

Fax Number: 02 6686 7035

Developer

Attention: Ballina Waterways Pty Limited

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Address: 2 Castlereagh Street, PENRITH NSW 2750

Email address: matthew@froeburnsurveyors.com

- 11.2 If a Party gives the other Party three business days' notice of a change of its postal or email address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, sent or faxed to the latest postal or email address or fax number.
- 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.
 - (d) If it is sent by email, as soon as the sender has sent the email without receipt of a message that the email was undeliverable.
- 11.4 If any notice, consent, information, application or request is delivered or sent via email 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

Except 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.

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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

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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

19.1 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.

19.2 This Deed does not restrict the creation of easements for Council approved purposes nor fetter the creation of Biobank credits which can be used to improve or maintain biodiversity values of the Land. Biobank credits created on the Land may be used to offset the impact of development on the Land and the impact of development on other land, pursuant to the *Threatened Species Conservation Act 1995*.

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, unenforceable or invalid, that clause or part of a clause is to be treated as removed from this Deed but the rest of this Deed is not affected.

22. Modification

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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 BALLINA WATERWAYS)
PTY LIMITED)
Date.....)
.....)
Director / Secretary)

DRAFT

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SCHEDULE 1 – DEVELOPMENT CONTRIBUTIONS SCHEDULE

The Developer agrees to provide the following material benefits:

1. Prior to the grant of Development Consent for any Development of the Land pursuant to and permitted in the R2 Low Density Residential or RU2 Rural Landscape zone or pursuant to the Additional Permitted Use provisions of Schedule 1 of the LEP (other than a Development Application for the subdivision of the Land to create an allotment for the intended Biobank site or other activities in pursuit of the registration of the Biobanking Agreement), the whole of that part of the Land zoned RU2 Rural Landscape under the LEP shall be the subject of a Biobanking Agreement pursuant to Division 2 of Part 7A of the *Threatened Species Conservation Act 1995*. The Biobanking Agreement shall:
 - i. establish as a Biobank Site that part of the Land to which it applies;
 - ii. be registered on the title for that part of the Land; and
 - iii. remain in perpetuity in accordance with Division 2 of Part 7A of the *Threatened Species Conservation Act 1995* and the *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*.
2. Prior to the lodgement of a Development Application for any Development of the Land pursuant to and permitted in the R2 Low Density Residential or RU2 Rural Landscape zone or pursuant to the Additional Permitted Use provisions of Schedule 1 of the LEP (other than a Development Application for the construction of a trial fill embankment with settlement monitoring plates) comprehensive and detailed geotechnical investigations shall be carried out to accurately assess the required depths of fill for preloading including the construction of a trial fill embankment with settlement monitoring plates.

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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 40 Cherry Street, Ballina, NSW 2478
(Council)

Ballina Waterways Pty Limited of 46 Evan Street South Penrith NSW 2750
(Landowner of Lot 4 DP 537419)

Description of Land to which this Draft Planning Agreement applies:

Lot 4 DP 537419 (the Land)

Description of Proposed Change to Environmental Planning Instrument, Ballina Local Environmental Plan 2012 (BLEP 2012)

The changes proposed to BLEP are as follows:

- An amendment to change the zoning of part of the Land from RU2 Rural Landscape zone to R2 Low Density Residential zone.
- An amendment to incorporate that part of the Land zoned 1(d) Rural (Urban Investigation) zone under the provisions of Ballina Local Environmental Plan 1987 (BLEP 1987) and apply a part R2 Low Density Residential zone and a part RU2 Rural Landscape zone to the Land.
- An amendment to permit live – work purposes within the R2 Low Density Residential zone proposed for the Land as additional permitted uses.

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- An amendment to apply a 0.7:1 Floor Space Ratio to that part of the Land proposed to be zoned R2 Low Density Residential zone.
- An amendment to apply a 40 hectare minimum lot size to that part of the Land proposed to be zoned RU2 Rural Landscape zone and a 450m² minimum lot size to that part of the Land proposed to be zoned R2 Low Density Residential.
- An amendment to apply an 8.5 metre maximum building height provision to the Land.
- An amendment to apply a 2.7metre Australian Height Datum (AHD) Building Height Allowance to the Land.
- An amendment to remove the Strategic Urban Growth Area effectation from the Land and associated changes to buffer areas.
- Amendments to incorporate that part of the Land zoned under the provisions of BLEP 1987 and show such land on the Land Application Map, Acid Sulfate Soils Map and the Flood Planning Map.
- An amendment to permit within the area proposed to be zoned RU2 Rural Landscape zone a restaurant or café incorporating information and education facilities and a dwelling, contained within a curtilage having a maximum area of 1300m² as an additional permitted use.

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

The Objectives, Nature and Effect of the Draft Planning Agreement is to ensure that:

- a. part of the Land is reserved as a Biobanking Site for the purposes of a Biobanking Agreement; and
- b. detailed geotechnical investigations are carried out on that part of the Land proposed to be developed for purposes other than environmental protection to ensure that it is suitable for development for uses permissible in the zone.

Assessment of the Merits of the Draft Planning Agreement

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The Planning Purposes Served by the Planning Agreement

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

- to provide for the environmental and ecological protection and enhancement of land in connection with the Development; and
- to 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.

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

The Planning Agreement, by making provision for the reservation of part of the Land as a Biobank Site for the purpose of a Biobanking Agreement, and for detailed geotechnical investigations to be carried out on that part of the Land proposed to be developed for purposes other than environmental protection, 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.

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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