



**Ballina Shire Council**

**Planning Proposal –BSCPP 12/005  
May 2013**

**Lot 1 DP 522558,  
6 Burns Point Ferry Road, West  
Ballina**

Final

Planning Proposal – May 2013  
6 Burns Point Ferry Road, West Ballina

people • place • prosperity  
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## Introduction

### Summary of Planning Proposal

This planning proposal relates to Lot 1 DP 522558, No. 6 Burns Point Ferry Road, West Ballina, as shown on the locality map attached in Appendix 1.

The subject land is owned by Mr CM & Mrs JM Elliott & Mr DR & Mrs CM Westaway and has an area of 4,047m<sup>2</sup>.

The site is currently zoned RU2 Rural Landscape under the provisions of the *Ballina Local Environmental Plan 2012* (BLEP 2012), as shown on the Zoning Map attached in Appendix 2.

The proposal involves the rezoning of land from RU2 Rural Landscape to R3 Medium Density Residential.

It is also proposed that a minimum lot size for subdivision of 600m<sup>2</sup> be applied to the subject land and that the land also be removed from designation as a strategic urban growth area under the BLEP 2012.

It is noted that the site was zoned 1(d) Rural (Urban Investigation) Zone under the provisions of the *Ballina Local Environmental Plan 1987* (BLEP 1987).

The proponents of the LEP amendment submitted supporting documentation which is available under separate cover.

### Planning Context

Council has identified the subject land as having urban development potential since the introduction of the BLEP 1987 and the application of the former 1(d) Rural (Urban Investigation) Zone to the site. Additionally, future urban zoning of the land has been contemplated in a number of planning policies.

#### Ballina Shire Growth Management Strategy 2012

The subject land is located within the West Ballina Planning Precinct and is identified as being within a strategic urban growth area and having potential to accommodate urban development.

#### Far North Coast Regional Strategy

The Far North Coast Regional Strategy (FNCRS) provides the regional framework for the consideration of rezoning land for urban purposes in Ballina Shire. The FNCRS identifies the subject land as a 'Proposed Future Urban Release Area' within the 'Town & Village Growth Boundary' for Ballina Shire. The subject land is identified as a proposed release area under the FNCRS.

Ballina LEP 2012

The subject land is zoned RU2 Rural Landscape under the provisions of the BLEP 2012. The Lot Size Map contained in this plan applies a 40 hectare minimum lot size to the site. The site is also identified on the Strategic Urban Growth Areas Map as being a "strategic urban growth area".

During the preparation and drafting of the BLEP 2012, Council applied rural zones to areas previously zoned 1(d) Rural (Urban Investigation) zone under the BLEP 1987 as there was no zone equivalent to the 1(d) zone under the Standard Instrument Local Environmental Plan on which the BLEP 2012 is based. Under this approach, potential urban release areas are identified in the relevant strategic planning policy documents (as outlined above).

## Part 1 - Objectives or Intended Outcomes

The objective of this planning proposal is to rezone the subject land to enable medium density residential development and associated infrastructure.

## Part 2 - Explanation of the Proposal

This planning proposal relates to land located at 6 Burns Point Ferry Road, West Ballina and is known as the former 'Ferry Boat Motel' site. The site is currently zoned RU2 Rural Landscape under the provisions of the BLEP 2012.

This planning proposal seeks to rezone the subject land to R3 Medium Density Residential to enable future development for residential purposes (Appendix 3).

Amendments to the Minimum Lot Size Map and the Strategic Urban Growth Areas Map under the BLEP 2012 are also proposed. In relation to the Minimum Lot Size Map, it is proposed to change the application of the 40 hectare minimum lot size currently nominated for the site to a 600m<sup>2</sup> minimum lot size that is consistent with the surrounding locality. Should the site be rezoned, its nomination as a strategic urban growth area on the Strategic Urban Growth Areas Map will no longer be required, and as such, the land would be removed from identification as a strategic urban growth area in this map set.

The LEP amendment request prepared by Newton Denny Chapelle on behalf of the proponent (available under separate cover) has demonstrated that the site is relatively unconstrained and is capable of supporting low and medium density residential land uses. The proponent's proposal has provided conceptual medium density residential development scenarios to enable an assessment of the potential impacts associated with future residential uses. These are considered appropriate in supporting the conceptual stages and planning proposal phase of the LEP amendment process.

A preliminary investigation of environmental and planning constraints has been provided with the initial LEP amendment request (available under separate cover). This has briefly addressed issues such as land contamination, acid sulphate soils, geotechnical characteristics and flooding.

In response to a positive Gateway Determination in December 2012, the applicant's engaged the Melaleuca Group Pty Ltd to undertake investigative work to satisfy the requirements of State Environmental Planning Policy No 55 - Remediation of Land (available under separate cover). This investigative work concluded that metal concentrations in the soils were generally within background levels and reflective of the historical presence of buildings onsite. No asbestos was detected on the site during these investigations and it was concluded that the investigation area did not represent a significant risk of harm to end users.

Geotechnical assessments in the locality have indicated the presence of soft soils that may affect the subject site. Further investigation will be required at construction approval stage to determine the appropriate level of structural support necessary for the site given this potential constraint.

The subject site is also identified as being flood prone, although it is acknowledged that the site has been considered in the Ballina Flood Study Update as undertaken by BMT WBM in 2008. The site was considered in the modelling undertaken for the purposes of the study update as "future development or infrastructure works". Therefore, the site has already been considered based on a scenario of future filling and building construction in Council's floodplain modelling (this flood study is available under separate cover). This flood impact report indicated that filling of this site would have a negligible effect on flooding in the area.

Ecologically, the site has minimal features of significance and comprises slashed grassland with occasional introduced landscape tree and shrub species. It is acknowledged, however, that the effects of future development upon the land on the adjoining site will need to be considered, particularly where areas of ecological significance are identified.

Council's Environmental Scientist has concurred with the applicant's view in this regard, indicating that there are no significant matters of concern from an ecological perspective in relation to the rezoning of the land. However, Council's Environmental Scientist has identified a small area of Freshwater Wetland (an Endangered Ecological Community) along the southern boundary of the Lot, but advises that it represents a very small portion of the community's distribution in the locality. Given the small area involved, this is a matter that can be suitably addressed in conjunction with a future development application.

Council's Environmental Scientist has also identified that possible buffering of Endangered Ecological Communities on adjoining land will likely need to be considered with any future development application proposal. An assessment regarding potential adverse impacts from development of the site upon the Eastern Grass Owl known to roost within the adjoining land will also be required in conjunction with any future development application.

It is noted that the proposed concept plans for the site include parking below existing ground level. Council is aware of elevated ground water levels upon the site and adjoining land. Therefore, any future proposal that may impact upon existing hydrology would require further information to assess these impacts.

## Part 3 - Justification

### Section A - Need for the Planning Proposal

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

The subject land is identified in the Far North Coast Regional Strategy 2006 (FNCRS) as being a "Proposed Future Urban Land Release Area".

The subject land is identified in the Ballina Shire Growth Management Strategy 2012 as having potential for urban development.

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

As noted above, the proposal is consistent with a range of strategic planning studies that identify the site for future urban investigation. The LEP amendment request and supporting documentation which informed the preparation of this planning proposal demonstrate that this process is the best means to enable development for future residential uses.

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

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

The proposal is consistent with the FNCRS, which provides the regional framework for the consideration of rezoning land for urban purposes in Ballina Shire. The FNCRS identifies the subject land as being a "Proposed Future Urban Release Area" within the 'Town & Village Growth Boundary Map – Sheet 3, as shown in Figure 3 below:

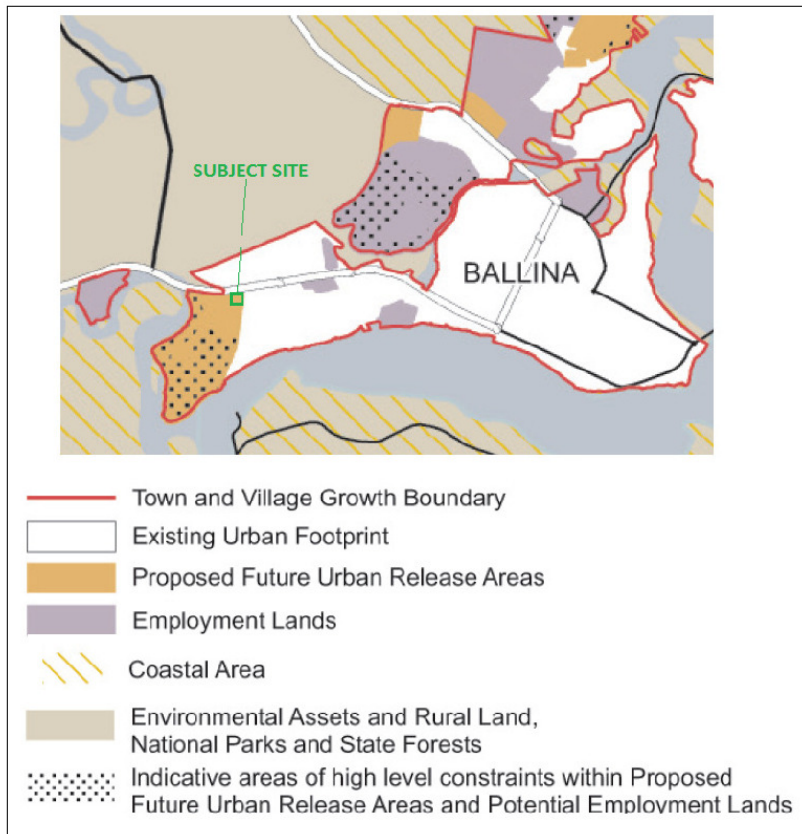


Figure 3 – Extract from Town & Village Growth Boundary Map, Far North Coast Regional Strategy, NSW Department of Planning 2006

The FNCRS notes that land identified in the Town and Village Growth Area Boundary will be subject to more detailed investigations to determine capability and future yield. Accordingly, investigation of the subject land for future urban development through the statutory rezoning process, involving assessment of the land’s capability to accommodate urban development is consistent with the regional planning framework.

**4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?**

The planning proposal is consistent with the provisions of BLEP 2012. The planning proposal will also provide appropriate land for urban development within a strategic growth area.

Council recognises that the subject land has potential for urban development, subject to detailed investigation being undertaken.

The proposal is consistent with Council’s adopted strategic planning for the site as being suitable for future urban land uses. The proposal also demonstrates that the site is physically capable of supporting future residential development with regard to environmental constraints and servicing.

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

Yes, the proposal is generally consistent with applicable State Environmental Planning Policies (SEPP).

A Preliminary Site Assessment in relation to potential site contamination has been undertaken by the Melaleuca Group Pty Ltd (available under separate cover). Council has reviewed this assessment and has concluded that it conforms to the requirements of SEPP 55-Remediation of Land. The findings of this preliminary assessment provide confidence that contamination, if present, is below standard residential criteria. Therefore, no further information is required in conjunction with this planning proposal in relation to land contamination.

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

Yes, the proposal is consistent with the relevant Section 117 Directions. A Section 117 Direction checklist for the planning proposal is contained in Appendix 4.

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

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

Information relating to the environmental characteristics of the site identifies it as being predominately cleared of significant vegetation and dominated by non-native plant species.

It is considered that a Section 5A Assessment for the development of the site would find minimal impact on the local occurrence of a Freshwater Wetland endangered ecological community (EEC's). However, any future development application for the land would need to address the impact upon adjoining EEC's and buffering may be required in conjunction with any future development application.

Due to the elevated groundwater upon the site, any proposals for below ground carparking would also need to satisfy Council that hydrology of the adjacent wetlands are not adversely impacted.

In regards to the Eastern Grass Owl, this species was known to persist in the area during the operation of the now demolished motel. Given the future development is within a similar footprint of the previous use, the impact on the existing Grass Owl population is likely to be minimal. However, issues associated with light and noise disturbance would need to be addressed in conjunction with any development application for the site.



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

Other potential environmental effects of the proposal may relate to the following:

- Potential contamination;
- Geotechnical constraints
- Site filling and flood management.

These and other issues have been addressed in the supporting documentation submitted with the planning proposal. It is expected that the risk of these effects to the development of the site can be appropriately managed through further investigation, remediation where necessary and the implementation of structural and building design elements to mitigate potential negative effects.

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

The rezoning of the land for urban purposes will likely have positive social and economic effects. In particular, the development of the land for housing will assist in meeting regional dwelling targets. Further, as an infill development outcome, efficiencies are likely in relation to infrastructure provision.

**Section D – State and Commonwealth Interests**

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

A future development on the subject land can be economically serviced by standard urban infrastructure.

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

The NSW Department of Environment and Heritage has been consulted in accordance with the Department of Planning and Infrastructure's Gateway Determination for the proposed LEP amendment. The OEH provided advice regarding biodiversity and flood hazard for the subject site. No objection to the proposal was raised in relation to flood hazard, provided that flood mitigation work recommended in the Ballina Flood Study Update 2008 for West Ballina (a copy of this Flood Study is available upon request) is implemented.

A summary of key issues raised by this public authority and the associated responses are contained within Attachment 6.

It is considered that the information provided to date is satisfactory for the purposes of enabling this LEP amendment to proceed. Any proposed future development would be required to address these issues within a development application.

## Part 4 - Mapping

Mapping details for the LEP amendment including a locality map identifying the subject site, a current zoning map for the area under the provisions of the BLEP 2012 and the proposed zoning map, lot size and strategic urban growth area maps are included in Appendix 3.

## Part 5 – Community Consultation

Extensive community consultation was undertaken during the preparation and exhibition of the *Ballina LEP 1987* in the mid 1980s. This process involved the introduction of the 1(d) Rural (Urban Investigation) Zone. The subsequent land release strategies, including the GMS 2012 were also subject to community engagement processes.

The planning proposal was formally exhibited between 24 April 2013 and 17 May 2013 in accordance with the Department of Planning and Infrastructure's Gateway Determination (Appendix 5).

Surrounding residents were notified of the proposal as part of the exhibition process. No submissions were received in response to the public exhibition of this planning proposal.

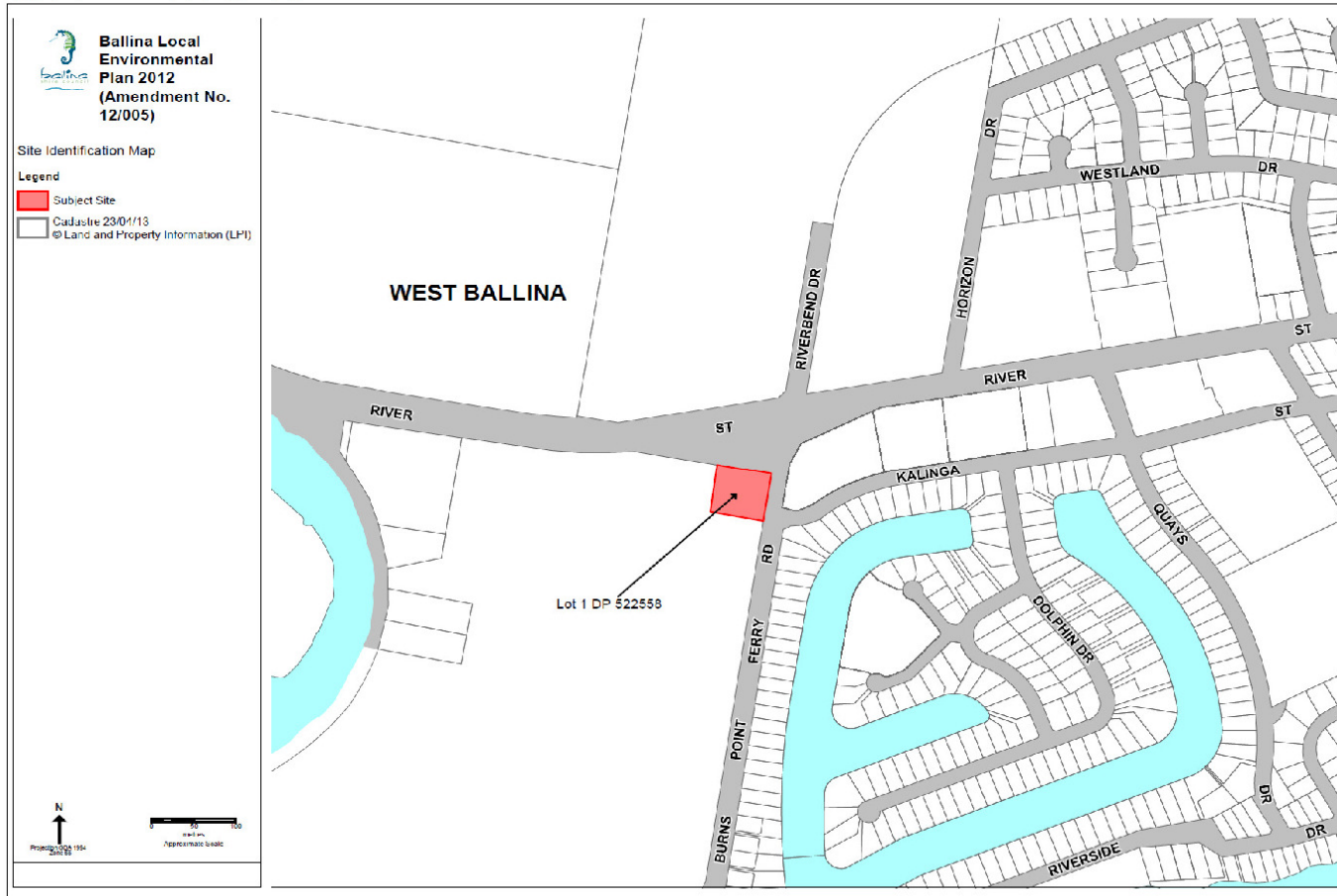
## Part 6 – Project Timeline

Plan Making Step	Estimated Completion (Before)
Gateway Determination (Anticipated)	December 2012
Completion of Technical Assessment	February 2013
Government Agency Consultation	February 2013
Public Exhibition Period	April 2013
Public Hearing (if required)	N/A
Submissions Assessment	May 2013
RPA Assessment of Planning Proposal and Exhibition Outcomes	June 2013
Submission of Endorsed LEP to DP&I for Finalisation	N/A – proposal is subject to delegation
RPA Decision to Make the LEP Amendment (if delegated)	June 2013
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	August 2013

Note: The DP&I granted Council delegation to carry out plan making functions to finalise this amendment in June 2013.

## Appendices

### Appendix 1 - Locality Map

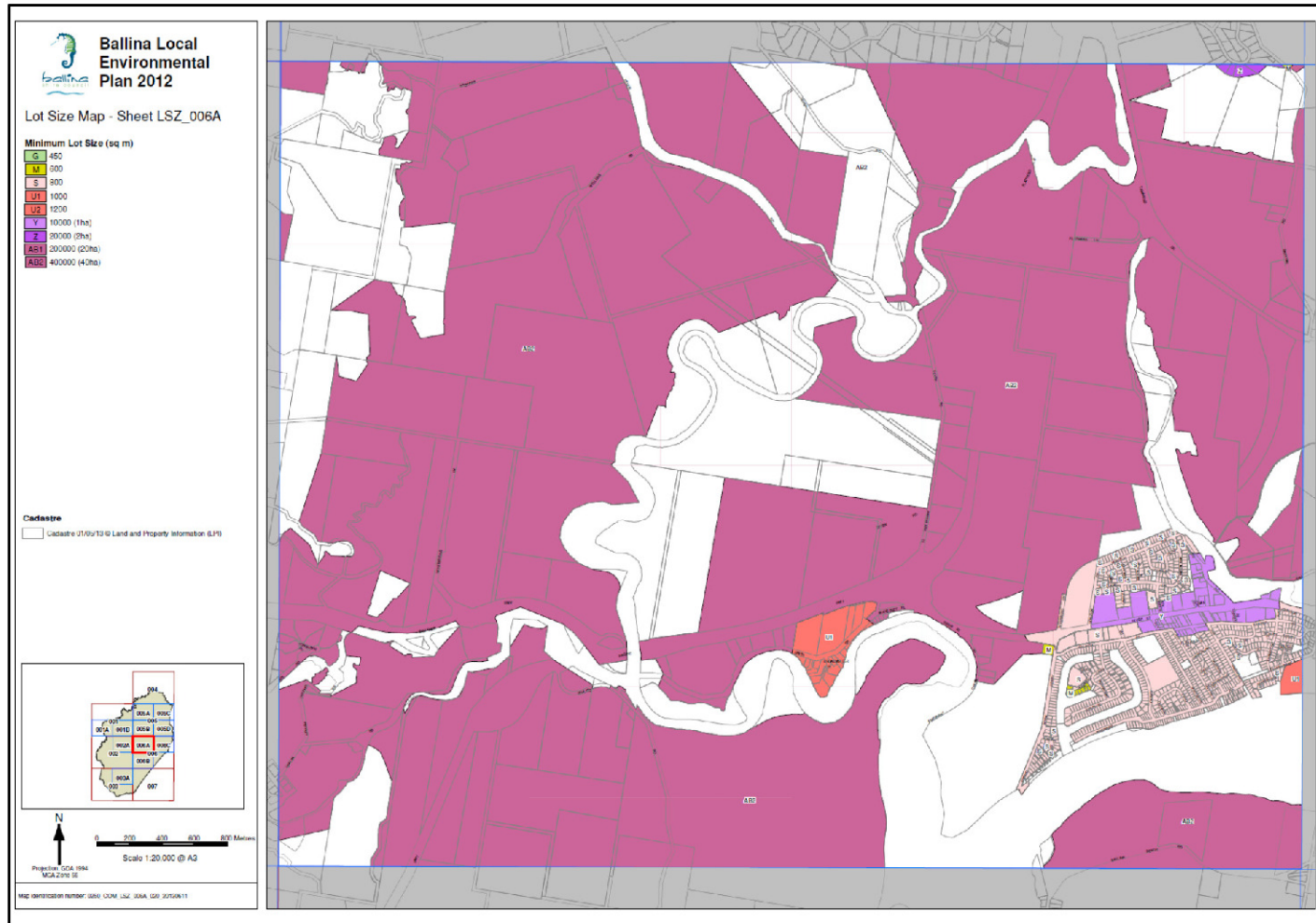




Appendix 3 – Proposed Zoning, Lot Size and Strategic Urban Growth Maps (BLEP 2012)



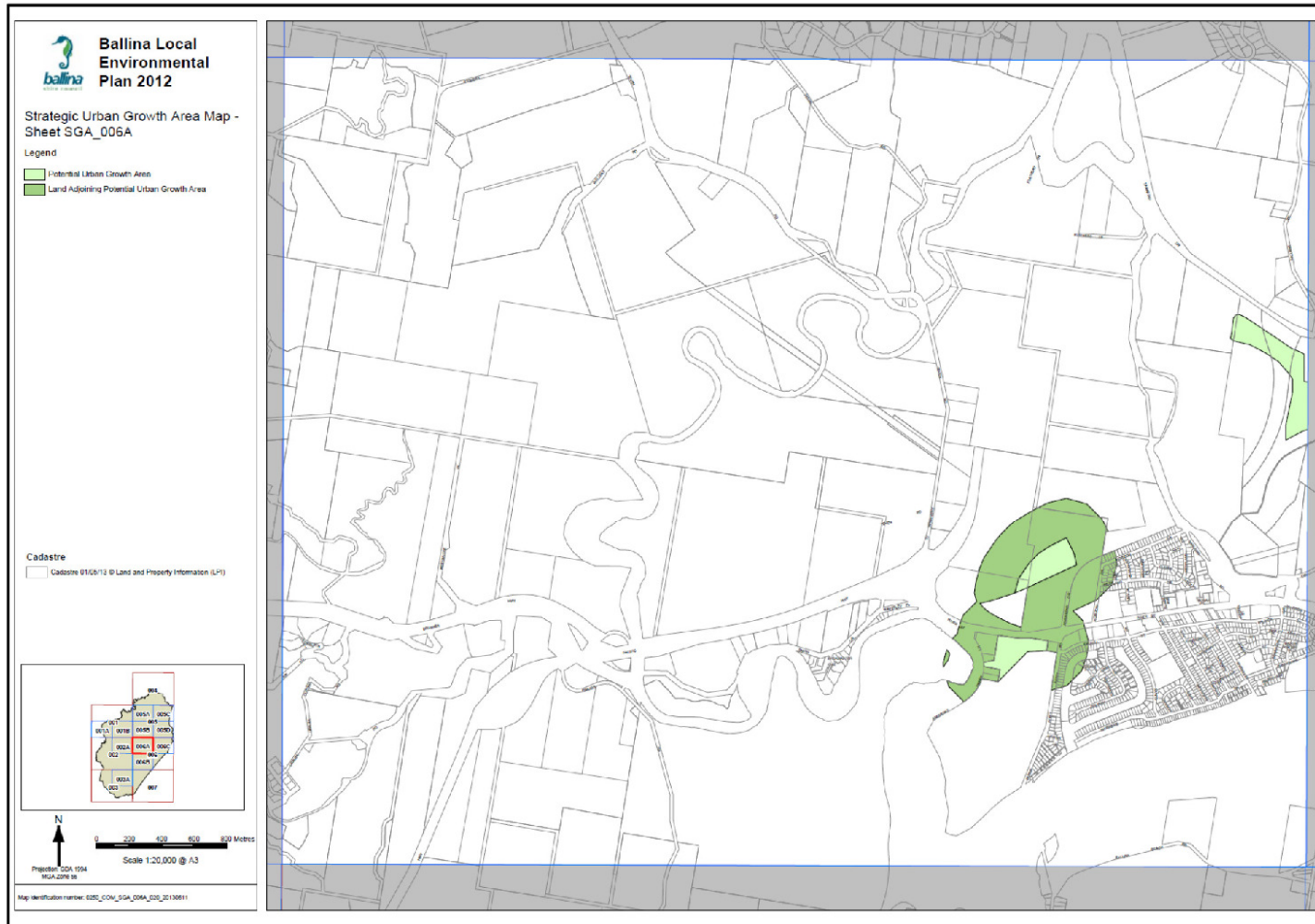
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9.2 Planning Proposal BSCPP 12/005 - Burns Point Ferry Road.DOC



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**Appendix 4 - Section 117 Direction Checklist**

Section 117 Direction Checklist Planning Proposal – 6 Burns Point Ferry Road, West Ballina	
TABLE 1 – SECTION 117 DIRECTIONS	
Direction	Proposal Consistency
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	Not applicable.
1.2 Rural Zones	Consistent. The proposed rezoning is consistent with this direction in that the area is identified in the Ballina Shire Growth Management Strategy and the Far North Coast Regional Strategy as being suitable for future urban development.
1.3 Mining, Petroleum Production and Extractive Industries	Not applicable.
1.4 Oyster Aquaculture	Not applicable.
1.5 Rural Land	Consistent. The subject site is currently vacant and is not currently used for rural activities. The site was previously occupied by a motel which was demolished in 2008. The rezoning is generally consistent with the Planning Principles contained in State Environmental Planning Policy (Rural Lands) and demonstrates compliance. In addition, this rezoning is of relatively minor significance and is consistent with the Far North Coast Regional Strategy.
<b>2. Environment and Heritage</b>	
2.1 Environmental Protection Zones	Not applicable.
2.2 Coastal Protection	Consistent. The rezoning proposal is consistent with this direction and demonstrates that the subject land can accommodate stormwater management and effluent disposal and will not impact on public foreshore access.
2.3 Heritage Conservation	Consistent. There are no items of environmental or cultural heritage identified by Council within the site that are considered to warrant specific LEP based protection based on the information currently available.
2.4 Recreation Vehicle Areas	Not applicable.
<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	Consistent. The planning proposal is consistent with this direction in that adequate infrastructure is available to service the area. The amendment enables a variety of housing types within the planned Ballina urban area. Design outcomes will be managed through the application of Council's development control plan.
3.2 Caravan Parks and Manufactured Home Estates	Not applicable.
3.3 Home Occupations	Consistent. Any dwellings subsequently erected following the rezoning of the land will be capable for use by home occupations.
3.4 Integrated Land Use and Transport	Consistent. The proposal is consistent with this direction because the land is located adjacent to an existing residential area that is serviced by regular public transport services.
3.5 Development Near Licensed Aerodromes	Not applicable.



Section 117 Direction Checklist Planning Proposal – 6 Burns Point Ferry Road, West Ballina	
TABLE 1 – SECTION 117 DIRECTIONS	
Direction	Proposal Consistency
<b>4. Hazard and Risk</b>	
4.1 Acid Sulphate Soils	Consistent. The site is identified as being subject to acid sulphate soils. However, appropriate regulation and management of acid sulphate soils would be considered at the development application stage as incorporated into the provisions of the <i>Ballina Local Environmental Plan 2012</i> .
4.2 Mine Subsidence and Unstable Land	Not applicable.
4.3 Flood Prone Land	<p>This direction states that a planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone. The direction does, however, state that a planning proposal may be inconsistent with this direction only if the RPA can satisfy the Director – General that the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005.</p> <p>Councils Infrastructure Manager has advised that;</p> <p><i>"This site was considered in the Ballina Flood Study Update report of March 2008 by BMT WBM (DW1923727) and a specific 'Flood Impact Assessment for the Ballina Waterways Development' report of May 2008 also included the site.</i></p> <p><i>Council's minimum fill levels for land in flood affected areas are based on the 1 in 100 year flood model values. The minimum floor levels are then to be 500mm above the minimum fill level. The uses of the 1 in 100 year values, the 500mm freeboard and other matters considered for the flood study are consistent with the requirements &amp; guidelines contained in the Floodplain Development Manual 2005."</i></p> <p>Therefore, it is considered that while the planning proposal is contrary to Clause 4.3 (5) of this direction, the proposal meets the requirements of 4.3 (9)(a) and is therefore considered satisfactory in this regard.</p> <p>The Gateway Determination confirmed within this correspondence that the inconsistency with this S117 Direction is of minor significance and no further approval is required in relation to this direction.</p>
4.4 Planning for Bushfire Protection	Not applicable.
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies	Consistent. The site is identified in the Far North Coast Regional Strategy as a proposed future urban release area.
5.2 Sydney Drinking Water Catchments	Not applicable.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable.
5.4 Commercial and Retail Development	Not applicable.
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	Consistent. The planning proposal is consistent with this direction in that it does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal is consistent with this provision as it does not include creation, altering or reduction of land for public purposes.
6.3 Site Specific Provisions	Consistent. The planning proposal is consistent with this direction as it seeks to apply a land use zone and standards compatible with the residential development of the site under Council's local environmental plan.

Appendix 5 – DP&I Gateway Determination



Planning & Infrastructure

Office of the Director General

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



Contact: Carlie Boyd
Phone: (02) 6641 6600
Fax: (02) 6641 6601
Email: Carlie.Boyd@planning.nsw.gov.au
Postal: Locked Bag 9022, Grafton NSW 2460
Our ref: PP\_2012\_BALLI\_007\_00 (12/19107)
Your ref: 12/52080

Dear Mr Hickey,

Planning proposal to amend either Ballina Local Environmental Plan (LEP) 1987 or draft Ballina LEP 2011

I am writing in response to your Council's letter dated 26 November 2012 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to amend either Ballina Local Environmental Plan (LEP) 1987 or draft Ballina LEP 2011 to rezone land at 6 Burns Point Ferry Road, West Ballina for residential purposes and if an amendment is made to draft LEP 2011 to allocate a 600sqm minimum lot size to the land and remove the land from the Strategic Urban Growth Area Map.

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

I have also agreed that the planning proposal's inconsistencies with S117 Directions 1.2 Rural Zones and 4.3 Flood Prone Land are of minor significance. No further approval is required in relation to these Directions.

The amending LEP is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the department to draft and finalise the LEP should be made six (6) weeks prior to the projected publication date.

The NSW State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under s54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Carlie Boyd of the regional office of the department on 02 6641 6600.

Yours sincerely,

Sam Haddad
Director General

14/12/2012

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



### Gateway Determination

*Planning proposal (Department Ref: PP\_2012\_BALLI\_007\_00): to facilitate the development of land at West Ballina for residential purposes.*

i, the Director General, Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to either Ballina Local Environmental Plan (LEP) 1987 or draft Ballina LEP 2011 to rezone land at 6 Burns Point Ferry Road, West Ballina for residential purposes and if amending draft LEP 2011 to allocate a 600sqm minimum lot size to the land and remove the land from the Strategic Urban Growth Area Map should proceed subject to the following conditions:

1. Council is to demonstrate that the planning proposal satisfies the requirements of State Environmental Planning Policy (SEPP) 55 – Remediation of Land. Council is to prepare an initial site contamination investigation report to demonstrate that the site is suitable for rezoning. This report is to be included as part of the public exhibition material.
2. As part of the public exhibition material, Council is to include the Ballina Flood Study Update prepared by BMT WBM Pty Ltd in 2008 and any subsequent updates to this study, including any other supporting material it may have relating to flooding matters.
3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
  - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Department of Planning and Infrastructure 2012)* and must be made publicly available for **14 days**; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning and Infrastructure 2012)*.
4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
  - Office of Environment and Heritage (Flooding Issues)

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.
5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

BALLINA PP\_2012\_BALLI\_007\_00 (12/19107)



**Planning &  
Infrastructure**

6. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated 14<sup>th</sup> day of December 2012.

Sam Haddad  
Sam Haddad  
Director General  
Delegate of the Minister for Planning and  
Infrastructure

BALLINA PP\_2012\_BALLI\_007\_00 (12/19/107)

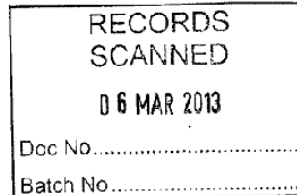
**Appendix 6 – Return advice from the NSW Dept of Environment and Heritage and Summary Table of Council’s Assessment.**



**Office of  
Environment  
& Heritage**

Your reference: BSCPP 12/005 – Burns Point Ferry Road  
(12/7789)  
Our reference: DOC13/4614 FIL07/9244-05  
Contact: Marcy Mills, (02) 6659 8256

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



Att: Simon Scott, Acting Manager Strategic Planning

Dear Sir

**Re: Planning Proposal BSCPP 12/005, Lot 1 DP 522558, No. 6 Burns Point Ferry Road, West Ballina**

Thank you for your letter dated 8 February 2013 notifying the Office of Environment and Heritage (OEH) of a Planning Proposal to amend the *Ballina Local Environmental Plan (LEP) 2012* for No. 6 Burns Point Ferry Road, West Ballina (Lot 1 DP 522558) and inviting comment. I appreciate the opportunity to provide input on this matter.

The planning proposal and associated assessment reports have been reviewed by OEH and the following advice is provided to Council in relation to biodiversity and flood hazard.

**Biodiversity**

OEH notes that the land subject to the planning proposal has been previously disturbed by past land uses, with the most recent being a motel development (Ferry Boat Motel) which was demolished in 2008. It is also acknowledged that the land is flood prone and low lying, with existing ground levels ranging from RL 0.75 AHD to RL 1.1m (Newton Denny Chapelle, May 2012).

Recent aerial photography and satellite imagery of the subject site indicates that regeneration of native vegetation has been occurring on the site. OEH recognises that this vegetation may be in low condition due to previous land uses and continued maintenance of the site however the vegetation may still be of conservation significance.

Previous environmental investigation of the land immediately adjoining the subject site (Lot 4 DP 537419) as part of LEP Amendment No. 39 *'Ballina Waterways'* identified the occurrence of freshwater wetland and swamp oak forest. These are floodplain endangered ecological communities (EECs) listed on the *Threatened Species Conservation Act 1995* (TSC Act). Hence, OEH recommends that Council considers requiring further investigations to ascertain whether there are any occurrences of floodplain EECs on the subject site.

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

OEH's preference is for the avoidance of impacts on EECs, but where *in situ* protection is unachievable OEH recommends that impacts to EECs are offset by the protection and ongoing management of comparable habitat in an off-site location. In this regard, OEH recommends that Council gives consideration to offsetting impacts to any EEC found to occur on the subject site, with an appropriate quantum of offset lands comprising comparable EECs that are secured as part of the planning proposal via a legally binding agreement. The quantum of offset lands could be determined via the BioBanking methodology and OEH would be happy to provide advice to Council and the proponent to assist in reaching a suitable outcome in relation to this matter.

In addition to the potential presence of EECs, a flora and fauna assessment of the land adjoining the subject site undertaken in November 2005 identified a number of roost sites for the Eastern Grass Owl (*Tyto longimembris*) which is listed as vulnerable under the TSC Act. The Eastern Grass Owl was also sighted and its calls detected during fauna surveys on the adjoining site in February to March 2005.

Whilst such records do not extend to the subject site, OEH recommends that Council gives consideration to requiring further investigations to identify whether the Eastern Grass Owl (or potential habitat for this species) occurs on the site due to its proximity to the previous sightings and roost sites. This will enable more appropriate consideration of this species in the assessment of the planning proposal.

OEH also recommends that as part of the assessment of the planning proposal, Council gives due consideration to the potential impacts from filling the subject site on the high conservation value native vegetation on land adjoining the site.

#### **Flood Hazard**

OEH notes that a draft Floodplain Risk Management Study has been prepared for the Ballina Local Government Area and exhibited by Council. The flood impact assessment undertaken as part of this study identifies the likely impacts that future development may have on the floodplain and includes an assessment of the subject site (Lot 1 on DP238009) and adjoining land (Ballina Waterways).

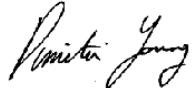
Whilst the results of the flood modelling undertaken as part of the study indicate that the 1 in 100 year peak flood levels in west Ballina would increase by an insignificant amount as a result of individual developments, cumulatively it was acknowledged that the impact from increases in flood levels may not be acceptable to the extent that adverse flooding to neighbouring properties may occur.

The Ballina Flood Study Update (BMT WBM 2008) therefore recommends flood mitigation work, comprising a trapezoidal shaped open floodway transecting the subject site (Lot 1 DP238009) and connecting with a number of flood relief culverts beneath the Pacific Highway to alleviate cumulative flooding impact that is likely to result from future development in west Ballina.

With regard to the above, OEH raises no objection to the planning proposal in relation to flood hazard, provided that the flood mitigation work recommended in the Ballina Flood Study Update for west Ballina is implemented in accordance with the study. Notwithstanding this, OEH recommends that adequate consideration is given by Council to potential impacts from the provision of flood mitigation works on high conservation values that may occur and adjoining the subject site, particularly in relation to the potential occurrence of floodplain EECs.

Should you require further information or clarification, or should Ballina Shire Council be in possession of information that suggests that OEH's statutory interests may be affected, please contact Marcy Mills, Conservation Planning Officer, on 02 6659 8256.

Yours sincerely

 1 March 2013

**DIMITRI YOUNG**  
Regional Coordinator – North East  
Office of Environment and Heritage

**BSC Planning Proposal 12/005 – Burns Point Ferry Road (Old Motel Site)  
Summary of matters raised by the Office of Environment and Heritage (OEH) submission  
dated 1 March 2013**

<b>Matter</b>	<b>Assessment</b>
<p>Biodiversity - While the site has been disturbed by previous land uses, aerial photographs of the subject land indicate that regeneration of native vegetation has been occurring onsite.</p>	<p>Council’s Environmental Scientist has inspected the site and has concurred with the proponent’s view that the site has minimal features of significance. The site comprises slashed grassland with occasional introduced landscape trees and shrub species. It is acknowledged, however, that adverse impacts upon the adjoining land as a result of future development upon the site will need to be considered at the development application stage, particularly where areas of ecological significance are identified.</p>
<p>Biodiversity - Previous environmental investigations have identified the occurrence of freshwater wetland and swamp oak forest upon the adjoining land. These vegetation types are flood plain endangered ecological communities (EEC’s) listed on the Threatened Species Conservation Act 1995 (TSC). OEH recommends that Council considers further investigations to ascertain whether there are any occurrences of floodplain EEC’s on the subject site.</p>	<p>Council’s Environmental Scientist has inspected the site and “<i>confirmed the occurrence of a small area of Freshwater Wetland EEC growing along the southern boundary of Lot 1 (the subject site). It is estimated that the Freshwater Wetland EEC represents less than 0.01% of the EEC’s immediate distribution growing within the locality. Consequently, it is considered likely that any future 5A assessment for the development of the site would conclude the development would not have a significant impact on the local occurrence of the freshwater wetland EEC. However, buffering to the adjacent EEC may be required in conjunction with any future development application.</i>”</p> <p>There are no swamp oak forests upon the subject site.</p> <p>Any future development proposals would be required to address the potential adverse impacts upon adjoining EECs.</p>
<p>Biodiversity - A flora and fauna assessment of the land adjoining the subject site undertaken in 2005 identified a number of roost sites for the Eastern Grass Owl which is listed as vulnerable under the TSC.</p>	<p>In regards to the occurrence of the vulnerable Eastern Grass Owl, Council’s Environmental Scientist has advised as follows;  <i>“Given the proposed development is to occupy the same footprint and the previous motel the impact of the development on the Grass Owl population is likely to be minimal. However, issues associated with light and noise disturbance will be required to be assessed during the preparation of a development application of the site.”</i></p>



<b>Matter</b>	<b>Assessment</b>
<p>Biodiversity - Council is to give consideration to the potential impacts from filling the subject site on the high conservation value native vegetation on the adjoining land.</p>	<p>The Ballina Flood Study Update of 2008 indicated that filling of the site would have a negligible effect on flooding in the area. Therefore, it is considered unlikely that the adjoining high conservation value native vegetation will be adversely impacted by flood events following the filling of the subject land. Further consideration to this matter would, however, be required during any future development application process.</p>
<p>Flood Hazard – OEH raises no objection to the planning proposal in relation to flood hazard, provided that the flood mitigation work recommended in the Ballina Flood Study update for West Ballina is implemented in accordance with the study. Council should also give consideration to the potential impacts associated with the provision of flood mitigation works on high conservation value lands on the adjoining subject site, particularly the flood plain EECs.</p>	<p>The subject site is identified as being flood prone and the site has been considered in the Ballina Flood Study Update as undertaken by BMT WBM in 2008. The site was considered in the modelling undertaken for the purposes of the study update as “future development or infrastructure works”. Therefore, the site has already been considered based on a scenario of future filling and building construction in Council’s floodplain modelling and planning. This flood impact report indicated that filling of this site would have a negligible effect on flooding in the area. Any potential adverse impacts on the adjoining land from flood mitigation would be considered during any future development approval process. It is noted that the submission from the OEH refers to the floodway and culverts adjacent to the proposed highway service centre site. Councils Development Engineer has stated that “these works are not linked to the subject site and the filling of the site does not have any impact on the service centre site (adjoining) or vice versa.”</p>