



## Planning Proposal BSCPP 13/007

February 2014

### Reclassification of Land

Lot 5 DP 843369, Old Bagotville Road, Wardell

Planning Proposal – February 2014 (14/4339)  
Reclassification of Land – Lot 5 DP 843369 Old Bagotville Road, Wardell

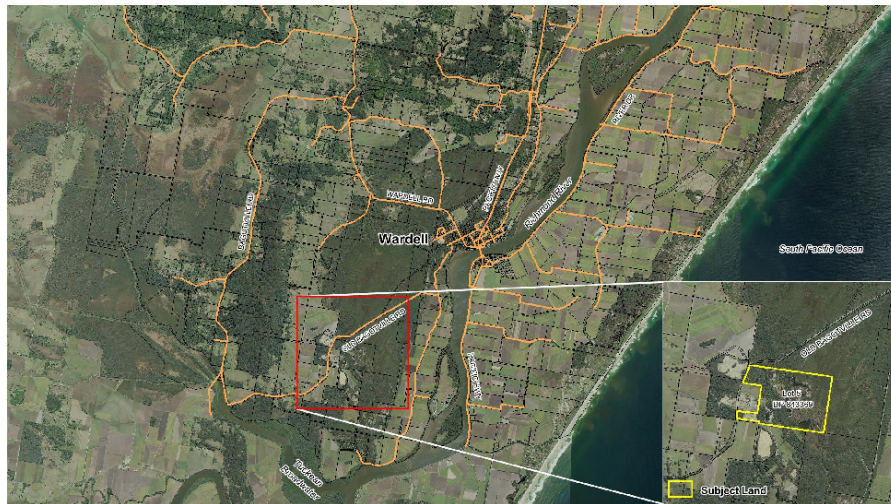
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**INTRODUCTION**

**Summary of Planning Proposal**

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



**Figure 1 – Site Location**

Lot 5 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 part of the land to “operational land” in accordance with the requirements of the LG Act.

Part of Lot 5 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.

The planning proposal submitted for Gateway determination sought to reclassify the entire area of Lot 5 from community land to operational land under the provisions of the LG Act. Following the consideration of submissions received from public consultation, and also having regard to the recommendations contained within the public hearing report, the planning proposal has been amended to provide for only part of Lot 5 to be reclassified as operational land.

The planning proposal has been amended to provide for only that part of Lot 5 that is proposed to be acquired by, or subject to acquisition discussions with, the Roads and Maritime Services

## 9.7 Land Reclassification - Lot 5 DP 843369, Old Bagotville Road, Wardell.DOC

(RMS) for the Pacific Highway upgrade to be reclassified as operational land. Land located to the east of the RMS acquisition area will remain as community land as indicated in the diagram below.

A copy of the RMS Property Acquisition Sketch is contained in Appendix F.

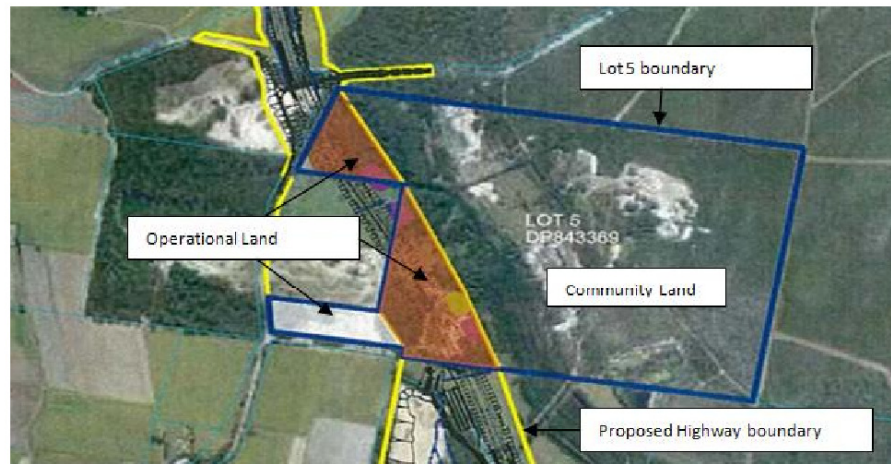


Figure 2 – Land Classification Boundaries

An amendment to Schedule 4 of the BLEP 2012 and Schedule 7 of the BLEP 1987 to incorporate reference to the part reclassification of Lot 5 DP 843369 will be required together with required map changes. The maps which delineate the extent of the land reclassification are contained within Appendix G.

The Department of Planning and Infrastructure (DP&I) has issued a Gateway determination under cover of their letter dated 6 September 2013. A copy of the letter and determination is contained within Appendix C.

The Gateway determination requires that the planning proposal be publically exhibited for a period of 28 days and specifies a 6 month time period for completing the LEP. The DP&I subsequently extended this period by 3 months. The LEP is now required to be completed by 13 June 2014. A copy of the Gateway extension letter is contained within Appendix C.

### Planning Context

Lot 5 was acquired by Council in 1996 due to its potential as an extractive resource and future landfill site. Due to the land being acquired by negotiation after 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.

A substantial portion of Lot 5 contains vegetation which is considered to have high conservation value. The coastal health vegetation communities within Lot 5 are also considered to provide habitat for a range of fauna species listed as vulnerable under the NSW Threatened Species Conservation Act 1995. These species include the Wallum Froglet, Wallum Sedge Frog, Long-nosed Potoroo and various bat and bird species.

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Lot 5 adjoins, along its eastern boundary, the Ngunya Jargoan Indigenous Protection Area (NJIPA). This area is managed by the Jali Local Aboriginal Land Council in recognition of the significant cultural and natural value of this land. As a consequence of past mining Lot 5 now contains a significant source of fresh water which enhances its value as a wild life habitat area.

As a consequence of the flora and fauna contained within Lot 5, its fresh water resource and the connectivity that it provides to the adjoining NJIPA a community land classification is considered to be appropriate for the area not subject to RMS interest.

The reclassification of only the western most section of Lot 5 to operational land will support liaison with the RMS with regard to the acquisition of the land required for the proposed highway upgrade.

The reclassification of Lot 5 was initially 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.

Council at its meeting on 27 February 2014 gave further consideration to the planning proposal following community consultation and the public hearing held under the LG Act provisions. Council resolved at that time to amend the planning proposal such that the extent of the operational land classification applicable to Lot 5 is limited to that part of the lot proposed to be acquired by and subject to acquisition discussion with the RMS.

Copies of Council resolutions and reports related to this matter are contained within 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**

<b>Site</b>	<b>Lot 5 DP 843369, Old Bagotville Road, Wardell</b>
<b>Land Register ID</b>	L12034_01
<b>Current Classification</b>	Community Land
<b>Proposed Classification</b>	Part Operational Land
<b>Reason for classification/ reclassification</b>	To enable Council to exercise its options with regard to the sale, lease or other dealings of part of the land to facilitate its acquisition by the RMS for the purposes of the Pacific Highway upgrade project.
<b>Reason for the Draft LEP</b>	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 part of the subject land from community land to operational land.
<b>Ownership of the land</b>	Ballina Shire Council

<b>Nature of Council's Interest</b>	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. Areas previously used for quarrying have naturally rehabilitated and provide important wildlife and flora habitat.
<b>Other parties with interests</b>	There are no other parties with an interest in this land.
<b>Change of interests resulting from classification/ reclassification</b>	Not applicable – there are no other parties with an interest in this land.
<b>Special agreements applicable to the land</b>	No special agreements apply to the land.
<b>Financial issues</b>	The reclassification of part of the land will enable Council to utilise or dispose of this land for financial gain consistent with the initial reasons for the land's acquisition.
<b>Asset issues</b>	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 part of Lot 5 to operational land to provide greater flexibility for Council in its future considerations for the use of the subject land, including the facilitation of its partial 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 part of Lot 5 from community land to operational land for the purposes of the LG Act. Appendix G contains the maps which delineate that part of Lot 5 proposed to be reclassified to operational land under the provisions of Ballina LEP 1987 and Ballina LEP 2012.

## 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 part of Lot 5 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 part of 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 the value of the land and assist in ensuring that Council receives an appropriate financial return from its sale having regard to the fact that the land was originally purchased for commercial purposes. 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 that part of the land proposed to be reclassified. The land has no underlying current 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?**

The Gateway determination did not require consultation with any State or Commonwealth public authorities. Comments were however invited from the NSW Roads and Maritime Services (RMS), Office of Environment and Heritage (OEH), Department of Primary Industries – Office of Water and NSW Trade and Investment - Resources and Energy. A summary of the submissions received appears below with copies of correspondence being contained in Appendix D.

Roads and Maritime Services (RMS) have advised that:

- *They have no objection to the proposed reclassification.*
- *Part of the land is affected by the upgrade of the Pacific Highway and will be subject to part acquisition.*

The Office of Environment and Heritage (OEH) has advised that:

- *The reclassification will not alter the current zoning provisions existing over the land.*



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- *The proposed reclassification will enable Council to exercise options with regard to the sale, lease or other dealings with the land by Roads and Maritime Services for the purpose of the Pacific Highway upgrade project.*
- *The reclassification of land may lead to more appropriate long term management outcomes in keeping with the values of the land, both for environmental protection and commercial purposes.*

The Department of Primary Industries – Office of Water has advised that:

- *It is not concerned with Council's plans to reclassify the land, however would like the opportunity to review any future rezoning proposals for the site or development applications associated with the two quarries on the site.*
- *Indicates that the Office of Water was aware of a number of wetland on this site.*

The Department of Trade and Investment – Resource and Energy – Mineral Resources Branch (MRB) has advised that:

- *MRB supports the planning proposal to reclassify the subject site as operational land to allow the potential utilisation of the in- situ construction material resource for the Pacific Highway upgrade works*
- *MRB notes that Petroleum Exploration Licence (PEL) 445 held by Dart Energy (Bruxner) Pty Ltd exists over a broad regional area that includes the subject site.*

### PART 4 – MAPPING

The following maps have been prepared to support the planning proposal:

- Map 1 – illustrates the location of the subject land – Site Identification Map;
- Map 2 – illustrates the existing zonings applying to the land under the terms of Ballina LEP 1987;
- Map 3 – illustrates the existing zonings applying to the land under the terms of Ballina LEP 1987;
- Map 4 – presents the proposed reclassification of the land under the terms of Ballina LEP 1987;
- Map 5– presents the proposed reclassification of the land under the terms of Ballina LEP 2012.

The planning proposal relates to the part reclassification of Lot 5 DP843369 from community land to operational land as detailed in Maps 4 and 5. All maps are contained within Appendix G.

**PART 5 – COMMUNITY CONSULTATION**

**Part 5 – Community Consultation**

This planning proposal was publicly exhibited between 2 October 2013 and 4 November 2013, so as to comply with the minimum 28 day period specified in the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. Three submissions were received.

A summary of the issues raised in submissions is detailed in the Table below:

Person / Authority	Summary
David Milledge	<p>Objection</p> <ul style="list-style-type: none"> <li>Exceptionally high biodiversity value of the land and its strategic location adjoining Ngunya Jargoona Indigenous Protection Area (IPA).</li> <li>Failure of planning process as above issues not addressed in planning proposal.</li> <li>Range of threatened fauna species recorded on the site or in similar habitats – Wallum Froglet and Wallum Sedge Frog, Long –nosed Potoroo, Eastern Blossom-bat, Grey – headed Flying – fox. Additional habitats suitable for the Pale-vented Bush-hen, Red-backed Button –quail, Ground Parrot, Grass Owl and several microchiropteran bat species occur in Lot 5.</li> <li>Eastern section of Lot 5 provides habitat connectivity with the IPA.</li> <li>Proposed reclassification implies that the entire lot is suitable for commercial development.</li> <li>Council should have undertaken a Threatened Species Assessment and also referred the proposal to the Commonwealth Government under the EPBC Act 1999.</li> <li>Council would be in a much better position to negotiate a balanced outcome with the RMS if land remains classified as community land.</li> </ul>
Jali Local Aboriginal Land Council, Cullimurra Woia, Acting CEO)	<p>Raise the following concerns:</p> <ul style="list-style-type: none"> <li>Impacts to the adjacent lands directly affect the values of the IPA, provide a risk to important habitat, to local aboriginal sites and cultural complexes, and break up the important connectivity with surrounding land.</li> <li>Reclassifying community held land directly adjacent to the IPA to a zoning which allows the potential sale and development does not enhance this important asset of the region.</li> <li>It diminishes the IPA through allowing potential sale and development. Would lead to destruction of habitat and lead to destruction of the only viable population of the Long-nosed Potoroo in coastal NENSW.</li> <li>It diminishes the IPA through removing important wildlife corridors.</li> <li>It diminishes the IPA through removal of a buffer between the IPA, cane farms and quarries to the west.</li> <li>It diminishes the value IPA and the primary cultural and natural reasons for which it was declared.</li> </ul>
The Hon. Jan Barham, MLC	<p>Objects to the proposed reclassification on the grounds that the land:</p> <ul style="list-style-type: none"> <li>Has significant biodiversity value</li> <li>Adjoins the Ngunya Jargoona IPA</li> </ul> <p>Claims that the planning process for the reclassification has failed to take the above matters into account.</p> <p>Submits that the proposed reclassification will have an adverse impact on the threatened species through the disruption of critical habitat.</p> <p>Submits that Council should have undertaken a Threatened Species Assessment and also referred the proposal to the Commonwealth Government under the EPBC Act 1999.</p>

A public hearing was also held into the proposed reclassification of Lot 5 from community land to operational land. A copy of the report prepared by the chairperson of the public hearing is contained in Appendix E.

**PART 6 – TIMELINE**

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

<b>Plan Making Step</b>	<b>Estimated Completion (Before)</b>
Gateway Determination	September 2013
Public Exhibition Period	November 2013
Public Hearing	December 2013
Submissions Assessment	January 2014
RPA Assessment of Planning Proposal and Exhibition Outcomes	February 2014
Submission of Endorsed LEP to DP&I for Finalisation	March 2014
RPA Decision to Make the LEP Amendment (if delegation accepted)	N/A – Council is not seeking to accept delegation
Forwarding of LEP Amendment to DP&I for Notification (if delegation accepted)	N/A – Council is not seeking to accept delegation

Note: Council did not seek the delegation of plan making functions from the Department of Planning and Infrastructure in relation to this proposal due to Council's commercial interest in the subject property. Notwithstanding this, plan making functions for the finalisation of the amendment have been delegated to Council.

Council has determined that it will not exercise its delegated plan making functions due to the commercial interest that it has in the land.

**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**

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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**

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**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.

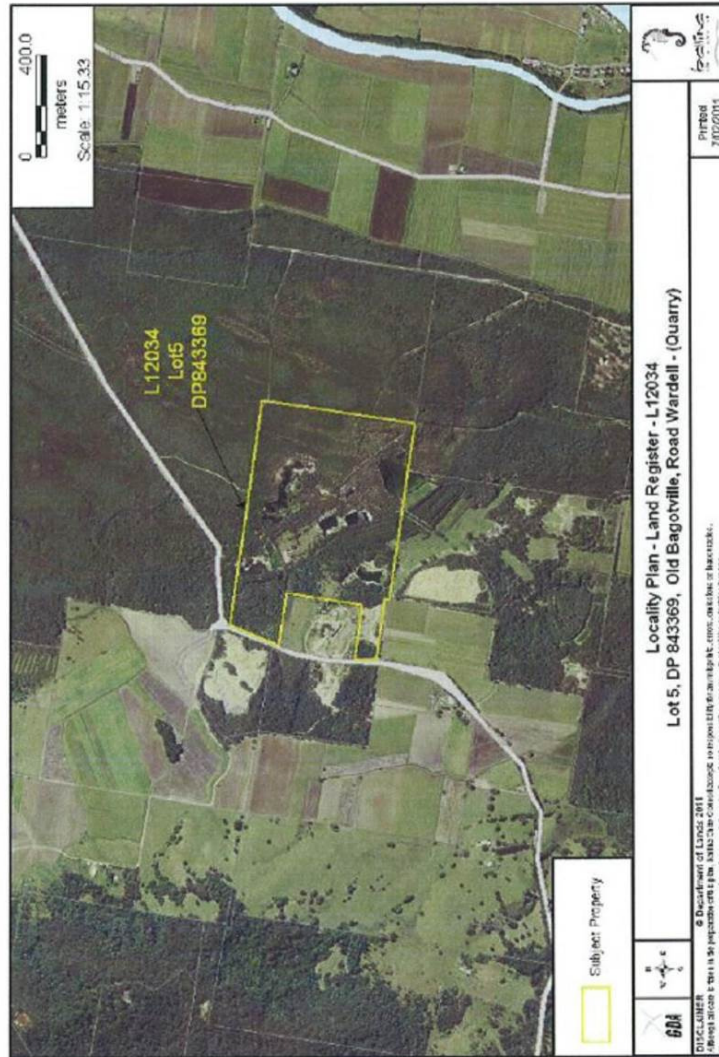
**RECOMMENDATIONS**

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

<b>Site</b>	Lot 5 DP 843369, Old Bagotville Road, Wardell
<b>Land Register ID</b>	L12034_01
<b>Current Classification</b>	Community Land
<b>Proposed Classification</b>	Operational Land
<b>Reason for classification/ reclassification</b>	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.
<b>Reason for the Draft LEP</b>	The classification/ reclassification forms part of the Shire Wide LEP renewal process. This process is a requirement of the NSW Department of Planning.
<b>Ownership of the land</b>	Ballina Shire Council
<b>Nature of Council's Interest</b>	The property was purchased at auction on 17 April 1996 with funds generated by Council's land development activities.
<b>Other parties with interests</b>	There are no other parties with an interest in the land.
<b>Change of interests resulting from classification/ reclassification</b>	Not applicable because there are no other parties with interests in the land.
<b>Special agreements applicable to the land</b>	There are no special agreements applicable to this land.
<b>Financial issues</b>	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

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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

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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**

<b>Section 117 Direction Checklist</b>	
<b>Planning Proposal – Lot 5 DP 843369, Old Bagotville Road, Wardell</b>	
<b>Direction No.</b>	<b>Compliance of Planning Proposal</b>
<b>1. Employment and Resources</b>	
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 part of the land and is generally consistent with the Rural Planning Principles contained in State Environmental Planning Policy (Rural Lands) 2008.
<b>2. Environment and Heritage</b>	
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.
<b>3. Housing, Infrastructure and Urban Development</b>	
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.
<b>4. Hazard and Risk</b>	
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.

## 9.7 Land Reclassification - Lot 5 DP 843369, Old Bagotville Road, Wardell.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.
<b>5. Regional Planning</b>	
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
<b>6. Local Plan Making</b>	
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.
<b>7. Metropolitan Planning</b>	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.

Appendix C – Gateway Determination and Gateway Extension Letter



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

Our ref: PP\_2013\_BALLI\_007\_00 (13/14487)  
Your ref: 13/90315

Dear Mr Hickey

**Planning proposal to amend Ballina Local Environmental Plan 2012 and Ballina Local Environmental Plan 1987**

I am writing in response to Council's letter dated 27 August 2013 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 reclassify Lot 5, DP 843369, Old Bagotville Road, Wardell from community to operational land.

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

Council is reminded of its obligations for undertaking a public hearing in relation to the proposed reclassification of land in accordance with the department's practice note *PN09-003, Classification and reclassification of public land through a local environmental plan*.


The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 6 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 to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the department for administrative purposes.

The 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 section 54(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 Jon Stone of the regional office of the department on 02 6701 9655.

Yours sincerely

  
Stephen Murray  
Regional Director  
Northern Region  
Planning Operations and Regional Delivery

Northern Region 49 Victoria St Grafton NSW 2460 Locked Bag 9022 Grafton NSW 2460  
Telephone: (02) 6641 6600 Facsimile (02) 6641 6601 Website [planning.nsw.gov.au](http://planning.nsw.gov.au)



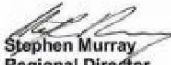
### Gateway Determination

*Planning proposal (Department Ref: PP\_2013\_BALLI\_007\_00): to reclassify Lot 5, DP 843369, Old Bagotville Road, Wardell from community to operational land.*

I, the Regional Director, Northern Region at the 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 the Ballina Local Environmental Plan 2012 and the Ballina Local Environmental Plan 1987 (LEP) to reclassify Lot 5, DP 843369, Old Bagotville Road, Wardell from community to operational land should proceed subject to the following conditions:

1. 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 must be made publicly available for a minimum of **28 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 & Infrastructure 2013)*.
2. No consultation is required with public authorities under section 56(2)(d) of the EP&A Act.
3. 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).
4. The timeframe for completing the LEP is to be **6 months** from the week following the date of the Gateway determination.

Dated *6<sup>th</sup>* day of *September* 2013.

  
**Stephen Murray**  
Regional Director  
Northern Region  
Planning Operations and Regional Delivery  
Department of Planning and Infrastructure  
  
Delegate of the Minister for Planning and  
Infrastructure

Ballina Shire Council PP\_2013\_BALLI\_007\_00 (13/14467)



Planning & Infrastructure

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



Our ref: PP\_2013\_BALLI\_007\_00

Attention: Klaus Kerzinger

Dear Mr Hickey

**Planning Proposal PP\_2013\_BALLI\_007\_00 – Gateway Determination Extension**

I refer to your request on 24 January 2014 seeking an extension of time to complete the Planning Proposal PP\_2013\_BALLI\_007\_00 to reclassify Lot 5 DP 843369, Old Bagotville Road, Wardell.


I have determined as the delegate of the Minister, in accordance with section 56(7) of the Environmental Planning and Assessment Act, 1979, to amend the Gateway Determination dated 6 September 2013 for PP\_2013\_BALLI\_007\_00.

The Gateway Determination is amended by extending the time for the completion of the Planning Proposal by an additional three (3) months. The Planning Proposal is now due for completion by 13 June 2014.

Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the department for administrative purposes.

If you have any questions in relation to this matter, please contact Mr Jon Stone Regional Planning Officer of the Department of Planning and Infrastructure's Tamworth office on (02) 6701 9688.

Yours sincerely

 30 January 2014  
**Stephen Murray**  
General Manager, Northern Region  
Growth Planning & Delivery

Northern Region 49 Victoria St Grafton NSW 2460 Locked Bag 9022 Grafton NSW 2460  
Telephone: (02) 6641 6600 Facsimile: (02) 6641 6601 Website: [planning.nsw.gov.au](http://planning.nsw.gov.au)

Appendix D – Submissions from Public Authorities



Office of Environment & Heritage

Your reference: BSCPP 13/007  
Our reference: DOC 13/67113  
Contact: Nicky Owner (02) 6659 8254



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

Attention: Mr Klaus Kerzinger

Dear Mr Hickey

Re: Planning Proposal BSCPP 13/007 – Old Bagotville Road, Wardell

Thank you for your letter of 25 September 2013 requesting comments from the NSW Office of Environment and Heritage (OEH) on the Planning Proposal for Lot 5 DP843369, Old Bagotville Road, Wardell. OEH understands that the Planning Proposal is required to reclassify the above land, owned by Ballina Shire Council, from Community Land to Operational Land, in accordance with the provisions of the *Local Government Act 1993*.

The documentation supporting Council's Planning Proposal has been reviewed and OEH provides the following comments:

- The proposed reclassification of the above land will not alter the current zoning provisions existing over the land.
- The zoning of the majority of the subject land is currently a deferred matter in accordance with the *Ballina Local Environmental Plan (LEP) 2012* (in effect, this land is zoned for Environment Protection in accordance with *Ballina LEP 1988*).
- The remaining portions are zoned RU1 in accordance with Ballina LEP 2012. OEH understands there is an existing quarry within this area.
- OEH notes that the proposed Pacific Highway upgrade traverses the area zoned rural in the western portion of the site. The proposed reclassification will enable Council to exercise options with regard to the sale, lease or other dealings with the land by Roads and Maritime Services for the purpose of the Pacific Highway upgrade project.
- As such, the reclassification of lands may lead to more appropriate long term management outcomes in keeping with the values of the land, both for environmental protection and commercial purposes.

Should you require further information or clarification, or should Council be in possession of information that suggests that OEH's statutory interests may be affected, please contact Mrs Nicky Owner, Conservation Planning Officer, on (02) 6659 8254 or via email [nicky.owner@environment.nsw.gov.au](mailto:nicky.owner@environment.nsw.gov.au).

Yours sincerely

*Dimitri Young* 31 October 2013

DIMITRI YOUNG  
Senior Team Leader Planning - North East  
Regional Operations

Locked Bag 914, Coffs Harbour NSW 2450  
Federation House Level 7, 24 Moonsee Street,  
Coffs Harbour NSW 2450  
Tel: (02) 6651 5946 Fax: (02) 6651 6187  
ABN 30 641 587 271  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)



1<sup>st</sup> October 2013

Klaus Kerzinger  
Town Planner – Strategic and Community Facilities Group  
Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478

Your Reference: BSCPP 13/007;  
Old Bagotville Rd, Wardell (13/50315)  
Our Reference (TRIM): OUT13/29658

EMAILED

Dear Mr Kerzinger

**Re: Planning Proposal BSCPP 13/007 – Old Bagotville Road, Wardell**

Thank you for the opportunity to provide advice on the above matter. This is a response from the NSW Department of Trade & Investment (DTIRIS) – Mineral Resources Branch (MRB). The Department of Primary Industries, incorporating advice from Agriculture, Fisheries and Forests NSW may respond separately.

**Specific Issues**

In May 2011, Ballina council was provided a Mineral Resource Audit (MRA) data package. The MRA was conducted in accordance to Section 117(2) Direction 1.3 – Mining, Petroleum Production and Extractive Industries under the *Environmental Planning and Assessment Act 1979*. There are several extractive operations in proximity to the subject area that have been identified in the MRA.

MRB supports the planning proposal to reclassify the subject site as Operational Land to allow for the potential utilisation of the in situ construction material resource for Pacific Highway upgrade works.

**General Information**

MRB notes Petroleum Exploration License (PEL) 445 held by Dart Energy (Bruxner) Pty Ltd exists over a broad regional area that includes the subject site. Identification of the title is to make the consent authority aware that there are other stakeholders with interests in the region.

NSW Department of Trade and Investment, Regional Infrastructure and Services  
RESOURCES & ENERGY DIVISION  
PO Box 344 Hunter Region Mail Centre NSW 2310  
Tel: 02 4931 6666 Fax: 02 4931 6726  
ABN 51 734 124 190  
[www.dtiris.nsw.gov.au](http://www.dtiris.nsw.gov.au)

Planning Proposal (Final)  
Reclassification of Land – Old Bagotville Road, Wardell

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**Geoscience Information Services**

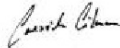
MRB has a range of online data available on line through the following website address:  
<http://www.resources.nsw.gov.au/titles/online-services>

This site hosts a range of data to enable research into exploration, land use and general geoscience topics. Additionally, the location of exploration and mining titles in NSW may be accessed by the general public using the following online utilities:

1. **MinView** allows on-line interactive display and query of exploration tenement information and geoscience data. It allows spatial selection, display and download of geological coverages, mineral deposits and mine locations, geophysical survey boundaries, drillhole locations, historical and current exploration title boundaries and other spatial datasets of New South Wales. This online service is available at:  
<http://www.resources.nsw.gov.au/geological/online-services/minview>
2. **NSW Titles** enables the public to access and view frequently updated titles mapping information across NSW. This online service is available at:  
<http://nswtitles.minerals.nsw.gov.au/nswtitles/>

Queries regarding the above information, and future requests for advice in relation to this matter, should be directed to the MRB Land Use team at [landuse.minerals@industry.nsw.gov.au](mailto:landuse.minerals@industry.nsw.gov.au).

Yours sincerely



Cressida Gilmore  
Team Leader Land Use

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Contact: Christie Jackson  
Phone: 02 6701 9652  
Fax: 02 6701 9682  
Email: [christie.jackson@water.nsw.gov.au](mailto:christie.jackson@water.nsw.gov.au)  
Our ref: ER22620  
Your ref: BSCPP 13/007

Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478

Attention: Klaus Kerzinger

Dear Mr Kerzinger,

**Planning Proposal BSCPP 13/007 – Old Bagotville Road, Wardell**

I refer to your letter dated the 25 September 2013 seeking the NSW Office of Water's (Office of Water) comments on the planning proposal for Lot 5 DP843369, Old Bagotville Road, Wardell. The Office of Water has reviewed the documents provided and understands Ballina Shire Council propose to reclassify the land from community land to operational land.

The land is currently zoned as RU2 Rural Landscape and the remainder of the site is identified as 'deferred matter', due to the proposed application of E2 Environmental Protection Zone to the land under this plan. The Office of Water understands there are no plans to change the current zoning arrangements as part of this planning proposal.

The Office of Water understands Ballina Shire Council plans to reclassify the land to allow for the sale, lease and/ or use of the land and to facilitate the acquisition of all or part of the land by Roads and Maritime Services (RMS) as the preferred route of the Pacific Highway Upgrade (Woodburn-Ballina) traverses this lot.

As you are aware, there are two quarries on the site and it appears from the maps provided a number of wetlands are on the site. The Office of Water is not concerned with Councils plans to reclassify the land, however would like the opportunity to review any future rezoning proposals for the site or Development Applications associated with the two quarries on the site.

If you require clarification on any of the above please contact Christie Jackson on (02) 6701 9652 at the Tamworth office.

Yours sincerely,

**Mitchell Isaacs**  
Manager, Strategic Stakeholder Liaison  
16 October 2013

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Level 3, 155-157 Marius Street, Tamworth | PO Box 550 Tamworth NSW 2340  
t (02) 6701 9600 | f (02) 6701 9682 | [www.water.nsw.gov.au](http://www.water.nsw.gov.au)

 <b>Transport</b> Roads & Maritime Services	
File no. NTH13/00091 CR2013/007139 Reference. BSCPP 13/007	
<b>Attention: Klaus Kerzinger</b> Strategic Planner Ballina Shire Council PO Box 450 BALLINA NSW 2478	
Dear Sir	
<b>Ballina Shire Council. BSCPP 13/007. Reclassification of Land. Bagotville Road, Wardell</b>	
I refer to your letter to Roads and Maritime Services dated 27 September 2013 concerning the proposed reclassification.	
The subject land is affected by the upgrade of the Pacific Highway and will be subject to a part acquisition. This process has not commenced.	
Roads and Maritime would have no objection to the land being reclassified from community to operational land.	
Upon determination of the application, it would be appreciated if Council could forward a copy of the Consent Conditions for our records. If you have any further enquiries regarding the above comments please do not hesitate to contact Greg Sciffer on 6640 1362 or email <a href="mailto:development.northern@rms.nsw.gov.au">development.northern@rms.nsw.gov.au</a> .	
Yours faithfully	
 John Alexander Regional Manager, Northern Region	23 OCT 2013
<b>Roads &amp; Maritime Services</b>	
31 Victoria Street, Grafton NSW 2460   PO Box 576 Grafton NSW 2460 T 02 6640 1300   F 02 6640 1304   E <a href="mailto:development.northern@rms.nsw.gov.au">development.northern@rms.nsw.gov.au</a> <a href="http://www.rms.nsw.gov.au">www.rms.nsw.gov.au</a>   13 17 82	

Appendix E – Public Hearing Report



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**Report on a Public Hearing into the  
Proposed Reclassification of Council Land  
being the Ballina Quays Canals,  
Banyanda Lake and  
Land at Old Bagotville Road, Wardell**

**Lot 63 DP 263861 and Lot 132 DP 775228, Ballina Quays Canals (BSCPP13/008);  
Lot 50 DP 259593, Banyanda Lake, Ballina (BSCPP13/008);  
Lot 5 DP 843369, Old Bagotville Road, Wardell (BSCPP13/007)**

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Prepared for Ballina Shire Council  
by MikeSvikisPlanning  
18 December 2013

Planning Proposal (Final)  
Reclassification of Land – Old Bagotville Road, Wardell

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Mike Svikis  
Principal Planner

**MIKESVIKISPLANNING**

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**MikeSvikisPlanning**  
Experience/Commitment/Quality

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Planning Proposal (Final)  
Reclassification of Land – Old Bagotville Road, Wardell

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## Introduction

Mike Svikis (Principal Planner at MikeSvikisPlanning), was engaged by Ballina Shire Council as an independent chair for a public hearing into the proposed reclassification of certain land and water bodies in Ballina and near Wardell.

The public hearing was held on 11 December 2013 at the Richmond Room in Ballina. Verbal submissions were made on both the land at Wardell and the water bodies at Ballina. This report summarises the submissions and provides a response to them and recommendations to Council.

Council will consider this report in making its deliberations on the subject land.

In preparing this report I have also reviewed the information that Council placed on public exhibition and the written submissions to the exhibition. With Council officers, I inspected the land at Wardell and the water bodies at Ballina on 21 November 2013. The photographs in this report were taken at that time.

## Objectives of the Public Hearing

The objectives of this public hearing are to:

- Satisfy legislative requirements relating to public land reclassification
- Provide an opportunity for any person to make a verbal submission
- Enable those submissions to be considered by an independent chairperson who can then prepare a report and make recommendations on those issues to Council.

'Public land' is any land (including a public reserve) vested in, or under the control of, Council (with some exceptions such as roads). 'Community land' is public land that is generally open to the public, eg parks, reserves or sports grounds. 'Operational land' is public land that may be used for other purposes, eg a works depot or held as a temporary asset. All public land is either Community or Operational (NSW DoP Practice Note PN 09-003).

Changing land from one classification to another can be undertaken through a planning proposal under the Environmental Planning and Assessment Act 1979. When it is changed the classification status of the land is recorded in a schedule in the Local Environmental Plan. When Community land is proposed to be reclassified as Operational land a public hearing must be held at some time after the close of the exhibition period of the planning proposal.

## The Independent Chairperson

The public hearing must be chaired by an independent person. The Local Government Act 1993 states in relation to this:

### **47G Public hearings**

- (1) *In this section, **public hearing** means any public hearing required to be arranged under this Part.*
- (2) *The person presiding at a public hearing must not be:*
  - (a) *a councillor or employee of the council holding the public hearing, or*



Proposed Reclassification of Council Owned Land

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- (b) a person who has been a councillor or employee of that council at any time during the 5 years before the date of his or her appointment.
- (3) Not later than 4 days after it has received a report from the person presiding at the public hearing as to the result of the hearing, the council must make a copy of the report available for inspection by the public at a location within the area of the council.

This public hearing was chaired by Mike Svikis who is not a Councillor or an employee of Ballina Shire Council now or at any time in the past.



**MikeSvikisPlanning**  
Experience/Commitment/Quality

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Planning Proposal (Final)  
Reclassification of Land – Old Bagotville Road, Wardell

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## Background

The planning proposal for Ballina Quays Canals and Banyanda Lake was commenced by Ballina Shire Council at its Ordinary meeting of 22 August 2013. It proposed that the land on which these waterways are located should change from Community to Operational under the Local Government Act 1993 (LG Act). No change of zoning was proposed.

The planning proposal for Lot 5 DP 843369 at Old Bagotville Road, Wardell was commenced by Ballina Shire Council at its Ordinary meeting of 20 December 2012. It proposed that this land change from Community to Operational under the LG Act. No change of zoning was proposed.

### **Lot 63 DP 263861 and Lot 132 DP 775228, Ballina Quays Canals, Ballina and Lot 50 DP 259593, Banyanda Lake, Ballina**

The land containing Banyanda Lake (Lot 50 DP 259593) has an area of 1.97 hectares and the land containing the Ballina Quays Canals (Lot 63 DP 263861 and Lot 132 DP 775228) has a combined area of 9.37 hectares.

All three parcels are in the ownership of Ballina Shire Council and are classified as Community land. 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.

All the subject lots are located fully within the W2 Recreational Waterway zone under the provisions of the Ballina Local Environmental Plan 2012 (BLEP 2012). No amendments to the current zoning arrangements under the BLEP 2012 form part of this planning proposal.

This planning proposal seeks to reclassify the entire area of Lot 63 DP 263861 and Lot 132 DP 775228 (Ballina Quays Canals) and Lot 50 DP 259593 (Banyanda Lake) from Community land to Operational land under the provisions of the LG Act. This involves the amendment of Schedule 4 of the BLEP 2012 to incorporate reference to the reclassification of Lot 63 DP 263861, Lot 132 DP 775228 and Lot 50 DP 259593.

Council advised that a review of the management provisions applying to public Community land, and specifically the subject lots detailed above, revealed that the placement of private structures on Community land is inconsistent with the statutory management provisions of the LG Act. This has also highlighted potential public liability for Council in relation to the placement of such private structures on land for which it has management responsibility in accordance with the LG Act.

Council considers that section 47D of the LG Act requires that the private, exclusive use of community land may only be by way of a lease, licence or other estate. A lease, licence or other estate for the use of Community land is limited to purposes that meet the current and future needs of the community and wider public such as public recreation and those that promote the physical, cultural, social and intellectual welfare or development of persons. As such, the current private structures placed in the subject waterways cannot be issued with a lease, licence or other estate because they are inconsistent with the requirements of the LG Act.

Council's solution for rectifying the above matter and enabling the private waterway structures to be made consistent with the LG Act is to reclassify the subject land from Community land to Operational land. This will allow Council, in the first instance, to make the structures consistent with the LG Act through removing the application of the specific management requirements of the Act. Subsequently, it will allow Council to further consider its options with regard to managing and regulating the placement of the structures through leasing and/or licensing.

The NSW Department of Planning and Infrastructure issued a Gateway Determination on 6 September 2013. The draft planning proposal was publicly exhibited and approximately 75 submissions were received.





Figure 1: Ballina Quays and Lake Banyanda in Ballina

**Lot 5 DP 843369, Old Bagotville Road, Wardell**

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(i) – 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.

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 after auction by negotiation, 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.

Proposed Reclassification of Council Owned Land

Council considers that the physical and geographic constraints of Lot 5 DP 843369 mean 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 support liaison with Roads and Maritime Services with regard to the acquisition of the land required for the highway upgrade.

The NSW Department of Planning and Infrastructure issued a Gateway Determination on 6 September 2013. The draft planning proposal was publicly exhibited, and three public submissions and four government submissions were received.



Figure 2: Lot 5 DP 843369, Old Bagotville Road, Wardell

## Public Hearing

The Public Hearing was held on 11 December in the Richmond Room at Ballina. It commenced at 6.00 pm with submissions on the land at Old Bagotville Road, Wardell, and this matter was dealt with until 6.55 pm. At 7.00 pm the hearing re-commenced with submissions on the waterways at Ballina, and this was completed at 8:15 pm.

### Lot 63 DP 263861 and Lot 132 DP 775228, Ballina Quays Canals, Ballina

Fifty-two persons in attendance, four Council staff, Mike Svikis is the presiding officer.

Introduction by Steve Barnier, including a welcome to country. He provided details of the planning proposal and advised that maintenance of the canals was not part of the proposal being considered. Steve also clarified that maintenance would not be affected by the reclassification and that Council had made no decision in relation to possible charges referenced in Council's [August 2013] report.

Mike Svikis advised how he would manage the hearing with those registered being given first opportunity before opening the floor to others in attendance. Mike outlined his approach to the hearing, advising that he would be primarily listening to the issues raised and then reporting on those issues to Council. The night was not a general question and answer session, and he asked speakers not to repeat the issues or matters raised by others as he was well aware that some of the issues were of concern to many in attendance.

David Kirsh commenced at 7.15 pm. He has read the reports and information on the proposal. His main question – cannot see why it is illegal to have pontoons on public land. He cannot see why these cannot be placed on Community land. The law changed 10 years ago and new structures have been added since then with Council approval with the Local Government Act in place. He does not know which part of the LG Act makes the pontoons illegal. The only way he can see the reason for the reclassification is to allow the Council to start charging a levy on land owners for the structures. He can see from research that the land was gifted to the Council and must be classified as Community land and that it cannot be reclassified. Operational land is only land not open to the public like a works depot. He is concerned that if the land is reclassified it will be closed off to the public. Will the public still be able to use the land if reclassified?

Nick Reimer commenced at 7.20 pm. He feels hampered by the instructions given as to what he can and cannot say at this hearing. He has lived on the quays for about 10 years and bought his land/house after making enquiries in relation to establishing a pontoon, boat ramp and retaining wall on the land, all of which have been done with lawful approval by the Council and constructed by a master builder. He would not have purchased the property if he could not have done these things. In relation to estuaries [Crown waterways], he found the quays appealing as they do not have the same licence charges as the estuaries [Crown waterways]. He was advised at the time of purchase that there would be no charges on the structures. In relation to maintenance he raised matters relating to previous Council commitments to maintain the waterways and keep public access. In 2008 there was a proposal for a special rate policy that was unsuccessful. Based on early documentation in development files, the justification for the quays' maintenance by the Council is based on the higher rates paid on the quays' properties, which were considered sufficient to defray the maintenance costs. The reclassification lays the groundwork for Council to start charging land owners and this will affect land values. It is difficult to sell these properties and the possible charges will make it worse. Are all these structures now illegal? He raised section 47D of the LG Act and is of the view that no land owner has exclusive use of the waterway. The adjoining land owners share the waterway with members of the public, and the land is a public reserve with access to the public provided by adjoining parks. He raised section 30(1) of the LG Act where reclassified land ceases to be a public reserve. There are unfortunate consequences of the reclassification. The Council has been party to the erection of the illegal structures. Many of the structures are unused or not maintained and some may seek the removal of the old structures. He strongly objects to the reclassification.



Dan McOmish commenced at 7.30 pm. He is a semi-retired solicitor and has worked both for and against councils in legal matters for 30 years. He believes the reasons for the reclassification are the management of the private structures, the regulation of the private structures, compliance with the LG Act and the legality of the structures. In his written submission he has stated that he believes the structures can be legally approved under the LG Act. The concept of exclusive use is incorrect and that approval has never been granted by Council for exclusive use, thus the concept has no application. The issue can be fixed by a management plan as required under the Act; it can also be fixed by regulation, and the local member [Don Page] could achieve this by a stroke of a pen. He is concerned with the philosophical issues of the reclassification of Community land. Desires to keep Council out of publicly used land; this land should not be used as a fund raising mechanism for the Council. The land is for public use, not just for those land owners adjoining the canal. The land is also a drainage reserve. The provisions in the LG Act regulate activities on public land and this is not addressed in the Council's submission. In the LG Act there are a number of provisions relating to what a Council can and cannot do, and also in relation to public safety. The Council is enabled under the LG Act to issue orders and notices for defective structures. The Council can raise charges for structures over public land. There are sections of the LG Act that indicate you can place private structures on public land. He asked whether Council will disclose to the public its legal advice in relation to this matter? Has this advice been obtained independently by an expert in LG law? The reclassification of Community land leads to consequences, such as tampering with sporting fields, alienation and commercialisation of public open space. When the quays were approved they had a condition applied that required the dedication (Condition No 3) of roads, waterways and parklands to Council. The reclassification needs to do more than stated in the Council report. He referenced section 32 of the LG Act in relation to dedication of land under section 94 of the Environmental Planning and Assessment Act. In section 30 it provides that the Council can only reclassify this land if it is found to be unsuitable for its intended purpose. Council has various mechanisms under the LG Act to raise fees, charges and special rates. As a safeguard to the community, any annual charge must be based on the reason for that charge and its benefit to the user. Once the decision to reclassify is made the public can appeal, make submissions to the minister and the Land and Environment Court.

Richard Crandon commenced at 7.45 pm. He is a retired engineer and resident of Burns Point Ferry Road, and has a pontoon. He questions the legalities of the claim by the Council that the pontoons are illegal. He has good knowledge of the LG Act. He referred to new provisions commencing in 1993, allowing the change to open space classification and land dedication. The Act requires land to be classified and Community land must have a plan of management. He asked whether there was a plan of management for the land. He was advised by Council staff that there was, and it was available there for perusal after the public hearing or on Council's web site. He was advised that special provisions applied but only to Ballina Quays and only for pontoons. Where land is Operational land, Council has full control. He believes there should be a proper plan of management for the waterways to regulate and detail works on the land, such as maintenance. The plan of management is essential in achieving this. If these matters are not addressed in the plan of management then Council has been negligent. Does the reclassification remove Council's requirements? Is this an easy way out for the Council in the absence of a plan of management specific to the canals? There are maintenance issues and liabilities with the canals, and he sees the reclassification as a way for Council to sell the land and remove its maintenance obligations and discharge its responsibilities. He wants to see Council's legal advice.

At this point, there being no further registered speakers, Mike asked if there were any more interested in speaking. Specifically, he asked if any present were representative of the land owners adjoining Lake Banyanda. Of the group, there were only two, and they chose not to speak to the hearing.

Pam Maxwell addressed the hearing at 7.55 pm. She has been resident of Ballina Quays for 22 years and has seen many documents and many issues over this time, particularly regarding maintenance. She referred to legal advice in 1993 obtained by the Council in relation to maintenance. She advised this was referenced in her submission, which she chose to formally table at the hearing. Her interpretation of the advice is that the land is classified as Community land and could stay that way. The advice indicates that the Council is responsible for maintenance.

Ken Thurston addressed the hearing at 7.57 pm. He has been a resident of Ballina Quays for 13 years and is very concerned in relation to proposed maintenance charges. He is reassured by the advice that the maintenance program will not be interrupted by the reclassification proposal. He has read the [August 2008] report to the Council and notes reference to charges in other council areas. He questions the legality if the reclassification goes through. What might happen to stop people from using the canal? Can the Council restrict access to the canal through the application of the Operational classification if there are liability issues identified?

Joe Fisher addressed the hearing at 8.00 pm. He is a resident of Ballina Quays and is a boat owner. There were a lot of boat owners present. He likes being able to use his pontoon and the convenience it provides as a boating enthusiast. He is of the view that the Council does not like boat owners – the Ballina bar is treacherous, the quays are too shallow, the Ballina marina was allowed to be taken away. He feels wronged as a boat owner. He feels that they are not valued enough given they pay higher rates.

Some general and procedural questions were asked by unidentified attendees including: Can the legal advice obtained by the Council be made available to the public? Steve Barnier advised that this would be up to the Councillors and the writer of the advice. In response to a question asked about the legality of the whole process, it was advised that it would be the Councillors making the final decision in this matter.

Noel Warr addressed the hearing at 8.05 pm. He advised that he had approached some Councillors and that they knew nothing of what he was talking about. He believes that the Councillors do not have the knowledge to know what they are doing and that they are not qualified to make this decision. There is a lot of work and reading behind this matter. Will the Councillors take note of this? This is far and above a matter for decision at a Council meeting.

Deanna Savage addressed the hearing at 8.10 pm. She has parents who built on Ballina Quays. She asked if there would be a workshop for the Councillors. Steve advised in response that this would be a matter for the General Manager to decide, but that it was probably likely. If a workshop is scheduled, it is up to the Councillors to participate – they are not obliged to.

#### **Discussion and Recommendation**

A number of submissions questioned Council's legal advice and the premise that the current situation of privately owned structures on Community land is unlawful. It was also suggested that under the current Community land designation, Council could issue leases to the owners of the structures if it chose to. This would allow the waterways to stay as Community land and therefore remain as an area open to the public (boats, swimmers, fisherpersons, etc) as well as a drainage reserve. It would give adjacent land owners comfort that Council is not going to divulge itself of responsibilities (particularly maintenance) in relation to the waterways because they would remain Community land.

Other submissions clearly object to leases or licenses in any form as they see them inevitably linked to charges and fees that will probably be recurrent. They also see the concept of changing these waterways to Operational as linked to the cost of maintenance of the waterways. Any extra charge for waterway maintenance is strongly opposed.

Some who presented to the hearing believe the history of development approvals can be viewed as evidence that the existing structures are not illegal and nothing needs to change. Previous legal advice from 1993 appears to differ from the legal advice more recently obtained, but not yet released to the public.

Some submissions expressed concern that Council has not been fully briefed to make a decision on this important matter. The comment is that it should be taken to Councillors as a workshop item so that it can be fully discussed. The legal advice, which is the reason that Council is doing this, should be made available to the public in the interests of transparency.

As the independent chairperson at the hearing, I was aware of the strong views and feelings on this issue on the night. The number of submissions and high attendance at the public hearing demonstrate genuine concern



among residents about what Council is trying to achieve. I also believe there is a lot of misunderstanding and confusion about what is being proposed and what will flow from any change, if it occurs.

In my opinion the recent decision by Council to tender for maintenance dredging in the waterways (albeit allegedly overdue from the five year cycle expected by residents) is a clear statement that the proposed change of the waterways from Community to Operational is not about Council not wanting to undertake maintenance. In my opinion it is also not about charging for maintenance as this could be done by Council regardless of the land being Community or Operational land under the Local Government Act 1993.

In my opinion changing the land to Operational will not facilitate Council collecting fees as a lucrative source of revenue. There are about 145 structures at Ballina Quays and less than 10 at Lake Banyanda. (There are less than 10 on the Endeavour Close waterway as well.) This is a relatively small base from which to collect licence fees, and the cost of collecting those fees would be considerable. There has been no decision taken by Council on the issue of fees and charges should the waterways become Operational land. If the waterways become Operational and structures are licensed, it is inevitable that fees will be considered at some stage. Council, however, has the choice to set these fees at a level it considers appropriate, and that debate is yet to occur. The potential for licence fees is not a reason in itself to avoid reclassifying the waterways.

Council has issued many approvals under the Environmental Planning and Assessment Act 1979 for structures to be erected on and in the waterways at Ballina Quays and Lake Banyanda on Council land. Council knew that the waterways were Community land when these approvals were issued. In the case of Ballina Quays these structures are mentioned in the Principal Generic Plan of Management for Community Land. If Council's current legal advice is correct and these approvals should not have been issued then Council should take action to "regularise" or "make good" its past actions so as to not leave residents exposed to the assumption that their lawfully issued consents are regarded in any way as an unlawful occupation of public land. Since Council is now fully aware of this matter, it should not issue any more consents until it has been sorted out.

The crux of the matter is the accuracy of the legal advice that Council has obtained. This indicates that to make good its past consents and put itself in a position where owners can lodge applications for new or replacement structures, Council should reclassify the waterways to Operational and then issue a licence or lease for the exclusive use of a part of that waterway to those that want to have jetties, pontoons or boat ramps located on or over Council (public) land. The lease or licence creates the relationship between the applicant and the public land (the waterway), and the development approval documents the size and nature of the structure, who has responsibility for its maintenance, etc. In my opinion this advice is partly at odds with legal advice received in 1993 and tabled at a Council meeting (at that time) that indicated the waterway should be classified as Community land (paragraph 17 of the advice). This advice was issued in 1993 so it may be superseded by amendments to the legislation. However, it is currently the only legal advice available to the residents. In fairness to the concerned residents, and to ensure Council is taking the correct action, I am of the view that Council should seek a Barrister's opinion on this matter before it makes its decision as to whether the waterways in question should be changed from Community to Operational in order that leases or licences can be issued for structures approved in the past and can be issued for structures if approved in the future. Council should ensure that the Barrister has relevant experience in the Local Government Act 1993. This advice should be made available to the public so that residents and others can see why Council is taking this action.

**My recommendation on Lot 63 DP 263861 and Lot 132 DP 775228, Ballina Quays Canals is:**

- 1 Council should confirm (or otherwise) its current legal advice on the key issue of the legality of permitting privately owned structures such as pontoons and boat ramps to be located on Community land (being public land owned by Council). This should be done through a Barrister's opinion and that opinion should be made available to the public so that all Ballina Shire residents can fully understand Council's position.
- 2 If the Barrister's opinion confirms its current legal advice, then Council should continue to reclassify Lot 63 DP 263861 and Lot 132 DP 775228 as Operational land under the Local Government Act 1993.

Council should, after this has been finalised, consider its leasing or licensing arrangements for all privately owned structures over Lot 63 DP 263861 and Lot 132 DP 775228.

- 3 If the Barrister's opinion does not confirm its current legal advice and Council can allow privately owned structures such as pontoons and boat ramps to be located on Community land without being in contravention of the Local Government Act 1993, then it should consider updating its Plan of Management to more comprehensively address this matter in relation to structure maintenance and responsibility and public liability. Council should also consider its leasing or licensing arrangements for privately owned structures over Lot 63 DP 263861 and Lot 132 DP 775228 pursuant to the Local Government Act 1993.

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### Lot 50 DP 259593, Banyanda Lake, Ballina

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The group was asked if there was anyone present who was a resident of the Banyanda Lake Estate. Two people indicated they were. They chose not to present to the public hearing.

#### Discussion and Recommendation

Banyanda Lake is in the same situation as the Ballina Quays Canals, except it is not mentioned in the Principal Generic Plan of Management for Community Land and it has fewer pontoons and boat ramps.

My recommendation on this land is therefore the same as for Ballina Quays Canals. That is:

- 1 Council should confirm (or otherwise) its current legal advice on the key issue of the legality of permitting privately owned structures such as pontoons and boat ramps to be located on Community land (being public land owned by Council). This should be done through a Barrister's opinion and that opinion should be made available to the public so that it can fully understand Council's position.
- 2 If the Barrister's opinion confirms its current legal advice, then Council should continue to reclassify Lot 50 DP 259593 as Operational land under the Local Government Act 1993. Council should, after this has been finalised, consider its leasing or licensing arrangements for privately owned structures over Lot 50 DP 259593.
- 3 If the Barrister's opinion does not confirm its current legal advice and Council can legally allow privately owned structures such as pontoons and boat ramps to be located on Community land without being in contravention of the Local Government Act 1993, then it should consider updating its Plan of Management to include reference to Banyanda Lake as well as to more comprehensively address this matter in relation to structure maintenance and responsibility and public liability. Council should also consider its leasing or licensing arrangements for privately owned structures over Lot 50 DP 259593 pursuant to the Local Government Act 1993.

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### Lot 5 DP 843369, Old Bagotville Road, Wardell

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Three persons in attendance, four Council staff, Mike Svikis is the presiding officer.

Introduction by Steve Barnier, including a welcome to country. He outlined the requirements for a public hearing under the Local Government Act 1993. Steve advised that this matter would most likely go to Council in February 2014, and Council would then consider how this matter should proceed.

He indicated that participants would be advised by letter when the Independent Chairperson's report became available so that they could download it from the web.





Mike Svikis advised how he would manage the hearing with those registered being given first opportunity before opening the floor to others in attendance. Mike outlined his approach to the hearing, advising that he would be primarily listening to the issues raised and then reporting on those issues to Council. He would ask questions if required to clarify any issues. He indicated that up to one hour had been allocated, so there was plenty of time for all there to present their views.

Cullimurra Woia (Acting CEO Jali LALC) commenced at 6.10 pm. Ms Woia tabled information related to the National Reserve System (NRS) and advised that the NRS was a network of protected areas which included the Ngunya Jargoon Indigenous Protected Area (NJIPA). She advised that the NJIPA adjoined Lot 5 (Appendix A).

Ms Woia advised that the whole Shire should be proud of the NJIPA and the NRS. She indicated that so far this year five school groups, each containing 50 or more people, had visited the NJIPA. These groups had received information about the cultural history and ecology of the area. Nothing like the NJIPA exists elsewhere in Ballina Shire. She advised that the reclassification would take away an important buffer area between the cane farms and quarries and the NJIPA. This, in turn, would diminish the value of the Indigenous Protected Area (IPA).

The IPA attracts significant grant funds for employment and training. In her opinion, the IPA people could partner with Council to preserve the land.

She indicated that the IPA was an important wildlife corridor for the Long-nosed Potoroo and this corridor included Lot 5. It is important for the whole Shire that this valuable ecosystem be protected. Lot 5 has permanent water that the IPA does not have nearby. It is very important.

She indicated that her (and Jali LALC's) preference was for the whole of Lot 5 to be left as Community land so that it would be preserved for the benefit of the whole Shire. Development of the land would impact on the IPA.

Mike Svikis asked Ms Woia if Jali would want to take over ownership of the land if the opportunity arose? She answered that they would, but management and protection of the land is more important than owning it. She indicated that the concern is that the land will be taken away and developed. She believes that little things can impact a great deal. If reclassification resulted in development, this would have a great impact on wildlife. She advised that Jali could do weed and pest control on the land if it remained Community land. Also consider that Lot 5 will serve as a buffer to the IPA from the proposed Pacific Highway alignment.

David Milledge commenced at 6.30 pm. He advised that he has been a wildlife ecologist for 45 years. Currently works part-time for the Nature Conservation Council and as a consultant.

He tabled a paper on the distribution of Long-nosed Potoroo habitat on the far north coast of New South Wales, which he has co-written for publishing in the Australian Zoologist (Appendix B).

He indicated that he has two primary interests related to Lot 5. Firstly, it is integral to maintenance of biodiversity within the NJIPA. He considered that the IPA land is more significant than a National Park because it has national significance, not just state. He considers that Lot 5 intrudes into the IPA and is essentially part of it.

The second interest relates to the Long-nosed Potoroo, which is listed as vulnerable under national and state legislation. He advised that the IPA probably contains the last viable population of the Long-nosed Potoroo on the North Coast of New South Wales.

In his role with the National Conservation Council he conducts monitoring surveys over five different IPAs. In respect to Lot 5 he has not conducted any formal biodiversity surveys, but he has conducted them all around it. He has recorded various endangered species in the NJIPA as per his written submission.

He considers that Lot 5 has very high biodiversity value in its context with the NJIPA. It has a high movement corridor value. He had issues with Council's assessment report as it made no reference to its biodiversity value. The report should have also referenced its location in terms of proximity to the IPA.

He has specific issues regarding how Council staff had interpreted part 3 of the DoPI practice note on planning proposals. He claims that staff had misconstrued this technical issue regarding whether or not the reclassification would have any environmental impact.

Mike Svikis asked whether David Milledge believed there was any direct impact on Lot 5 from proposed reclassification as such? Mr Milledge answered yes, because reclassifying all of Lot 5 implies it is all suitable for some sort of development and that Council can do what it wants with it. Maybe RMS will put a depot on it for their road project.

Mr Milledge considers that there may not be any direct impact from the reclassification but that this is the thin edge of the wedge. Council should have undertaken a threatened species assessment under Part 5A.

He considers that Council would be in a stronger position if the land remained Community. Council could then negotiate with the RMS to use the land as compensatory habitat.

He advised that the land also had connectivity values to land on the other side of Bagotville Road.

In summary, Mr Milledge strongly advocated that the land stay Community. If this occurred then Council could more strongly advocate the land's biodiversity values and obtain a stronger financial return.

Mike Svikis asked David Milledge whether he would like the land managed by the same people that manage the IPA? Mr Milledge answered yes – the land is integral to the IPA as it is part of the paper bark wetlands. Approximately four-fifths of Lot 5 should be managed as part of the IPA.

Mike Svikis asked Mr Milledge that if it was true that under the LG Act land could only be transferred to a Crown authority if it stayed Community, did he see this as problem if it could not be transferred to IPA? Not if managed appropriately by Council.

Mike Svikis asked Mr Milledge if he was aware that the land was designated E2 in the draft LEP before that part of the land became a deferred matter? Yes, he was aware of that.

Mike Svikis asked Mr Milledge if he thought that the draft zoning, if implemented, would provide protection for the land? Mr Milledge did not think so due to the ISEPP provisions.

Ms Woia stated to the hearing that her aim was not to gain the land for the IPA but to ensure that the land remains Community for the benefit of the community. She indicated that if it stayed Community then Jali could do weed and feral pest control without cost to Council.

Marcus Ferguson commenced at 6.45 pm. He indicated that he was the Cultural Sites Officer with Jali LALC and Co-ordinator for the IPA. He advised that he has dealt with the Pacific Highway proposal since 2002. He has a number of issues with the highway location due to impacts on permanent water sources and the IPA. He advised that on the Jali land the water dries up, but not on the Council land (Lot 5). Jali wants to look after Lot 5 and the biodiversity of this area. The highway will destroy scar trees and stone arrangements. He cannot be sure if there are or are not any Aboriginal cultural heritage sites on Lot 5. There are none registered that he is aware of, but others are nearby.

#### Discussion and Recommendation

Council has stated its intention in changing the classification of Lot 5 is that it is no longer regarded as suitable for the use for which it was purchased, ie a quarry or landfill site (or both). Council is also aware that part of Lot 5 may be required by RMS for the Pacific Highway bypass and they would consider it to be an advantage to have the lot Operational rather than Community. Since Council made its decision to commence the process of reclassification, RMS has issued a property acquisition sketch (dated 28/10/13), which shows an area at the western edge of Lot 5 that is marked for possible acquisition to be used for the highway (Appendix C). This sketch was available for discussion at the public hearing.



I agree that the biodiversity values of a large part of Lot 5 have not been emphasised in the supporting material to the planning proposal, and the existence of the IPA on land immediately surrounding it is also not mentioned. I do not consider that the planning proposal should have been the subject of a Threatened Species assessment or referred to the Commonwealth Government under the EPBC Act 1999. If the land goes to Operational, Council may well choose to dispose of all or part of it, including some of it to RMS. However, it is the subsequent actions by RMS or other owners that would be subject to detailed environmental assessment, not the act of changing the land classification under the Local Government Act 1993. Facilitating the sale of a piece of land to RMS could result in the balance of Lot 5 ending up with the Jali LALC and incorporated into the IPA, if Council was to choose to do this. The choice to transfer land to a non-government organisation such as Jali LALC is only available to Council if the land is Operational.

However, no formal discussion with Jali LALC has occurred and its clear position on this matter is that it opposes the reclassification to Operational under the LG Act. It supports Council retaining the land and working with Jali LALC to manage it as Community land.

Land classified as Community can still be transferred to a Crown authority whether it is Community or Operational. Although the RMS has only expressed an interest in part of Lot 5 for the highway realignment, it may be interested in the balance as an environmental offset area.

In relation to the future use of Lot 5 if it were to become Operational land, this would be largely influenced by the zones that apply to it under Council's LEP. In this case Ballina LEP 2012 zones Lot 5 partly RU2 Rural Landscape and partly "deferred matter". The "deferred matter" was going to be zoned entirely E2 Environment Protection, but this zone was deferred by the Minister throughout Ballina LEP 2012, leaving Ballina LEP 1987 as the substantive LEP over these deferred areas. Under Ballina LEP 1987 the deferred area on Lot 5 is zoned part 1(b) Rural (Secondary Agricultural Land) and part 7(l) Environmental Protection (Habitat). The two LEPs are shown in Figures 3a and 3b.

From this it is clear that the environmentally significant land on Lot 5 is not currently adequately protected by Councils LEPs. The area covered by 7(l) under LEP 1987 is considerably smaller than the area proposed as E2. In changing the classification of Lot 5 from Community to Operational, the subsequent sale of the land could lead a purchaser to believe that land zoned Rural under LEP 1987 could be cleared (for say, agriculture) without consideration of its environmental values. Parts of this land have high biodiversity value and are likely the habitat of Threatened Species such as the Long-nosed Potoroo.

The other concern with Lot 5 is the lack of information on its Aboriginal cultural heritage significance. AHIMS does not record any sites occurring on Lot 5, however Marcus Ferguson is aware of several in the general locality, so there is a possibility that they occur on Lot 5 as well. Had the E2 zone been applied by LEP 2012 as Council intended, it is likely that any sites would be covered by that zone. Partly because it is extensive and partly because the area in RU2 at the western edge of Lot 5 is heavily disturbed by past clearing and quarrying activity.

**My recommendation on Lot 5 DP 843369, Old Bagotville Road, Wardell is:**

- 1 Council should retain as Community land all that part of Lot 5 that is currently designated as "deferred matter" under LEP 2012. The balance of Lot 5 that is zoned RU2 under LEP 2012 should be reclassified as Operational land. When the environment protection zones have been finalised in LEP 2012 and Lot 5 is zoned according to its environmental characteristics; and when Council has considered whether it wants to manage Lot 5 in the long-term or pass it on to a land management group (such as the managers of the adjacent IPA), then the matter of its classification can be revisited as a way of facilitating its transfer (either all of it or part of it) to an appropriate land manager, if this is Council's preferred position.
- 2 If Council considers splitting Lot 5 into two classifications is not practical then all of Lot 5 should be retained as Community land until such time as the environment protection zones have been finalised in LEP 2012 and Lot 5 is zoned according to its environmental characteristics. This should ensure that the ecological values and Aboriginal cultural heritage values (potentially) of Lot 5 are not



compromised by a future owner. When Council has considered whether it wants to manage Lot 5 in the long-term or pass it on to a land management group (such as the managers of the adjacent IPA), then the matter of its classification can be revisited as a way of facilitating its transfer (either all of it or part of it) to an appropriate land manager, if this is Council's preferred position.

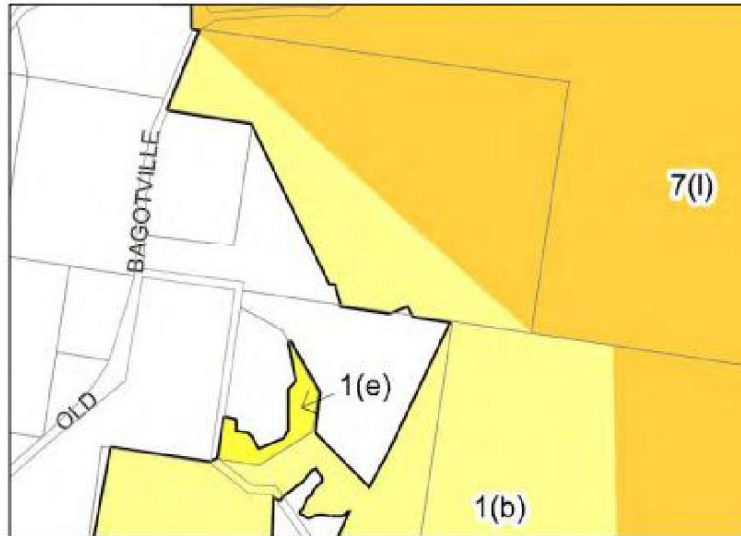


Figure 3a: Lot 5 as zoned under LEP 1987

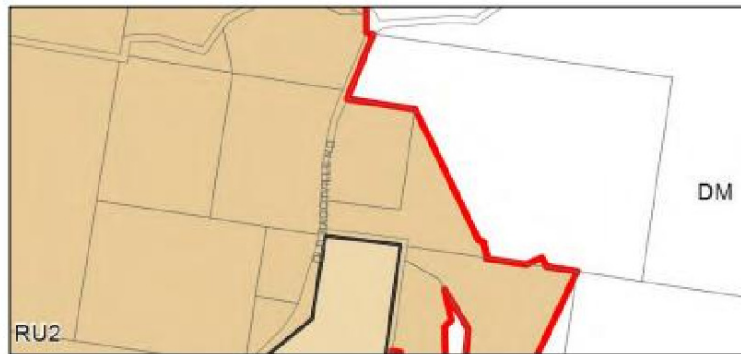
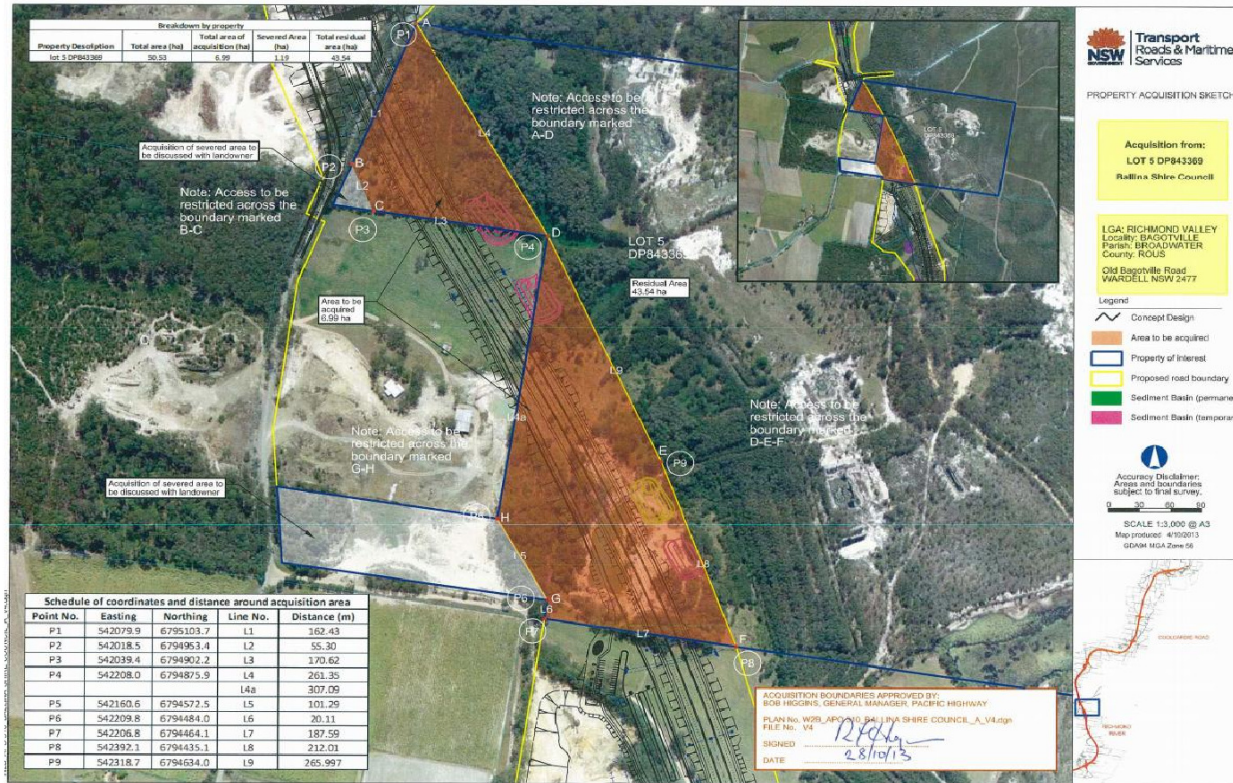


Figure 3b: Lot 5 as zoned under LEP 2012

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

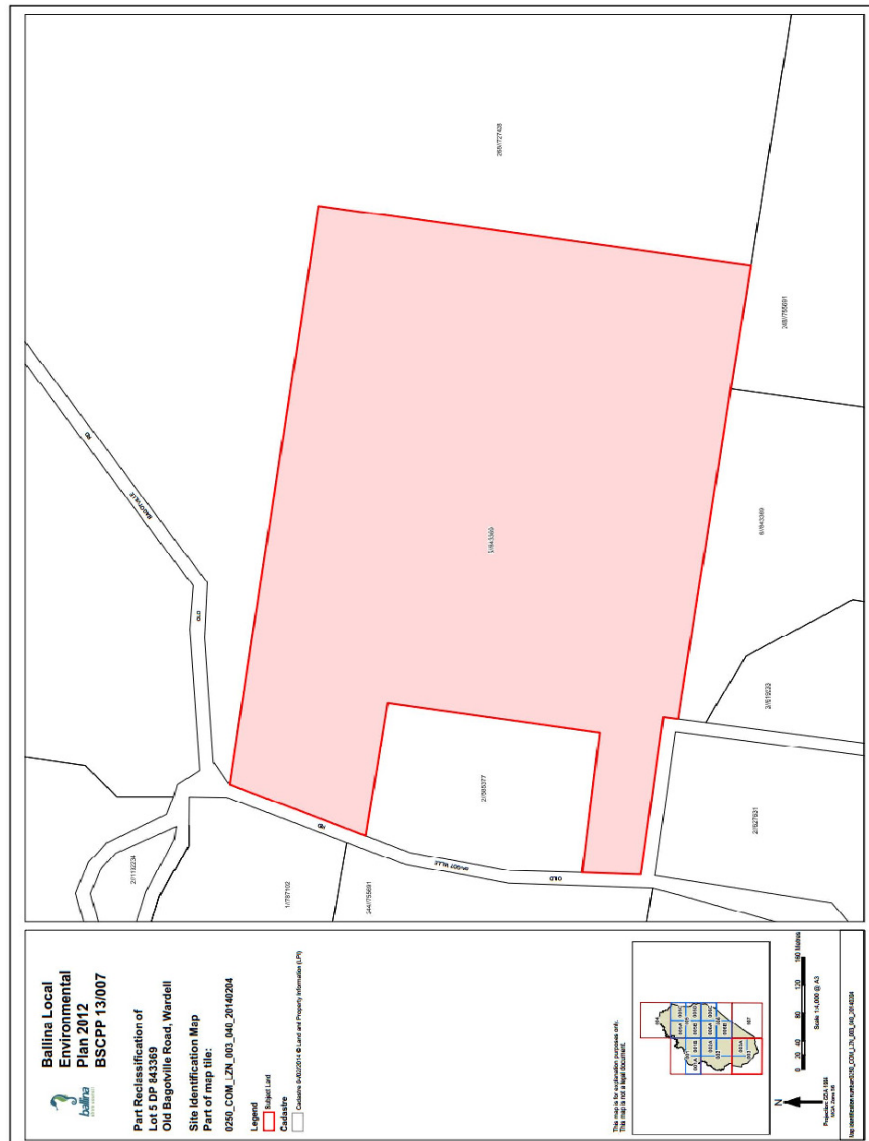
Appendix F – RMS Property Acquisition Sketch



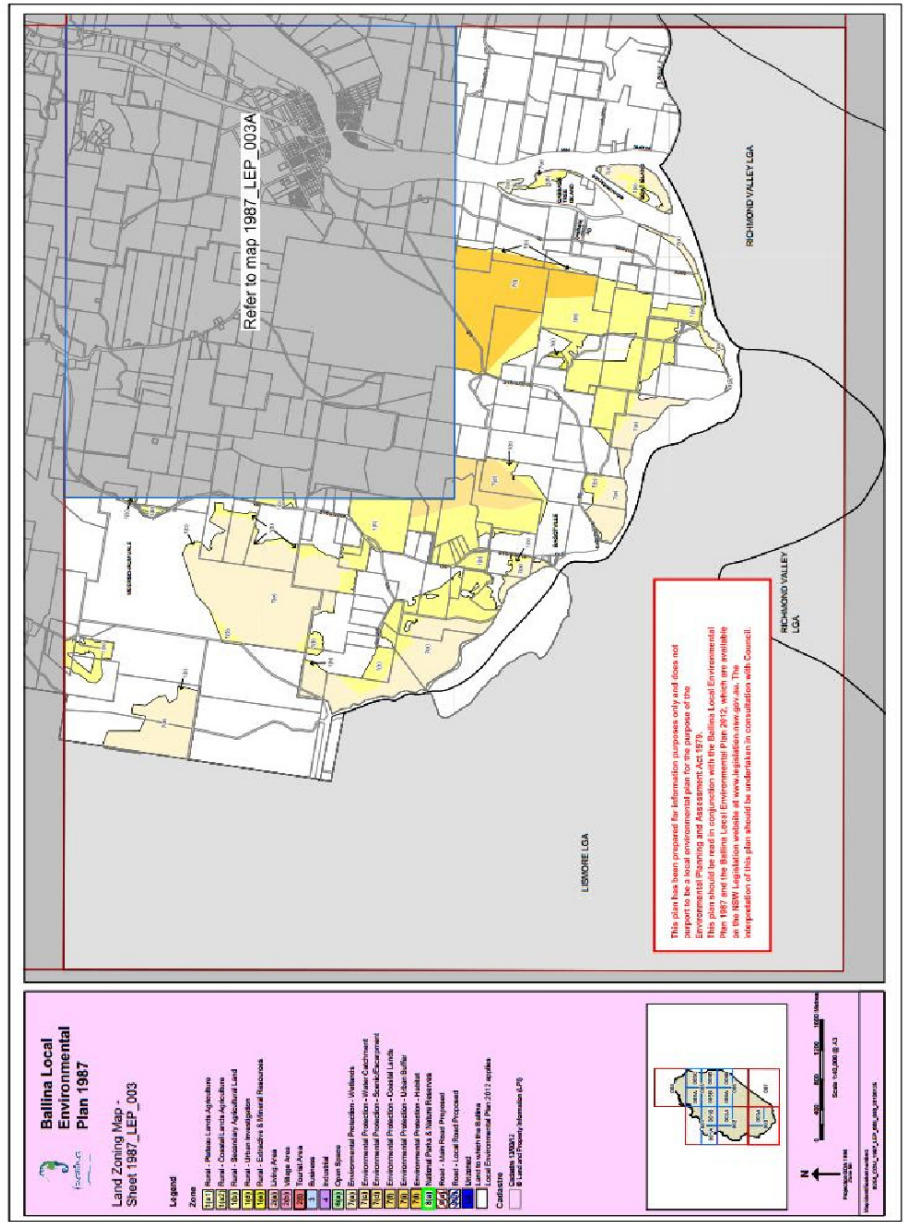
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Appendix G – Maps



Map 1 - Site Identification Map



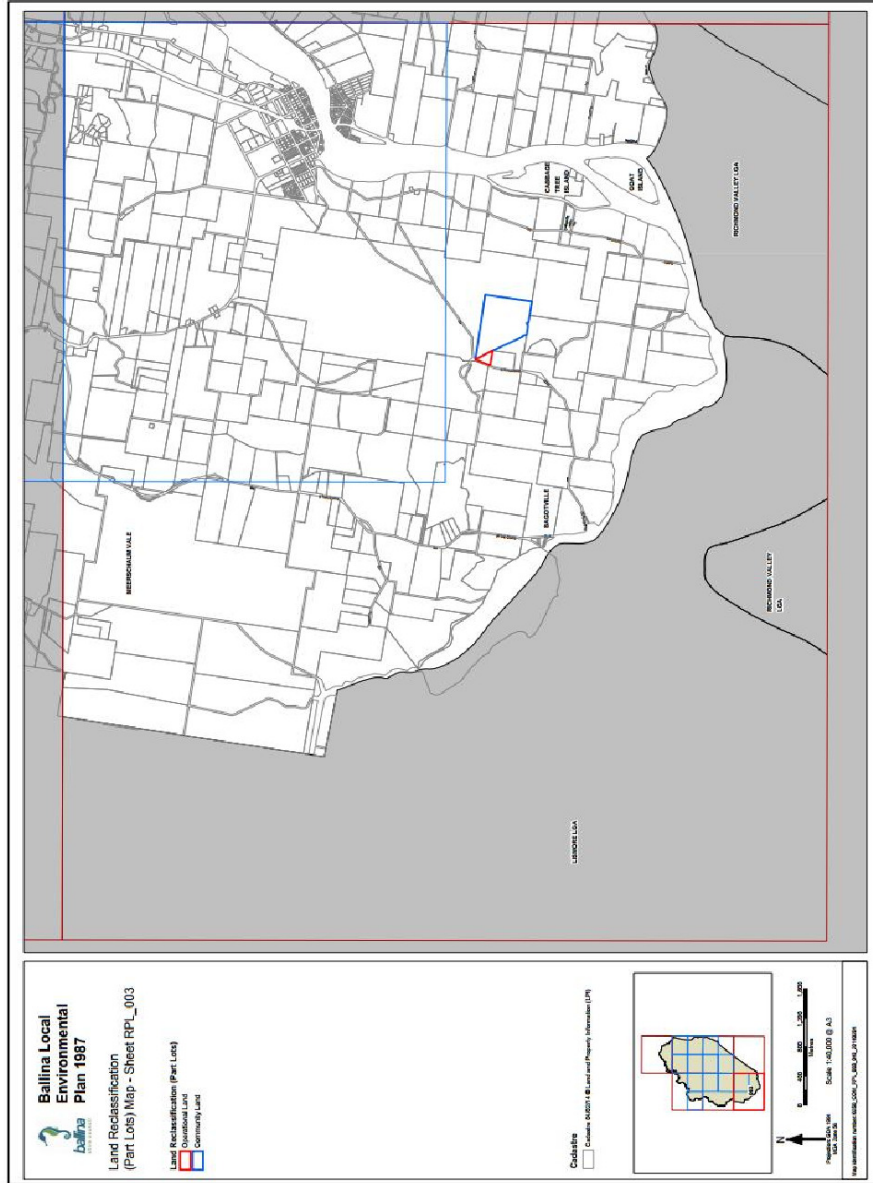
Map 2 - Land Zoning Map – Ballina LEP 1987

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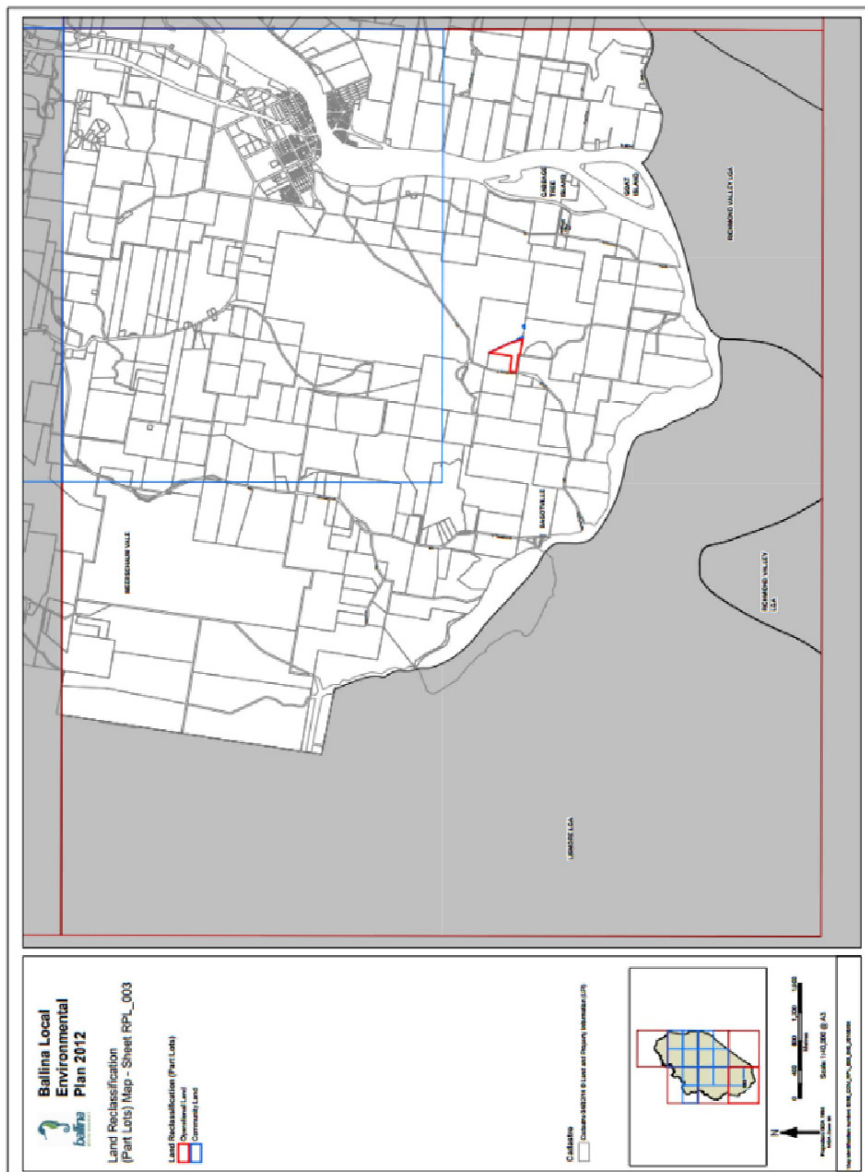






Map 4 - Land Reclassification Map Ballina LEP 1987

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Map 5 - Land Reclassification Map Ballina LEP 2012

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