





Planning Proposal – August 2013

Reclassification of Land

Lot 5 DP 843369, Old Bagotville Road, Wardell

13/43681 Council/Gateway

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INTRODUCTION

Summary of Planning Proposal

This planning proposal relates to land identified as Lot 5 DP 843369 located on Old Bagotville Road, Wardell as shown on the locality map below (Figure 1).

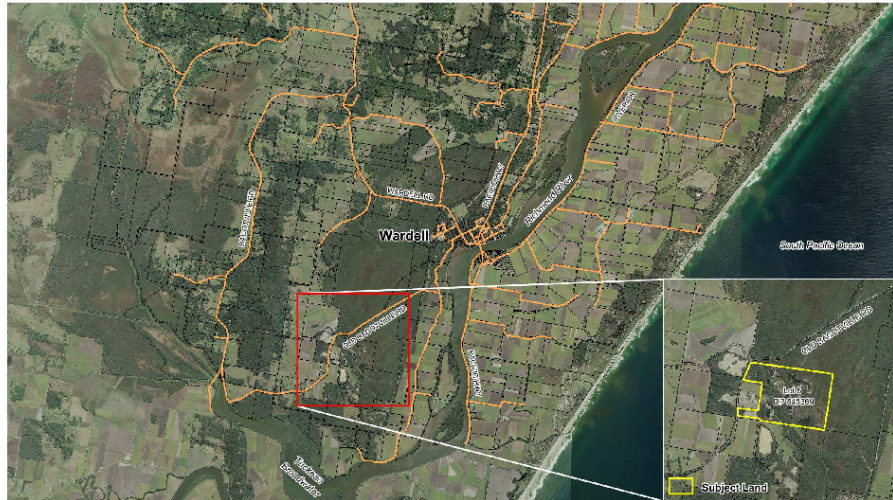


Figure 1 – Site Location

Lot 5 DP 843369 has an area of 50.53 hectares and is in the ownership of Ballina Shire Council. The land is classified as “community land” for the purposes of the *Local Government Act 1993* (LG Act). The purpose of this planning proposal is to enable the reclassification of the land to “operational land” in accordance with the requirements of the LG Act.

Part of Lot 5 DP 843369 is zoned RU2 Rural Landscape under the provisions of the *Ballina Local Environmental Plan 2012* (BLEP 2012) with the remainder of the site being “deferred matter”. This land is identified as deferred matter under the BLEP 2012 due to the proposed application of the E2 Environmental Protection Zone to the land under this plan. The *Ballina Local Environmental Plan 1987* (BLEP 1987) applies to the area identified as “deferred matter”. This area is zoned part 1(b) – Rural (Secondary Agricultural Land) and part 7(l) – Environmental Protection (Habitat) under the provisions of the BLEP 1987. No amendments to the current zoning arrangements under either the BLEP 2012 or BLEP 1987 are proposed as part of this planning proposal.

This planning proposal seeks to reclassify the entire area of Lot 5 DP 843369 from community land to operational land under the provisions of the LG Act. This will involve the amendment of Schedule 4 of the BLEP 2012 and Schedule 7 of the BLEP 1987 to incorporate reference to the reclassification of Lot 5 DP 843369.

Planning Context

Lot 5 DP 843369 was acquired by Council in 1996 for its potential as an extractive resource and future landfill site. Due to the land being acquired at auction, Council was unable to comply with the legislative requirements applicable at the time in relation to the classification of the land as operational land. As such, the land has been classified as community land in accordance with the provisions of the LG Act.

Due to the physical and geographic constraints of Lot 5 DP 843369, it has limited use for future community land uses. As such, to enable Council to consider its options with regard to the sale, lease and/or use of the land, it is considered that the operational land classification is more appropriate for the land. Commercial uses of the land could include quarrying operations.

In addition to the above, the preferred route of the Pacific Highway Upgrade (Woodburn-Ballina Section) traverses Lot 5 DP 843369. The reclassification of the land to operational land will provide support liaison with Roads and Maritime Services with regard to the acquisition of the land required for the highway upgrade.

The reclassification of Lot 5 DP 843369 was considered by Council’s Commercial Services Committee on 18 December 2012 where it was recommended that Council prepare a planning proposal for the reclassification of the land in accordance with the requirements of the LG Act. The minutes of the Commercial Services Committee meeting on 18 December 2012 were tabled and confirmed at Council’s Ordinary Meeting on 20 December 2012. These resolutions and the accompanying report are contained in Appendix A.

Given that the land is Council owned and Council’s associated commercial interest in the site, this planning proposal has been prepared having regard for the Department of Planning and Infrastructure’s Practice Note PN 09-003 - Classification and reclassification of public land through a local environmental plan and Best Practice Guideline: LEPs and Council Land. Information addressing the requirements of the practice note and guideline are contained in Table 1 below.

Table 1 – Site Assessment

Site	Lot 5 DP 843369, Old Bagotville Road, Wardell
Land Register ID	L12034_01
Current Classification	Community Land
Proposed Classification	Operational Land
Reason for classification/ reclassification	To enable Council to exercise its options with regard to the sale, lease or other dealings with the land and to facilitate the acquisition of all or part of the land by Roads and Maritime Services for the purposes of the Pacific Highway upgrade project.
Reason for the Draft LEP	To insert reference to Lot 5 DP 843369 in Schedule 4 of the BLEP 2012 and Schedule 7 of the BLEP 1987 to enable the reclassification of the subject land from community land to operational land.
Ownership of the land	Ballina Shire Council
Nature of Council's Interest	Council acquired the subject land on 17 April 1996 with the intention of seeking a commercial return based on the potential of the land for extractive resources (quarrying). The subject land has not been actively used for quarrying since Council’s acquisition. However,

9.3 Land Reclassification - Lot 5 DP 843369, Old Bagotville Road.DOC

	Council wishes to examine other uses and outcomes relating to deriving an economic return from the land.
Other parties with interests	There are no other parties with an interest in this land.
Change of interests resulting from classification/reclassification	Not applicable – there are no other parties with an interest in this land.
Special agreements applicable to the land	No special agreements apply to the land.
Financial issues	The reclassification of the land will enable Council to utilise or dispose of the subject land for financial gain consistent with the initial reasons for the land's acquisition.
Asset issues	Aside from previously established quarry pits, the land is currently vacant and there are no assets or substantial physical improvements present.

PART 1 – OBJECTIVES OR INTENDED OUTCOMES

The objectives or intended outcomes of this planning proposal are:

- to reclassify Lot 5 DP 843369 to operational land to provide greater flexibility for Council in its future considerations for the use of the subject land, including the facilitation of acquisition for the proposed Pacific Highway upgrade.

PART 2 – EXPLANATION OF THE PROPOSAL

This planning proposal will result in the amendment of Schedule 4 of the BLEP 2012 and Schedule 7 of the BLEP 1987 to incorporate reference to the reclassification of Lot 5 DP 843369 from community land to operational land for the purposes of the *Local Government Act* 1993.

PART 3 – JUSTIFICATION

Section A - Need for the Planning Proposal

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

The planning proposal is the result of an internal review of Council's landholdings.

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

The planning proposal to reclassify Lot 5 DP 843369 as operational is the best means for achieving the objectives as outlined in the assessment contained in Table 1.

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 to reclassify the subject land is consistent with the objectives and actions in the applicable regional and sub-regional strategies.

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

The proposed reclassification will enhance Council's options for the future use and/or disposal of the subject land and will enable the land to be used based on the purposes for which it was acquired. This is consistent with the principles of managing Council's finances and assets as specified in Council's adopted Community Strategic Plan 2013-2023.

5. Is the planning proposal consistent with applicable state environmental planning policies?

The proposal is generally consistent with applicable State Environmental Planning Policies (SEPPs).

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

The proposal is consistent with the relevant Section 117 Directions as detailed in the Section 117 Direction Checklist contained in Appendix B.

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?**

The proposed reclassification will not result in direct impacts on critical habitat or threatened species, populations or ecological communities or their habitats.

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

No other likely environmental effects are expected.

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

The proposed reclassification is not expected to result in any adverse social or economic effects. The social and economic effects are likely to be positive through providing Council with greater control and flexibility in the management and ongoing use of the land. The land has no underlying public recreational use.

Section D - State and Commonwealth interests.

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

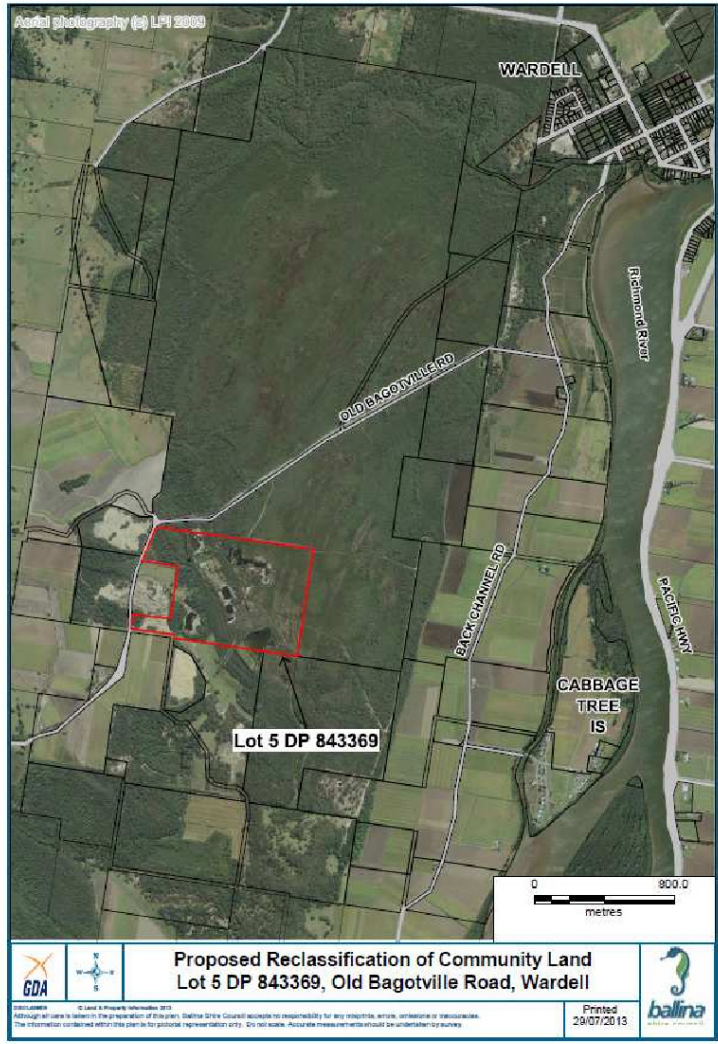
The planning proposal will not create any need for public infrastructure.

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

No engagement with State or Commonwealth public authorities has been undertaken as part of this planning proposal to date.

PART 4 – MAPPING

The planning proposal relates to the reclassification of Lot 5 DP 843369 from community land to operational land as detailed in the locality plan below. The proposal will not result in amendments to any of the maps associated with either the BLEP 2012 or the BLEP 1987.



PART 5 – COMMUNITY CONSULTATION

Council has not undertaken any community consultation concerning this specific planning proposal. It is anticipated that this will occur as part of the formal exhibition of the planning proposal or as directed through the Gateway determination process. This is expected to comprise the standard 28 day public exhibition process followed by a public hearing into the reclassification of community land in accordance with legislative requirements.

PART 6 – TIMELINE

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination (Anticipated)	September 2013
Government Agency Consultation	October 2013
Public Exhibition Period	October 2013
Public Hearing (if required)	November 2013
Submissions Assessment	December 2013
RPA Assessment of Planning Proposal and Exhibition Outcomes	January 2014
Submission of Endorsed LEP to DP&I for Finalisation	January 2014
RPA Decision to Make the LEP Amendment (if delegated)	N/A – proposal not subject to delegation
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	N/A – proposal not subject to delegation

Note: Council is not seeking delegation of plan making functions in relation to this proposal due to Council’s commercial interest in the subject property.

APPENDICES

Appendix A – Council Reports and Resolutions

4.2 Reclassification of Land - Old Bagotville Road, Wardell

4.2 Reclassification of Land - Old Bagotville Road, Wardell

Delivery Program Commercial Services

Objective To reconsider the proposal to reclassify Lot 5 DP 843369, Old Bagotville Road, Wardell from Community Land to Operational Land for the purpose of the Local Government Act 1993.

Background

A report was submitted to Council at its Ordinary Meeting held on 24 March 2011 in relation to the reclassification of Lot 5 DP 843369, Old Bagotville Road, Wardell from community land to operational land pursuant to the provisions of the Local Government Act 1993 (site plan attached). Council, at that time, did not support the reclassification due to concerns expressed by Wardell residents.

A number of these concerns related to the expansion of private quarries in the Bagotville area and the increased traffic flows that may result.

The purpose of this report is to ask Council to reconsider this matter due to the private quarry expansions not proceeding and the further progression of the Woolgoolga to Ballina highway realignment.

Key Issues

- Whether Lot 5 DP 843369 is best classified as operational or community land

Information

The Local Government Act (LGA) requires that all land in Council ownership be classified as either operational land or community land. Council may deal with operational land without any restrictions under the LGA. Such land is generally held and used in connection with Council's administrative operations, utilities (water, waste, wastewater) and/or commercial activities.

Community land consists typically of open space owned by Council for which there is a range of management requirements under the LGA to ensure that these community assets are retained and managed for the benefit of the community. The LGA prohibits the sale of community land and imposes restrictions on its development and use.

The reclassification of community land to operational land can only be undertaken through an amendment to the Ballina Local Environmental Plan 1987 (BLEP). This will require a planning proposal to be prepared by Council and submitted to the NSW Department of Planning.

4.2 Reclassification of Land - Old Bagotville Road, Wardell

The Department will then issue a gateway determination indicating whether the matter should proceed. Where the Department determines that the matter should proceed, it will indicate whether any further studies or information is required, as well as the requirements for community and agency consultation.

In accordance with the requirements of the LGA, Council is also required to arrange a public hearing in respect of any planning proposal to reclassify community land as operational land.

The Department of Planning's reclassification site assessment sheet has been completed for Lot 5 and is **attached** for Council's information. The assessment outlines the rationale for the proposed reclassification. A locality plan is also **attached**.

Lot 5 was purchased by Council in 1996 to realise a commercial return on its extractive resource or alternatively to use the land as a possible landfill site. The land had several developed quarry pits at the time of purchase. Council was actively involved in quarrying at the time, but has since changed its corporate focus with the lease of its approved quarries to contractors in exchange for royalty payments.

In respect to landfill options the preferred regional approach is for sites near Coraki and / or Kyogle. If these did not proceed the reclassification to operational land would be more suitable for use of this land as a landfill site.

The reason the land was initially classified as community land was that at the time of purchase Council did not provide the required notice to classify the land as operational land. This was because the land was being sold at auction and there was a commercial imperative for Council to be an anonymous bidder. Legislation has since been amended to allow post-purchase notification (within three months) to recognise such situations.

Legal / Resource / Financial Implications

The reclassification of the land can be undertaken within the available resources of Council. The reclassification of Lot 5 will enable Council to realise the value of the land through its sale or development should it choose to examine these options in the future. Moreover, and in general terms, the operational classification would more aptly reflect the environmental and other characteristics of the land.

The proposed Woodburn-Ballina section of the Pacific Highway upgrade affects part of Lot 5 and the acquisition of all or part of the land by RMS is expected. The reclassification of the land would make it easier to deal with RMS on a compensation basis and possibly provide an opportunity to sell material to RMS.

4.2 Reclassification of Land - Old Bagotville Road, Wardell

Consultation

There have previously been objections to this proposal from residents at Wardell as there are concerns that the site could be used as a quarry and result in increased truck movements through Wardell. This was a particularly sensitive matter when Council was considering two applications for extensions to existing private quarries in the Bagotville area. Those two applications did not eventually proceed, however it is fair to say that the Wardell residents do not want to see any increased traffic flows from an expansion of any quarry operations.

Whether or not Council will use the site as a quarry is uncertain, particularly with the future bypass likely to traverse this area. Importantly, having the land classified as operational allows Council to then assess the best option for the land.

The reclassification process is subject to public consultation with the outcomes reported to Council.

Options

The options are to commence the process for reclassification to operational land or not.

Due to the nature of the land, the future possible uses, plus the likelihood of part or all of the land being acquired by the RMS, the most appropriate classification for this land is operational and the recommendation is to commence the reclassification process.

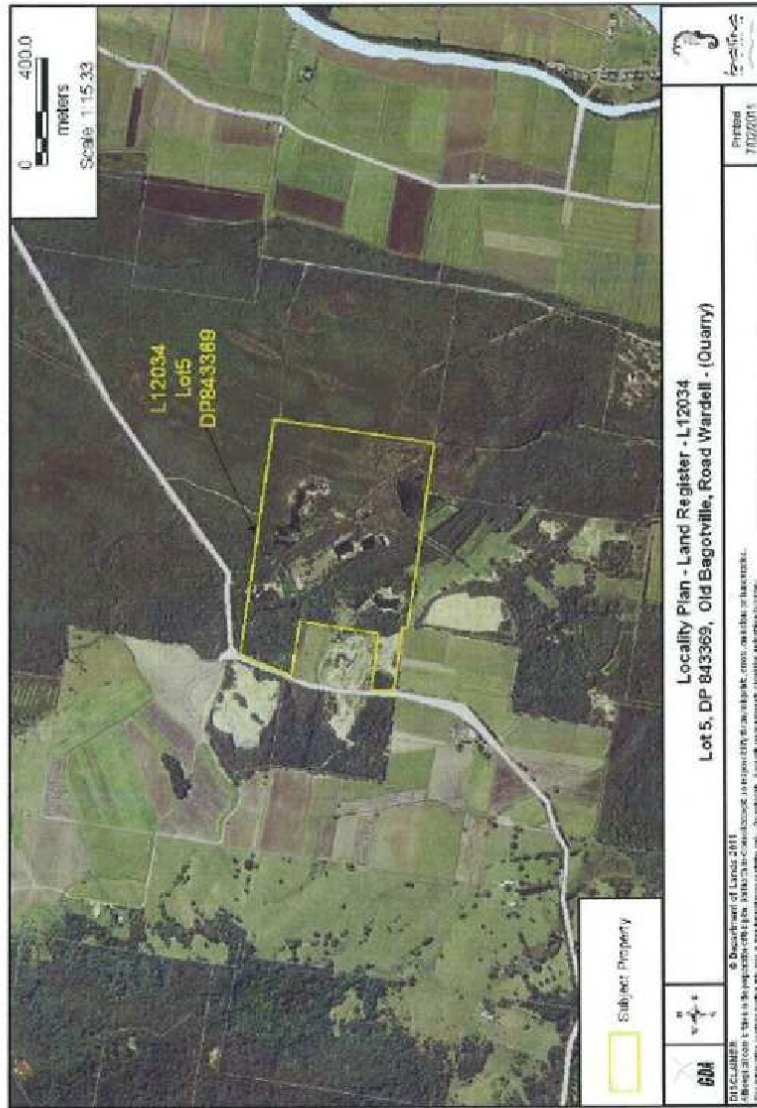
RECOMMENDATIONS

1. That Council prepare a planning proposal for the reclassification of Lot 5 DP 843369, Old Bagotville Road, Wardell from community land to operational land in accordance with the requirements of the Local Government Act 1993.
2. That the matter be reported to Council for determination at the conclusion of the community consultation phases.

Attachment(s)

1. Locality Plan
2. Site Assessment Sheet

4.2 Reclassification of Land - Old Bagotville Road, Wardell



4.2 Reclassification of Land - Old Bagotville Road, Wardell

Proposed Classification or Reclassification of Land - Site Assessment February 2011

Site	Lot 5 DP 843369, Old Bagotville Road, Wardell
Land Register ID	L12034_01
Current Classification	Community Land
Proposed Classification	Operational Land
Reason for classification/ reclassification	To recognise that Council purchased this land to realise a commercial return on its extractive resource. The land had several developed quarry pits at the time of purchase. Note: Council was unable to give the required pre-purchase notice of its intention to classify this land as Operational because of the commercial imperative of remaining an anonymous bidder at the auction for the land. Legislation has since been amended to allow post-purchase notification to recognise such situations.
Reason for the Draft LEP	The classification/ reclassification forms part of the Shire Wide LEP renewal process. This process is a requirement of the NSW Department of Planning.
Ownership of the land	Ballina Shire Council
Nature of Council's Interest	The property was purchased at auction on 17 April 1996 with funds generated by Council's land development activities.
Other parties with interests	There are no other parties with an interest in the land.
Change of interests resulting from classification/ reclassification	Not applicable because there are no other parties with interests in the land.
Special agreements applicable to the land	There are no special agreements applicable to this land.
Financial issues	The reclassification of the land has significant financial implications because Council is presently constrained by the <i>Local Government Act 1993</i> from developing or realising the market value for the land.

**MINUTES OF THE COMMERCIAL SERVICES COMMITTEE MEETING
OF THE BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET BALLINA,
ON 18/12/12 AT 5.00 PM**

4.2 Reclassification of Land - Old Bagotville Road, Wardell

RECOMMENDATION

(Cr Keith Johnson/Cr Ben Smith)

1. That Council prepare a planning proposal for the reclassification of Lot 5 DP 843369, Old Bagotville Road, Wardell from community land to operational land in accordance with the requirements of the Local Government Act 1993.
2. That the matter be reported to Council for determination at the conclusion of the community consultation phases.

FOR VOTE - All Councillors voted unanimously.

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET, BALLINA,
ON 20/12/12 AT 9.00 AM**

14.3 Commercial Services Committee Minutes - 18 December 2012

201212/36 RESOLVED

(Cr Ben Smith/Cr Sharon Cadwallader)

That Council confirms the minutes of the Commercial Services Committee meeting held 18 December 2012 and that the recommendations contained within the minutes be adopted, with an amendment to the voting on the item "Adoption of Recommendations from Confidential Session" – Cr Jeff Johnson voted against.

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

Appendix B – Section 117 Direction Checklist

Section 117 Direction Checklist	
Planning Proposal – Lot 5 DP 843369, Old Bagotville Road, Wardell	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Consistent. While the subject site is zoned part RU2 Rural Landscape (BLEP 2012) and part 1(b) Rural (Secondary Agricultural Land) (BLEP 1987), the proposal does not seek to amend these current zonings.
1.3 Mining, Petroleum Production and Extractive Industries	Consistent. This planning proposal relates to the reclassification of land only and will not result in the prohibition or restriction of mining, petroleum production and extractive industries.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Consistent. The subject site is zoned part RU2 Rural Landscape (BLEP 2012) and part 1(b) Rural (Secondary Agricultural Land) (BLEP 1987). The planning proposal is for reclassification of the land and is generally consistent with the Rural Planning Principles contained in State Environmental Planning Policy (Rural Lands) 2008.
2. Environment and Heritage	
2.1 Environmental Protection Zones	Consistent. Part of the subject site is zoned 7(l) Environmental Protection (Habitat) (BLEP 1987). The reclassification of land included in this planning proposal will not reduce the environmental protection standards that currently apply to the land
2.2 Coastal Protection	Does not apply to planning proposal.
2.3 Heritage Conservation	Consistent. The planning proposal is for the reclassification of land and will not directly impact any known items, areas, objects or places of environmental heritage significance and indigenous heritage significance.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal will not enable the land to be developed for a recreational vehicle area.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to planning proposal.
3.3 Home Occupations	Does not apply to planning proposal.
3.4 Integrated Land Use and Transport	Does not apply to planning proposal.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulphate Soils	Consistent. Although the site contains potential acid sulfate soils (at a depth beyond 2m), the planning proposal relates to the reclassification of land only. The planning proposal will not amend the applicable regulatory requirements of the BLEP 2012 and BLEP 1987 that address development on land having the potential for acid sulfate soils.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Does not apply to planning proposal.

9.3 Land Reclassification - Lot 5 DP 843369, Old Bagotville Road.DOC

4.4 Planning for Bushfire Protection	Consistent. While the subject site is identified as being bush fire prone land, the planning proposal relates only to the reclassification of the land and will not result in any inconsistencies with this planning direction.
5. Regional Planning	
5.1 Implementation of Regional Strategies	The Far North Coast Regional Strategy applies to Ballina Shire. The planning proposal is consistent with the Far North Coast Regional Strategy.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Does not apply to planning proposal. The subject land is not identified under the Northern Rivers Farmland Protection Project as being either State or Regionally Significant Farmland.
5.4 Commercial and Retail Development	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Repealed
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Repealed
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Repealed
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The subject site is not zoned or reserved as land for a public purpose.
6.3 Site Specific Provisions	Does not apply to planning proposal.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.



CivilTech
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● Subdivision Design ● Civil Engineering ● Town Planning ● Project Management

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Reclassification of Land
Lot 5 DP843369
Old Bagotville Road, Wardell

12 July 2013

Adrian Zakaras
Town Planner, CivilTech

Ref No 1392



DISCLAIMER

This report has been prepared for the use of the stated client and for the specific purpose described in the Introduction and is not to be used for any other purpose or by any other person or corporation. CivilTech accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this report in contravention of the terms of this disclaimer.

Due consideration has been given to site conditions and to appropriate legislation and documentation available at the time of preparation of the report. As these elements are liable to change over time, the report should be considered current at the time of preparation only.

No site inspections were undertaken in the preparation of this report, CivilTech accepts no responsibility for any omissions that may have occurred due to the desktop nature of the report.

Conclusions to the report are professional opinions and CivilTech cannot guarantee acceptance or consent of the relevant determining/ consent authorities. Subsequent requests for further work or information may be subject to agreements and additional fees.



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PROPERTY SUMMARY

Address	Old Bagotville Road, Wardell
Real Property Description	Lot 5 DP843369
Current Use	Vacant (disused quarry)
Land Area	50.53 hectares
Land Use Zoning	<p>RU2 Rural Landscape and Deferred Matter under the provisions of the Ballina Local Environmental Plan 2012.</p> <p>1(b) Rural – Secondary Agricultural Land and 7(l) Environmental Protection – Habitat.</p>



1. Introduction

CivilTech Consulting Engineers (CivilTech) has been engaged by Ballina Shire Council to prepare a report to assist in the preparation of a Planning Proposal for land formally known as Lot 5 DP843369 located on Old Bagotville Road, Wardell.

An aerial view of the subject site is provided in Plate 1 below.

This report has been prepared to assist Council in the preparation of a Planning Proposal to reclassify the land from Community Land to Operational Land in accordance with the requirements of the *Local Government Act 1993*. The report contains the following information:

- Introduction;
- Subject Site;
- Previous Approvals/uses;
- Background to Reclassification;
- Local Environmental Plans and Council Policies;
- Summary.

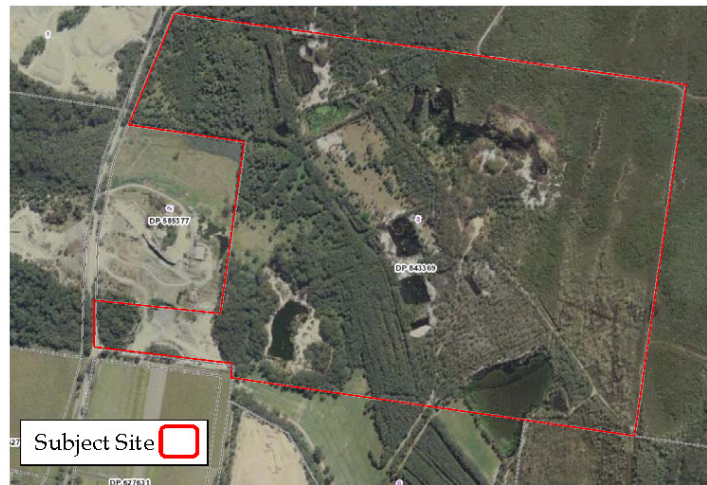


Plate 1: Aerial View of Subject Site (source www.imagery.maps.nsw.gov.au)



2. Subject Site

The land has an area of 50.53 hectares and is accessed via Old Bagotville Road.

The land is currently vacant and has previously been used for quarry operations.

The property was purchased by Ballina Shire Council at auction on 17 April 1996 with funds generated by Council's land development activities.

The land is zoned RU2 Rural Landscape and Deferred Matter under the provisions of the Ballina Local Environmental Plan 2012 (BLEP 2012). The land zoned deferred matter under BLEP 2012 is zoned 1(b) Rural – Secondary Agricultural Land and 7(l) Environmental Protection – Habitat under the provisions of Ballina Local Environmental Plan 1987 (BLEP 1987).

The preferred route of the Woodburn to Ballina Pacific Highway deviation traverses part of the land (see Attachment A). It is expected that the Roads and Maritime Services (RMS) will acquire the land they require in due course.

The site is identified in the Ballina Growth Management Strategy as being identified Resource Area, Transition Area – areas adjacent to identified resource areas and a Potential Resource Area under the Mineral Resources Map (see Plate 5).



3. Previous Approvals/Land Uses

Development Consent DA1995-89 was issued by Ballina Council on 19 January 1995 to allow *"The continued operation of two existing shale quarries pursuant to State Environmental Planning Policy No. 37 – Continued Mines and Extractive Industries, and the increase in production levels to a maximum annual rate of 37,000 cubic metres."*

A Section 96 amendment application was subsequently lodged to increase the time for the deferred commencement conditions to be completed.

A copy of this approval and Section 96 approval is attached in Appendix B.



4. Background to Reclassification

The land was purchased at auction by Council in 1996, at a time when Council was actively involved in quarrying operations, to realise a commercial return on the lands extractive resource (shale). At the time of purchase, the land had numerous developed quarry pits.

An alternative to the quarrying of the site was the use of the site as a landfill site. This has not eventuated and the current preferred regional approach to landfill is for sites near Coraki and/or Kyogle.

As the land was purchased at auction, Council was unable to give the required pre-purchase notice of its intention to classify the land as Operational because of the commercial imperative of remaining an anonymous bidder.

A report was submitted to Council at the 24 March 2011 Ordinary Meeting in relation to the reclassification of the land from Community Land to Operational Land. The proposal to reclassify the land was not supported at this time due to concerns raised by Wardell residents in relation to the expansion of private quarries in the Bagotville area and the increased traffic flows that may result. These private quarry expansions did not proceed.

As mentioned previously, the preferred Pacific Highway upgrade route from Woodburn to Ballina traverses the subject site (see Attachment A). The reclassification of the land from community land to operational land will make it easier to liaise with RMS regarding the acquisition of the land required for the highway upgrade.

Additionally, having the land classified as operational land will allow the RMS to utilise some of the lands extractive resource (subject to development consent) for the construction of the Pacific Highway.



5. Local Environmental Plans and Council Policies

- Ballina Local Environment Plan (BLEP) 2012

As shown in Plate 2 below, the land is zoned RU2 Rural Landscape and Deferred Matter under the provisions of the Ballina Local Environmental Plan 2012. Clause 1.3 states that the BLEP 2012 does not apply to land identified as Deferred Matter on the Land Zoning Maps.

The land (subject to BLEP 2012) is identified on the Lot Size Map (Sheet LSZ_003) as AB2 – 40 hectares.

The Land Use Table of the RU2 zone is attached in Appendix C.

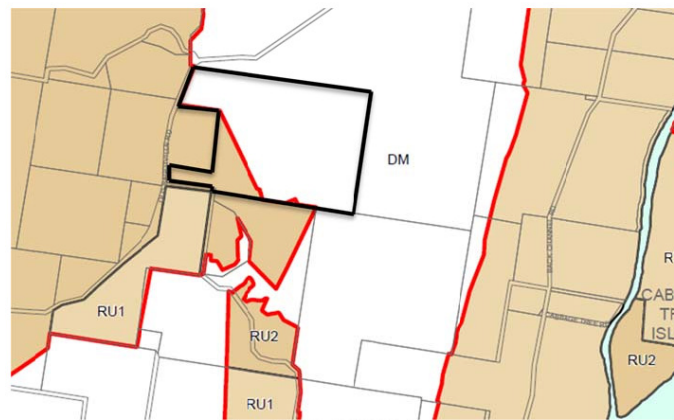


Plate 2: BLEP 2012 Zoning



- **Ballina Local Environment Plan (BLEP) 1987**

The land zoned deferred matter under BLEP 2012 is zoned 1(b) Rural – Secondary Agricultural Land and 7(l) Environmental Protection – Habitat under the provisions of BLEP 1987 (see Plate 3).

The Land Use Table of the 1(b) and 7(l) zones are attached in Appendix C.

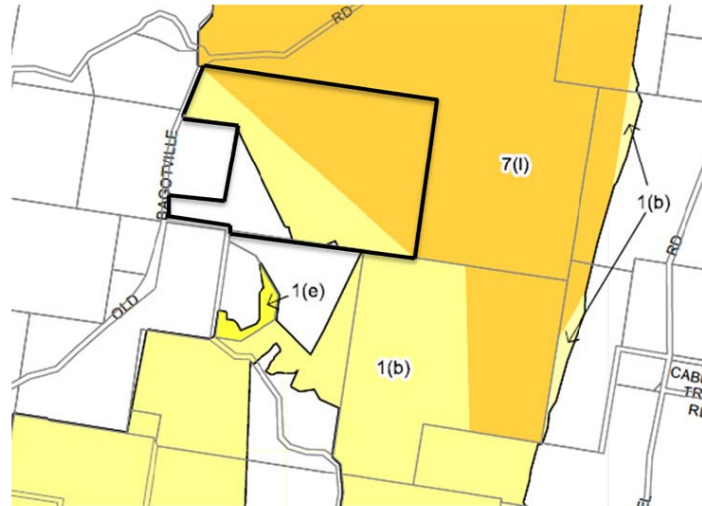


Plate 3: BLEP 1987 Zoning

- **Ballina Shire Growth Management Strategy 2012**

The Ballina Shire Growth Management Strategy 2012 provides the framework for managing population and employment growth in the Ballina Shire, with respect to residential, commercial and industrial development opportunities, over the planning period of 2012-2031.

As shown in Plate 4, part of the site is mapped as containing High Conservation Value vegetation.

Plate 5 shows the site as being identified Resource Area, Transition Area – areas adjacent to identified resource areas and a Potential Resource Area under the Mineral Resources Map.





Plate 4: High Conservation Value vegetation (source: Ballina Shire Growth Management Strategy)

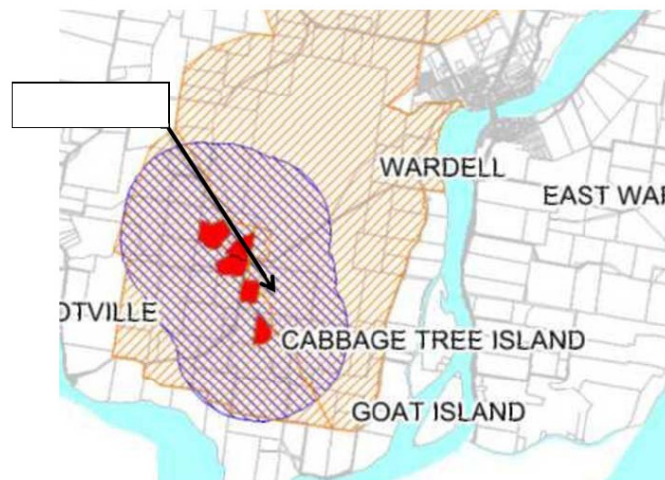


Plate 5: Mineral Resources Map (source: Ballina Shire Growth Management Strategy)



6. Summary

Reclassification of the land from Community Land to Operational Land has significant financial implications for Council and will allow Council to realise the commercial value of the land through its sale (to the RMS or other) or through the future development of the land (for a quarry, landfill site or another undetermined use).

Any future development of the land, should it proceed, will be subject to development consent and be required to be assessed in accordance with the relevant legislation applicable at the time of submission for the type of development proposed.

The reclassification will also simplify the process of selling the land, or part thereof, to the RMS for the proposed Pacific Highway realignment.

The classification of the land as Operational Land is most appropriate given the reasons detailed above.



7. Attachments

Attachment A – Pacific Highway Realignment Concept Plan

Attachment B – Development Consent and Section 96 Approval

Attachment C – Land Use Tables



9.3 Land Reclassification - Lot 5 DP 843369, Old Bagotville Road.DOC

*Reclassification of Land
Lot 5 DP843369*

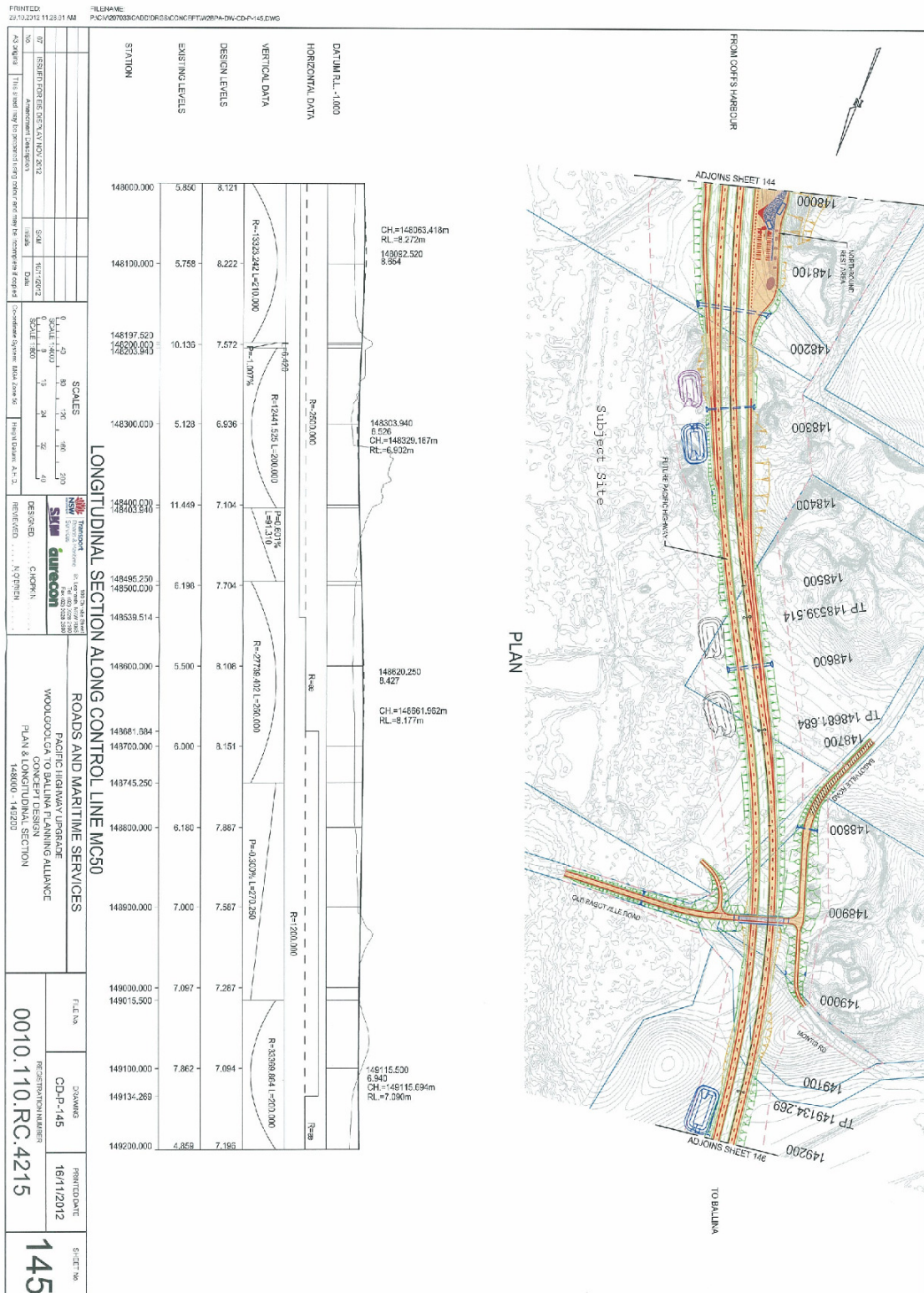
Attachment A – Pacific Highway Realignment Concept Plan

Ref No: 1392

CivilTech Consulting Engineers



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Attachment B – Development Consent and Section 96 Approval

Ref No: 1392

CivilTech Consulting Engineers



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Ballina Shire Council



Cnr. Cherry & Tamar Streets
P.O. Box 450, BALLINA, N.S.W. 2478
DX 27789, BALLINA
TELEPHONE No. 86 4444 (STD 066)
FAX No. (066) 86 7035

ENQUIRIES REFER

IN REPLY PLEASE QUOTE
DA-1995/89

95/206

FORM 7

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979.

NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

The GeoLINK Group Pty. Ltd.,
P.O. Box 9,
LENNOX HEAD. 2478

being the applicant in respect of development application No.1995/89
for the following use:

The continued operation of two existing shale quarries pursuant to
State Environmental Planning Policy No. 37 - Continued Mines and
Extractive Industries, and the increase in production levels to a
maximum annual rate of 37,000 cubic metres - (EATON)

Pursuant to Section 92 of the Act, notice is hereby given of the determination by
Ballina Shire Council of the abovementioned development application relating to
land described as Lot 5 in DP 843369 (Subdivision of Lot 4 in DP 619233) Old
Bagotville Road, Bagotville.

The development application has been determined by granting of consent subject to
the following conditions:

"DEFERRED COMMENCEMENT"

1. The preparation of a detailed Mining, Rehabilitation and Environmental
Management Plan for the continued operation of the quarry, to the
requirements and satisfaction of the Department of Mineral Resources. Such
Plan is to be submitted to Council for approval in consultation with the
Regional Inspector of Mines (Department of Mineral Resources), prior to the
consent becoming effective. Such Plan shall report on all operational
parameters of the quarry including, but not limited to; quarry development,
ripping and blasting activities and monitoring, progressive rehabilitation,
control of pollutants, quantity of material won, ground water seepage into
the pit, surface water effects and proposals to ameliorate impacts on the
road network.
2. The preparation and submission of a Noise Impact Statement (NIS) to the
requirements and satisfaction of the Environment Protection Authority,
including but not limited to, details of the predicted noise levels, the
distance from any noise or vibration sources (ie blasting, crushing or
transportation activities) to the nearest residence and the attenuation
measures proposed, the noise levels of laden and unladen transport vehicles
along local access roads and the impact on local residences. Such statement
is to be submitted to Council for ratification in consultation with the
Environment Protection Authority.

cont...

All communications should be addressed to the General Manager



DA-1995/89 cont...

PAGE 2.

3. The disposal of refuse currently existing on the site shall not be made to any of Ballina Shire Council's disposal areas. Arrangements satisfactory to the Shire Engineer for the removal of the refuse shall be fully documented and provided to Council for approval prior to the consent becoming effective.
4. Should the above requirements in conditions No. 1, 2 and 3 not be completed to Council's satisfaction within 6 months from the date of this notification, the development consent shall not become effective.

GENERAL CONDITIONS

1. Development of the site being carried out generally in accordance with the plans and statement of environmental effects prepared by *The GeoLINK Group, Dated September 1994* and submitted with the development application, subject to such amendment as required by any conditions specified hereinafter.
2. The development shall meet noise emission criteria, standards relating to airborne pollutants and discharge of polluted waters from the site as specified by the Environment Protection Authority.
3. Any remaining topsoil and overlying material above resource base, is to be progressively stripped from areas to be excavated and stockpiled separately. Stockpiles are to be located away from the general operation of the quarry, are to be stabilised (erosion and sediment controls provided) and be preserved for the future rehabilitation of the quarry.
4. Sediment control measures shall be put into place and be properly maintained to prevent soil erosion and the transport of sediment off the development site or into natural or man-made drainage lines or watercourses during rainfall and run-off. All topsoil, subsoil stockpiles, and landscaping mounds shall be stabilised and revegetated by turfing or an approved seeding method within 14 days of completion of earthworks in each part of the quarry. It is a requirement that the topsoil be preserved for use with the site rehabilitation. Details showing sediment control measures and rehabilitation works shall be incorporated into the Mining, Rehabilitation and Environmental Management Plan.
5. The proposed sedimentation ponds are to have the following design criteria:
 - i) a basin volume of 250 cubic metres per hectare of disturbed catchment (ie exposed quarry) entering each pond;
 - ii) the total storage shall be two-thirds of settling volume at a minimum depth of 0.6 metres and one-third sediment storage volume; and,
 - iii) the minimum basin surface area at the crest elevation of the primary outlet is to be 185 sq metres per hectare of disturbed catchment entering each basin.
6. General quarry operations are to be restricted within the hours 7.00am to 6.00pm, Mondays to Fridays.
7. Blasting operations shall be restricted to the hours of 9.00am to 3.00pm, Mondays to Fridays. At least 24 hours notice shall be given to adjoining landowners prior to commencement of blasting operations.
8. No fixed building, plant or machinery shall be erected on the site without the prior consent of the Council.

cont...

DA-1995/89 cont...

PAGE 3.

9. That a stockproof fence and appropriate warning signage is to be erected around the quarry perimeter incorporating lockable gates.
10. No material for quarry infilling shall be imported to the site without the prior consent of Council.
11. Operational plant (crushers, screening facilities, dozers, front end loaders) used on a temporary and contract basis shall comply with and meet the relevant criteria and standards as specified by the Environment Protection Authority.
12. Oils, lubricants and fuels shall be stored in bunded areas sufficient to hold the stored liquids in the event of accidental spillage, to the requirements and satisfaction of Council's Engineer and Health and Building Surveyor. Design and details of such areas are to be provided in the Mining, Rehabilitation and Environmental Management Plan.
13. The sequence of operations in each stage of the site development shall take place only in accordance with the Statement of Environmental Effects and the Mining, Rehabilitation and Environmental Management Plan (MREMP).
14. That a monitoring program be implemented to the requirements and satisfaction of the Department of Water Resources, to ensure that surface water discharge is below the recommended limit of 50 mg/L for non-filterable residues, and that a plan for the control of such a discharge is prepared before new works commence. Such is to be identified in the Mining, Rehabilitation and Environmental Management Plan.
15. On-site effluent disposal facilities shall be designed and constructed in accordance with the requirements of Council's Chief Health and Building Surveyor.
16. A full and detailed landscaping plan is to be submitted to Council (and included as part of the Mining, Rehabilitation and Environmental Management Plan) detailing types of vegetation and maintenance programs therefore.
17. The annual rate of extraction shall not exceed 37,000 cubic metres. Details are to be submitted to Council on a quarterly (3 month) basis. The prior Development consent of Council shall be obtained for any extraction in excess of this amount.
18. Traffic signage is to be erected at suitable locations along Old Bagotville Road advising of traffic hazards to the requirements and satisfaction of the Shire Engineer.
19. A road maintenance levy of \$0.23/cubic metre hauled shall be paid quarterly to Council. The levy is to be increased annually in accordance with Consumer Price Index for Sydney, commencing January each year for the life of the quarry. Such is to be paid in advance to an amount conforming to 15 loaded truck movements per day.
20. This consent shall permit quarrying on the site for not more than 20 years from the endorsement date of consent of this certificate.

cont...

DA-1995/89 cont...

PAGE 4.

21. In respect to the necessity for Council to monitor the subject development and ensure that the quarry operations are conducted in accordance with the Mining, Rehabilitation and Environmental Management Plan (MREMP) and the conditions of development consent, the mine operator shall pay to the Council prior to this consent becoming effective and on each anniversary of the commencement date of this consent, an amount to be determined by Council upon receipt of the MREMP, to defray continued monitoring activities. The payments so made shall not be refundable.

The abovementioned conditions have been imposed for the following reasons:

1. to ensure that the development is undertaken in accordance with the terms and limitations of the development application and of this consent,
2. to ensure compliance with relevant Health and Building Code of Australia requirements,
3. to protect the existing and likely future amenity of the locality,
4. to ensure traffic efficiency and safety on the public street and to preserve the opportunity for casual on-street parking,
5. to ensure compliance with the Ballina Local Environmental Plan 1987,
6. to protect the public interest;
7. to ensure that the quarry is operated in an environmentally sensitive manner in accordance with a Mining, Rehabilitation and Environmental Management Plan;
8. to protect the existing and likely future amenity of the locality and to attain the Objects of the Environmental Planning and Assessment Act, 1979.

THIS CONSENT IS FOR THE USE OF THE PROPERTY ONLY AND IS NOT A BUILDING PERMIT WHICH MUST ALSO BE OBTAINED FROM COUNCIL'S HEALTH & BUILDING DEPARTMENT BEFORE ANY STRUCTURAL WORK COMMENCES. THE BUILDING PERMIT WILL CONTAIN ADDITIONAL CONDITIONS.

Endorsement of the date of consent - 19th January, 1995



G.J. Faulks,
GENERAL MANAGER.

23/1/1995

(See notations on reverse hereof.)

DA-1995/89

95/3833

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION

TO AMEND DEVELOPMENT CONSENT

To: The GeoLINK Group Pty. Ltd.
PO Box 9
LENNOX HEAD. 2478

being the applicant in respect of an application seeking amendment of development consent No. 1995/89 for the following use:-

The continued operation of two existing shale quarries pursuant to State Environmental Planning Policy No. 37 - Continued Mines and Extractive Industries, and the increase in production levels to a maximum ^{annual} rate of 37,000 cubic metres (EATON).

Pursuant to Section 102 of the Act, notice is hereby given that the application seeking amendment of the subject development consent has been determined by granting approval to the modifications specified in this notice.

DETAILS OF AMENDMENT

Deferred commencement condition No. 4 shall be amended to read:

"4. Should the above requirements in conditions No. 1, 2 and 3 not be completed to Council's satisfaction by the 18th September, 1995, the development consent shall not become effective.

NB: In all other respects the terms conditions and limitations of Development consent No. 1995/89, endorsement date of consent 19th January, 1995, shall remain applicable.

G.J. Faulks,
GENERAL MANAGER.

3.7.1995

Attachment C – Land Use Tables





[Whole title](#) | [Parent Act](#) | [Historical versions](#) | [Historical notes](#) | [Search title](#) | [Maps](#) |

Ballina Local Environmental Plan 2012

Current version for 1 July 2013 to date (accessed 12 July 2013 at 11:45)

[Land Use Table](#) → [Zone RU2](#)

<< page >>

Zone RU2 Rural Landscape

1 Objectives of zone

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

2 Permitted without consent

Environmental protection works; Extensive agriculture; Home-based child care; Home occupations; Intensive plant agriculture

3 Permitted with consent

Agriculture; Airstrips; Animal boarding or training establishments; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Community facilities; Correctional centres; Crematoria; Depots; Dual occupancies (attached); Dwelling houses; Environmental facilities; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Function

<http://www.legislation.nsw.gov.au/inforce/act/12012012/act/landusepl12012/act/landusepl12012> 12/07/2013

centres; Helipads; Home businesses; Home industries; Home occupations (sex services); Information and education facilities; Jetties; Kiosks; Liquid fuel depots; Marinas; Markets; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Public administration buildings; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Restaurants or cafes; Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Sewerage systems; Signage; Storage premises; Tourist and visitor accommodation; Turf farming; Vehicle repair stations; Veterinary hospitals; Water recreation structures; Water supply systems; Wharf or boating facilities

4 Prohibited

Advertising structures; Backpackers' accommodation; Hotel or motel accommodation; Self-storage units; Serviced apartments; Any other development not specified in item 2 or 3

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<http://www.legislation.nsw.gov.au/frames/inforce/epi+20+2013+nt+landuse+inc+2+> 12/07/2013

Zone No 1 (b) Rural (Secondary Agricultural Land) Zone

1 Objectives of zone

A The primary objective is to regulate the subdivision and use of land within this zone:

- (a) to encourage the productive use of the land and enable development ancillary to agricultural land uses, particularly dwelling-houses, rural workers' dwellings and rural industries, and
- (b) to permit a range of uses which are compatible with the rural character of the land, particularly tourist oriented developments and recreation establishments and recreation facilities, and
- (c) (Repealed)

B The secondary objectives is to ensure that development within the zone:

- (a) maintains the rural character of the locality, and
- (b) does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.

C The exceptions to these objectives are:

- (a) development of land within the zone for public works and services, outside the parameters specified in the primary and secondary objectives, subject to the impact on agricultural resources being minimised, where practical,
- (b) development of land for extractive resource purposes, and
- (c) development of an industry which, by reason of the processes involved or the method of manufacture or the nature of the materials used or produced, requires isolation from other buildings.

2 Without development consent

Agriculture (other than feed lots, piggeries, poultry farms, stock homes and other intensive keeping of animals); forestry.

3 Only with development consent

Any purpose other than a purpose specified in item 2, 4 or 5.

4 Advertised development—only with development consent

Bulk stores; industries (other than rural, extractive, offensive or hazardous industries); motor showrooms; warehouses.

5 Prohibited development

Brothels; caravan parks for permanent occupation; residential buildings (other than dwelling-houses); shops (other than general stores).

Zone No 7 (I) Environmental Protection (Habitat) Zone

1 Objectives of zone

- A The primary objective is to protect areas of particular habitat significance.
- B The secondary objective is to enable development of a similar nature to that intended as being the primary and secondary objectives of Zone No 1 (b), except for development which would conflict with the primary objective of this zone.
- C The exception to these objectives is development of public works and services, outside the parameters of the primary and secondary objectives, but only in cases of demonstrated and overriding public need and subject to the impact on the habitat area being minimised as much as is reasonably practical.

2 Without development consent

Nil.

3 Only with development consent

Agriculture; bed and breakfast establishments; bush fire hazard reduction; camping grounds; community buildings; dwelling-houses; environmental educational facilities; environmental protection works; forestry; home industries; open space; roads; telecommunications facilities; utility installations.

4 Advertised development—only with development consent

Nil.

5 Prohibited development

Any purpose other than a purpose specified in item 3.