



## **MAYORAL MINUTE**

### **Ordinary Meeting 27 September 2012**

**Held at Ballina Shire Council Chambers**  
**40 Cherry Street, Ballina**



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## **7.2 Mayoral Minute - Draft Ballina Local Environmental Plan**

### **7. Mayoral Minute**

#### **7.2 Mayoral Minute - Draft Ballina Local Environmental Plan**

**Councillor** David Wright

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Following six years of preparation, including extensive community engagement, Council endorsed the draft Ballina Local Environmental Plan 2011 (draft LEP) as its principal local planning instrument for finalisation in December 2011. The draft LEP was prepared at the direction of the NSW Government and is based on the NSW Government's Standard LEP Instrument.

The draft plan was submitted to the Department of Planning & Infrastructure (DP&I) for review in February 2012 and Council has been working cooperatively with the Department in relation to the finalisation of the instrument for implementation.

The Minister for Planning and Infrastructure, the Hon. Brad Hazzard, issued a media release on 20 September 2012 (Attachment 1) indicating that the E2 Environmental Conservation and E3 Environmental Management zones applied within Council's endorsed draft LEP will not be applied in finalising the plan. The approach announced by the Minister will result in a substantial change to the draft plan. Council was not consulted with, or advised by the Minister, the local State Member, the Hon. Don Page, or the DP&I in relation to this decision.

It is of significant concern that the Minister for Planning and Infrastructure, the Member for Ballina and the DP&I are not able to provide any guidance to Council at this time in relation to the Minister's decision. Indeed, the North Coast office of the Department appears to have been unaware that the Minister's announcement would be made in advance. Based on information from the DP&I and comments attributable to the Member for Ballina in local media, it is emerging that there is considerable uncertainty about the consequences of the Minister's announcement.

To ensure that the Minister and the DP&I have the opportunity to fully appreciate Council's key concerns with the decision, it is suggested that a submission be made to the Minister for Planning and Infrastructure. The attached draft submission to the Minister seeks to highlight Council's concerns including the lack of consultation, the lack of knowledge of Council's extensive LEP renewal program and associated plan making process and the consequences that are evident when the detail of the draft LEP is fully considered and understood (Attachment 2). The submission also seeks a prompt review of the decision with a view to reversing it.

It is suggested that Council engage the Minister for Planning and Infrastructure via the attached submission (Attachment 2) to communicate its deep disappointment with both the outcomes and process associated with the decision to remove environmental protection zones from the draft LEP.

## **7.2 Mayoral Minute - Draft Ballina Local Environmental Plan**

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It is also proposed to pursue a collective response from the NOROC region, as this decision affects Tweed Shire Council, Byron Shire Council, Lismore City Council and Kyogle Council.

### **RECOMMENDATION**

That Council forward a submission, as per Attachment Two, to the Minister for Planning and Infrastructure advising of its deep disappointment in the outcome and process associated with the decision to remove the environmental protection zones from the draft Ballina Local Environmental Plan and to seek an immediate review of this decision.

### **Attachment(s)**

1. Media Release - Minister for Planning and Infrastructure - Removal of E Zones
2. Submission to Minister for Planning and Infrastructure - E Zones in Ballina Local Environmental Plan



**Brad Hazzard MP**  
**Minister for Planning & Infrastructure**  
**Minister assisting the Premier on Infrastructure NSW**

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**MEDIA RELEASE**

Thursday 20 September 2012

**ENVIRONMENTAL E2 AND E3 ZONES TO BE REVIEWED IN NORTH COAST LEPs**

Minister for Planning and Infrastructure Brad Hazzard yesterday met with Ballina MP and Minister for North Coast Don Page and Lismore MP Thomas George to discuss their concerns about environmental zonings being applied to agricultural land.

Today Minister Hazzard announced the Government would not endorse the use of E2 and E3 environmental zones on land that is clearly rural in council local environmental plans (LEPs) on the Far North Coast.

Instead, areas proposed to be covered by these zones would be excised from the plans while the Department of Planning and Infrastructure reviews the use of these controls in consultation with other government agencies and stakeholders.

Minister Page said this approach would apply to LEPs in the Ballina and Byron council areas in his electorate. Mr George said he was happy the same would apply for the LEPs in Lismore, Kyogle and Tweed.

"These proposed zones and overlays have the potential to limit existing agricultural and other rural uses without a valid evidence base," Mr Page said.

"There are also very strong concerns that these restrictive controls could reduce the value of existing properties.

"The NSW Government will act to ensure the rights of existing landowners are protected.

"The Government will now review the suitability of these controls, whilst still providing appropriate protection for the environment."

A number of LEPs in the region have been exhibited for public comment and are expected to come to the State Government shortly for approval.

Minister Hazzard said that any E2 or E3 zoned land in these draft plans would be excised when the LEPs are finalised. Similarly, any proposed environmental overlays on land that is clearly rural would be removed.

"Local environmental plans establish good land use planning principles for the entire council area and it's important that planning for other uses such new housing and employment generation can go ahead while this issue is being resolved," Mr Hazzard said.

"However, this Government is not going to stop farmers and other existing landowners from carrying on their businesses through overly restrictive environmental zones."

**MEDIA: Adam Raskall 0409 565 083**

**Steve Barnier**

**Draft Ballina LEP - Ministerial Decision E Zones (311)**

27 September 2012

The Hon. Brad Hazzard MP  
Minister for Planning and Infrastructure  
Level 31 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Minister Hazzard

**Re: Ballina Local Environmental Plan - Removal of Environmental Protection Zones**

It is with great disappointment that I am compelled to write to you on behalf of Ballina Shire Council with respect to your decision to 'excise' E2 Environmental Conservation and E3 Environmental Management zones from the draft Ballina Local Environmental Plan.

As you will be aware, Ballina Shire Council has worked for the past six years towards the implementation of the Standard LEP Instrument at the request of the NSW State Government. Council has worked patiently and cooperatively with the Department of Planning and Infrastructure over this period and has compiled its draft LEP with great care and consideration for community views, expectations and aspirations as expressed in LEP specific engagements as well as Council's Community Strategic Plan. Council has also had careful regard for the characteristics of land in the Shire, a long history of community engagement based strategic land use planning and the various legislative requirements and Departmental advices associated with the preparation of local planning instruments.

Council has expended considerable resources to achieve a logical draft LEP founded in sound planning principles, balanced and with an understanding of the local environment, the local community and local issues. It appears that you and the Member for Ballina, the Hon. Don Page MP, have been inadequately informed on the substantial body of work undertaken that explains and justifies Council's draft local planning instrument. It is unfortunate that your decision does not reflect the principles you publicly enunciate in relation to consultation and local government decision making.

Council has undertaken an extensive plan preparation process including the establishment of foundation principles to underpin the draft LEP, comprehensive issues analysis and information review and long term community and stakeholder engagement. In terms of community and stakeholder engagement, Council utilised a variety of engagement mechanisms including maintenance of a formal system for the consideration of requests to the draft LEP, exhibition of a series of discussion papers (2007), holding of a community policy forum (2008), maintenance of a project specific website and completion of two public exhibition periods (2010 and 2011).

Council has also drawn on its endorsed Sustainability Framework (majority funded by the DP&I) which now underpins its Community Strategic Plan to guide the preparation of its draft LEP. A summary of Council's engagement program which has been inclusive and transparent is enclosed for your information. This information has previously been forwarded to your Department.



Council has also sought to work collaboratively with the DP&I during the plan preparation process. In particular, Council has identified a number of significant concerns with the Standard LEP Instrument program, including substantial omissions in relation to rural subdivision, but has continued to work towards implementation of the Standard LEP in good faith. Unfortunately, it seems that Council has not been shown the same good faith or extended the courtesy of a thorough engagement before your decision was made, apparently undertaken with input from Mr Page.

Council is disappointed with the lack of communication regarding your decision. Council, and local government more generally, deserves at least the benefit of formal advice in advance in relation to a decision of such magnitude. It is entirely unacceptable for Council to find out about these types of decisions via the media and worse, for your own Department (in the DP&I) to not be in a position to answer Council's enquiries in any meaningful way. The DP&I expects councils to operate transparently with the government and the community in the field of land use planning, but your actions do not support this principle. Unfortunately, your lack of communication has caused a serious erosion of trust.

At present, the outcomes associated with your decision are unclear. This not only has implications for environmental considerations, but also many other aspects of the local planning framework. Council's draft LEP is based on careful and interconnected decisions over time that ultimately seek to arrive at a balanced plan that is suitable for operation over a 15 to 20 year planning cycle. Table 1 outlines some examples of the uncertainties Council believes are posed by the comments in your media release.

**Table 1: Examples of Potential Impacts Associated with the Removal of E2 and E3 Zones**

- The removal of the E2 and E3 zones may reintroduce the requirement for dual consent in relation to native vegetation removal, thereby removing the streamlined process under the Standard LEP Instrument.
- Drinking water catchments may not be subject to any provisions under the draft LEP that reflect or recognise the public health considerations associated with the public drinking water supply.
- The Wilsons Source drinking water catchment may not be recognised in any local environmental plan applicable to Ballina Shire.
- It is uncertain as to whether E2 zones will be retained in relation to vegetated areas of conservation value. The uncertainty stems from contradictory statements in the media release, lack of information from the DP&I and comments attributed to Mr Page in local media in relation to agricultural and rural land. If E2 zones are not retained in relation to such land, areas of the Coolgardie escarpment and Blackwall Range south of Ballina which are identified as a regional conservation priority by the NSW Government in the Far North Coast Regional Conservation Plan (2010) will not be subject to an environmental protection zone.
- It is uncertain as to how the Ballina Shire coastline will be recognised in the local planning framework.
- It is uncertain as to whether E2 zones can be applied within the Pacific Pines residential development at Lennox Head. This zoning was requested by the landholder as part of the draft LEP to align with obligations to protect threatened species on the land.
- Rural land holders in water catchment areas may not be able to diversify into tourist and visitor accommodation land uses (aside from bed and breakfasts), as such opportunities are enhanced under the draft LEP compared to the existing LEP.
- Special provisions designed to provide certainty to the operation of business activities in Newrybar Village may not be applied, leading to ongoing uncertainty for such business activity.
- The overall zoning approach for the proposed major Cumbalum Urban Release Areas includes E2 and E3 zones on the basis of a comprehensive environmental study that has been completed. The uncertainty regarding the availability of suitable zones to reflect the outcomes of the comprehensive local study may make the progress of the amendment uncertain as Council has sought to ensure a balanced and holistic planning outcome for the areas.

A further and very serious consequence of your decision is the potential for the need to operate two local environmental plans. This then means the operation of two development control plans and significant adjustments to the Section 149 planning certificate system. The outcome of your decision appears to have the effect of duplicating a variety of planning processes that the Standard LEP Instrument has sought to avoid.

Examples of the unnecessary confusion and duplications are illustrated by the following:

- If two LEPs are to operate, a landholder may need to check two separate zoning systems and work through four sets of planning controls (2 different LEPs and 2 different DCPs). This equates to more time and expense for landholders and planning authorities.
- If two LEPs are to operate, planning certificates will likely become populated with dual information reflecting 2 LEPs and 2 DCPs. This is an entirely unnecessary outcome that is only likely to yield confusion and uncertainty.

With respect to the Standard LEP Instrument program, Council notes the inconsistency in your approach to the application of E2 and E3 zones in local government areas immediately to the south of Ballina Shire. Both Richmond Valley Council and Clarence Valley Council have had Standard LEP Instruments made inclusive of environmental protection zones whilst you have been Minister for Planning and Infrastructure. It is difficult to understand why Ballina Shire Council and others on the North Coast are being treated differently.

In terms of the basis for your decision being founded in the protection of agricultural enterprise, I draw your attention to the E2 and E3 zones in Council's draft LEP and particularly to the uses permitted with and without consent. As you will note, agriculture is embraced in various ways in both zones with this being a conscious decision of Council.

Specifically, you will note that Extensive agriculture and Intensive plant agriculture are permitted without consent in the E3 zone. In the E2 zone, which is applied to high conservation value vegetation and the coastline, Council has maintained the permissibility of Extensive agriculture. The E2 and E3 zones are not a 'one size fits all' approach and as such, it is important to consider the specifics of each land use table and the associated special provisions of each draft LEP when looking at implications for agriculture across the North Coast.

In terms of the foundations for Council's draft LEP it is incorrect for anyone to suggest that it has been prepared without a valid evidence base. On the contrary, Council has thoroughly considered a large body of information, submissions and State Government requirements in preparing its draft LEP and has founded its decisions based on published rationale, logic and overarching principles.

Council's approach is articulated in a recent letter to the Director General of the DP&I dated 5 September 2012. A copy of this letter is attached for your information. In terms of evidence, it is of concern that your media release makes a sweeping statement attributable to Mr Page about environmental protection provisions potentially reducing the value of existing properties. Council has not been provided with any evidence by the DP&I or others to support this statement.

Having regard for the above, it is evident that the Member for Ballina, the Hon. Don Page MP, has been closely involved in the decision to remove environmental protection zones from LEPs on the North Coast. Council would like to better understand the position of its Local Member but has not been conveyed the courtesy of any meaningful explanation or discussion by Mr Page. This is of particular concern as Mr Page is also the Minister for Local Government and as such, should recognise local government as a pivotal stakeholder in land use planning processes.

Your approach to the management of the LEPs on the North Coast appears to be counter to the efficiency, transparency, public involvement and local government decision making principles that you routinely promote, not least within the Green Paper for planning reform.

It is difficult for Council to see how the reform principles can be delivered in an environment where local government is not consulted, decisions are made by the State without clear explanation, extensive community engagement is discounted and duplication of processes and resource impacts do not seem to be considered.

Council respectfully urges you to look closely at the details of Council's draft LEP, reconsider your decision to remove E2 and E3 zones from North Coast LEPs, and allow Ballina Shire Council's comprehensive LEP to progress to completion in entirety. Council will make its staff available to discuss any matter of specific concern with your Departmental officers or to undertake a review of particular considerations with the DP&I.

Alternatively, if Council's LEP cannot progress in a holistic manner, it is requested that the finalisation of the entire instrument be deferred so that Council can continue to maintain a single planning framework for the shire until the application of E zones is fully reviewed. This approach will not impinge on the potential for residential or employment outcomes in the short term.

I look forward to your prompt consideration of these matters and if you have any enquiries please contact our Group Manager – Strategic and Community Services, Mr Steve Barnier on telephone 6686 4444.

Yours faithfully

Cr David Wright  
**Mayor**

CC: Mr Don Page MP Member for Ballina

ATTACHMENT 1

enquiries refer  
**Matthew Wood**  
enquiry please quote

**Draft Ballina Local Environmental Plan (305)**

5 September 2012

COPY



Mr Sam Haddad  
Director General  
Department of Planning and Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

Dear Mr Haddad

**Re: Draft Ballina Local Environmental Plan - Application of Environmental Protection Zones**

I refer to your telephone conversation with Council staff on 23 July 2012 and subsequent requests for information from the Department relating to the application of environmental protection zones under the draft Standard LEP Instrument prepared by Ballina Shire Council. Based on the enquiries from the Department, it is evident that there may be concerns within the Department with respect to Council's approach. In particular, Council notes the Department's interest in the extent of evidence based planning used in the analysis of environmental attributes, the rationale for zone application to several particular properties in the shire and comparison of zoning under the Ballina LEP 1987 with the draft Ballina Local Environmental Plan (draft LEP).

*Rationale for Plan Preparation and Land Use Zoning*

Council has consistently applied the E2 Environmental Conservation and E3 Environmental Management zones on the basis of a documented policy position and a published set of criteria. The zones have been applied having regard for a variety of information sources including data collated by Council as part of the comprehensive review of its LEP, site inspections, analysis of external information where available, and the review of government agency and interest group and community submissions.

Council has applied the E2 Environmental Conservation zone to land along the shire coastline and to areas of recognised ecological value. Council has applied the E3 Environmental Management zone to areas that have environmental attributes such as drinking water catchment, urban buffer or scenic/ escarpment values. These zones have been applied with careful consideration of available information and the outcomes of Council's two public exhibition processes and in accordance with the relevant statutory requirements. Council established its strategic principles and policy platform for the application of the zones early in the LEP renewal program and applied these objectively to the application of land use zones. Council's approach is detailed in the Section 68 report material provided to the Department in February 2012.

As outlined in Council's Section 68 reporting, Council's policy basis for the application of land use zones under the draft LEP was developed based on the outcomes of its Sustainability Strategy, the public exhibition of a Discussion Paper series and an LEP specific Community Policy Forum. These documents and processes that underpin the LEP are based on extensive community engagement and exemplify the concept of establishing strategic

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- council@ballina.nsw.gov.au - www.ballina.nsw.gov.au



direction based on community engagement early in planning processes as the basis for decision making. Council notes that this is a central principle of the Department's Green Paper relating to the new planning system for NSW.

*Site Specific Issues and Objections*

Council is aware that there are several landholders who object to the application of an environmental protection zoning to their land parcels. Where these landholders have engaged with Council, Council has provided details of the rationale and evidence utilised in the land use zoning process as it applies to the particular land parcels. This information can be made available to the Department to supplement to site inspection undertaken by the Department's Regional Director, Mr Steve Murray, on Wednesday 1 August 2012.

Where the Department is concerned about the application of a zone to a specific land parcel, Council welcomes the opportunity to discuss the details associated with the draft zoning and the characteristics of the land.

*Statistical Analysis - Draft Ballina LEP 2011 and Ballina LEP 1987*

In response to the request from the Department's Grafton Regional Office for statistical information relating to the application of environmental protection zones under the draft LEP, the following information is provided. However, Council emphasises that the comparison of statistics between the two LEPs should have regard for the context associated with the zoning applied. In particular, the zoning under the draft LEP has been applied in different circumstances to those prevalent in 1987, including the limitations in the available zones under the Standard LEP Instrument, changed statutory and legislative requirements and very different community expectations. Given this, it is considered to be difficult to undertake a straight comparison of the two plans based on statistical data alone.

Notwithstanding the above, outlined below are a number of statistics associated with the application of environmental zones under the draft LEP. The figures provided are based on the current draft of the LEP that is with the Department. This includes Council's endorsed amendments from December 2011 and other amendments such as the rezoning of the Henderson Farm.

Total Zone Areas - Draft Ballina LEP

- E2 Environmental Conservation Zone Area: 8,183 ha
- E3 Environmental Management Zone Area: 5,529ha
- Total Area of Ballina Shire: Approximately 49,300ha

Zone Area Comparison - Draft LEP v Ballina LEP 1987

- 5417 ha of land within the proposed E2 zone is currently zoned for environmental protection purposes under the Ballina LEP 1987 (all '7' and '8' zones).
- 2766 ha of land within the proposed E2 zone is currently zoned for other purposes.

- 4710 ha of land within the proposed E3 zone is currently zoned for environmental protection purposes (principally 7(c) Environmental Protection - Water Catchment, 7(d) Environmental Protection - Scenic/ Escarpment, 7(d1) Environmental Protection - Newrybar Scenic/ Escarpment or 7(i) Environmental Protection - Urban Buffer).
- 819 ha of land within the proposed E3 zone is currently zoned for other purposes.

In considering the above, it is important to note that Council's review of land use zoning did not only result in additional environmental zoned areas. The review also resulted in the removal of environmental zones from some areas. This reflects Council's comprehensive approach to the review of the LEP it has undertaken. With respect to the proposed removal of environmental zones, the following provides an overview of the changes.

- Of 5698 ha of land presently zoned 7(a) Environmental Protection - Wetlands, 7(f) Environmental Protection - Coastal Lands and 7(j) Environmental Protection - Habitat, 414 ha is subject to a zone other than E1, E2, or E3 under the draft LEP.
- Of 6822 ha of land presently zoned 7(c) Environmental Protection - Water Catchment, 7(d) Environmental Protection - Scenic/ Escarpment, 7(d1) Environmental Protection - Newrybar Scenic/ Escarpment or 7(i) Environmental Protection - Urban Buffer, 1684 ha is subject to a zone other than E1, E2, or E3 under the draft LEP.

#### Overall Change

- The total increase in the area of environmental zoned land (under the E2 and E3 zones) as a proportion of Ballina Shire is approximately 2.4%.

#### Items of Note

- The majority of land that would be subject to a new environmental zone is located in areas of significant vegetation in the vicinity of the Coolgardie escarpment/ Blackwall Range, Alstonville escarpment, Bagotville and the Tuckean Swamp localities, and areas of scenic/escarpment value in the Coolgardie escarpment/Blackwall range, Alstonville escarpment and North Teven localities.
- The environmental zones have been applied based on a documented methodology and a variety of evidence sources. Council's Environmental Scientist has been directly and actively involved in the preparation and review of the mapping.
- With respect to the Coolgardie, Bagotville and Tuckean localities, there are multiple sources of information separate to Council's analysis of values that indicates land in these localities is of a character highly compatible with the application of an E2 Environmental Conservation zone.
- By way of example, the Targeted Vegetation Survey of Floodplains and Lower Slopes on the Far North Coast completed as part of the Comprehensive Coastal Assessment in 2008 by the then Department of Environment and Climate Change identifies the area of vegetation around Coolgardie, Wardell and the Blackwall Range as being of very high significance, containing superb examples of various vegetation communities. The report also identifies the Tuckean Swamp area as containing vegetation of high conservation significance.



- More recently, the Far North Coast Regional Conservation Plan (2010) identifies the Tuckean/Blackwall Range area as a regional conservation priority area. The Plan describes the locality as an area containing highly significant remnants of a largely depleted landscape. The Plan notes various vegetation communities as being present in the area, the known presence of a large number and variety of threatened fauna and habitat corridor values.
- With respect to the Alstonville escarpment, areas identified for an E2 zone comprise significant areas of vegetation identified as having conservation value. Such areas include stands of sclerophyll forest that provide threatened species habitat (including habitat for the koala) and sub tropical rainforest areas that constitute remnants of the Big Scrub. Sub tropical rainforest is also listed as an endangered ecological community under the *Threatened Species Conservation Act*.
- Council has applied the E3 zone to land located in the vicinity of the Blackwall Range, Alstonville escarpment and North Teven in recognition of the scenic/ escarpment values attributable to the land. To identify the scenic values, Council has undertaken an analysis of the terrain and the exposure of the areas to key viewing locations such as roadways and the coastline. These areas warrant the application of the E3 zone on the basis that they are highly significant to the landscape of Ballina Shire. Importantly, it should be noted that the E3 zone as drafted by Council recognises the agricultural activities undertaken in such areas (e.g. the E3 zone provides for an extensive range of agricultural pursuits without the need for development consent). This is consistent with Council's desired strategic direction of achieving balance between agricultural activities and environmental values.
- Council has completed its comprehensive review of zoning in accordance with what it has been asked to do by the State Government and in a manner consistent with statutory requirements including those contained within the Far North Coast Regional Strategy (s117 Direction 5.1) and s117 Direction 2.1 Environment Protection Zones.

#### *Exhibition Feedback*

As the Department will be aware, Council undertook two extensive public exhibitions of its draft LEP during 2010 and 2011. Council received 207 submissions (195 community submissions and 12 Government agency submissions) to its 2010 exhibition and 107 submissions (96 community submissions and 11 Government submissions) to its 2011 exhibition. Council also received a petition containing 2268 signatures in favour of stronger environmental protection outcomes along the coastline between Lennox Head and Angels Beach in response to its 2010 exhibition.

Council considered the exhibition feedback in detail and made a number of changes in relation to environmental protection zoning. Details of Council's approach are contained in the reports to meetings of Council's Environmental and Sustainability Committee from May 2011 and December 2011 which have previously been provided to the Department as part of Council's Section 68 reporting.

#### *Summary*

The above information and associated attachments is provided to demonstrate to the Department the extent of policy and evidence based planning undertaken by Council in completing the draft LEP in a consistent, holistic and comprehensive manner. Council will

be pleased to discuss any aspect of the draft LEP further where of assistance to the Department and/or the Minister for Planning and Infrastructure.

In considering the approach taken to the preparation of Council's Standard LEP Instrument, Council is unclear as to the nature of the Department's concerns, if any, relating to the application of environmental protection zones under the draft Ballina Local Environmental Plan. If, following consideration of Council's Section 68 reporting and the additional information provided, including that set out above, the Department has any concerns regarding the approach to the application of environmental protection zones, Council will appreciate specific advice from the Department as to the nature of the matters of interest.

In the meantime, if you have any enquiries in regard to this matter please contact me on telephone 6686 1284.

Yours faithfully

Matthew Wood  
**Manager Strategic Planning**  
**Strategic and Community Services Group**

cc: Mr Steve Murray, Regional Director - Northern Region, NSW Department of Planning and Infrastructure, Locked Bag 9022, GRAFTON NSW 2460



## ATTACHMENT 2

Draft Ballina Local Environmental Plan 2011 - Section 68 Report

### 3.0 Engagement

#### 3.1 Internal

The preparation of the draft LEP has involved a range of internal engagement activities and associated supporting systems and briefings to address both technical plan preparation as well as the management of the renewal process. In particular, the internal engagement process has involved the following:

- ⇒ Regular briefings for Council's Strategic Services Group staff.
- ⇒ Involvement of specialist Strategic Services Group staff in analysis and review in the fields of heritage, social planning and environmental management.
- ⇒ Targeted workshops with Council's Regulatory Services Group staff relating to key issues associated with plan development, plan formulation & drafting and plan operation & implementation.
- ⇒ Regular updates and briefings for MANEX (Meetings of the General Manager and Group Managers).
- ⇒ Periodic updates and briefings with Council's Records staff in relation to the management and keeping of project records.
- ⇒ Periodic updates and briefings for staff within Council's Civil Services Group, Commercial Services Section and General Manager's Group.
- ⇒ Liaison with Customer Service staff during exhibition periods in relation to service protocols and exhibition processes related to the exhibited materials.

The internal engagement has also included an 'open door' approach whereby LEP project staff encouraged the identification and discussion of LEP related issues either directly or via an internal digital noticeboard. In both cases, the matters raised were recorded and reviewed as part of the LEP renewal process. A primary intent of this approach was to capture issues arising with development assessment as they occurred or became evident.

How to ensure rural land use doesn't increase use of...	Wed 06/09/2006 3:46 PM
Status of the NLEP	Mon 14/08/2006 8:39 AM
Car Repair Stations	Wed 05/08/2006 4:18 PM
Definition of "agriculture"	Wed 02/08/2006 5:03 PM
Clause 12 (3)(c) and Dwelling Entrances	Wed 02/08/2006 5:57 PM

#### 3.2 Councillors

The elected Council has received a variety of formal reports regarding the LEP renewal activities following commencement of the process in 2005. In addition to the formal reporting, Councillors also received a number of specific workshops and briefings including those listed below.

- ⇒ Workshop No.1 Planning Reforms and the Standard LEP (November 2005)
- ⇒ Workshop No.2 LEP Renewal Context and Process (September 2006)
- ⇒ Workshop No.3 LEP Renewal Discussion Paper Series (June 2007)
- ⇒ Workshop No.4 LEP Renewal Discussion Paper Series (October 2007)
- ⇒ Workshop No.5 Working Draft Ballina Local Environmental Plan 2010 (October 2008)
- ⇒ Workshop No.6 Secondary Dwellings (March 2009)
- ⇒ Workshop No.7 Progress and Exhibition Certification (October 2009)

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- ⇒ Workshop No.8 Certified Draft LEP and Public Exhibition (February 2010 - 2 sessions)
- ⇒ Councillor Update Exhibition Mid Point Report (April 2010)
- ⇒ Workshop No.9 2010 Draft LEP Exhibition Issues (September 2010)
- ⇒ Workshop No.10 Submissions Reporting and Plan Finalisation Draft Ballina LEP 2010 (May 2011)
- ⇒ Workshop No.11 Re-exhibition Draft Ballina LEP 2011 (August/ September 2011)
- ⇒ Workshop No.12 Listed Items - 1 December 2011 Environmental and Sustainability Committee Meeting (December 2011)

Workshop No.5 was a central workshop in that it involved targeted discussion sessions with respect to the construction and content of the Working Draft LEP for the shire.



Workshop No.7 sought to affirm key policy positions framing the working draft LEP and outline key issues arising during DP&I engagement prior to the certification of a draft plan for exhibition.

Workshop No.10 was a precursor to formal reporting regarding the exhibition of the Draft Ballina LEP 2010.



Workshop No.11 was in response to Council's resolution regarding the re-exhibition of the LEP as the Draft Ballina LEP 2011.

Workshop No.12 was in response to the Environmental and Sustainability Committee's identification of several submission items where additional information was sought.

Further to the LEP workshops, all Councillors were also provided with an LEP Resource Folder containing key process information as a reference resource. The folder was regularly updated until June 2011 at which point material was supplied to Councillors digitally via iPad technology. Following the September 2008 Local Government Elections, newly elected Councillors received a complete set of the documentation distributed to the previous Council.

Councillors also received briefings and participated in workshops with respect to LEP related matters including Council's Rural DCP, Ballina Shire Community Based Heritage Study, Draft Local Growth Management Strategy and Draft Affordable Housing Strategy.

### 3.3 Regional

A series of discussions with neighbouring councils in the region were held during the preparation of the comprehensive LEP. Discussions commenced with intent to collaborate on a number of key issues on a regional basis with the assistance of the Department of Planning and Infrastructure (DP&I) and appropriate State agencies. As part of this, it was intended that the DP&I would coordinate involvement from State agencies with a view to determining common policy positions on key issues. Unfortunately, and despite considerable enthusiasm from council representatives, this outcome was unable to be achieved, with key State agencies unable to document unified policy positions in relation to central LEP issues. It is noted, however, that in mid 2008 the DP&I convened a productive meeting between Council and representatives of the key natural resource agencies concerning the drafting of the plan.

Notwithstanding the above, collaborative meetings between councils on the Far North Coast were convened. The forums typically involved LEP project staff from Ballina Shire, Lismore City, Byron Shire, Richmond Valley and Kyogle Shire councils, with Tweed Shire participating on occasion. The forums generally focussed on LEP preparation issues including policy approaches and challenges in the process. The aim of the forums was to develop common positions in relation to key issues, share experiences in preparing plans and avoid "reinventing the wheel" in order to improve the overall outcomes for each Council. Given the particular similarities in issues and approaches, Ballina Shire Council also undertook more targeted discussion with Lismore City Council staff on a number of additional occasions.

Specifically during the public exhibition of the Draft Ballina LEP 2010, Council hosted a neighbouring Council morning tea (attended by Lismore City, Byron Shire and Richmond Valley councils) and a government agency morning tea (attended by DECCW, NSW Police, I&I and LPMA).

#### **3.4 Department of Planning and Infrastructure**

Council undertook liaison with staff at the Grafton Regional Office of the Department of Planning and Infrastructure on an as needs basis during the initial phases of plan preparation. Typically, this engagement involved clarification of Departmental policy or approaches to elements of the Standard Plan or plan preparation process. More specifically, LEP project staff met with the Grafton Regional Office at the time of the LEP Discussion Paper Series preparation in mid 2007 (which involved discussion regarding Council's proposed approach to the renewal process) and in mid 2008 with respect to Council's Working Draft LEP. Council staff also met with Departmental staff in relation to key issues arising during the DP&I's consideration of Council's plan for exhibition in July 2009 and November 2009.

Following exhibition of the Draft Ballina LEP 2010, officers from the Grafton Regional Office of the Department attended a meeting with Council staff in August 2010 to discuss the initial outcomes and issues arising from the public exhibition period.

With respect to the re-exhibition of Council's Draft Ballina LEP 2011, Council provided a briefing to regional officers of the Department in Grafton in October 2011.

Regular discussion was also undertaken with Ms Claire Purvis, being the Departmental project officer responsible for the processing of Council's draft plan. Council is grateful for the professional and ongoing assistance provided by Ms Purvis and the Grafton regional office of the Department.

#### **3.5 External**

The LEP renewal process incorporated a range of community engagement opportunities. Key aspects of the engagement approach are outlined below:

##### **⇒ LEP Briefings and Registrations of Interest.**

Interest groups and individuals in the shire were invited to indicate their interest in the LEP renewal process and/ or receive a briefing from Council staff in relation to the project in November 2006. Briefing sessions were held with 25 groups and a number of registrations of interest were lodged with Council. Those registered were provided with key LEP material as it became available during the plan preparation process. Registrations remained open to any interested person during the entire plan preparation process.

→ **Amendment Requests**

Council openly received requests for outcomes through the new LEP from the inception of the renewal process in 2006 through to early 2010. This process typically involved lodgement of a written request and sometimes involved submission of substantial supporting documentation for review by Council. Staff were also available to discuss elements of the requests with proponents as required and did so with numerous interested parties either in person, writing or via telephone on numerous occasions.

**General Requests**

Throughout the LEP renewal process, various stakeholders within the community identified preferred outcomes with respect to particular land parcels or issues. Each of these requests was considered with respect to criteria adopted by Council (see right) in terms of the processing approach applied. The majority of requests related to matters of a scale and nature well suited to consideration as part of the comprehensive renewal process. However, a small number of requests were considered to warrant specific consideration, with some of these progressing to LEP amendments in relation to the Ballina Local Environmental Plan 1987.

With respect to the amendments held for integration into the comprehensive review, each was reviewed and considered with respect to the new plan. It should be noted that in considering the requests, some related to more the philosophical or overarching direction of the plan, whilst others were about very specific issues that were not as wide reaching. A list of the requests received and the outcome under the draft LEP is contained in Appendix E. As is evident in Appendix E, the key areas of request related to rural residential subdivision and land use zoning applicable to particular land parcels.

**December 2005 Ordinary Meeting - Minute No. 081205(019)**

1. That the Council endorse the continued processing of existing LEP amendments at this time, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.
2. That the Council endorse the commencement of processing of LEP amendments separate to the comprehensive LEP review process, in accordance with the requirements of the Environmental Planning and Assessment Act 1979, only where such amendments are clearly and strictly consistent with the exceptional circumstances criteria for consideration of amendments set out by the Department of Planning and Infrastructure in relation to the comprehensive LEP review process; or amendments constitute essential "housekeeping".
3. That the Council hold all other LEP amendment requests that are not consistent with the DPIP criteria referred to in (2) above for integration into the comprehensive LEP review process.
4. That Council advise those making requests for amendments to the existing LEP separate from the comprehensive LEP review, that certain fees and charges will be levied in processing such requests in accordance with Council's Schedule of Fees and Charges.
5. That the processing of individual LEP amendment requests separate to the LEP review process be reconsidered at key milestones during the comprehensive renewal of the Ballina Local Environmental Plan.

**March 2009 Ordinary Meeting - Minute No. 230206(013)**

*That Council receive and note the report regarding procedural changes to the making of Local Environmental Plans, acknowledging that the advice contained in Planning Circular PS 05-005 further informs Council's consideration of LEP amendment requests; supplementing those matters the Council has determined to have regard for at its December 2005 Ordinary Meeting (Minute No. 081205(019)).*

**Specific Rezoning Processes and Key Sites**

Council provided an opportunity for rezoning proposals over specific land parcels to be considered as part of the LEP renewal process. Although several proponents indicated a desire to engage in this approach, only one formal request was made, being in relation to land off Amber Drive at Lennox Head. This land was the subject of a local environmental study and the land was identified for rezoning to a part residential and part environmental protection zone. A copy of the local environmental study has been provided under separate cover.

⇒ Discussion Papers

Council was not required to prepare a Local Environmental Study to support or guide the comprehensive LEP review, given the completion of the Sustainability Framework and various recently published strategic planning documents.

While a formal LES was not required, Council's Project and Issues Mapping Discussion Paper, identified preparation of a series of Discussion Papers as an appropriate tool to support the technical preparation of the new LEP. The LEP Renewal Discussion Paper series was publicly exhibited between July and September 2007 and was endorsed by Council for application in the LEP renewal process at its October 2007 Ordinary Meeting. The endorsed Discussion Papers were forwarded to the DP&I in July 2007 and a meeting was held between the DP&I and Council officers to discuss them.

The Discussion Papers were structured to canvass a range of planning issues relating to the themes of community facilities and services, industry and commerce, infrastructure and utilities, the natural environment, society and culture, rural land and urban land.

In addition, each paper provides a snapshot of the shire with respect to the theme of the paper and sets out suggested planning objectives to provide guidance in formulating the new LEP (Appendix F). Importantly, the Discussion Papers were structured within the context of Council's Sustainability Framework as well as the existing statutory and strategic planning environment.

The Discussion Papers were intended to:

- Provide a snapshot of information.
- Discuss key issues.
- Provide general direction.
- Be a tool to gauge views and ideas.
- Form the basis for preparation of the LEP.

The Discussion Papers were not intended to:

- Provide final answers to key challenges.
- Define final outcomes.
- Canvass technical means to deliver desired outcomes in detail.
- Promote a particular view of change or retention of the status quo.
- Provide the level of detail found in a LES.

⇒ LEP Policy Forum

To assist in the consideration of key planning issues and policy development, an intensive community engagement process was undertaken in relation to several key LEP policy issues.

The LEP Renewal Community Policy Forum sought to gather a snapshot of opinions, advice and suggestions from members of the community relating to planning issues. The process was structured with the aim of achieving a balance with respect to the often conflicting views surrounding various key planning issues. A full report on the Forum process and outcomes (Community Policy Forum Outcomes Report) is attached as Appendix G.

The Forum process actively engaged 23 representative community participants in relation to key policy areas considered to be of high significance with respect to the preparation of the new LEP. Participants engaged in the process through one of three streams, being Environment, Social and Economic. Each stream considered issues associated with three policy focus areas, namely Towns and Villages, Rural Landscape and Employment & Industry. The Forum focussed on the issues raised with respect to the forthcoming planning period. Importantly, the Forum structure sought to provide for balanced consideration of key planning issues, with a central aim being to identify areas of similarity and difference between streams.



The Forum occurred in three stages as set out below:

- Stage 1: Initial Briefing Session 28 March 2008  
Participants were introduced to the Forum process and the structure for addressing policy issues.
- Stage 2: Community Policy Forum 5 April 2008  
Participants addressed key issues in relation to each policy focus area.
- Stage 3: Outcomes Session 30 April 2008  
Outcomes, including areas of general consensus (see below), were presented to the participants.

During Stage 2, Forum participants engaged in an in depth analysis and discussion of a range of challenging issues from a variety of viewpoints and backgrounds. In doing so, each participant gave a significant amount of time and effort to assist Council in the consideration of policy approaches for the LEP renewal.

With respect to Forum outcomes, key views expressed through the Forum are briefly outlined below in Table 4. The views outlined represent those where a general consensus was noted between streams in discussing a key issue. Significantly, there were few areas of difference between or within streams with respect to the core issues addressed.

Table 4 Community Policy Forum Outcomes Summary

Policy Focus Area	Area of General Agreement Between Streams
Towns and Villages	<b>Urban Footprint</b> No expansion of urban footprint over good quality agricultural land or areas with strong ecological values. Utilise the land that is suitable for urban development efficiently.
	<b>Village Character</b> Retain the village scale and character of Alstonville, Wollongbar, Lennox Head and Wardell.
	<b>Building Height</b> Well designed taller buildings may be suitable in certain locations, subject to particular criteria such as not being in close proximity to the Richmond River foreshore.
	<b>Ballina Island</b> More intensive development may be appropriate on Ballina Island given that it is relatively well serviced and flat. However, sea level rise is a potential risk.
Rural Landscape	<b>Agricultural Production</b> Preserve the agricultural production potential of rural land. Support diversity in agricultural production and look for ways to support agriculture such as rural workers' accommodation.
	<b>Rural Residential Subdivision</b> Additional rural residential development is not desirable (i.e. subdivision of land for rural living not related to agricultural production). Loss of agricultural land, servicing and land use conflict are significant concerns in relation to rural residential development.
	<b>Rural Tourism</b> Encourage a range of small scale tourism activities in rural areas. Support activities that complement agricultural activity.
	<b>Environment</b> Identify, protect and manage key environmental assets and resources. Seek a balanced approach to environment and catchment management. No dominant view about whether environmental or agricultural values should prevail.
Employment and Industry*	<b>Green Industry</b> Provide for 'clean and green' industries. Seek innovation and technology connections.

Policy Focus Area	Area of General Agreement Between Streams
* Areas of consensus in relation to employment and industry were not as clearly definable compared to the other two policy focus areas considered.	<b>Home Based Business</b> Provide for home based business activity.
	<b>Targeted Industry</b> Support targeted industry areas such as marine and aviation related activity.

*Note: The content of the above table should be read in conjunction with the full Community Policy Forum Outcomes Report May 2008.*

The outcomes from the Community Policy Forum were utilised in the development of LEP policy and the associated preparation of the new LEP for Ballina Shire.

→ LEP Renewal Project Website

Council has maintained an LEP project specific website for the duration of the LEP renewal at <http://newlep.ballina.nsw.gov.au>

The website provides background to the process, key information about progress and timing, all exhibition material, key reports to Council and details about getting involved, and making comment and submission. The website is a key information dissemination tool for the project.



<http://newlep.ballina.nsw.gov.au>

In addition to the above, LEP project staff were available for telephone discussion and meetings with interested persons throughout the plan drafting process. General submissions were also encouraged during the process in addition to formal submissions periods at key exhibition times.

Public Exhibition Periods

**Draft Ballina LEP 2010**

The public exhibition of the Draft Ballina LEP 2010 utilised a number of mechanisms to engage the community in the consideration of the plan. Engagement tools utilised included:

- LEP project website,
- display of LEP exhibition materials at Council's Community Access Points (Council, shire libraries, Wardell Community Centre and Ballina Community Services Centre),
- counter enquiry system,
- exhibition display panels,
- exhibition guide and other supporting explanatory material,
- media kit, media releases, advertisements, radio and television interviews,
- use of Council's community connect newsletter,
- use of a dedicated LEP project phone line and business card,
- LEP information branding,
- ward committee briefings,
- interactive mapping,
- stakeholder group meetings,
- street stalls,
- direct correspondence (government agencies, persons making prior amendment requests, registered parties, residents in and surrounding Amber Drive, landowners of key potential urban release area sites, neighbouring councils and key stakeholder groups),
- provision of material in digital format on CD, and
- LEP launch event



**Draft Ballina LEP 2011**

The public exhibition of the Draft Ballina LEP 2011 occurred over a shorter period of time, utilising engagement tools including:

- LEP project website,
- display of LEP exhibition materials at Council's Community Access Points (Council, shire libraries, Wardell Community Centre and Ballina Community Services Centre),
- counter enquiry system,
- supporting explanatory material,
- use of Council's community connect newsletter,
- LEP information branding,
- direct correspondence (government agencies, submitters to the 2010 exhibition, registered parties), and
- provision of material in digital format on CD.

See Section 5 for details regarding the public exhibition associated with the preparation of Council's draft LEP.



### 3.6 Reporting

Council was routinely provided with reports relating to the LEP renewal process over the duration of the project. In particular, Council was regularly updated in relation to requested amendments to the LEP for consideration with respect to the comprehensive review and received reports in relation to each of the key statutory steps associated with the preparation of the new LEP. All items were reported in open Council forums. The reports presented to the Council (from the latest) regarding the LEP renewal are as follows:

#### Ballina Local Environmental Plan Renewal - Council Reports

- December 2011: Environmental and Sustainability Committee Minutes 1 December 2011 (Item 14.1)
- December 2011: Ballina LEP Renewal: Re-exhibition and LEP Finalisation (Items 4.1-4.9 Report to Environmental and Sustainability Committee)
- May 2011: Environmental and Sustainability Committee Minutes 17 & 19 May 2011 (Item 14.1)
- May 2011: Ballina LEP Renewal: Public Exhibition and LEP Finalisation (Items 4.1-4.9 Report to Environmental and Sustainability Committee)
- July 2010: Ballina LEP Renewal - Reclassification of Public Land (Item 9.1)
- May 2010: Ballina LEP Renewal - Amendments to Standard LEP Instrument (Item 9.3)
- May 2010: Ballina LEP Renewal - Standard LEP Instrument Submissions (Item 9.2)
- May 2010: Ballina LEP Renewal - Reclassification of Public Land (Item 9.1)
- February 2010: Ballina LEP Renewal - Public Exhibition (Item 9.1)
- December 2009: Ballina LEP Renewal - Section 65 Exhibition Certificate (Item 9.1)
- October 2009: Ballina LEP Renewal - LEP Amendment Requests (Item 9.1)
- March 2009: Ballina LEP Renewal - LEP Amendment Requests (Item 9.1)
- March 2009: Ballina LEP Renewal - Secondary Dwellings (Item 4.1 Report to Environmental Committee)
- October 2008: Ballina LEP Renewal - Request for Section 65 Exhibition Certificate (Item 7.2)
- October 2008: Ballina LEP Renewal - LEP Amendments (Item 7.1)
- June 2008: Ballina LEP Renewal - Vegetation Management (Item 7.2)
- May 2008: Ballina LEP Renewal - LEP Amendments (Item 7.4)
- May 2008: Ballina LEP Renewal - Community Policy Forum (Item 7.3)
- March 2008: Ballina LEP Renewal - Land Use Zone Rationale (Item 7.1)
- January 2008: Ballina LEP Renewal - LEP Amendments (Item 7.4)
- January 2008: Ballina LEP Renewal - Locality Update (Item 7.3)
- October 2007: Ballina Local Environmental Plan Renewal - Discussion Paper Exhibition (Item 7.2)
- August 2007: Ballina Local Environmental Plan Renewal - LEP Amendments (Item 7.1)
- June 2007: Ballina Local Environmental Plan - Comprehensive Review (Item 7.1)
- April 2007: Ballina Local Environmental Plan Renewal - LEP Amendments (Item 7.1)
- February 2007: Far North Coast Regional Strategy (Item 19)
- December 2006: Comprehensive Review of the Ballina Local Environmental Plan - Department of Planning and Infrastructure S54 Response (Item 16)
- September 2006: Comprehensive Review of the Ballina LEP - Formal Commencement (Item 23)
- May 2006: Comprehensive Review of the Ballina LEP - Standard LEP Instrument (Item 18)
- April 2006: Comprehensive Review of the Ballina LEP - Standard LEP Instrument (Item 20)
- March 2006: New Procedures LEP Making - Review Panel Process (Item 16)
- December 2005: Processing of Individual Rezoning Requests (Item 15)
- November 2005: Preparation of New Comprehensive LEP for Ballina Shire - Draft Standard LEP Submission to DP&I (Item 18)
- September 2005: Preparation of a New Comprehensive LEP for Ballina Shire (Item 19)