Ballina Shire Development Control Plan 2012 – Chapter 3 Urban Subdivision
Draft Amendments

5.8 Burns Point Ferry Road Area

5.8.1 Application

Applies to:	
Location/s (Land):	Burns Point Ferry Road Expansion Area (Land as shown on Special Area Control Map)
Development Type/s:	Subdivision

5.8.2 Desired Future Character

Precinct 1 is located within the north of the site within the R2 zoned area and features undeveloped land some of which has high conservation value including endangered ecological communities and wildlife habitat, including grass owl vegetation. Drainage lines within the site feed into Emigrant Creek to the west and Richmond River to the south. The site is subject to flooding and has a high water table requiring filling to ensure an appropriate level of flood immunity and ensure adequate stormwater treatment and drainage.

High conservation value land impacted by the development of Precinct 1 will be offset within Precinct 2 in accordance with a Biobanking Agreement, prepared under the *Threatened Species Conservation Act 1995*, for the site. The Biobanking Agreement must be registered prior to the granting of any development consent for development on the site other than for the subdivision of the land to create an allotment for the intended Biobanking Agreement or other activities in pursuit of the registration of the Biobanking Agreement.

Precinct 1 is divided into two sections. The northern section will contain single dwelling housing forms and the southern section will contain live/work development as indicated in the Residential Intensity Plan contained within Appendix F.

The live/work section of Precinct 1 may be developed as a Community Title subdivision scheme whereas the single dwelling section is proposed to be developed as a Torrens Title subdivision scheme.

The key function of that part of Precinct 1 designated for live/work development is to provide for residential development while allowing home business uses in association with the primary residential use. The integral requirement of development within this part of Precinct 1 is that home business uses cannot be established without a primary dwelling component.

Part of Precinct 1 shall provide housing choice opportunities tied to a home business use. These home businesses will be located in the southern area of Precinct 1 in accordance with the Burns Point Ferry Road Area Structure Plan (Appendix F). In this area home businesses shall be permitted to occupy larger floor areas (up to 120m^2) than home businesses located elsewhere within residential zones.

The key purpose of Precinct 2 is the designation of land for the management and protection of important biodiversity associated with the site, particularly Endangered Ecological Communities, possible grass owl habitat, riparian areas and wildlife habitat. Environmental buffers and infrastructure requirements required for Precinct 1 must be designed to avoid impacts within Precinct 2.

One mixed use development containing a restaurant or café, and information and education facility and a dwelling (Interpretive Centre) is permitted within Precinct 2 as shown on the Burns Point Structure Plan (Refer Appendix F).

Note:

Details of the additional permitted uses permitted on this site are contained within *Schedule 1 Additional permitted uses* of Ballina LEP 2012.

A Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* applies to the Land. The agreement provides that part of the Land (Precinct 2) will be a Biobanking site; and that detailed geotechnical investigations be carried out on that part of the Land proposed to be developed for purposes other than environmental protection.

5.8.3 Planning Objectives

The planning objectives of the subdivision of the Burns Point Ferry Road Area are to:

a. Facilitate a high level of landscape and urban amenity.
b. Enhance and protect the bio-physical environment, particularly the Endangered Ecological Communities, grass owl habitat and other wildlife habitat associated with the site.
c. Protect and enhance ground water, surface water quality and hydrology.
d. Ensure that the siting, scale and intensity of subdivision enhances and protects Ballina's liveability attributes by:
   - delivering landscaped public open spaces for local recreation opportunities and to complement residential amenity;
   - provides a permeable pedestrian network that facilitates communal exchange and fosters a sense of community;
   - ensuring that site access does not compromise the amenity or safety of adjoining residential areas and road networks;
   - providing a street design and hierarchy that addresses environmental constraints and traffic/ pedestrian requirements of the live/work precinct.
e. Ensure that suitable buffers are provided between adjoining development, environmentally significant land (existing and future) and for the management of hazards (including bushfire and mosquito management).
f. Provide a subdivision layout that is responsive to site opportunities and constraints including energy efficiency, solar access, topography and prevailing winds.

g. Ensure that service infrastructure and open space are provided in an orderly and economically feasible manner, provide for connectivity with existing and planned infrastructure and meet the needs of the future residents and occupants of the site.

h. Ensure the site is subdivided generally in accordance with the Burns Point Ferry Road Area Structure Plan provided as Appendix F.

5.8.4 Development Controls

A. Element – Site Layout (Precincts 1 and 2)

General

i. Subdivision of the Land must be consistent with the planning objectives for the Land set out under section 5.8.3 and the Burns Point Ferry Road Area Structure Plan in Appendix F.

ii. Subdivision of the Land other than a minor boundary adjustment or for the creation of a lot for the Biobanking Agreement must comply with the master planning requirements outlined in Section 3.2.3 of this Chapter of the DCP.

Access and Road Network (Precinct 1)

iii. Access to this site must be via:

- A new left in left out intersection in River Street shown as Intersection A on the Access Plan within the Burns Point Structure Plan (Appendix F); and
- A new intersection in Burns Point Ferry Road shown as Intersection B on the Access Plan within the Burns Point Structure Plan (Appendix F).

iv. The street network is to be designed to provide safe and convenient access for residents generally as shown on the Burns Point Ferry Road Area Structure Plan (Appendix F).

v. The design and hierarchy of internal roads is to be in accordance with the requirements set out in the *Northern Rivers Local Government Development and Design Manual*.

vi. Where appropriate, street design should accommodate road reserves within bushfire asset protection zones, particularly on the southern and eastern boundaries.

vii. The street network design is to incorporate designated bus routes and bus stop locations to service a walkability catchment of 400 metres. Bus stops are to be provided with "hail and ride" J poles and constructed bus shelters.

viii. A street and pedestrian/cycleway network is to be provided which integrates the subdivision with public open spaces and the mixed-use development within Precinct 2 and the shared pathway located in River Street. The network shall be generally consistent with the Burns Point Ferry Road Area Structure Plan (Appendix F).

ix. On-street parking for visitors and non-resident employees must be provided within the street network as part of the overall subdivision at a minimum rate of one space per two lots.

Layout and Character (Precinct 1)

x. The design of the lots must enable the construction of a built form which is sympathetic to the established character of the area.

xi. A development application for Community Title subdivision must include a draft development contract and a draft management statement.

Note:

Community Title Subdivision Provisions

Community Title legislation enables the creation of private development lots and common property (community lot) where proposed future uses of the private lots can be specified in a community management statement and future use of common property can be specified in a development contract. A community title scheme is managed by the community association.

1. Development Contract

A Development Contract must be provided for all community title schemes. A draft of the contract must be provided with the DA for subdivision. The Development Contract operates primarily as a construction agreement between the developer and members of the community title scheme in relation to the use of common property areas and in relation to the provision of various facilities or amenities. The development contract is signed by the developer and the Council.

2. Management Statement

A Management Statement must be provided for all community title schemes. A draft of the Management Statement must be provided with the DA for subdivision. The final Management Statement must be lodged with the NSW Land and Property Information office for registration with the final subdivision plan. The Management Statement should contain details of the design concept for future development within the scheme; architectural and landscape guidelines for future development; and rules regarding access to land; use and maintenance of common property; services; insurance; etc.

The Management Statement must clearly indicate:

a. The maintenance requirements applicable to all community infrastructure.

b. How waste will be collected, stored and disposed of within the community title scheme.

Aspects of the draft contract and management statement may be incorporated into conditions of development consent.

B. Element – Infrastructure Provision (Precinct 1 and Additional Permitted Use Area within Precinct 2)

Internal Infrastructure

i. The subdivision is to be fully serviced with water, sewer, roads, drainage, underground electricity and communications. All service infrastructure is to be provided in accordance with the *Northern Rivers Local Government Development and Design Manual.*

ii. Applications for development are to be accompanied by an infrastructure servicing plan that provides for infrastructure delivery consistent with the staging identified on the Burns Point Ferry Road Area Structure Plan (Appendix F).

iii. Each development stage is to be fully serviced and provided with connections that are sized for the ultimate yield of the area. Each development stage is to provide associated upstream/downstream/connecting easements where required for crossing intervening land or for stormwater conveyance, discharge treatment or attenuation.

C. Element – Open Space (Precinct 1)

i. A local public park, comprising a minimum usable park area of 2000m^2, and to service a walkability catchment of 400 metres must be provided and be provided generally consistent with the Burns Point Ferry Road Area Structure Plan (Appendix F).

ii. The local park is to be embellished by the developer in accordance with a design approved by Council, including:

- Shade trees, garden areas and seating;
- Children's playground with impact matting / softfall and multi-play equipment area at least 100m^2 in size and covered by a shade structure;
- Drinking fountain and tap; and
- BBQ, picnic shelter with picnic table setting.

iii. Details of the location and type of facilities proposed are to be provided with the development application for the subdivision of the site.

D. Element – Residential Precincts

Density

i. Precinct 1 is to be divided into two density areas as shown on the Residential Intensity Plan within the Burns Point Ferry Road Area Structure Plan. These areas are:

- Area 1 (northern section of Precinct 1) shall be subdivided (Torrens title) to accommodate single dwellings.
- Area 2 (southern section of Precinct 1) shall be subdivided to predominantly accommodate the live/work component of the development. This are may be subdivided as a community title scheme.

E. Element – Environmental Management and Buffers

Biodiversity and Environmental Management

i. A Biobanking Agreement pursuant to the *Threatened Species Conservation Act 1995* is required to be registered prior to the granting of any development consent for subdivision in accordance with the Voluntary Planning Agreement registered for the land.

ii. An entomological assessment shall be prepared as part of the development application for residential or live/work subdivision of the land. The assessment must address the requirements of Section 3.6 Mosquito Management of Chapter 2 of BSDCP 2012.

iii. A noise impact assessment is to be prepared and submitted as part of the development application for the residential or live/work subdivision of the land, specifically to identify traffic noise affected lots impacted by the operation of River Street and determine suitable measures to mitigate such impacts.

Environmental Buffers

iv. Riparian corridors within the site must be established in accordance with *NSW Department of Primary Industries (Office of Water) Guidelines for Riparian Corridors on Waterfront Land*. The proponent is required to consult with DPI Water to ensure rehabilitation requirements for riparian corridors are considered as part of the subdivision design process and prior to the submission of the development application.

v. Asset Protection Zones (APZs) for all live/work and residential development shall be located within Precinct 1. Any required APZ for the mixed-use development within Precinct 2 must be contained within the area nominated for this use on the Burns Point Ferry Road Area Structure Plan (refer Appendix F) The APZs must be determined in accordance with the NSW RFS publication *Planning for Bush Fire Protection*. The APZs must have regard to any required future revegetation within Precinct 2.

vi. Unless otherwise defined by the entomological assessment, mosquito management buffers must be provided as follows:

- minimum width of 30 metres;
- buffer to be primarily formed by roadways and footpath reserves around allotments adjacent to all vegetated areas;
- buffer to be clear of vegetation likely to afford harborage to mosquitoes dispersing from wetland vegetation.

Note:

Any reduction in the 30m buffer must be justified by a entomological assessment. The minimum 30m buffer must be clear of any significant vegetation likely to afford harbourage to mosquitoes dispersing from the wetland margin vegetation.

F. Element – Filling of the Site, Flooding and Geotechnical Requirements

Filling and Flood Impacts

i. The site must be filled to ensure an appropriate level of flood immunity and ensure adequate stormwater treatment and drainage. The specific details of the fill and how it will interface with adjoining land must be addressed as part of the development application for subdivision of the land.

ii. The site must be filled to a minimum level of R.L. 2.7m Australian Height Datum.

iii. The minimum floor level for all buildings on the site is to be determined in accordance with the methodology contained within Chapter 2B Floodplain Management of BSDCP 2012.

iv. Batters must be provided at the edge of the fill area and must have a slope of not less than 1:6.

v. Batters must be located within Precinct 1 or in the case of the additional permitted use in Precinct 2 be located within the site area allocated for such use.

	Note: Flood impacts from the filling of the site have been assessed and incorporated into Council's integrated flood model. Therefore, flood impacts from the filling of the site are considered acceptable from a broader floodplain perspective.

Geotechnical and Land Contamination Impacts

vi. A geotechnical assessment must be prepared as part of the development application for subdivision of the land that assesses:

- Trafficability and management of construction activities associated with the development of the site; and
- Preloading requirements associated with the filling of the land and future development of the site, including appropriate monitoring and testing regimes to confirm the preloading process is complete.

	Note: Previous geotechnical investigations have identified development issues at the site resulting from low strength surface soils and a weak marine clay subsurface layer. The Planning Agreement which applies to the Land contains specific geotechnical requirements.

vii. A detailed land contamination assessment is required as part of the development application for the residential and live/work subdivision of the land and the development of the proposed Interpretative Centre. The assessment must comply with the requirements contained within SEPP 55 – Remediation of Land (or its successor), *National Environmental Protection (Assessment of Site Contamination) Measure 1999 (2013)*, *Ballina Shire Council Policy for the Management of Contaminated Land* and any other relevant guidelines. The assessment must consider potential impacts of previous land use at the site including:

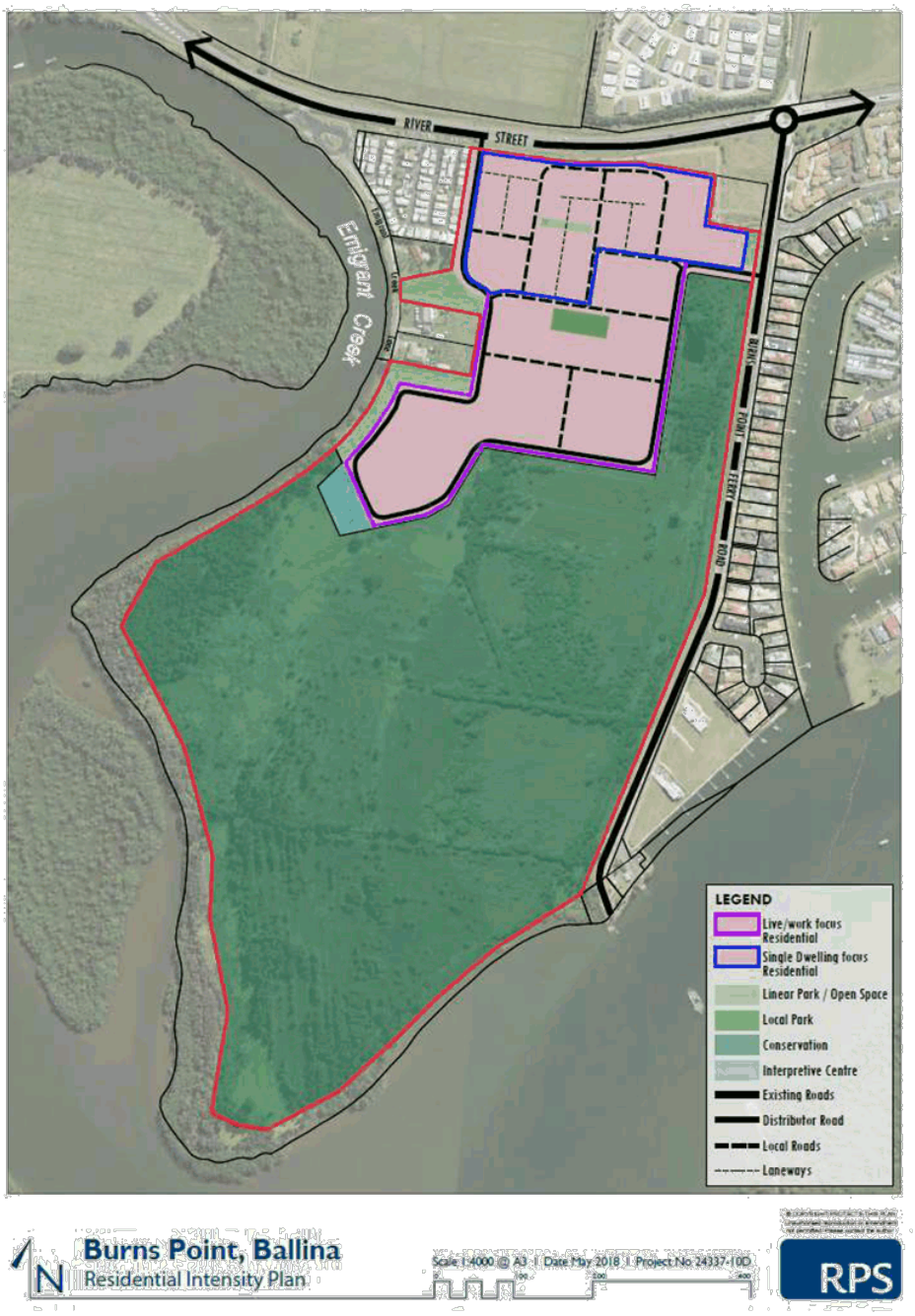
- Former garbage disposal area;
- Former farm house and shed;
- Sugar cane farming activities;
- Potential ground water contamination associated with previous land uses; and
- Any other potentially contaminating activities previously carried out on the site.

G. Element – Stormwater Management and Buffers

i. A stormwater management plan that provides for the following must be prepared and lodged with the development application for the subdivision:

- All stormwater infrastructure is to be located within Precinct 1.
- Uncontaminated, low pH, low nutrient fill is to be used for all earthworks required within Precinct 1.
- Avoid the need for deep basins or permanent pools for the detention of stormwater by incorporating shallow detention areas or swales across the site which fully drain following rainfall events.
- Ensure that stormwater leaving the site is treated to a quality equal or better to predevelopment quality and that stormwater flow rates leaving the site are no greater than pre-development flow rates.
- Stormwater treatment and disposal must not rely solely on any end of line facility. A treatment train must be proposed that incorporates a range of facilities, inclusive of measures, where appropriate, within the road system. Best management practices include dispersion techniques such as dissipaters, litter and debris control traps and associated trunk line drainage structures in controlling sediment and reducing phosphate/nitrate levels. Where possible and practicable, these structures are to be designed sympathetic to the surrounding environment and constructed of natural materials such as boulders and rock features and landscaped.
- Manage the flow and quality of water leaving the site to avoid adverse impacts upon adjoining sensitive wetland areas, particularly in relation to maintaining low pH and low nutrient levels.
- Stormwater detention areas are to be designed so as to minimise the potential for mosquito habitat and facilitate easy maintenance. Refer to DCP Chapter 2 General and Environmental Requirements, clause 3.6.3(viii) for specific design requirements.

Appendix F – Burns Point Ferry Road Expansion Area, Structure Plan, Mosquito Management Plan, Residential Intensity Plan, Open Space Plan, Access Plan


RIVER STREET
Emigrant Creek
BURNS POINT FERRY ROAD
LEGEND
Live/work focus Residential
Single Dwelling focus Residential
Linear Park / Open Space
Local Park
Conservation
Interpretive Centre
Existing Roads
Distributor Road
Local Roads
Laneways
N
Burns Point, Ballina
Residential Intensity Plan
Scale 1:4000 @ A3 | Date May 2018 | Project No 24337-10D
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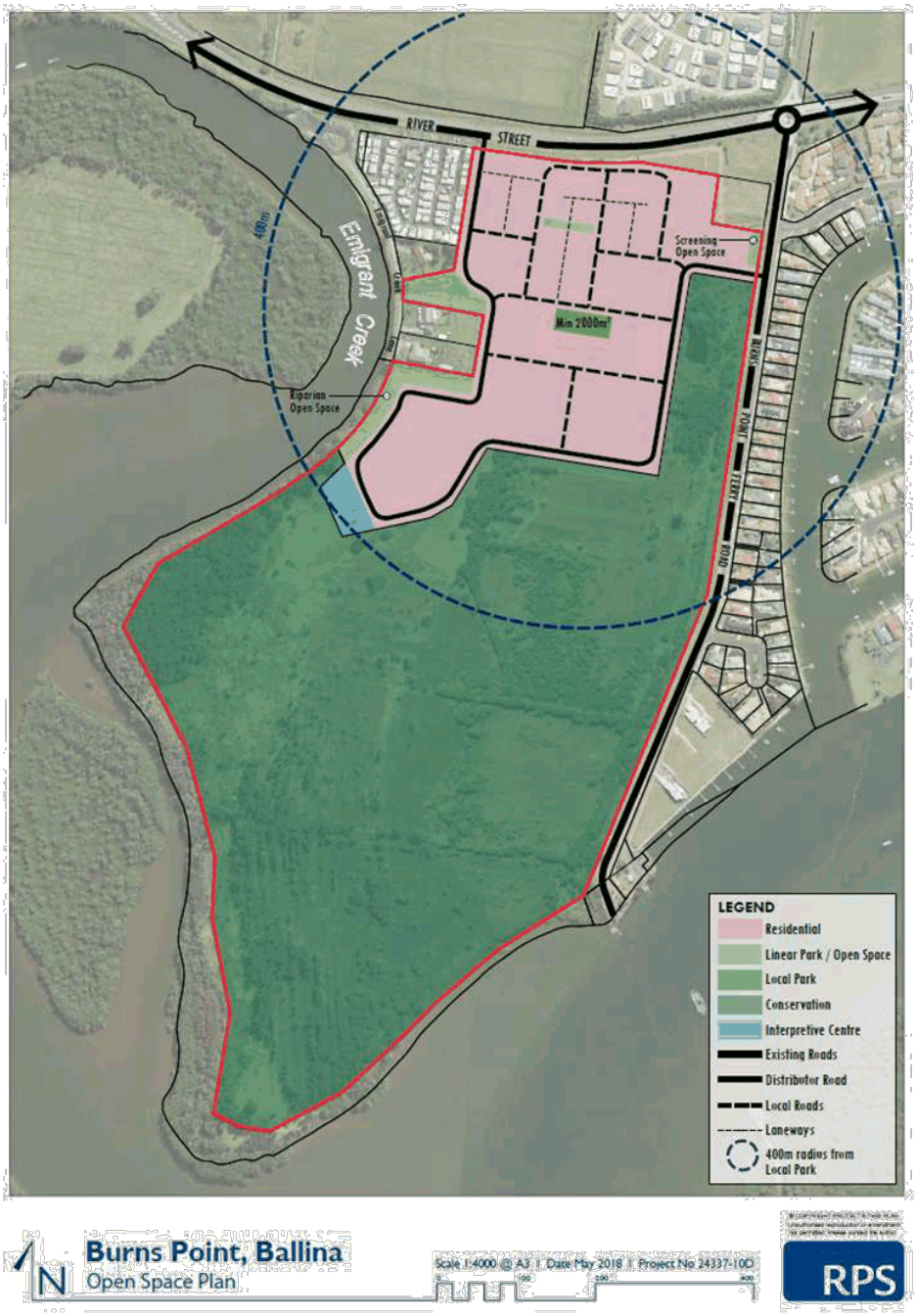
RIVER STREET
Emigrant Creek
400m
Min 2000m²
Screening Open Space
Riparian Open Space
BURNS POINT FERRY ROAD
LEGEND
Residential
Linear Park / Open Space
Local Park
Conservation
Interpretive Centre
Existing Roads
Distributor Road
Local Roads
Laneways
400m radius from Local Park
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Open Space Plan
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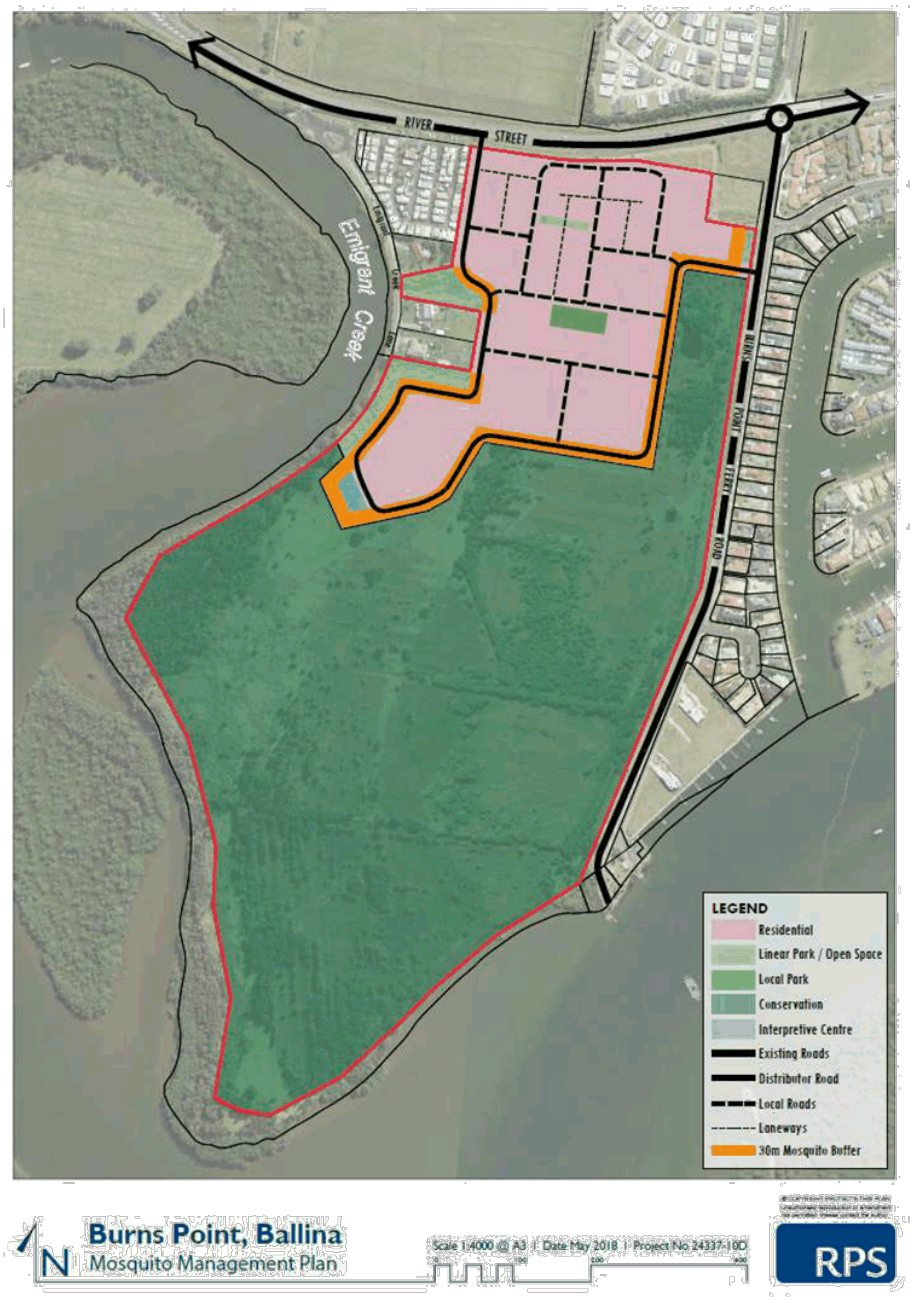
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RIVER STREET
A
B
Emigrant Creek
BURNS POINT FERRY ROAD
LEGEND
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Interpretive Centre
Existing Roads
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Site Access Point A
Site Access Point B
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Access Plan
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Ballina Shire Development Control Plan 2012 – Chapter 4 Residential and Tourist Development

Draft Amendments

4.8 Burns Point Ferry Road Expansion Area

4.8.1 Application

Applies to:	
Location/s:	Burns Point Ferry Road Expansion Area (as shown on Special Area Control Map)
Development Type/s:	***Precinct 1 - Residential and Home Business (live/work) uses*** ***Precinct 2 - Biobanking Site and one Mixed Use Development***

4.8.2 Planning Objectives

a. Within that part of Precinct 1 designated as having a live/work focus on the Residential Intensity Plan (Appendix E) – to provide improved opportunities for the establishment of home businesses within residential buildings (live/work) to meet the growing demand for integrated housing and employment opportunities in the Ballina area;

b. Within that part of Precinct 1 designated as having a single dwelling focus on the Residential Intensity Plan (Appendix E) – to provide high quality detached single dwelling housing.

c. Within Precinct 2 to protect and embellish the existing environmental qualities of the site by protecting the site under a Biobanking Agreement prepared under the *Threatened Species Conservation Act 1995*;

d. Provide for environmental buffers from significant vegetation, waterways, mosquito risks and bushfire risks within the site;

e. To provide services and facilities to meet the needs of the future residents of the site; and

f. To minimise land use conflict between residential and home business uses, whilst recognising the live/work character of part of the expansion area.

Note:

Live / work development for the purpose of this chapter means a dwelling which contains a *home business*. The total floor area occupied by the *home business* shall not exceed a floor space ratio of 0.2:1 or 120m^2 whichever is the smaller. Refer also to the definition of *home business* contained within *Ballina LEP 2012*.

4.8.3 Development Controls

A. Element – Access and Parking (Precinct 1)

i. On site car parking for all live/work developments must be provided as follows:

- In accordance with the requirement for a *Home Business*, as stipulated in BSDCP Chapter 2 Table 2.3.

B. Element – Additional Uses within Precinct 2

i. A facility, characteristic of a mixed-use development containing a restaurant or café, information, education facility, and a dwelling (Interpretive Centre) may be located within Precinct 2. The development is required to:

- Be located in the area specified on the Burns Point Ferry Road Area Structure Plan provided at Appendix E;
- Be located on a site the area of which does not exceed 2,500m^2 within Precinct 2;
- Be limited to two storeys and be compatible with the bulk, scale and character of the locality;
- Minimise adverse impacts on the existing or future amenity of adjoining properties and the scenic or landscape quality of the locality;
- Have direct access from a public road;
- Provide car parking in accordance with an approved car parking study;
- Comply with a Council approved operational management plan that identifies hours of operation, landscape maintenance, mosquito controls, car parking arrangements and total number of employees working at the premises at any one time;
- Facilitate the provision of interpretative information relating to the environmental value of Precinct 2;
- Apply and contain relevant buffers detailed within this chapter; and
- Comply with the provisions of Chapter 2b of BSDCP 2012 - Floodplain Management.

C. Element – Biodiversity – Precinct 2

i. A Biobanking Agreement pursuant to Division 2 of Part 7A of the *Threatened Species Conservation Act 1995 is* required to be registered on title in accordance with the provisions contained in the Voluntary Planning Agreement applying to the land. Any development of the site must be consistent with this agreement.

D. Element – Building Design (Live / Work)

i. Two storey development is encouraged.

ii. A building design able to accommodate a range of home business uses and allow for changes to uses over time is encouraged (refer to Figure 4.1).

iii. In relation to two storey development, the home business building components of the development must be clearly integrated and include:

- Internal access between ground and upper floors;
- The home business component on the ground floor; and

- The residential component on the upper floor.

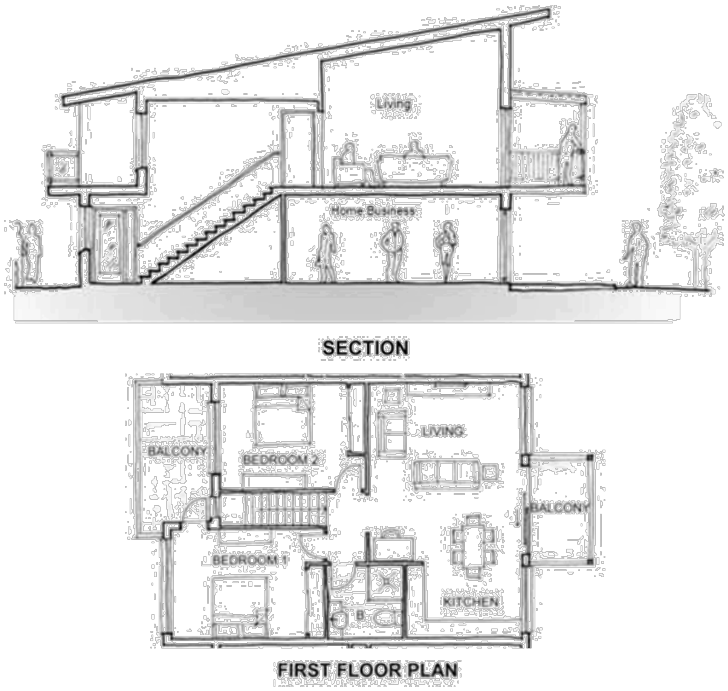
iv. The home business component must have high ceilings with a minimum of 3.3m floor to ceiling height. The live component must have a minimum 2.7m floor to ceiling height.

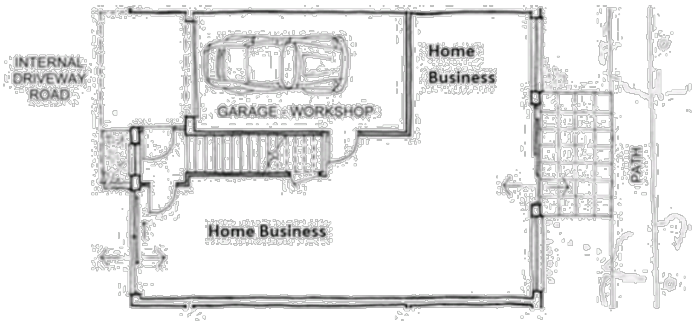
v. No residential components shall be located on the ground floor except for garage and laundry facilities.

vi. Development must be designed so that garbage collection areas and noise and odour generating operations are located away from living areas.

vii. The home business operator shall reside within the dwelling component of the building on the same site. No part of the home business or dwelling (live/work) development shall be separately leased.

Figure 4.1 – Encouraged Live / Work Building Design





GROUND FLOOR PLAN

	Note: The Building Code of Australia (BCA) contains requirements for the separation of certain classes of buildings. A BCA certifier should be consulted during the design phase of any development proposal to determine any BCA implications with any proposed development.

E. Element –Density

i. The following density requirements apply:

- The home business (work) component of a development must be secondary and tied to the primary dwelling use.
- The live (dwelling) component of the development is subject to a maximum Floor Space Ratio (FSR) of 0.5:1.
- The area for the home business (work) component must not exceed 120 square metres or a maximum FSR of 0.2:1; whichever is the lesser.
- The combined development is subject to a maximum FSR of 0.7:1.

	Note: Refer also to clause 5.4 of Ballina LEP 2012 for floor space ratio provisions applicable to the Burns Point Ferry Road Expansion Area.

F. Element – Hours of Operation

i. Traffic and noise generating activities associated with commercial activity shall be undertaken generally in accordance with the following:

- 8.00am to 5.00pm Monday to Friday;
- 8.00am to 1.00pm Saturdays; and
- No noise or traffic generating work on Sundays or Public Holidays.

G. Element – Landscaping and Open Space

i. In addition to the requirements of Ballina Shire DCP 2012 – Chapter 4 Clause 3.1.3 - Element G, the following landscaping requirements are applicable to Precinct 1:

- Landscape planting is to generally comprise low shrubs (to 1.2 metres high) and pruned up trees (to two metres) that will provide sightlines consistent with CPTED principles;
- Where landscaping is required to meet the above requirements, a development application is to be supported by a landscaping plan; and
- The landscaping plan must demonstrate that provision of landscaping is consistent with the entomological assessment and buffers required as part of the development approval for the subdivision of the land.

H. Element – Noise

i. The design of the residential component of development must address the acoustic interface between residential areas and work areas.

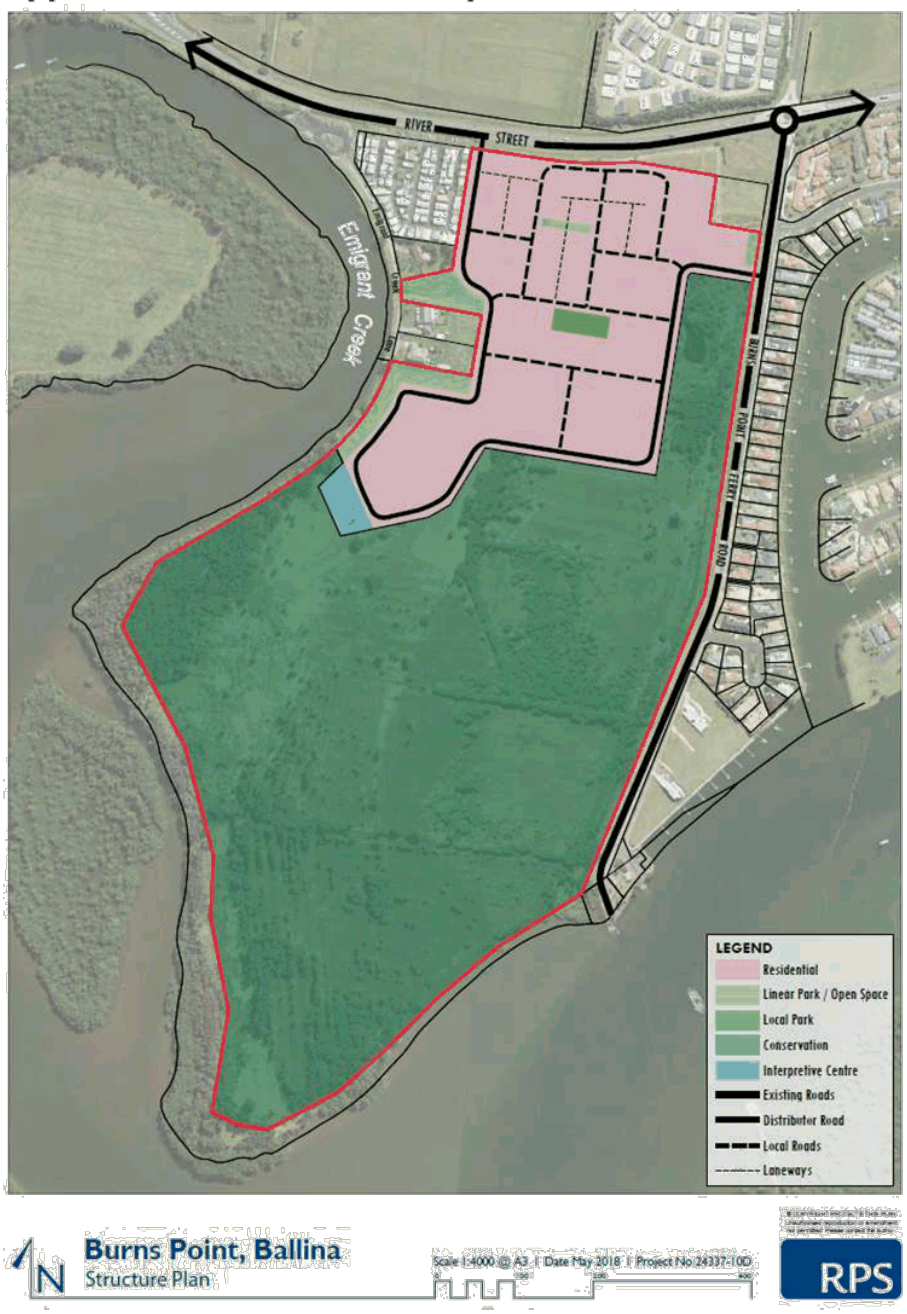
ii. The residential component of a development must be designed to ensure compliance with *AS 2107:2000 Acoustics - Recommended design sound levels and reverberation times for building interiors*. A summary of these requirements is provided in the table below:

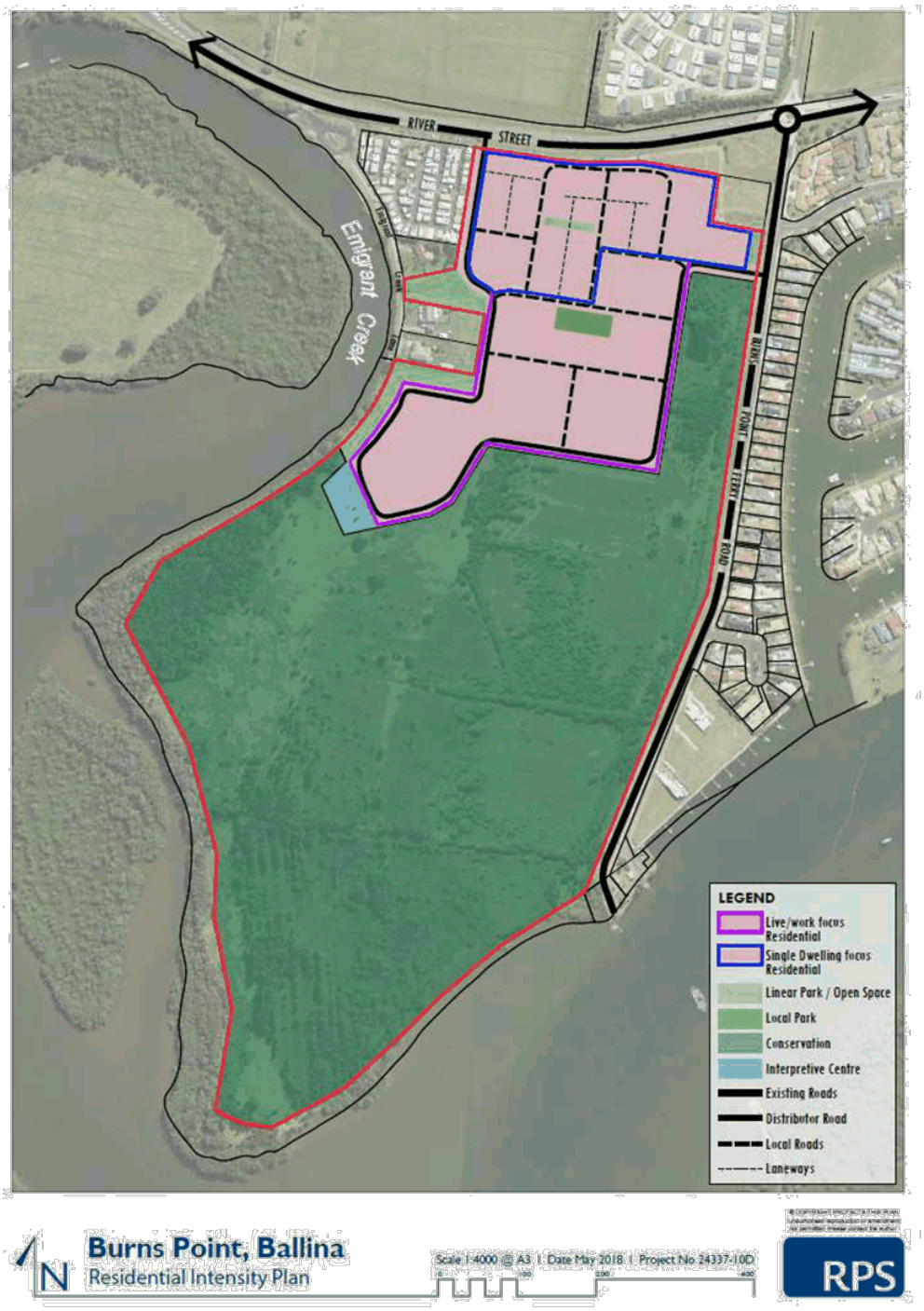
Type of occupancy/ activity	Satisfactory design sound level dB(A)	Maximum design sound level dB(A)
Sleeping areas	30	35
Living areas	30	40
Work areas	35	40
Common areas	45	55

Note:

Additional acoustic assessment may be required for individual live/work development applications dependent on the type of work activity proposed. The applicant shall consult with Council prior to submitting a development application to determine any acoustic assessment requirements for individual live-work developments.

Appendix E – Burns Point Expansion Area Structure Plan

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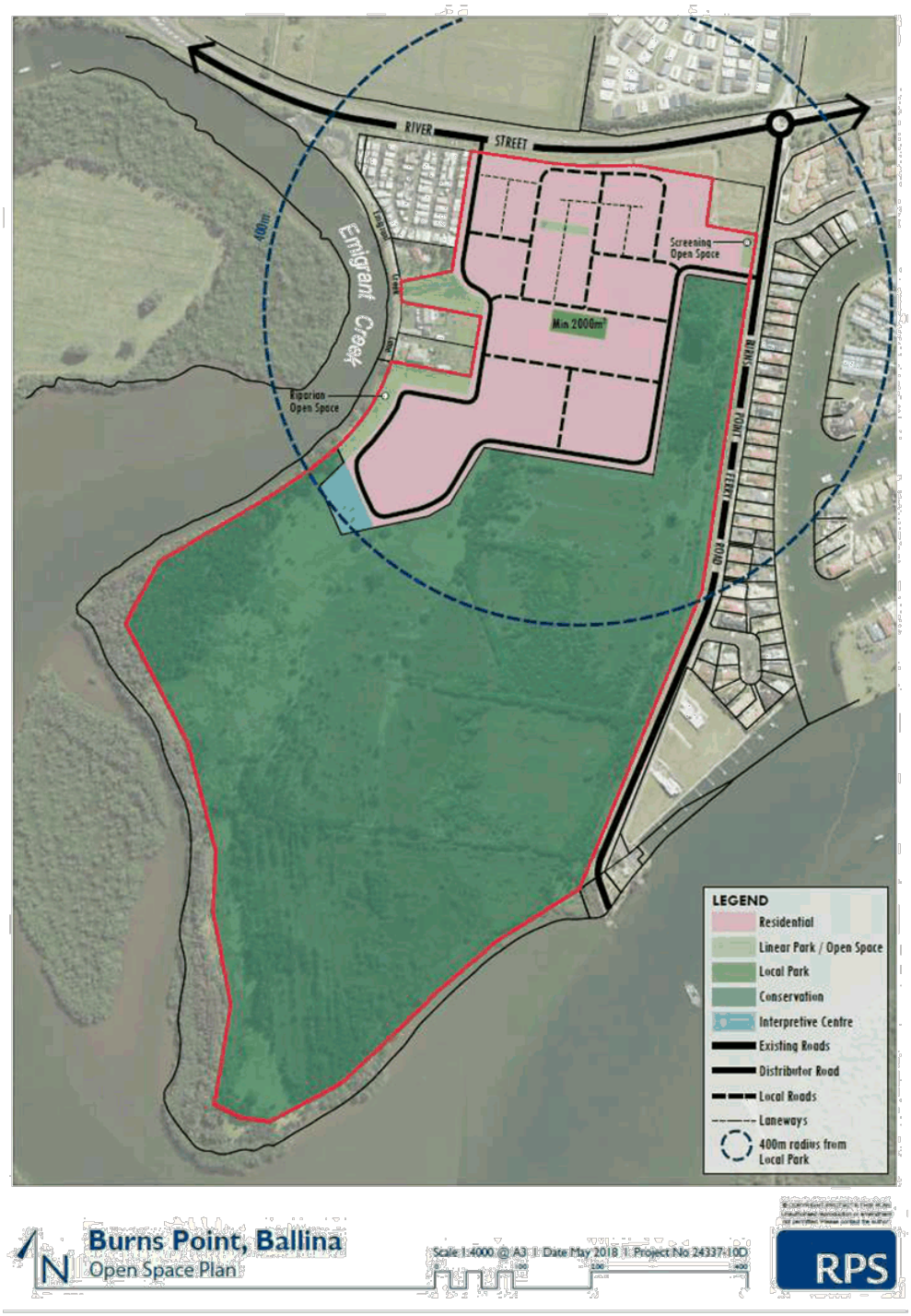
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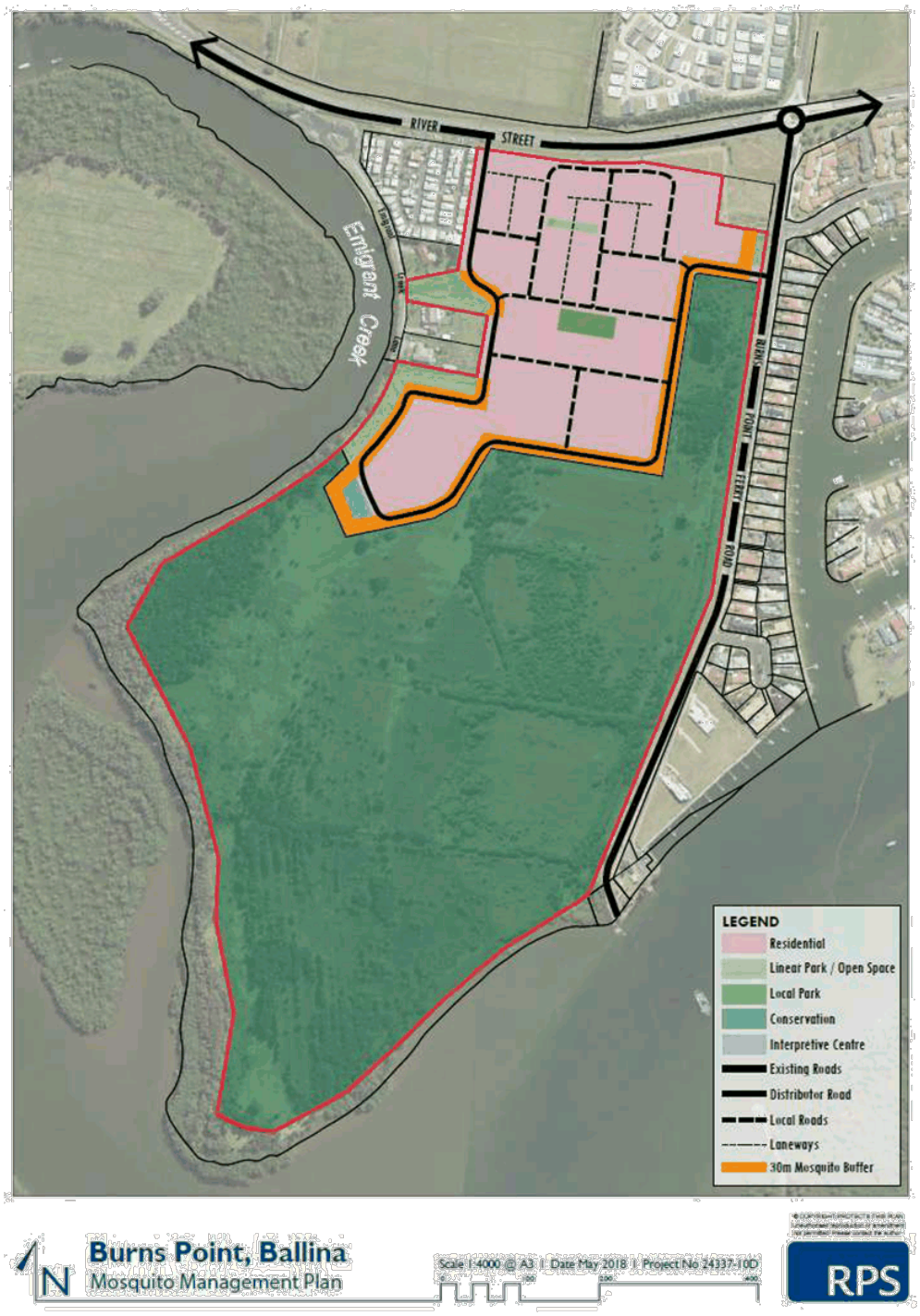
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Submissions to Public Exhibition – Burns Point Ferry Road Planning Proposal and Draft DCP Chapters 10/9/2018

SOMERVILLE LAUNDRY LOMAX SOLICITORS

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SENIOR ASSOCIATES Nathan Job, Joshua Allan, Myfanwy Sewell
ASSOCIATES Steve Spinks, Rob Manitta, Greg McBurney, Joshua Bull, Marissa Moore, Melanie Loomes, Cassandra Keogh
CONSULTANTS Carolyn Hunt, Dan McOmish, Peter Carmont, Damian Shanahan

21 September 2018

Our Ref: GM:2180020 **(Ballina Office)**
Your Ref: BSCPP 14/008 Burns Point Ferry Road (18/44300)

Mr Klaus Kerzinger
Acting Manager,
Strategic and Community Facilities Group
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

BY EMAIL: klaus.kerzinger@ballina.nsw.gov.au

Dear Sir

Re: Objection to Planning Proposal BSCPP 14/008 Burns Point Ferry Road, West Ballina and Draft Amendments to Ballina Shire Development Control plan 2012

We refer to the above matter and to our letter dated 7 September 2018 in relation to same.

We confirm we are instructed by Mr F Bienke, owner of Lot 6 DP537419, Emigrant Creek Lane, West Ballina, and Mr G Suffolk, owner of Lot 5 DP537419, Emigrant Creek Lane, West Ballina in relation to the matter.

We refer to our request for an extension for further submission on 6 September 2018 and in accordance with our telephone conversation on this date we confirm we are instructed to submit the following further submissions in objection to Planning Proposal

Accredited Specialists
Personal Injury
Family Law

Established 1888
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Suite 7, 20-54 River Street, Ballina NSW 2478 PO Box 147 Phone 02 6686 2522
Level 1, 89 Jonson Street, Byron Bay NSW 2481 PO Box 968 Phone 02 6680 8525
Somerville Laundry Lomax Solicitors Pty Ltd ACN 164 381 782 trading as Somerville Laundry Lomax

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BSCPP 14/008 Burns Point Ferry Road, West Ballina and Draft Amendments to Ballina Shire Development Control plan 2012.

Previous Public Exhibition

Our clients object to the short periods of public exhibition that this proposal has had in the past and continues to have to date.

Given the significant effect this proposal will have on the immediate neighbourhood and the direction of Ballina's development to all residents of the Ballina Shire, longer periods of public submission should be considered. Our clients were only able to make submissions late in the latest period of public exhibition due to personal health and travel commitments. On previous public exhibition periods for this proposal, especially in the 8 June to 8 July 2016 period our clients were unable to make any submissions due to the death of Mrs Kathleen Bienke at this time due to cancer after a long fight with multiple surgeries and treatment.

Mr Bienke requests that the above should be noted in particular as reference has been made to him that there has been limited public submissions made previously. It is his submission that the public in general and the residents of Ballina Shire in particular are completely unaware of the proposal and its effects. Accordingly, our client's request longer public exhibition periods for this proposal or its associated applications in the future.

Amenity, Enjoyment and Value of Property

Our clients, Francis Bienke and Graham Suffolk, instruct that, with their respective families they purchased their particular properties on the basis of the characteristics of there properties. The chief attractions of their properties being the peaceful, quiet and serene environment and characteristics of the rural properties, with spacious rural aspects and limited neighbours. The location and zoning of their properties and their neighbouring property was significant in their various decisions to purchase and locate their families to the properties.

Should the Proposal be passed by council and amendments be made to the DCP in relation to the neighbouring property, it is our clients belief and concern that the amenity and enjoyment of their properties will be destroyed along with the value of their properties.

Our clients strongly object to the proposal and associated amendment to the DCP on the basis to the direct damage this proposal will have to the amenity, enjoyment and value of their properties abutting the proposal.

Flood Risk

Our client's note that the flood assessment undertaken or referred to in association with this proposal and associated amendment to the DCP are out of date and are not representative of the current circumstances of the current planning proposal and draft amendments of the DCP.

The Flood Assessment is dated May 2008 with a subsequent letter dated 18 December 2014 making reference to changes in the proposal subsequent to May 2008. Our

clients submit that since December 2014, almost 4 years ago and over 10 years since the flood assessment:-

- Further planning proposal amendments have been made in addition to draft amendments to the DCP in relation to the proposal. This includes filling land comprised within the proposal to a height of 2.7 metres which is considerably higher than anticipated by the original assessment. Also, changes to zoning have not been contemplated by the original flood assessment. Our client's submit that these amendments to the proposal and the DCP manifestly effect the impact of the proposal, have not been contemplated by the original flood assessment, have not been addressed in the subsequent letter in relation to the flood assessment, and accordingly render the flood assessment inadequate in relation to the proposal area adjacent to our client's properties and to our client's properties.

- The Ballina By-pass has been completed. Accordingly, the food assessment may be redundant as it has not considered the implications of the By –pass on the proposal area.

Chapter 2, Section 3.9.3 C states:-

Manage Stormwater Runoff from Development

i. Changes to the natural or pre-development runoff volume, peak discharge rate, frequency, duration and velocity of stormwater by development and associated stormwater systems must be mitigated and managed to ensure no adverse f looding or ecological impacts on downstream land, landuse and receiving systems.

ii. Stormwater runoff is not to be generated, concentrated or diverted by development in a manner that causes any adverse flooding impacts, damages or nuisance to any downstream persons, public or private property.

Our client's submit that the available flooding assessments indicate the planned proposal will heighten flood risk and stormwater runoff will be generated, concentrated and diverted by the proposed development onto the land of our clients.

Our clients' concerns regarding flood and storm water runoff are bases on the proposal being 2.7 metres higher than our clients' properties. Currently our clients' properties are higher than the adjourning rural land subject to the proposal. The height of the proposal to mitigate flooding within the proposal will create a situation where our clients' properties will be lower than the proposal area and will have stormwater funnelled towards our clients' properties.

There are already noted flood risks for this area and the build-up of the land on the proposal area will cause considerable water displacement which will effect adjoining properties and the ability for water to be drained. In addition to filling land to a height of 2.7 metres and building upon land which will alter existing environmental status as it relates to flooding and existing heightened flood risk, the size of individual properties and the roof catchment of water, there are concerns that stormwater drains will not be able to cope particularly when the tide is up or with effect of flood (i.e. there will be nowhere for the stormwater to escape per normal conditions other than adjoining properties).

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The fact that the planned development proposal has reconsidered the placement of a restaurant due to flood risk, demonstrates the risk of flooding on the proposed site and the level of displacement that will occur – further demonstrated by classification of part of the property as 'Extreme Flood Risk Precinct'.

Our clients' instruct that while considerations regarding flooding appear to centre on the risk for the planned development proposal, there appears to be little concern to the effect on adjoining properties and how this effect will be negated. Nuisance and loss of enjoyment and amenity of property should not be imposed upon others. Furthermore, there is likely significant financial implications of such as it will devalue the adjoining properties, particularly with insurance either not available or already highly priced. Should damage to our clients' properties occur due to excess stormwater runoff and resultant flooding, the public authority may be liable.

Ferry Road currently floods with king tides in normal weather conditions, how is the drainage supposed to escape when the land is filled and roads and laneways plus curb and guttering is completed (which in turn would speed up the flow rate of drainage in flooding rains)? Furthermore, there will be a multiplying factor of roof catchment once buildings are constructed. It is submitted that when we have heavy rain and the tides are full, the drainage will be unable to discharge into Emigrant Creek. How does the developer propose to overcome this huge planning discrepancy for drainage?

Our clients are concerned that their properties will be damaged by the proposal but that damage will be considered a justified sacrifice for the purposes of the proposal. Our clients' position is that the proposed development should not be allowed to adversely affect adjoining properties and strongly object to the proposal and amends to the DCP.

LAND LOCK

Our clients' instruct they are concerned that the planned development will create 'land lock' of Lots 5 and 6. They will be surrounded by properties and structures at greater heights and create a sense of being surrounded – significantly different to what attracted them to their properties, being: the peaceful, quiet, serene and spacious characteristics of the property, limited neighbours and placement adjacent to a rural zoned area.

Zoning, Proposed Live – Work Concept, Traffic and Location of the Café Restaurant

Our clients instruct that they object to the proposal as the proposal is inconsistent with provisions of the Ballina Shire Local Growth Management Strategy and other long-term strategies of relevant authorities.

Our client's oppose the proposed live-work concept predicated in the proposal and the extension of the permitting of home businesses with a floor area up to 120 m2. This proposal is a significant variation from the current characteristics of the area and in direct contrast as to why our clients chose to live in the area. Furthermore, this live-work concept is likely to have significant impacts upon traffic coming from Burns Point Ferry Road and onto and along River Streets which are already often heavily congested.

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Reference is made in various components of the planning proposal and attachments to live/work concepts being developed in other locations, but in addition to Byron Bay (where the concept is relatively small in nature) only 7 locations in all of Australia (all of which are in much more densely populated areas) could be quoted and there was no demonstrable evidence of:

- how positive or otherwise the outcomes of these have been;
- effect on surrounding neighbours and environment; and
- how relatable these are to the current proposal – e.g. their previous zoning, allowable floor space, traffic and environmental effects (including flood risk).

Our clients question why in the proposal the designated live – work area is located adjacent to three residential properties, while the single dwelling component is located adjacent to the caravan park? This is a land use conflict. It is also locating heavier use closer to the environmentally protected area – this is at odds with what would be deemed effective planning and protection. This and the related Draft Development Control Plan provisions are opposed

Our clients oppose the additional permitted uses contained within the proposal that facilitate the inclusion of a café/restaurant. This inclusion and the location within the proposal of the inclusion will have an impact on our clients in terms of loss of amenity. The newly proposed location of the café/restaurant seems to be located directly adjacent to our clients' property. Again this commercial aspect of the proposal is in direct contrast to the existing use of the land and to our client's amenity and is far removed from not only the current rural zoning which our clients expected on an ongoing basis but also residential zoning in general. Our client's also note and object to the increase in size of this commercial aspect of the proposal. It is easily foreseeable to our clients that noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise (all of which are even disallowable from home businesses under the Ballina LEO 2012) will affect their amenity. Accordingly, our client's object to the proposal and amending the DCP.

An overview of the proposal suggests a relatively major intersection onto River Street that then links River Street to the work – life sites and also flows through to the proposed café and restaurant. This roadway and infrastructure will be located at the back of the properties of our clients. This is directly against the environment they valued in purchasing their properties, is detrimental to their amenity and enjoyment of property and conflicts with existing use. Furthermore, it suggests an increase in noise pollution, traffic noise and congestion and heightening of social issues associated with higher density living including heightened crime and social risk for the existing residents.

The traffic on River Street past Emigrant Creek Lane is already significantly heavy and at times heavily congested. Our clients object to the proposal and associated amendments to the DCP and note proposal and associated amendments to the DCP plan a left turn into the proposal area from River Street and a left turn out from the

proposal area onto River Street. Our client object and summit that the proposal as planned will draw clientele to the area as well as the residents themselves, which will:

- add unreasonable increases to traffic to River Street with one lane each way past the proposed development. The infrastructure is considered inadequate for such and further development of this would remove it from the characteristics enjoyed by existing residents;
- significantly add traffic to the River Street and Burns Point Ferry Road roundabout;
- make it significantly more difficult to turn out of and into Emigrant Creek Lane – the traffic entering River Street will do so not far from the Emigrant Creek Lane entry; and
- further build up traffic leading into and out of Ballina.

.**Environment and Contamination Concerns**

Our clients instruct they object to the proposal and amendments of the DCP on an environmental basis.

Reference is made in the proposal to the benefits and importance of bio banking and that credits could be secured from other sites. Actions on the site of the proposal will directly effect the immediate environment within the proposal are despite the concept of bio banking which benefits other areas away from the immediate area of the proposal. This would not benefit residents in the immediate area who value the existing state of the land.

Our clients are further concerned about the flexibility given to the timing of a bio banking statement for the proposal. That is, a bio banking statement will be allowed to be completed after the proposal is finalised. This is objectionable to our clients as any bio banking statement would not be considered at the time of authority decision making and would not be able to be tested and considered by all stakeholders prior to consent.

Our client's object to the proposal on the basis that the proposal does not adequately consider increased stormwater and the increase in concentrations of contaminates from increased density and infrastructure and commercial activities. Our clients disagree with the proposal inferring that pollutant concentrations and loads will be reduced to an acceptable level without going into specific of how this would happen. How does the proposal propose the effective treatment and negation of increased concentrations of contaminates from increased density and infrastructure and commercial activities before exiting onto adjoining land or directly past and through our client's properties into Emigrants Creek?

Our clients note the respective report in relation to contamination does not adequately address or consider the area to the south of the proposal sit yet places the commercial café/ restaurant at this location. Our client's would like this issue addressed prior to a decision on the proposal is made by council.

Further, our client note there does not appear to be due consideration within the proposal to potential erosion of the Emigrant Creek embankment due to increased drainage effects and further boating activity on the waterway. Our clients report that

the embankment currently has issues in relation to collapses due to cattle and boat wash and believe that increased runoff from the proposal area will further contribute to this issue.

Further Issues

Our clients are concerned that given the location of their properties in relation to the proposal that in the event of a flood there is a real risk they will be marooned on their properties with no exit point. This is an issue for our clients who are elderly and have ongoing health and well-being concerns.

Our client submit that the planned proposal materially effects the one in a hundred year flood assessment and other assessments that would have been undertaken when considering the development of our clients' properties.

Conclusion

Our client's object to the proposal and amending the DCP to cater for the proposal.

The proposal relies on assessments that were undertaken some time ago and the assumptions contained within the assessments need to be revisited given the changes to the immediate environment including the bypass and the increase in fill required for the proposal area.

The immediate and long term effects on our clients' properties have not been considered at any stage by the proposal and accordingly this should be considered prior to any final determination on the proposal by Ballina Shire Council.

Please do not hesitate to contact the writer on (02) 6686 2522 in you would like to discuss the matter further.

Yours faithfully
SOMERVILLE LAUNDRY LOMAX

Greg McBurney

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SOMERVILLE LAUNDRY LOMAX SOLICITORS
More experience = better outcomes

PRINCIPALS Robert Wairen, Ben Crawford, Guy Latham, Sean Radburn, Ben Robin, Stephen Tester
SENIOR ASSOCIATES Nathan Job, Joshua Allan, Myfanwy Sewell
ASSOCIATES Steve Spinks, Rob Manitta, Greg McBurney, Trevor Jones, Joshua Bull, Marissa Moore, Melanie Loomes
CONSULTANTS Carolyn Hunt, Dan McOmish, Peter Carmont, Damian Shanahan

7 September 2018

Our Ref: GM 2180020 **(Ballina Office)**
Your Ref: BSCPP 14/008 Burns Point Ferry Road (18/44300)

Mr Klaus Kerzinger
Acting Manager,
Strategic and Community Facilities Group
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

BY EMAIL: klaus.kerzinger@ballina.nsw.gov.au

Dear Sir

Re: Objection to Planning Proposal BSCPP 14/008 Burns Point Ferry Road, West Ballina and Draft Amendments to Ballina Shire Development Control plan 2012

We act on behalf of Mr F Bienke, owner of Lot 6 DP537419, Emigrant Creek Lane, West Ballina, and Mr G Suffolk, owner of Lot 5 DP537419, Emigrant Creek Lane, West Ballina.

Given the location and proximity of our clients' properties, the Planning Proposal and amendments to the Ballina Shire DCP, if passed will have a direct impact.

We refer to your letters to our client dated 1 August 2018 giving notice of the Re-exhibition of Planning Proposal BSCPP 14/008 Burns Point Ferry Road, West Ballina and Draft Amendments to Ballina Shire DCP 2012. We are instructed that that each of our clients did not become aware and were unable to address the contents of such due to either health and hospitalisation or attending holidays. Our clients would like the

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opportunity to provide fuller objections within the next two weeks in addition to the contents of this correspondence.

We respectively submit the following submissions with regard to the Planning Proposal BSCPP 14/008 Burns Point Ferry Road, West Ballina and Draft Amendments to Ballina Shire DCP 2012 and wish that Ballina Shire Council take these submissions and concerns into due consideration regarding their decisions with respect to both the Planning Proposal and Ballina Shire DCP 2012.

We are instructed to submit that are clients object to the Planning Proposal and Amendments to the Ballina Shire DCP on the following grounds:

1. **Environmental Concerns**

1.1. Differences in professional opinions with regard to identified ecological issues

Such differences include:

- The occurrence, distribution, extent and quality of Freshwater Wetland EEC,
- Impacts to Grass Owl habitat, and
- The Extent to which the above issues may be offset through bio banking on the Site.

These differences should be addressed definitively prior to any final decision on the Planning Proposal or amendments to the DCP by a further ecological study beyond a peer review and gap analysis.

1.2. Flooding and Stormwater Concerns

The proposal and amended DCP will result in a change to the water and stormwater flows particularly as the area will need filling due to potential flooding and development will change the natural absorption and water flows on the area, and flowing from the proposal.

Our client's properties create a salient into the proposal area. Two of the proposed bio retention areas (area 1 and area 2 identified in the Supplementary stormwater reports) are located directly adjacent to the northern and southern boundaries of our clients' property taken as a block. Our clients are concerned that given the necessity of increased fill throughout the proposal area, that the proposed bio retention area will be totally inadequate for the additional water and stormwater flow from the development are which may result in an overflow onto their properties which will be much lower than the filled developed area.

Further, plans of the proposal indicates that there will be a road directly adjacent to the back boundaries of our clients' properties which will result in an overflow onto our client's property.

The fill required by flood mitigation within the proposal area will create a situation where our clients' properties will be effectively downhill/lower that the proposal area which dramatically increases the potential of water flow/stormwater flow and overflow directly onto our clients' properties. The effect will be that the backyards on our clients' properties will turned into additional bio retention areas for the proposal.

1.3. Noise Pollution

The effect of the proposal and amendment of the DCP would effectively create a two acre salient of RU2 surrounded on three sides by R2. The proposal strongly indicates that there will be a roadway constructed directly on the boundary between our clients' property and the proposal. Given the size of the proposal and an amendment to R2, this will significantly increase the amount of noise intruding onto our clients' property, including; household noise, commercial noise and traffic noise. This is at complete odds to the current situation where the whole proposal area is RU2 and where noise pollution is therefore limited or non-existent. Any move to change the zoning within or approve the proposal will directly affect the utility and amenity value of our clients' properties.

Given the sheer scale of residential development and the increase of residents, it is also likely to increase the use of the public boat ramp located on Emigrant's creek lane because this will be the closest ramp to the proposal. This will increase boat noise to the front of our clients' properties as well as increased wake damage to the creek bank.

2. Traffic

In addition to the creation of traffic and traffic noise directly on the boundaries of our clients, the increase of traffic at the intersection of Emigrant's Creek Lane onto River Street will be substantial. Currently traffic entering River Street from Emigrant's Creek Lane can only turn right due to traffic conditions. An increase of traffic from the proposal area will create further traffic issues to the current residents of Emigrants Creek Lane.

3. Destruction of Amenity

Our client's cumulatively have been resident of their properties for decades. The purpose of their respective purchases of property was to enjoy the amenity of rural life.

The existing zoning of both our clients' properties and the area of the proposal is RU2 As Ballina Council is aware the objectives of this zone is as follows:

> To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
>
> - To maintain the rural landscape character of the land.
> - To provide for a range of compatible land uses, including extensive agriculture.
> - To minimise the fragmentation and alienation of resource lands.

- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To enable small-scale tourist-orientated development that is compatible with the rural nature of the land.
- To encourage development that involves restoration or enhancement (or both) of the natural environment if consistent with the production and landscape character of the land.
- To enable development that does not adversely impact on the natural environment, including habitat and waterways.
- To ensure that there is not unreasonable or uneconomic demands (or both) for the provision of public infrastructure.

Our clients currently enjoy the amenity of their respective properties within the objectives of RU2 zoning. However a rezoning of the proposal area to R2 have completely different objectives which when taken on the scale of the proposal that surrounds our client's properties on three sides makes a mockery of the RU2 objectives that supposedly remain within the 2 acres of our clients' properties. R2 zoning objectives are as follows:

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

We respectfully submit that the proposal or amended DCP is not compatible with the character and amenity of the neighbouring area consisting of our clients' 2 acres of rurally zoned properties which creates a salient into the proposal area.

The proposal will cause substantial damage to the amenity enjoyed by our clients which in turn will have an effect on the resale values of their respective properties into the future.

With reference to our telephone conversation with Mr Kerzinger on 6 September 2018 and with reasons provided above, our clients may wish to expand on and add onto their objections to the proposal and amendments to the DCP. Despite the closing of public submissions on 7 September 2018, given the direct impact any decision regarding this matter will have on our clients, our client will take the opportunity to make further submissions within the next 14 days or prior to 21 September 2018.

Please do not hesitate to contact the writer on (02) 6686 2522 in you would like to discuss the matter further.

Yours faithfully
SOMERVILLE LAUNDRY LOMAX

Greg McBurney
greg.mcburney@sll.com.au

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Attention: The General Manager
Mr Paul Hickey

As adjacent landholders, we would like to raise our concerns regarding the BSCPP 14/008 Planning Proposal at Burns Point Ferry Rd, West Ballina.

Our major concerns with such a large development as the one proposed for Lot 4 DP 537419 (Lot 4) Burns Point Ferry Road, West Ballina are -

The existing properties adjacent to the subject site

Stormwater runoff and drainage

Flooding

Road access via River St to the site – We have many elderly residents whose only mode of transport are mobility scooters and regularly use the safety of the pathway between our north eastern corner and Burns Point Ferry Rd.

Regards,

Tracy Burke
Ballina Waterfront Village & Tourist Park

14

General Manager

Ballina Shire Council

PO Box 450

Ballina NSW 2478

22nd August 2018

Dear Sir, Proposal to amend the DCP 2012 Burns Point Ferry Road BSCPP 14/008

I lodge an objection to sections of the above proposal which seek to introduce the live work zones. I know of no other similar DCP where this type of mix is permitted within the Shire, however I know of many situations where such a mix is not allowed, including within industrial and special zones. In fact, existing use experiences of this type of combined live work allotments which are a left over from earlier times (when there were no planning restrictions in use) provide a lesson to avoid such a concept due to potential for conflicts and loss of amenity. A couple of examples in North Creek Road are Macs Engineering and Tom Shepherd Car Trimmer, both of which have now reverted to residential. The attached photo refers to a residential zone where extra activities are carried out and creates an undesirable situation.

A home office for an accountant, auditor, lawyer, tour operator, acupuncturist, aged care provider, artist, architect, hairdresser, boat salesman, body and ear piercing, bookkeeping services, business broker, building designer, audiologist, alternative and natural therapist, dancing instructor, cake decoration, computer software, computer repair, computer systems development, cosmetic surgery and procedures, medical practitioners, dental practitioners, music teachers, educational tuition, naturopaths, herbalists, recording services, real estate agent, valuer, marketing promoter, tradesmen, printer, financial planner, loan broker, car detailer, funeral director, herbalists, reflexologist, (to mention just a few examples) is OK until expansion of the business results in staff being engaged at the house and clients start to create parking problems. Town planning was implemented to eliminate and control these unsatisfactory situations.

Let's restrict business to the right zones and not establish a precedent that creates conflict within the estate just to give the developer an extra selling point (which is dubious anyway). Also spare a thought for those other small operators who have already set up their business pursuit in the correctly zoned business zones.

Potential conflicts relate to parking, noise, amenity and congestion and the need for Council to be involved in policing and sorting out the issues. The residential intensity plan shows unimaginative layouts including laneways which are certain to add to the congestion. Laneways were an idea from decades ago which gave access for services which are no longer relevant here.

In housing estates where below standard width roads are provided, continuing problems occur due to the size of waste collection vehicles, removalist and other essential large vehicles and the indiscriminate parking of resident's vehicles. Experiences of this type should be avoided in our new estates.

A good width cyclist and pedestrian path and road network throughout the estate would be a good feature. The internal roads should allow for parking on both sides plus room for two vehicles to pass as well, this is similar to existing standards in Dolphin Drive (for example).

The proposal to allow home businesses to be established with floor areas of up to 120 m square is not desirable or reasonable when it is considered that many small businesses within existing zoned business areas and strata buildings occupy areas of less than what is proposed for this estate. There is no mention within the proposal to require off street parking, extra requirements being specified as on-street parking.

Any business which requires noise and operating controls as proposed in the DCP should not be contemplated for living areas. There should be no objection to small scale internet-based and many home occupation businesses that do not generate many clientele/customers where no noise or operating hours would need to be stipulated or enforced. Work from home in these situations raises no issues but adequate internet infrastructure and extra off-street parking as well as open space areas should be planned. No advertising material should be permitted within the live work zones apart from one small information plaque per property. Based on the type of business proposed in this paragraph, there would be no objection to this being implemented throughout the whole of the proposed new area.

It will be good to see improvement to this portion of land and it is hoped that standards are implemented to maintain the good amenity and accessibility of the new living areas.

Summary of this proposal

Live work areas of 120 metres square not be permitted as per the proposal.

Small scale businesses not requiring noise and hours control be further considered for all the residential land within the whole of the proposed development area. Detailed specifications be considered in a DCP to identify acceptable type and scale of businesses. (To scale a business based on floor area will lead to problems in interpretation.)

Yours faithfully,

Gary Faulks

PO Box 8001

West Ballina NSW 2478

NSW GOVERNMENT | Department of Primary Industries

Our Ref: FE15/77 (OUT18/12942)

23 August 2018

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478
Via email: klausk@ballina.nsw.gov.au

Attention: Mr Klaus Kerzinger

Dear Mr Kirzinger

Re: BSCPP 14/0008 – Burns Point Ferry Road Planning Proposal. Lot 4 DP 537419

Thank you for your letter of 1 August 2018 requesting that DPI Fisheries, a division within the Department of Primary Industries, provide comments on the subject development planning proposal. DPI Fisheries notes that the subject planning proposal has undergone numerous iterations over an extensive timeframe. The following comments are a contemporary summary of relevant DPI Fisheries matters.

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 Aquatic Ecosystems Unit assesses activities under the *Environmental Planning and Assessment Act 1979* in accordance with the objectives of the *Fisheries Management Act 1994* (FM Act), the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the FM Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)* (DPI Fisheries P&G) (http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0005/634694/Policy-and-guidelines-for-fish-habitat.pdf). In addition, DPI Fisheries is responsible for ensuring the sustainable management of commercial, quality recreational fishing and viable aquaculture within NSW.

DPI Fisheries Policy and Guidelines

The subject site includes areas of marine and aquatic vegetation. Planning proposals that involve terrestrial areas adjoining freshwater, estuarine or coastal habitats should be carefully considered in order to minimise land use impacts on these aquatic habitats. As a precautionary approach, foreshore buffer zones at least 50 metres wide should be planned for, with their natural features and vegetation preserved. The width of these buffer zones may need to be increased to 100 metres or more where they are adjacent to ecologically sensitive areas such as Coastal Wetlands. DPI Fisheries will generally not support developments that do not incorporate buffer zones of 50-100 m width adjacent to TYPE 1 marine vegetation and at least 50 m width adjacent to TYPE 2 marine vegetation. The buffer zone should not be used for other asset protection purposes (e.g. as a bushfire or mosquito buffer). Please refer to section 3.2 of the DPI Fisheries P&G for further details on habitat types and buffer zones.

Division of Primary Industries, DPI Fisheries
1243 Bruxner HWY WOLLONGBAR NSW 2477
Tel: 0407 264 391 ABN 72 189 919 072 www.dpi.nsw.gov.au

NSW GOVERNMENT | Department of Primary Industries

It is noted that the southern portion of the site is proposed to be zoned as *Rural (Urban Investigation)*. This area includes areas of marine and aquatic vegetation and includes Coastal Wetlands gazetted under the *Coastal Management Act 2016* which are key fish habitat. DPI Fisheries highlights the management objectives for coastal wetlands, as stated within the *Coastal Management Act 2016*, which include:

a. to protect coastal wetlands in their natural state, including their biological diversity and ecosystem integrity;
b. to promote the rehabilitation and restoration of degraded coastal wetlands;
c. to improve the resilience of coastal wetlands to the impacts of climate change, including opportunities for migration;
d. to support the social and cultural values of coastal wetlands; and
e. to promote the objectives of State policies and programs for wetlands management.

The management objectives for this area should be consistent with the management objectives for coastal wetlands listed above and should be included within the terms of any voluntary planning agreement executed over the land.

Priority Aquaculture Oyster Lease

The proposal is in close proximity to Priority Oyster Aquaculture Areas within the Richmond and North Creek estuary triggering the need for any subsequent development proposal on the subject land to satisfy provisions outlined in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS) (https://www.dpi.nsw.gov.au/fishing/aquaculture/publications/oysters/industry-strategy).

OISAS and enabling amendments to State Environmental Planning Policy 62 - Sustainable Aquaculture (SEPP 62) were gazetted in December 2006. The strategy covers all oyster growing estuaries in NSW and identifies Priority Oyster Aquaculture Areas as areas where commercial oyster aquaculture is a priority intended outcome and outlines the agreed water quality needs of the oyster industry.

It is essential for oyster aquaculture that the planning proposal does not result in deleterious effects on the water quality of the estuary. The water quality guidelines for oyster aquaculture areas are detailed in OISAS. The table below provides some of the key parameters.

Parameter	Guideline	Source
Faecal (thermos-tolerant) coliforms	90th percentile of randomly collected Faecal coliform samples do not exceed 43MPN or 21 MF/100mL	ASQAP Operations Manual 2002 and the NSW Shellfish Program Operations Manual 2001
pH	6.75 – 8.75	Schumway (1996)
Salinity	20.0 – 35.0 g/L	Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000)
Suspended solids	<75 mg/l	
Aluminium	<10µg/L	
Iron	<10µg/L	
Other parameters	For other parameters please refer to Section 4.4 and Section 9.4 of the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000)	

Division of Primary Industries, DPI Fisheries
1243 Bruxner HWY WOLLONGBAR NSW 2477
Tel: 0407 264 391 ABN 72 189 919 072 www.dpi.nsw.gov.au

Department of Primary Industries

These guidelines should be viewed cognisant that an intended outcome of SEPP 62 is to achieve no net deterioration of estuarine water quality and remediation of existing problems to achieve estuarine water quality improvements.

Marine Estate Management Strategy

DPI Fisheries has been collaborating with other agencies including Department of Planning and Environment, Department of Transport, Office of Environment and Heritage, and agencies within the Department of Industry cluster regarding greater holistic management of the marine estate (i.e. the tidal waters of NSW to 3 nautical miles). Consistent with requirements of the *Marine Estate Management Act 2014*, a Threat and Risk Assessment (TARA) (https://www.marine.nsw.gov.au/__data/assets/pdf_file/0010/736921/NSW-Marine-Estate-Threat-and-Risk-Assessment-Final-Report.pdf) of environmental, social, cultural and economic threats and risks to the marine estate has been undertaken. This assessment found urban stormwater discharge as the priority environmental threat to the marine estate. Water pollution from urban stormwater discharge was also identified as the most significant threat to social, cultural and economic values of the marine estate. Any planning proposal which involves intensification of land use should consider increased stormwater production and the ability for the site to adequately manage this stormwater to avoid impacts to the marine estate. In addition, any planning proposal which involves the intensification of land use should also consider other relevant threats and risks to the marine estate that have been identified within the TARA.

If you have any enquiries, please me on 0447 537 168 or jonathan.yantsch@dpi.nsw.gov.au.

Yours sincerely

Jonathan Yantsch
Fisheries Manager, Aquatic Ecosystems (North Coast)
Aquatic Environment, Primary Industries NSW

Division of Primary Industries, DPI Fisheries
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Transport
Roads & Maritime
Services

File No: NTH06/00602
Your Ref: BSCPP 14/008 Burns Point Ferry Road (18/53581)

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

Attention: Klaus Kerzinger

Dear Sir / Madam,

River Street [MR545]: – Planning Proposal BSCPP 14/008, Burns Point Ferry Road, West Ballina

I refer to your letter of 1 August 2018 requesting comment from Roads and Maritime Services in relation to the abovementioned planning proposal.

Roles and Responsibilities

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

River Street is a classified (Regional) road. In accordance with Section 7 of the *Roads Act 1993* (the Act), Ballina Shire Council is the Roads Authority for this road and all other public roads in the subject area. Roads and Maritime's concurrence is required prior to Council's approval of works on, or connection to, this road under Section 138 of the Act.

Roads and Maritime Response

Roads and Maritime has reviewed the information provided with the planning proposal, and provides the following comments to assist the local planning authority in making a determination;

- The proposed future permanent connection to Burns Point Ferry Road is supported; however, the timing for construction of this connection has not been identified.
- The proposed interim measures include a left in / left out arrangement for the connection to River Street. No concept design has been provided to enable consideration of the safe operation of this facility. Consideration of Austroads Guidelines and Australian Standards should be demonstrated.
- Consideration should be given to connectivity for active transport modes, including public and school bus facilities and pedestrian and cycleway links.
- The subject land will require remedial and filling work. Access for vehicles associated with this component of the proposal has not been nominated and should be considered.

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

Yours faithfully

For Monica Sirol
Network & Safety Manager, Northern Region
05/09/2018

rms.nsw.gov.au 1

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NSW GOVERNMENT | Office of Environment & Heritage

RECEIVED
12 SEP 2018
RECORDS

Our Ref: DOC18/563807
Your Ref: BSC PP 14/008

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Attention: Mr Klaus Kerzinger

Dear Mr Hickey

Re: Burns Point Ferry Road, West Ballina - Planning Proposal Exhibition

Thank you for your email dated 3 August 2018 about the exhibition of the Burns Point Ferry Road, West Ballina Planning Proposal seeking comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide further input.

The OEH has provided comments on this Planning Proposal previously on 6 March 2015 and 30 June 2016.

We have reviewed the documents supplied and provide our detailed comments in **Attachment 1** to this letter. In summary the OEH recommends that the Ballina Shire Council should:

1. Consider reducing the rezoning area to limit the biodiversity impacts associated with subsequent development to be enabled by the planning proposal.
2. Ensure that the proposed rezoning area is suitable and able to contain all impacts associated with future development scenarios.

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

Yours sincerely

6 September 2018

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Conservation and Regional Delivery

Enclosure: Attachment 1 detailed comments

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Attachment 1: Detailed OEH Comments – Re: Burns Point Ferry Road, West Ballina - Planning Proposal Exhibition

Biodiversity Planning matters

The Office of Environment and Heritage (OEH) provided comments to the Ballina Shire Council on this proposal on 30 June 2016. The most recent ecological report that was reviewed at that time was the Peer Review Gap Analysis report prepared by Geolink dated March 2016. There have been no further reports prepared since to inform the ecological matters for the site.

Avoiding impacts

As no further ecological reporting has been undertaken since 2016, our previous recommendation is still relevant, that '*Council should consider reducing the rezoning area to limit the biodiversity impacts associated with subsequent development to be enabled by the planning proposal*'.

Further, the OEH notes that the latest planning proposal has increased the size of the proposed Low Density Residential R2 area and provides additional lands within the proposed Rural Landscape RU2 area for the proposed interpretive centre. The ecological reports prepared for the planning proposal do not appear to have assessed these additional areas.

The OEH is still of the view that the planning proposal should aim to avoid impacts to biodiversity rather than to address these impacts at the development assessment stage, in accordance with the directions and actions for biodiversity in the North Coast Regional Plan.

Biobanking agreement

The OEH notes that a biobanking agreement will be implemented over the remainder of the site. Page 16 of the Planning Proposal report (August 2018), states:

'As a consequence of the proposed rezoning and future urban development vegetation communities having higher conservation value will be removed from part of Lot 4. To compensate for the removal of these vegetation communities a biobanking agreement is proposed to be entered into which will cover the residue of Lot 4 (approx. 40ha) not proposed to be developed for urban purposes. A VPA has been executed between the land owner and Council which will give effect to the biobanking agreement following the rezoning of Lot 4. It is this area that is proposed to be restored and rehabilitated as part of a VPA associated with this proposal'.

The above statement is not entirely correct in relation to:

- The requirement to compensation for the removal of vegetation will only occur at the development assessment stage not at rezoning. It appears that at this rezoning stage, the only requirement will be to apply and finalise a biobanking agreement over the remainder of the land. Active management actions are only required to be undertaken on a biobanking site once biodiversity credits have been sold to satisfy at least 80% of the Total Fund Deposit (TFD). When this 80% trigger is reached is unknown for any Biobank site.
- At the development assessment stage, the Biodiversity Offsets Scheme is likely to apply due to the vegetation clearing required for the proposed subdivision and development (figure 4). This will be the time when offsets are determined in accordance with the Biodiversity Assessment Method.
- Any offset requirement for the proposed development could be retired against the proposed biobanking site on Lot 4, however other options such as a payment into the Biodiversity Conservation Trust or another biobanking (now called stewardship) site will also be available to the applicant.

- The biobanking application does not cover all the proposed RU2 zone as there is a proposal for the interpretive centre. The council should satisfy itself that the exact boundary of the proposed biobank site is compatible with the planning proposal. Initial review of the submitted biobanking application identified that the area proposed for the interpretive centre is slightly different to figure 4 in the planning proposal report.

Notwithstanding the above, the OEH generally agrees with the approach of securing the balance of the property via a biobanking agreement. However, the above points have been highlighted to ensure that Council and the applicant are aware of the current parameters of the planning proposal.

Appropriate buffers

Our previous recommendation (letter dated 30 June 2016) is also still relevant, that '*Council should ensure that the proposed rezoning area is suitable and able to contain all impacts associated with future development scenarios*'.

Section 3.1.3.2 Buffers of the Peer Review Gap Analysis report indicates that buffers of 21m are proposed between the village area and the conservation zone. The report indicates that this buffer distance is a bushfire requirement and has not been determined from any ecological perspective. This section of the report then concludes that, '*Until further information is provided* [in relation to stormwater control], *it can only be assumed that the buffers as proposed are not appropriate given the occurrence of sensitive wetland and estuarine communities south of the village zone*'.

Although this matter will be addressed at the development assessment stage, it is important that both the council and the applicant are aware of this requirement to inform the planning proposal.

OEH Recommendations

1. Council should consider reducing the rezoning area to limit the biodiversity impacts associated with subsequent development to be enabled by the planning proposal.
2. Council should ensure that the proposed rezoning area is suitable and able to contain all impacts associated with future development scenarios.

NSW GOVERNMENT | Office of Environment & Heritage

Our Ref: DOC18/563807
Your Ref: BSC PP 14/008

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Attention: Mr Klaus Kerzinger

Dear Mr Hickey

Re: Burns Point Planning Proposal – update to previous OEH letter

Thank you for your email dated 15 October 2018 about the Burns Point planning proposal seeking clarification from the Office of Environment and Heritage (OEH) on our previous letter. I appreciate the opportunity to provide further input.

The OEH provided comments on this planning proposal to the Ballina Shire Council on 6 September 2018. In response to our letter we received an email from Mr Klaus Kerzinger, Acting Manager Strategic Planning, seeking further clarification of our letter. In response to Mr Kerzinger's email, we provide the following comments:

1. The OEH notes that the executed planning agreement provides at clause 5.1 & Schedule 1 that prior to the grant of development consent for development permitted within the R2 zone the developer will establish a biobanking site over the whole of the area zoned RU2 by the proposed LEP. However, the planning proposal also states that the interpretive centre is located within the proposed RU2 zone and it is proposed to be permitted with development consent within this zone subject to the additional permitted use provisions contained with Ballina LEP 2012. This contradiction would place the interpretive centre within a biobanking agreement site which would not be appropriate. I understand that the biobanking agreement for the site is still being assessed by the OEH. Our initial understanding is that the proposed biobanking area does not completely align with figure 4 of the planning proposal report. The council should liaise with the applicant to ensure the proposed biobanking agreement area is appropriate and reflects the intent of the executed planning agreement.

2. In our previous letter, the OEH noted that '*The ecological reports prepared for the planning proposal do not appear to have assessed these additional areas*'. This comment was referring to the most recent ecological report dated May 2014 showing in Figure 2 that the area subject to ecological assessment did not cover all the planning area. However, as your email points out, previous ecological reports dating back to 2005 did cover all the planning area. As such, the OEH agrees that there has been no change to the area proposed to be zoned R2 between the 2016 and 2018 publicly notified planning proposals.

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

Yours sincerely

16 October 2018

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Conservation and Regional Delivery

Contact officer: KRISTER WAERN
6640 2503

Department of Primary Industries

OUT18/14069

11 September 2018

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Klaus Kerzinger
klaus.kerzinger@ballina.nsw.gov.au

Dear Sir/Madam

BSCPP 14/008 - Exhibition Advice to DPI Agriculture - Burns Point Ferry Road Planning Proposal

Thank you for the opportunity to provide comment for the above proposal as per your correspondence dated 3 August 2018. The NSW Department of Primary Industries (NSW DPI) Agriculture provides advice to consent authorities about the protection and growth of agricultural industries and the resources upon which these industries depend to provide economic growth.

DPI Agriculture has reviewed the supporting documentation for the re-exhibited proposal and provides no objections.

Should you wish to discuss further, please contact Agricultural Resource Management Officer, Selina Stillman on (02) 66261215.

Yours sincerely

For Lilian Parker
Manager Agricultural Land Use Planning

NSW Department of Primary Industries - Agriculture
Locked Bag 21, Orange NSW 2800 | 161 Kite St, Orange NSW 2800
Tel: 02 6391 3391 | Email: landuse.ag@dpi.nsw.gov.au | www.dpi.nsw.gov.au | ABN: 72 189 919 072

Natural Resources Access Regulator

Our ref V15/2812-2#42 & OUT18/17252

Klaus Kerzinger
Acting Manager, Strategic Planning
Strategic and Community Facilities Group
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Re: Exhibition of Planning Proposal – BSCPP 14/008, Burns Point Ferry Road, West Ballina, and Draft Amendments to Ballina Shire Development Control Plan 2012

Thank you for providing the Natural Resources Access Regulator (NRAR) the opportunity to comment on the above planning proposal which is being re-exhibited following the proponent submitting site structure and related plans which significantly change the proposal as originally publically exhibited in 2016. In addition to our comments provided to Ballina Shire Council on 9 June 2016 (OUT18/12471), NRAR provides the following additional comments and recommendations for the Department of Planning and Environment's consideration.

Riparian Corridor Protection and Management

NRAR has reviewed the Burns Point Ferry Road Planning proposal (August 2018), draft indicative layout plan, development control plan and relevant technical studies and provides the following comment:

- Any proposed works on waterfront land may require Controlled Activity Approval from NRAR (note that if works are carried out on Crown Land, it may fall under an exemption).
- Any management considerations for any riparian zones on site should be consistent with NRAR's Guidelines for Controlled Activities. Please note that these guidelines were updated in July 2012. For the revised guidelines, please refer to: https://www.industry.nsw.gov.au/water/licensing-trade/approvals/controlled-activities
- It is noted that watercourses are traversing the site and these should be retained.
- Protection of riparian corridors and Vegetated Riparian Zone (VRZ) should be maintained. Any development within the outer 50% of a VRZ may be possible if that impact is offset by protecting and managing an equivalent area along the watercourse in accordance with NRAR guidelines for Waterfront Land.
- There is potential for impacts to Groundwater Dependent Ecosystems (GDEs) to occur with development of the Burns Point Ferry Road which should be addressed as part of the precinct planning.
- NRAR recommends that APZs are located wholly within the urban development land rather than within the riparian corridors.

Level 11 Macquarie Tower, 10 Valentine Avenue, Parramatta NSW 2150 | Locked Bag 5123 Parramatta NSW 2124
t 1800 353 104 | www.water.nsw.gov.au

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- The impacts of the proposed future development on surface and groundwater, watercourses or adjacent to the site and water quality should be considered. Appropriate stormwater management will need to be implemented to minimise impacts on downstream environments such as riparian areas, groundwater and adjoining land. NRAR considers that all stormwater treatment measures should be consistent with Water Sensitive Urban Design objectives and to aid in the protection of the receiving water source quality, all stormwater runoff must be appropriately treated at its source and/ or diverted through the stormwater treatment process designed for the site, prior to discharge from the site.

In regards to riparian management and protection, NRAR requests to be engaged during the lodgement of the development application for the proposed rezoning.

Please contact Anisul Afsar, Water Regulation Officer (Parramatta) on (02) 8838 7561 or anisul.afsar@nrar.nsw.gov.au if you have further enquiries regarding this matter.

Yours sincerely

Ryan Shepherd
A/Manager Regional Water Regulation (East)
Natural Resources Access Regulator
Department of Industry – Lands & Water

Date: 7 November 2018

Chronology of Council Resolutions and Activity
Ballina Waterways/ Burns Point Ferry Road to September 2018

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 1987.
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: 1. *That the Council proceed to commence the formal processing of the requested amendment to the Ballina Local Environmental Plan 1987 relating to Lot 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.* The report included the following statement: *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.* *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.* The Council resolution was not forwarded to the Department of Planning under S54(4) of the Act. The following advice was provided to the proponent: *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.* This is the origin of draft LEP Amendment No.93.

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July 2006	Council considered an update report concerning the rezoning. The report advised that there ware a range of constraints over the land which were still being assessed. Council resolved as follows: *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.*
October 2008	Response from Landpartners (formerly Aspect North) to Council's list of issues, withdrawing the concept plan and requesting: • 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.
December 2008	Council resolved as follows: *That in respect to the subject land matters Council resolves to proceed with option two as identified in the body of this report.* Option 2 is reproduced below: 1. *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:* a. *An integrated rezoning strategy is provided in conjunction with the Ferry Boat Motel site.* b. *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.* c. *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.* d. *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.* e. *A planning agreement is provided that outlines all undertakings/proposals that cannot be secured or delivered via the proposed zoning; or* (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.)

CM 18/77258

	The Report to Council included the following advice: *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:* *"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".* *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.* *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.* Consideration of the amendment proceeded under draft LEP Amendment No.39.
July 2009	Presentation to Councillors by SJ 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 R2 Rural Landscape.
April 2010	Council request for clarification regarding proponent's progress in relation to the amendment. Request sought clarification in relation to the following: *a. whether or not your client intends to proceed with the current rezoning request; and* *b. 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.* No specific response was received.
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.

CM 18/77258

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(b) – 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.
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. The resolution also required a further report to be presented to the Council at the conclusion of the community and Government agency consultations (exhibition).
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 proponents suitable to enable third party review of the planning proposal to proceed.

CM 18/77258

March 2016	Peer Review and Gap Analysis Report prepared by GeoLINK.
April 2016	Alteration of 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 permitting additional permitted uses. The period in which the LEP was required to be completed was also extended to 1 April 2017.
June 2016	Exhibition of Planning Proposal and draft VPA.
December 2016	Council considered the planning proposal and VPA post exhibition at its Ordinary Meeting on 15 December 2016. Council resolved to defer the proposal pending further investigation in relation to ecological and any other environmental impacts.
March 2017	Alteration of Gateway determination to extend the time to finalise the planning proposal to 1 January 2018.
March 2017	Councillors briefed by GeoLINK in relation to ecological and other environmental impacts associated with the planning proposal.
May 2017	Council considers and endorses planning proposal to apply an R2 zone and part RU2 zone to the site and additional permitted uses and controls as detailed in the exhibited planning proposal. Council also authorises the execution of the planning agreement and preparation of a draft DCP. Council resolved to require the draft DCP to be reported back to the Council prior to public exhibition [Minute No 250517/7].
June 2017	Council and property owner execute Planning Agreement
June 2017	GeoLINK engaged to prepare draft DCP after proponent agrees to meet costs
October 2017	Revised VPA prepared following coming into effect of Biodiversity Conservation Act in August 2017. Advice subsequently received from OEH, in March 2018, that the proponent's ecologist has lodged an application under the biobanking provisions (of the previous Threatened Species Conservation Act) and the proposal will proceed on that basis. This then avoided the need for the VPA to be updated to reflect the requirements of the Biodiversity Conservation Act.
November 2017	Proponents submit additional information including draft site structure plan to enable draft DCP preparation to progress.
February 2018	Gateway Determination extended to require the LEP amendment to be completed by 1 October 2018.
March 2018	GeoLINK submit final draft DCP suitable for staff consultation and review by proponents.
May 2018	Council considers draft amendments to Ballina Shire DCP Chapters 3 and 4 as well as changes to the planning proposal. The planning proposal changes related to limiting the extent of the live – work permitted area, increasing the size of the interpretive centre site and defining its location near Emigrant Creek and basing the live work concept on the home business provisions within the LEP subject to greater floor area provisions. Subject to an altered Gateway determination being received the Council endorsed the draft DCP provisions and altered planning proposal for exhibition.
July 2018	Altered Gateway determination issued by the Department of Planning and Environment allowing the amended planning proposal to proceed to public exhibition. The time to complete the planning proposal was also extended until 1 January 2019.
August 2018	Public exhibition of amended planning proposal and draft DCP chapters.

CM 18/77258

THIS Deed of Agreement is made the 13 day of June 2017 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_BALLI_007_00 as registered with the New South Wales Department of Planning & Environment in relation to the Land.

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

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

(a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.

(b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

(c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

(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.

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 93G of the Act.

9. Dispute Resolution

9.1 Notice of dispute

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

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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

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

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@freeburnsurveyors.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

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 13 June 2017

The Common Seal of the Ballina Shire Council was hereunto affixed pursuant to a resolution of the Council.

General Manager

Mayor

EXECUTED BY **BALLINA WATERWAYS PTY LIMITED**

Date 1/6/17

Director / Secretary

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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.
- 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 affectation 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.

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- 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 1300m^2 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

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.

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

Tel: +61 7 3831 6744
Fax: + 61 7 3832 3627

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Our Ref: L.B23491.002.docx

2 November 2018

Ballina Shire Council
40 Cherry Street
Ballina NSW 2478
PO Box 450, Ballina NSW 2478

Attention: Paul Busmanis

Dear Paul

RE: BALLINA WATERWAYS

BMT have been commissioned by Ballina Shire Council to provide an update on the flood impacts associated with the Ballina Waterways development. The Ballina Waterways development is located on the Richmond River floodplain immediately to the north of the confluence of the Richmond River and Emigrant Creek. River Street runs parallel to the northern boundary of the site.

The Flood Impact Assessment for the Ballina Waterways Development was completed by BMT in May 2008 (R.B15820.001.01). A letter update to this assessment was then completed in 2014 to assess a revised layout (L.B17123.002). Since the completion of this assessment, various developments have been completed in the floodplain which were not present or considered during the initial flood impact assessment for the Ballina Waterways development. As a consequence, it is appropriate to review the impacts in this area in the latest version of Council's Integrated flood model, which is up-to-date with all constructed and approved development and infrastructure. The integrated model shows cumulative flood impacts less than 10 mm (negligible) across the properties adjacent to the Ballina Waterways development site in a 100 year ARI event.

The low impacts are due to the 100 year ARI flood level generally being less than 0.5m above the existing ridge line across the site. Flow velocities across the site are low and the total flow across the site is minimal in existing conditions. There is a reduction in flood storage due to the development, although this forms a negligible volume in comparison of the overall storage of the Richmond River floodplain. The currently proposed development was discussed in the 2014 letter. It has a smaller footprint than that assessed in 2008, meaning the development will have a smaller impact on flood storage than previously assumed.

If you require any further information, please do not hesitate to contact the undersigned.

Yours Faithfully

Zita Dore
Senior Flood Engineer
BMT

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