

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

Date	Action
November 1995	Council resolved to prepare an amendment to the Ballina Local Environmental Plan for the area " <i>bounded generally by the Pacific Highway, Emigrant Creek, the Richmond River and Burns Point Ferry Road, with the purpose of the plan being to facilitate the urban development of the site</i> ".
June - July 1997	Exhibition of draft amendment 39 to the Ballina Local Environmental Plan 1987.
June 1999	Amended concept plan submitted by Steel & Associates Pty Ltd that attempted to address community and public authority submissions to the public exhibition.
July 1999	Council resolved to exhibit the revised rezoning proposal.
September 1999	Exhibition of the revised proposal deferred pending submission of further geotechnical information.
1999 - 2005	Ongoing work relating to resolving technical issues on the site.
November 2005	Rezoning request received seeking support from Council to rezone the land to facilitate residential development in the northern half of the site, with the remainder of the area to be zoned for environmental protection purposes. The request was worded as if it were a fresh application (i.e. not reliant on the previous decisions of Council) and an application fee was paid.
January 2006	<p>Council resolved as follows:</p> <ol style="list-style-type: none"> 1. <i>That the Council proceed to commence the formal processing of the requested amendment to the Ballina Local Environmental Plan 1987 relating to Lot 4 DP 537417 with the matter to be the subject of a further report to the Council providing additional technical detail with respect to the proposed amendment.</i> 2. <i>The Council workshop proposed on developer agreements will further define Council's expectations with respect to this particular development and the potential for a marina.</i> <p>The report included the following statement:</p> <p><i>This report is essentially to inform the Council with respect to whether or not it is considered the request is consistent with the adopted criteria for the commencement of formal processing, and to seek direction from the Council as to whether the formal processing of the request should commence.</i></p> <p><i>It is important to note that the commencement of the formal amendment process in no way binds the Council to rezone the land. Commencement of the process merely means that more detailed technical assessment of the proposal will start. Should Council wish to continue consideration of this proposed amendment, the next step will be the presentation of a more detailed report to the Council regarding the technical aspects of the proposal based on an initial review of the material provided by the proponent.</i></p> <p>The Council resolution was not forwarded to the Department of Planning under S54(4) of the Act.</p> <p>The following advice was provided to the proponent:</p> <p><i>Please note that Council's consideration of the matter to date stops short of a decision to prepare a draft local environmental plan, as required under Section 54 of the Environmental Planning and Assessment Act.</i></p> <p>This is the origin of draft LEP Amendment No.93.</p>
July 2006	Council considered an update report concerning the rezoning. The report advised that there were a range of constraints over the land which were still

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	<p>being assessed. Council resolved as follows:</p> <p><i>That the report concerning the current status of the request for rezoning of Allotment 1 DP 537417 Burns Ferry Road, West Ballina be received and noted.</i></p>
<p>October 2008</p>	<p>Response from Landpartners (formerly Aspect North) to Council's list of issues, withdrawing the concept plan and requesting:</p> <ul style="list-style-type: none"> • That the 4.76 ha area adjacent to the Pacific Highway be rezoned for urban development. • The potential to explore further development options over the balance of the land be preserved by maintaining the current zone or equivalent and that it be considered for urban expansion in the Urban Land Release Strategy.
<p>December 2008</p>	<p>Council resolved as follows:</p> <p><i>That in respect to the subject land matters Council resolves to proceed with option two as identified in the body of this report.</i></p> <p>Option 2 is reproduced below:</p> <ol style="list-style-type: none"> 1. <i>Advise the various land owners that Council is supportive of rezoning the 4.76 ha area of the Ballina Waterways site adjacent to the Pacific Highway and the immediately adjoining lands for urban purposes as part of the comprehensive Draft Local Environmental Plan, provided that:</i> <ol style="list-style-type: none"> a. <i>An integrated rezoning strategy is provided in conjunction with the Ferry Boat Motel site.</i> b. <i>The proposed zoning facilitates the development of the land for low key tourist accommodation, aged care, manufactured home estate, business or low key/impact industrial or a mix, rather than conventional residential allotments.</i> c. <i>A zoning strategy includes areas to be set aside for environmental protection, compensatory environmental measures and strategies for long term maintenance of environmental protection areas.</i> d. <i>The owners of the Ballina Waterways and former Ferry Boat Motel site provide commitments towards access being provided to and across the site in accordance with the NSW Roads & Traffic Authority recommendations i.e. extension of Kalinga Street across the site to give alternative access to Emigrant Lane.</i> e. <i>A planning agreement is provided that outlines all undertakings/proposals that cannot be secured or delivered via the proposed zoning; or</i> <p>(Note: It is envisaged that the owners of the adjoining Emigrant Lane Properties would be contacted to ascertain their preference for the future zoning of their land.)</p> <p>The Report to Council included the following advice:</p> <p><i>Council has the ability to include the subject land and the other adjoining land in a draft plan under the terms of Council's original resolution at its Ordinary Meeting held on 23 November 1995:</i></p> <p><i>"to prepare a local environmental plan to amend the provisions of the Ballina Local Environmental Plan 1987. The amending plan shall apply to that area in West Ballina bounded generally by the Pacific Highway, Emigrant Creek, the Richmond River and Burns Point Ferry Road, with the purpose of the plan being to facilitate the urban development of the site".</i></p> <p><i>Recent advice from the Department of Planning suggests that Council can continue to act on this original resolution if it wishes to prepare a draft plan for this land. Council will, however, need to obtain a Section 65 Certificate from the Director-General of</i></p>

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	<p><i>Planning for the public exhibition of a draft plan.</i></p> <p><i>If Council is to support any rezoning of part of the land for urban purposes, it may have to be undertaken as part of the comprehensive new Draft Local Environmental Plan, given the timing of both matters.</i></p> <p>Consideration of the amendment proceeded under draft LEP Amendment No.39.</p>
July 2009	Presentation to Councillors by SJ Connelly concerning revised concept for the site.
March 2010	Draft Ballina Local Environmental Plan 2010 placed on public exhibition proposing entire site to be zoned R2 Rural Landscape.
April 2010	<p>Council request for clarification regarding proponent's progress in relation to the amendment. Request sought clarification in relation to the following:</p> <ol style="list-style-type: none"> <i>whether or not your client intends to proceed with the current rezoning request; and</i> <i>should your client still be proceeding with the rezoning proposal, the likely timeframe for the submission of the required technical information connected to the rezoning.</i> <p>No specific response was received.</p>
May 2010	Council request to Department of Planning for entry of LEP amendment no.39 into the Gateway planning system. Amendment could not continue under the previous LEP amendment system.
June 2010	Department of Planning advice that conversion of the existing draft to a planning proposal under the Gateway system was not supported. This advice closed the consideration of the LEP amendment request (39) previously presented to Council.
October 2010	Advice from SJ Connelly that Part 3A submission lodged with Department of Planning. Council advised of a mixed urban/ environmental concept for the land (including biobanking).
May/ June 2011	Project identified as not being received into the Part 3A assessment system under reforms to Part 3A.
September 2011	Draft Ballina Local Environmental Plan 2011 placed on public exhibition proposing entire site to be zoned E2 Environmental Conservation.
December 2011	Submission received from SJ Connelly in relation to proposed environmental conservation zoning for the site in Draft Ballina Local Environmental Plan 2011. In response, Council resolved to grant the proponent additional time to prepare a rezoning proposal and to zone part of the site rural in accordance with its December 2008 resolution. This resolution included the applicable land use zoning for the site would be reviewed in 12 months.
May 2012	LEP amendment request received to rezone Lot 1 DP 522558 (former Ferry Boat Motel site) to allow medium density residential development.
July 2012	LEP amendment request received from SJ Connelly to rezone Lot 4 DP 537419 (Ballina Waterways site) comprising a mix of urban and environmental conservation land uses (including biobanking).
September 2012	LEP amendment request for Lot 1 DP 522558 (former Ferry Boat Motel site) reported to Council with recommendation to proceed with preparation of a planning proposal for Lot 1 only. Proposal for Lot 4 to be assessed and reported separately.
October 2012	<p>Council request to SJ Connelly for additional information in relation to rezoning proposal for Lot 4, including request for proponent agreement to engage third party ecological consultant to review ecological characteristics of site.</p> <p>No specific response received.</p>

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February 2013	Ballina Local Environmental Plan 2012 is made and zones the 4.76 hectare area (identified in the December 2008 Council resolution) as RU2 Rural Landscape. The remainder of the site (proposed for E2 Environmental Conservation under the Draft LEP) is deferred and remains zoned 1(b) – Rural (Urban Investigation) as per the Ballina Local Environmental Plan 1987.
June 2013	Matter reported to Council for direction as to how to proceed in relation to current proposal having regard to Council's previous (December 2011) resolution and the proponent's failure to respond to Council's October 2012 correspondence. Council resolved to defer consideration of the matter for up to 6 months allowing the proponent to submit additional information.
January 2014	Matter reported to Council for direction as to how to proceed following the lapsing of 6 months from the June 2013 resolution and the absence of additional information from the proponent. Council resolves to continue processing the amendment subject to the following: <ul style="list-style-type: none"> - undertaking of an independent ecological review at cost of applicant (to be completed by May 30), and, - Council seeking advice from the (then) Department of Planning and Infrastructure in relation to the ability to apply environmental protection zones to the site.
May 2014	Independent ecological consultant (Blackwood Ecological Services) provides report on the assessment of the ecological values of the site.
June 2014	The proponent acknowledges the findings and recommendations of the Blackwood Ecological Services report and makes a written commitment to enter a voluntary planning agreement with Council to achieve satisfactory ecological outcomes for the site should the LEP amendment proposal proceed.
July 2014	Matter reported to Council addressing items in January 2014 resolution. Council resolved to submit the proposal to the Department of Planning and Environment for Gateway determination and to engage a consultant to undertake a third party review of the proposal following government agency consultation. The resolution also required a further report to be presented to the Council at the conclusion of the community and Government agency consultations (exhibition).
September 2014	Gateway determination issued by Department of Planning and Environment in favour of the proposal subject to additional assessment undertaken prior to public exhibition.
December 2014	Additional information supporting the proposal submitted by the proponent in response to the requirements of the Gateway determination.
February 2015	Consultation with government agencies and Council technical staff.
August 2015	Additional information submitted by proponents suitable to enable third party review of the planning proposal to proceed.
March 2016	Peer Review and Gap Analysis Report prepared by GeoLINK.
April 2016	Alteration of Gateway determination issued by the Department of Planning and Environment. The altered Gateway determination related to the part R2 and Part RU2 zones, proposed planning controls permitting additional permitted uses. The period in which the LEP was required to be completed was also extended to 1 April 2017.
June	Exhibition of Planning Proposal and draft VPA.
December 2016	Council considered the planning proposal and VPA post exhibition at its Ordinary Meeting on 15 December 2016. Council resolved to defer the proposal pending further investigation in relation to ecological and any other environmental impacts.

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March 2017	Alteration of Gateway determination to extend the time to finalise the planning proposal to 1 January 2018.
March 2017	Councillors briefed by GeoLINK in relation to ecological and other environmental impacts associated with the planning proposal.



Planning Proposal

May 2016

Burns Point Ferry Road

Lot 4 DP 537419

Burns Point Ferry Road & River Street, West Ballina

16/30159 – Exhibition

Mapping

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INTRODUCTION

Site Details

This planning proposal relates to a 56.6 hectare parcel of undeveloped land described as Lot 4 DP 537419 (Lot 4) Burns Point Ferry Road, West Ballina.

The land is bound to the east by Burns Point Ferry Road, to the north by River Street, to the west by Emigrant Creek and to the south by the Richmond River. The land is contiguous with the existing residential areas of West Ballina. The location and extent of the subject land is shown in Figure 1.

Background to the Planning Proposal

The Burns Point Ferry Road site has an extensive history of land use proposals. A chronology of previous activity and Council resolutions, in this regard, is provided at Appendix A. Historically key issues have included conflicting information about the ecological values of the site and high potential for land use conflicts.

Ballina Shire Council received a concept rezoning submission prepared by Planners North, on behalf of the landowner Ballina Waterways Pty Ltd, in July 2012. Appendix B contains a copy of the concept rezoning submission.

The concept rezoning submission requested an LEP amendment which would permit the creation of Torrens Title live / work allotments, mixed use tourist and recreational precincts, an extension of local roads and infrastructure and the retention of the residue area as an environmental protection area.

The Council initially considered the planning proposal at its Ordinary Meeting of 27 June 2013. The matter was deferred for six months primarily to allow the proponent more time to undertake further ecological assessment to clarify the site's environmental attributes and liaise with the Office of Environment and Heritage to finalise the proposed biobanking scheme for the site.

At the time, environmental protection zones had been removed from the *Ballina Local Environmental Plan 2012* (BLEP 2012) due to the NSW Department of Planning & Environment's Northern Councils E Zone Review. As an alternative option to environmental protection zones, a Voluntary Planning Agreement (VPA) between Council and the proponent has been proposed, involving Biobanking to achieve environmental offsets.

When the Council again considered the planning proposal at its Ordinary Meeting of 23 January 2014, the further ecological assessment had still not been provided by the proponent and the matter of environmental zones remained unresolved by the State Government. The Council resolved to continue processing the LEP amendment subject to the engagement of an ecologist to undertake an independent ecological assessment of the land (at the proponent's cost). A copy of the report to Council and the resulting resolution are provided in Appendix C.

Council engaged Blackwood Ecological Services to undertake the independent ecological assessment. Blackwood's final report was provided to Councillors in May 2014. It informed the preparation of the current Concept Plan and Proposed Zoning Plan for the site. A copy of the Blackwood report is contained within Appendix D. The proponent subsequently provided a written commitment to enter into a VPA with the Council. Appendix E contains advice from

Planners North seeking to enter into a VPA to secure certain ecological outcomes for the site.

At its Ordinary Meeting of 24 July 2014 the Council resolved to submit the planning proposal to the NSW Department of Planning and Environment for Gateway determination. A copy of the report to Council and the resulting resolution are provided in Appendix F.

On 25 September 2014, the Department of Planning and Environment issued a Gateway determination (see Appendix G) which allowed the planning proposal to proceed subject to conditions. The determination required the proponent to provide further detailed technical studies in regards to:

- Ecological/ flora and fauna
- Acid sulfate soils
- Land contamination
- Geotechnical
- Stormwater impact
- Entomological (mosquitoes)
- Bushfire hazard
- Archaeological/cultural heritage
- Flooding

The abovementioned studies form Appendices H to P to this planning proposal.

Further information was also requested in regards to the proposed zoning, minimum lot sizes, height of buildings and environmental protection measures.

In December 2014, the proponent provided the requested information and supporting technical studies (Appendices H to P). These were referred to various government agencies as well as to Council's technical staff, in accordance with the Gateway determination. Responses received are contained within Appendix Q.

In May 2015, the proponent was requested to provide additional information to address the issues raised in response to the review of the technical studies.

In October 2015, the proponent submitted this additional information in the form of a *Post Gateway LEP Amendment Report* with amended technical studies. The report includes a revised Concept Plan (Figure 4) and requests changes to ancillary LEP maps: Proposed Zoning Map, Additional Permitted Uses Map, Lot Size Map, Height of Buildings Map. The *Post Gateway LEP Amendment Report* is contained within Appendix R.

The proponent's technical studies were the subject of an independent Peer Review and Gap Analysis undertaken by GeoLINK. GeoLINK's Peer Review and Gap Analysis report is contained within Appendix S. The GeoLINK report recommended that the proponent address minor information gaps prior to the planning proposal proceeding. These matters have been addressed through the submission of supplementary reports in May 2016, relating to stormwater management and traffic management. Supplementary reports are contained within Appendix W.

The planning proposal the subject of the September 2014 Gateway determination proposed to apply an IN2 Light Industrial zone to part of Lot 4. Dwelling houses were also proposed to be permitted with development consent.

Following further consideration of potential land uses conflict issues it is now proposed to replace the proposed IN2 Light Industrial zone with a R2 Low Density Residential Zone.

A range of commercial and light industrial employment uses are proposed to be permitted within the R2 zone, as additional permitted uses, using the mechanisms of clauses 2.5 and Schedule 1 of BLEP 2012.

Elements of the previous planning proposal, which was the subject of the September 2014 Gateway determination, such as the RU2 zone proposed for the southern site residue area, minimum proposed lot sizes and building height restrictions are proposed to be retained.

The changes made to the planning proposal since the September 2014 Gateway determination required the planning proposal to be resubmitted to the Department of Planning and Environment. The Department of Planning and Environment subsequently altered the September 2014 Gateway determination on the 8 April 2016. The altered Gateway determination allows the amended planning proposal to proceed to public exhibition subject to conditions and extends the period for completing the LEP until 1 April 2017. The altered Gateway determination is contained within Appendix G.

Existing Zoning

The land is subject to the provisions of both *Ballina Local Environmental Plan 1987* (BLEP 1987) and *Ballina Local Environmental Plan 2012* (BLEP 2012). The northern part of the site is subject to the provisions of the BLEP 2012 and is zoned RU2 Rural Landscape. The residue of the site has been deferred from the BLEP 2012 as a result of the exclusion of environmental protection zones from the plan due to the State Government's Northern Councils E Zone Review. As a result, this residue area is subject to the BLEP 1987 and is zoned 1(d) Rural (Urban Investigation) under the provisions of that plan.

The existing zoning of the site and surrounds is illustrated in Figure 2

Proposed Rezoning

The planning proposal seeks to amend the BLEP 2012 by applying a R2 Low Density Residential Zone, and associated land use control provisions, to enable development of part of the subject land for live – work (residential and employment) purposes. Employment purposes will be permitted utilising the mechanisms of clauses 2.5 and Schedule 1 of BLEP 2012 as outlined in *Part 2 – Explanation of Proposal*.

The residue of the site, not proposed to be zoned R2 (currently subject to the BLEP 1987), is proposed to be incorporated within BLEP 2012 and zoned RU2 Rural Landscape zone. This land having an estimated area of 40ha is proposed to be set aside for environmental protection and enhancement purposes.

A voluntary planning agreement (VPA) is proposed between Council and the proponent to achieve the proposed environmental protection and enhancement objectives. The VPA will address proposed ecological offset arrangements via a biobanking scheme. It is proposed that the VPA will also detail certain geotechnical site preparation requirements. The draft VPA and accompanying Explanatory Note are contained within Appendix V.

The proposed zoning plan is shown at Figure 3. A Concept Plan for the proposed subdivision and development is shown at Figure 4.



Figure 1 – Site Identification Map

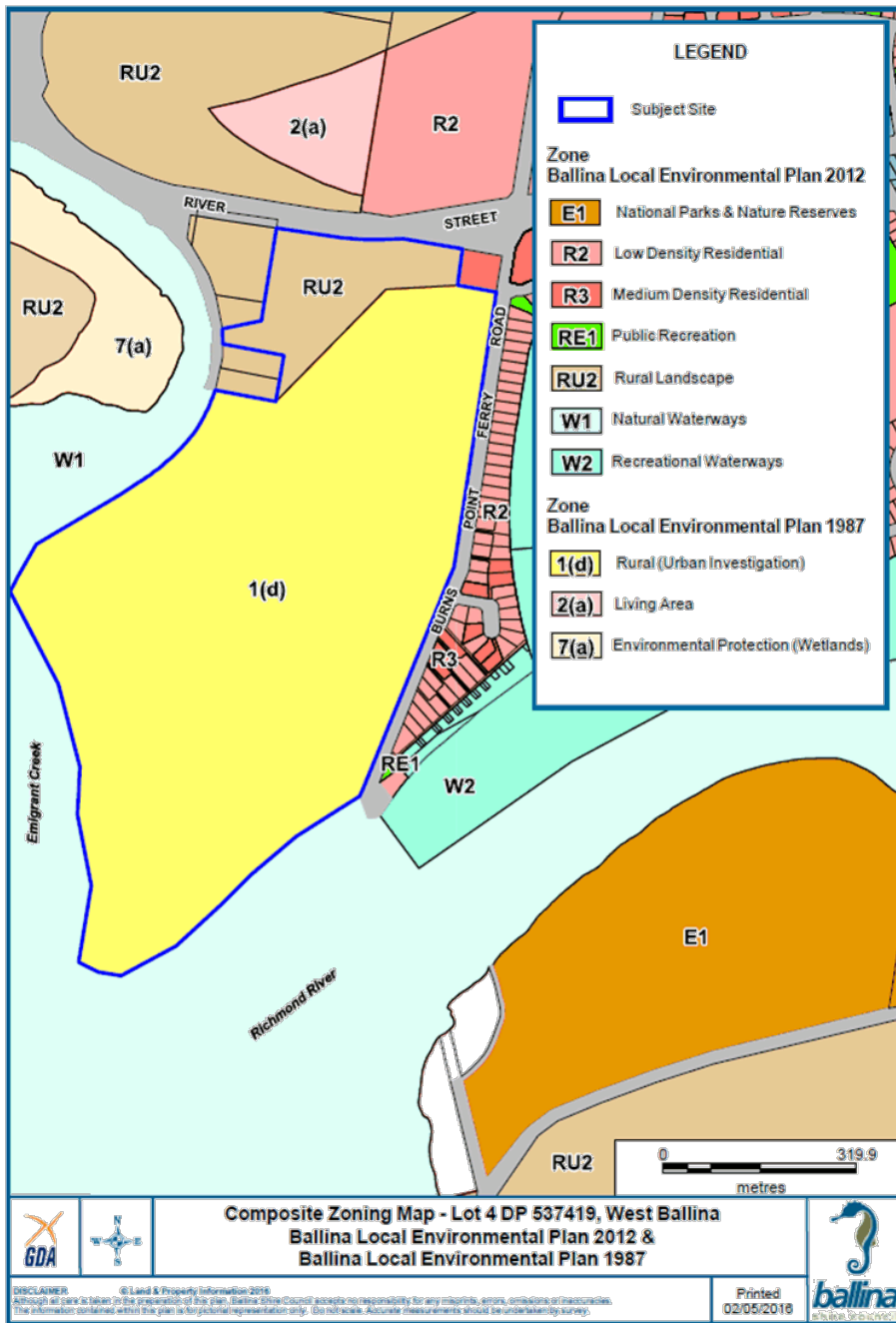
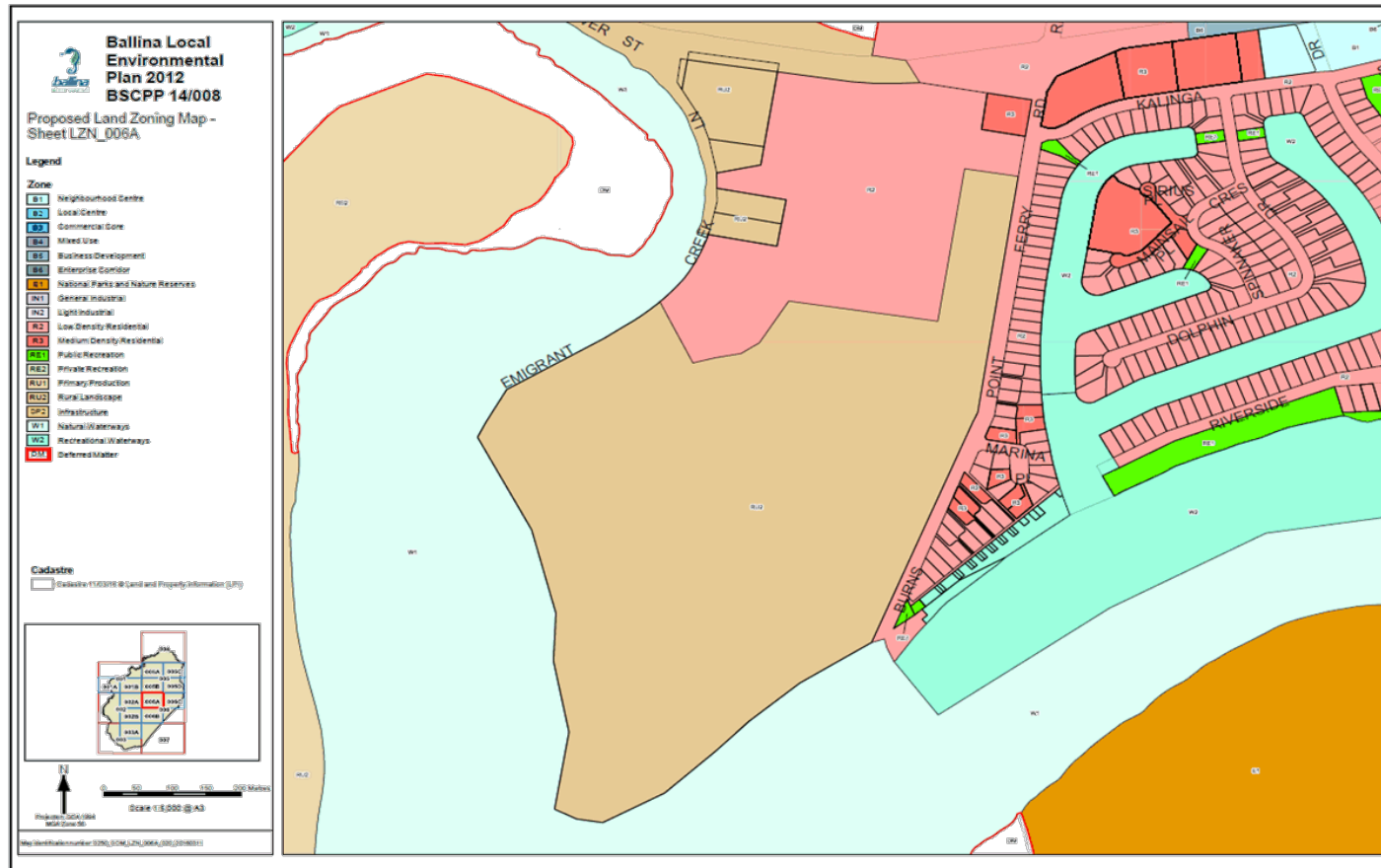


Figure 2 – Existing Zoning Map

Figure 3 - Proposed Zoning Map



Burns Point Ferry Road Planning Proposal – May (Exhibition)



Figure 4 – Concept Plan of the proposed subdivision and development (August 2015)

Strategic Planning Context

Far North Coast Regional Strategy

The 'Far North Coast Regional Strategy' (FNCRS) identifies the entire Burns Point Ferry site as a "proposed future urban release area" while also identifying the site as having indicative areas of high level constraints.

Ballina Shire Local Growth Management Strategy 2012

The *Ballina Shire Local Growth Management Strategy 2012* (LGMS) provides the strategic planning context for urban development in Ballina Shire. The LGMS identifies part of the site, being the area zoned RU2 under the BLEP 2012, as a strategic growth area.

Part of the area proposed for urban development is outside the identified strategic growth area identified in the LGMS. In the LGMS, this part of the site is identified as containing vegetation having high conservation value.

Although this proposal results in inconsistencies with the LGMS, the expanded urban footprint, beyond the identified strategic urban growth area, is generally consistent with the State Government's Far North Coast Regional Strategy, as it applies to this locality, and the historic 1(d) zoning of the land under the Ballina LEP 1987.

The proposed expanded urban footprint will affect the area broadly identified in the LGMS as containing vegetation of high conservation value. These values have been assessed in the supporting documentation. To address this, the proponent has committed to a VPA that will apply to the residue of Lot 4 for the purposes of addressing the ecological restoration and offsets required as part of the future urban development of the site.

Ballina Local Environmental Plan 2012

The provisions of the *Ballina Local Environmental Plan 2012* (BLEP 2012) currently apply to part of the site as detailed in Figure 2. Under the BLEP 2012, part of the site is zoned RU2 Rural Landscape and is subject to a minimum lot size of 40 hectares.

This proposal seeks to rezone this part of the site to facilitate residential and employment related land uses as detailed in the concept plan (Figure 3).

Development standards proposed to be applied to the R2 zone include a 450m² minimum lot size as well as an 8.5 metre building height limit.

Ballina Local Environmental Plan 1987

The remainder of Lot 4, not affected by the BLEP 2012, is subject to the provisions of the *Ballina Local Environmental Plan 1987* (BLEP 1987) which applies the 1(d) Rural (Urban Investigation) zone over this part of the site. This area is proposed to be incorporated within Ballina LEP 2012 and be zoned partly R2 Low Density Residential and partly RU2 Rural Landscape zone.

Development standards proposed to be applied to the RU2 zone include a 40ha minimum lot size and an 8.5 metre building height limit.

PART 1 – OBJECTIVES & INTENDED OUTCOMES

The objective of this planning proposal is to provide for the development of part of the site for urban land uses and to recognise the environmental attributes of the remainder of the site. Specifically, the proposal involves the application of the following zoning and planning provisions to Lot 4:

An R2 Low Density Residential zone is proposed to be applied to the proposed live – work precinct, which has an approximate area of 17ha, together with:

- Application of a minimum 450m² minimum lot size standard;
- Utilisation of the additional use provisions contained within BLEP 2012 together with other provisions to permit and regulate live-work development;
- Application of a 0.7:1 floor space ratio to the proposed live – work precinct;
- Incorporation of part of the live - work precinct within the BLEP 2012 Land Application Map, Flood Planning Map and Acid Sulfate Soils Map; and
- Removal of the Strategic Urban Growth Area affectation from part of Lot 4 and changes to the associated buffer areas.

An RU2 Rural Landscape zone is proposed to be applied to the conservation habitat precinct, which has an approximate area of 40ha, together with:

- Application of a minimum 40ha lot size; and
- Incorporation of the conservation habitat precinct within the BLEP 2012 Land Application Map, Flood Planning Map and Acid Sulfate Soils Map.
- Utilisation of the additional permitted use provisions contained within BLEP 2012 to permit a restaurant or café, incorporating information and education facilities and a dwelling;

The following controls are proposed to be applied to the whole of Lot 4:

- Maximum building height of 8.5 metres; and
- Building height allowance of 2.7m AHD.

The manner in which Ballina LEP 2012 is proposed to be amended, including a plain English explanation of the proposed amendments is contained within *Part 2 – Explanation of the Proposal*.

PART 2 – EXPLANATION OF THE PROPOSAL

The proposal seeks to incorporate the whole of Lot 4 within BLEP 2012.

An R2 Low Density Residential zone is proposed to be applied to an area (approximately 17ha) in the northern part of the site and be designated as a live – work precinct. Amendments are proposed to Ballina LEP 2012 including Schedule 1 of the LEP which will permit employment (work) related land uses within the R2 zone.

A significant portion of the area proposed to be zoned R2 is currently zoned RU2 Rural Landscape zone under the provisions of BLEP 2012. The southern and south – western section of the proposed R2 zoned area is, however, contained within an area deferred from BLEP 2012 and is zoned 1(d) Rural (Urban Investigation) under the provisions of BLEP 1987.

Portions of the land under the provisions of both BLEP 2012 and BLEP 1987 contain the following vegetation communities as identified by Blackwood (Appendix D):

- Swamp Oak Forest – Part of Swamp Oak floodplain forest an EEC listed under the TSC Act,
- Open forest (Blackwood wattle) – highly degraded with minimal conservation value,
- Mangrove and mid-high forest – protected marine vegetation under the NSW Fisheries Management Act 1994,
- Tall closed Phragmites reedland – consistent with Freshwater wetland on coastal floodplain EEC under the TSC Act, and
- Low closed grassland / reedland – low conservation value.

As a consequence of the proposed rezoning and future development (if it proceeds) vegetation communities having higher conservation value will be removed. To compensate for the removal of these vegetation communities a biobanking agreement is proposed to be entered into which will cover the residue of Lot 4 (40ha) not proposed to be developed for urban purposes. A VPA is proposed which will give effect to the biobanking agreement following the rezoning of Lot 4.

It is noted here that that the Blackwood assessment did not include a section of the site located to the south – west of the land proposed to be rezoned to R2. Part of this area was initially considered to contain Freshwater Wetland EEC by Council staff. It has been concluded following assessment by the Melaleuca Consulting (Appendix H), and subsequent assessment by GeoLINK, that the area contains disturbed grassland and does not contain Freshwater EEC. The following extract from the GeoLINK report (Appendix S p10) relates to this land.

An area of the site west of the development area flanking Emigrant Creek was not included in the vegetation mapping by Blackwood (2014) but was examined in the report by Melaleuca Consulting. This area was briefly inspected and comprises more elevated disturbed grassland which is subject to grazing. The rationale discussed above also applies to this land (ie. It comprises a mosaic of disturbed pasture) and is not considered to support the Freshwater Wetland EEC.

On the basis of the above assessment the subject area has been assigned a R2 zone.

Figure 5 below shows the Ecological Assessment Points referenced in the Melaleuca Consulting Ecological Assessment (Appendix H). Assessment point BP4 (J-A) is in the

area not included in the Blackwood report and referred to in the GeoLINK report.



Figure 5 – Ecological Assessment Points referenced in the Melaleuca Consulting Ecological Assessment

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In respect to fauna the Blackwood assessment did not find any threatened fauna on Lot 4 during the site survey periods. The conclusion reached was that the study area (northern area proposed for R2 zone) provides only limited habitat value due to its disturbance history, current grazing practices and relative isolation in the landscape.

The remainder of Lot 4 is proposed to be zoned RU2 Rural Landscape zone under the provisions of BLEP 2012. This land contains similar vegetation communities as are contained within the area proposed to be rezoned as R2. It is this area that is proposed to be restored and rehabilitated as part of a VPA associated with this proposal. This part of the site has also been assessed by Blackwood as providing movement habitat for birds and other mobile species.

Proposed to be located within the RU2 zoned area is a café / interpretive centre and associated dwelling. To enable this to occur a further additional permitted use provision is proposed for the purpose of a *restaurant or café incorporating information and education facilities* and a *dwelling*, contained within a curtilage having a maximum area of 1300m². A maximum area has been specified to limit the impact of the proposed facility on an area which has ecological value.

In conjunction with the amendments to the current zoning of the site, it is proposed to apply a minimum lot size of 450m² to the R2 area with the remainder of the site being subject to a minimum lot size of 40 hectares. A maximum building height of 8.5 metres is proposed for the entire site.

Consequential amendments to the Strategic Growth Area Map, Land Application Map, Acid Sulfate Soils Map, Building Height Allowance Map and the Flood Planning Map are also proposed.

Suggested amendments to Schedule 1, as they relate to the proposed café / interpretative centre and dwelling, are as follows:

Draft Amendment to Schedule 1 of BLEP 2012	Plain English Explanation of Proposed Clause
Use of Certain land at West Ballina	
(1) This clause applies to land adjacent to Burns Point Ferry Road and River Street, West Ballina, being part Lot 4 DP 537419 and identified as "Area H" on the <i>Additional Permitted Uses Map</i> .	The clause is intended to apply to that part of Lot 4 proposed to be zoned RU2 Rural Landscape. A precise location has not been nominated as part of this area is located within an Extreme Flood Risk Precinct and the land is also affected by other constraints which may render it unsuitable for building purposes.
(2) Development for the purpose of a restaurant or café incorporating information and education facilities and a dwelling, contained within a curtilage having a maximum area of 1300m ² , is permitted with development consent.	Uses additional to those permitted, with development consent, in the RU2 Rural Landscape zone have been specified. These uses are <i>restaurant or café incorporating information and education facilities and a dwelling</i> . Once a suitable site has been found for these uses within the RU2 zoned area then it is proposed that they be restricted to a maximum site area of 1300m ² . Only one such development is proposed to be permitted within the proposed RU2 zoned area.

Note:

The proponent has requested an area of 1300m² within the RU2 zone located at the river end of Burns Point Ferry Road to be used as a café facility and dwelling. This facility was envisaged to operate in a manner similar to the Sea Acres Rainforest Centre (Port Macquarie) and the Dorrigo Rainforest Centre (Dorrigo). It is proposed that it would provide an adjunct to the biobanking conservation precinct and be used to facilitate the provision of interpretative information relating to this precinct.

The proposed facility may be characterised as a mixed use containing a *restaurant or café, information and education facility, and a dwelling*. A *restaurant or café, and information and education facility*, are uses already permitted with development consent within the RU2 zone.

There is some ambiguity as to whether the proposed dwelling would be characterised as a *dwelling house* and thereby be permitted with consent. To remove this ambiguity the mechanism of clause 2.5 and Schedule 1 of BLEP 2012 is proposed to be used to ensure that all three components of what is proposed will be permitted with development consent.

The river end of Burns Point Ferry Road is within an *Extreme Flood Risk Precinct* as mapped in Ballina DCP 2012. Residential accommodation is not compatible with the risk profile associated with this precinct and for this reason an alternative site within the residue of Lot 4 will most likely be required. For this reason and to provide future flexibility in terms of potential location the additional permitted use area applies to the whole of the Lot 4 reside area.

Suggested amendments to Ballina LEP 2012 as they relate to the proposed live – work development are as follows:

Draft Amendment to Schedule 1 of BLEP 2012	Plain English Explanation of Proposed Clause
Use of certain land at West Ballina	Use of certain land at West Ballina
(1) This clause applies to land adjacent to Burns Point Ferry Road and River Street, West Ballina, being part Lot 4 DP 537419 and identified as "Area G" on the <i>Additional Permitted Uses Map</i> .	This clause is intended to apply to that part of Lot 4 proposed to be zoned R2 Low Density Residential as identified as "Area G" on the Additional Permitted Use Map contained within Appendix U.
(2) Development for live – work purposes is permitted with development consent. For the purposes of this clause live work development must contain a dwelling and one of the following: (a) Light Industry, or (b) business premises, other than funeral home, or (c) office premises.	Live - work development has not been specifically defined. To be considered as live – work development the development must contain a dwelling and only one of the following nominated landuses: (a) Light Industry, or (b) business premises, other than funeral home, or (c) office premises. Light industry, business premises and office premises are uses defined within the Dictionary to BLEP 2012.
Additional provisions to regulate live – work development for Ballina LEP 2012	Plain English Explanation of Proposed Clause
Live - Work Development	Live - Work Development
(1) The work component of live - work development permitted under this Plan in "Area G" as identified in Schedule 1, must	To ensure that work component of live – work development remains compatible with residential development a maximum floor area

<p>not exceed whichever of the following is the greater:</p> <p>(a) 120 square metres, (b) 0.2:1 floor space ratio.</p> <p>(2) A dwelling associated with live - work development must have a floor space ratio not exceeding 0.5:1.</p>	<p>control of 120 square metres or 0.2:1 floor space ratio is proposed.</p> <p>A limit on dwelling size has been nominated by applying a maximum 0.5:1 floor space ratio. This is consistent with that specified by Ballina Shire DCP 2012 for dwelling houses within the R2 zone.</p>
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PART 3 – JUSTIFICATION

Section A - Need for the Planning Proposal

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

As detailed above, part of the subject site is identified in the Ballina Shire Local Growth Management Strategy as a strategic urban growth area. The urban footprint proposed extends beyond this growth area. In the circumstances this is considered acceptable based on a more detailed site assessment and having regard for the potential delivery of environmental outcomes for the residue of the site.

The entire site is identified in the Far North Coast Regional Strategy as a proposed future urban release area. The area outside the identified strategic urban growth area in the LGMS is currently zoned 1(d) Rural (Urban Investigation) reflecting its historic recognition as a potential urban growth area.

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

The planning proposal and the associated VPA are considered to be appropriate means for securing the intended development outcomes for the land. An LEP amendment is required to enable urban uses of part of the land and to bring the whole of Lot 4 within the provisions of BLEP 2012.

Section B - Relationship to the Strategic Planning Framework

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

The proposal is consistent with the Far North Coast Regional Strategy (FNCRS), which provides the regional framework for the consideration of policy development and the overall vision of the future. The proposal is not in conflict with the outcomes or actions of the strategy.

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

As identified above, the proposal will result in an inconsistency with the provisions of the Ballina Shire Local Growth Management Strategy. Given the potential for the overall outcomes for the site to be positive, and the consistency of the proposal with the Far North Coast Regional Strategy and the present zoning arrangements, it is considered appropriate for the proposal to proceed to public exhibition.

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 the applicable Ministerial Directions (S. 117 directions)?**

The Gateway determination dated 25 September 2014 found that there were a number of minor inconsistencies with the following S117 Directions which did not require further approval:

- 1.1 Business and Industrial Zones,
- 1.2 Rural Zones,
- 1.5 Rural lands,
- 2.1 Environmental Protection Zones,
- 4.1 Acid Sulfate Soils,
- 4.3 Flood Prone Land

A Section 117 Direction checklist for the planning proposal is contained in Appendix T.

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?**

Ecological assessments have been undertaken for the northern part of the site which identifies the presence of several endangered ecological communities. These vegetation communities, whilst representative of EEC's, have been found by Blackwood to be generally of poor to moderate condition, fragmented, having low species diversity, young age structure and or generally of low to moderate conservation value. No threatened flora species were found on this part of the site.

As a consequence of the ecological assessments undertaken by Blackwood, Melaleuca Group, Peter Parker, Aspect North and GeoLINK it has been concluded that the northern part of the site is generally suitable for urban development as proposed, subject to appropriate biobanking offsets or compensatory habitat being established.

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

A number of environmental assessments have been undertaken to support the planning proposal and include the following:

- Ecological / flora & fauna assessment;
- Acid sulfate soils assessment;
- Land contamination assessment;
- Geotechnical assessment;
- Stormwater impact assessment;
- Entomological assessment (mosquitoes);
- Bushfire hazard assessment; and

- Archaeological / cultural heritage assessment.

The potential impacts associated with filling the site for the purpose of flood mitigation has been assessed as part of Council's floodplain management planning process, undertaken in accordance with the NSW Floodplain Management Manual. This broader assessment supports the principles of the planning proposal.

The technical supporting information referenced above that has been prepared in support of this proposal is contained within (Appendices H to P). These assessments have been the subject of peer review by GeoLINK (Appendix S) and have been found to address most of the requirements outlined in the Gateway determination, as well as the requirements of Council staff, the OEH and Fisheries NSW. The identified information gaps have been addressed in supplementary reports which are contained with Appendix W.

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

It is considered that positive social and economic benefits will result from the proposal as a result of additional and diversified urban land use options for Ballina.

Section D - State and Commonwealth Interests

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

The area the subject of the planning proposal is identified in various ways under State and local planning policy as well as the Ballina LEP 1987 as a potential urban release area. The water, sewer and road networks are either capable of accommodating the proposal or can be suitably augmented to meet the requirements of the urban use of the land.

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

Consultation has been undertaken in accordance with the requirements of the Gateway determination dated September 2014. The Gateway determination required consultation with the following public authorities:

- Roads & Maritime Services in relation to road access and maritime issues,
- NSW Office of Environment and Heritage,
- Department of Primary Industries – Fisheries and Aquaculture, and
- Department of Primary Industries – Agriculture.

Council has referred the planning proposal to the above agencies and has received responses to inform the technical assessment of the planning proposal. Responses received are contained within Appendix Q

The table below provides a summary of the issues raised in correspondence received together with the manner in which these issues have been addressed in subsequently submitted documentation.

Authority	Advice Provided	Comments
Roads and Maritime Services (March 2015)	Recommend that a detailed traffic study be undertaken. Traffic study to consider an access to River Street consistent with the Ballina Old Pacific Highway Corridor Access Management Plan.	A traffic study was not initially prepared. Planners North prepared estimates of likely traffic generation for the proposal in accordance with the RTA Guidelines. The GeoLINK peer review has found that additional

9.2 **Planning Proposal - Burns Point Ferry Road, West Ballina.DOC**

Authority	Advice Provided	Comments
<p>NSW Office of Environment and Heritage (March 2015)</p>	<p>Mapping of Freshwater Wetland EEC to be resolved within the planning area.</p> <p>The eastern portion of the planning area containing Freshwater Wetland be zoned for environmental conservation and suitably protected in perpetuity.</p> <p>Additional investigation be undertaken to confirm or discount the presence of Freshwater Wetland within the western portion of the planning area.</p> <p>Land comprising high conservation values not to be used for Bushfire Asset Protection Zones or stormwater management. Alternatively impacts are to be offset.</p> <p>Riparian buffer areas of the mixed use community title precinct be zoned RE 1 Public Recreation and a management plan be prepared.</p> <p>A revised BioBanking Statement and BioBanking Agreement should be prepared.</p> <p>Council to ensure that the planning proposal is not inconsistent with the draft Ballina Floodplain Risk Management Plan (BFRMP).</p>	<p>information is required related to the capacity of the adjoining road system to accommodate predicted increases in traffic. This additional information in the form of a Traffic Impact Assessment was subsequently submitted and is contained within Appendix W.</p> <p>The extent of Freshwater wetland EEC has been resolved in the GeoLINK peer review. No further assessment in this respect is considered to be required in conjunction with the rezoning process.</p> <p>The south - eastern portion of the site is proposed to be zoned RU2 at this time pending the incorporation of E zones more broadly within BLEP 2012.</p> <p>Additional investigation was undertaken by GeoLINK who have expressed the view that this area is not considered to support Freshwater Wetland EEC.</p> <p>Additional information has been required in relation to buffer areas. This issue requires further assessment.</p> <p>An RE1 zone is not proposed at this time consistent with Council's standard practice when rezoning land. Once the extent of land designated for public recreation has been determined as part of the subdivision process and dedicated to Council these areas will then be zoned RE1 as part of the general annual housekeeping amendment process.</p> <p>A revised biobanking statement and biobanking agreement will be required to be prepared prior to any development of the site for the additional purposes permitted by the planning proposal.</p> <p>The planning proposal is consistent with the Ballina Floodplain Risk Management Plan. It is noted here that the Geolink peer review required additional assessment relating to potential tidal and flooding impacts on the café and dwelling site. Assessment associated with the preparation of this planning proposal has however found the proposed site may be unsuitable due to flood hazard.</p>
<p>Department of Primary Industries – Fisheries and Aquaculture (February 2015)</p>	<p>SEPP 62 Aquaculture applies to the site. Issues of relevance have been satisfied through Fisheries consultation.</p> <p>Buffers have not been shown to the conservation block.</p> <p>The proposed restaurant site may result in direct impacts on marine vegetation – foreshore mangroves and seagrass.</p> <p>As buffers have not been shown it is not possible to assess any</p>	<p>Noted</p> <p>Buffers have now been shown in supplementary information submitted in May 2016 and contained within Appendix W.</p> <p>The originally proposed restaurant site is now considered to be inappropriate therefore overcoming concerns raised in respect to marine vegetation.</p>

Authority	Advice Provided	Comments
	<p>remaining areas available for biodiversity offset credits.</p> <p>Recommend that the conservation lot be zoned E2.</p> <p>Advise that Fisheries manage the offsets for marine vegetation.</p>	<p>An E2 zone is not proposed at this time due to the Northern Councils E zone review process.</p> <p>Noted</p>
<p>Department of Primary Industries – Agriculture</p> <p>(February 2015)</p>	<p>No major implications for agriculture were identified. Recommended consultation with Fisheries Unit and NSW Office of Water. Local cane industry consultation also recommended regarding a flood gate adjacent to the site.</p>	<p>Noted. Consultation as recommended will take place as part of the public exhibition process.</p>

The altered Gateway determination dated 8 April 2016 required that consultation take place with the Local Aboriginal Land Council and that they be provided with a copy of the planning proposal, the Aboriginal Cultural Heritage Assessment and the Archaeological Survey.

The Jali Local Aboriginal Land Council has been requested to provide comments on this planning proposal, and has been forwarded the specified documents.

PART 4 – MAPPING

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

- Additional Permitted Uses Map
- Acid Sulfate Soils Map
- Building Height Allowance Map
- Floor Space Ratio Map
- Flood Planning Map
- Height of Buildings Map
- Land Application Map
- Lot Size Map
- Land Zoning Map
- Site Identification Map
- Strategic Urban Growth Area Map.

Copies of the above maps are provided in Appendix U.

PART 5 – COMMUNITY CONSULTATION

Community consultation is being undertaken for this planning proposal in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*.

PART 6 – TIMELINE

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	September 2014
Government Agency Consultation	February 2015
Third Party Review	February 2016
Public Exhibition Period	June - July 2016
Public Hearing	N/A
Submissions Assessment	August 2016
RPA Assessment of Planning Proposal and Exhibition Outcomes	October 2016
Submission of Endorsed LEP to P&I for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	November 2016
Forwarding of LEP Amendment to DoP&E for Notification (if delegated)	November 2016

APPENDICES

Appendix A - Chronology of Council Resolutions and Activity

Date	Action
November 1995	Council resolved to prepare an amendment to the Ballina Local Environmental Plan for the area "bounded generally by the Pacific Highway, Emigrant Creek, the Richmond River and Burns Point Ferry Road, with the purpose of the plan being to facilitate the urban development of the site".
June - July 1997	Exhibition of draft amendment 39 to the Ballina Local Environmental Plan 1987.
June 1999	Amended concept plan submitted by Steel & Associates Pty Ltd that attempted to address community and public authority submissions to the public exhibition.
July 1999	Council resolved to exhibit the revised rezoning proposal.
September 1999	Exhibition of the revised proposal deferred pending submission of further geotechnical information.
1999 - 2005	Ongoing work relating to resolving technical issues on the site.
November 2005	Rezoning request received seeking support from Council to rezone the land to facilitate residential development in the northern half of the site, with the remainder of the area to be zoned for environmental protection purposes. The request was worded as if it were a fresh application (i.e. not reliant on the previous decisions of Council) and an application fee was paid.
January 2006	<p>Council resolved as follows:</p> <ol style="list-style-type: none"> 1. <i>That the Council proceed to commence the formal processing of the requested amendment to the Ballina Local Environmental Plan 1987 relating to Lot 4 DP 537417 with the matter to be the subject of a further report to the Council providing additional technical detail with respect to the proposed amendment.</i> 2. <i>The Council workshop proposed on developer agreements will further define Council's expectations with respect to this particular development and the potential for a marina.</i> <p>The report included the following statement: <i>This report is essentially to inform the Council with respect to whether or not it is considered the request is consistent with the adopted criteria for the commencement of formal processing, and to seek direction from the Council as to whether the formal processing of the request should commence.</i> <i>It is important to note that the commencement of the formal amendment process in no way binds the Council to rezone the land. Commencement of the process merely means that more detailed technical assessment of the proposal will start. Should Council wish to continue consideration of this proposed amendment, the next step will be the presentation of a more detailed report to the Council regarding the technical aspects of the proposal based on an initial review of the material provided by the proponent.</i></p> <p>The Council resolution was not forwarded to the Department of Planning under S54(4) of the Act. The following advice was provided to the proponent: <i>Please note that Council's consideration of the matter to date stops short of a decision to prepare a draft local environmental plan, as required under Section 54 of the Environmental Planning and Assessment Act.</i> This is the origin of draft LEP Amendment No.93.</p>
July 2006	<p>Council considered an update report concerning the rezoning. The report advised that there were a range of constraints over the land which were still being assessed. Council resolved as follows:</p> <p><i>That the report concerning the current status of the request for rezoning of Allotment 1 DP 537417 Burns Ferry Road, West Ballina be received and noted.</i></p>

9.2 Planning Proposal - Burns Point Ferry Road, West Ballina.DOC

Date	Action
October 2008	<p>Response from Landpartners (formerly Aspect North) to Council's list of issues, withdrawing the concept plan and requesting:</p> <ul style="list-style-type: none"> • That the 4.76 ha area adjacent to the Pacific Highway be rezoned for urban development. • The potential to explore further development options over the balance of the land be preserved by maintaining the current zone or equivalent and that it be considered for urban expansion in the Urban Land Release Strategy.
December 2008	<p>Council resolved as follows: <i>That in respect to the subject land matters Council resolves to proceed with option two as identified in the body of this report.</i></p> <p>Option 2 is reproduced below:</p> <ol style="list-style-type: none"> 1. Advise the various land owners that Council is supportive of rezoning the 4.76 ha area of the Ballina Waterways site adjacent to the Pacific Highway and the immediately adjoining lands for urban purposes as part of the comprehensive Draft Local Environmental Plan, provided that: <ol style="list-style-type: none"> a. An integrated rezoning strategy is provided in conjunction with the Ferry Boat Motel site. b. The proposed zoning facilitates the development of the land for low key tourist accommodation, aged care, manufactured home estate, business or low key/impact industrial or a mix, rather than conventional residential allotments. c. A zoning strategy includes areas to be set aside for environmental protection, compensatory environmental measures and strategies for long term maintenance of environmental protection areas. d. The owners of the Ballina Waterways and former Ferry Boat Motel site provide commitments towards access being provided to and across the site in accordance with the NSW Roads & Traffic Authority recommendations i.e. extension of Kalinga Street across the site to give alternative access to Emigrant Lane. e. A planning agreement is provided that outlines all undertakings/proposals that cannot be secured or delivered via the proposed zoning; or (Note: It is envisaged that the owners of the adjoining Emigrant Lane Properties would be contacted to ascertain their preference for the future zoning of their land.) <p>The Report to Council included the following advice: <i>Council has the ability to include the subject land and the other adjoining land in a draft plan under the terms of Council's original resolution at its Ordinary Meeting held on 23 November 1995:</i></p> <p><i>"to prepare a local environmental plan to amend the provisions of the Ballina Local Environmental Plan 1987. The amending plan shall apply to that area in West Ballina bounded generally by the Pacific Highway, Emigrant Creek, the Richmond River and Burns Point Ferry Road, with the purpose of the plan being to facilitate the urban development of the site".</i></p> <p><i>Recent advice from the Department of Planning suggests that Council can continue to act on this original resolution if it wishes to prepare a draft plan for this land. Council will, however, need to obtain a Section 65 Certificate from the Director-General of Planning for the public exhibition of a draft plan.</i></p> <p><i>If Council is to support any rezoning of part of the land for urban purposes, it may have to be undertaken as part of the comprehensive new Draft Local Environmental Plan, given the timing of both matters.</i></p> <p>Consideration of the amendment proceeded under draft LEP Amendment No.39.</p>
July 2009	<p>Presentation to Councillors by SJ Connelly concerning revised concept for the site.</p>
March 2010	<p>Draft Ballina Local Environmental Plan 2010 placed on public exhibition proposing entire site to be zoned RU2 Rural Landscape.</p>

9.2 Planning Proposal - Burns Point Ferry Road, West Ballina.DOC

Date	Action
April 2010	Council request for clarification regarding proponent's progress in relation to the amendment. Request sought clarification in relation to the following: a. <i>whether or not your client intends to proceed with the current rezoning request; and</i> b. <i>should your client still be proceeding with the rezoning proposal, the likely timeframe for the submission of the required technical information connected to the rezoning.</i> No specific response was received.
May 2010	Council request to Department of Planning for entry of LEP amendment no.39 into the Gateway planning system. Amendment could not continue under the previous LEP amendment system.
June 2010	Department of Planning advice that conversion of the existing draft to a planning proposal under the Gateway system was not supported. This advice closed the consideration of the LEP amendment request (39) previously presented to Council.
October 2010	Advice from SJ Connelly that Part 3A submission lodged with Department of Planning. Council advised of a mixed urban/ environmental concept for the land (including biobanking).
May/ June 2011	Project identified as not being received into the Part 3A assessment system under reforms to Part 3A.
September 2011	Draft Ballina Local Environmental Plan 2011 placed on public exhibition proposing entire site to be zoned E2 Environmental Conservation.
December 2011	Submission received from SJ Connelly in relation to proposed environmental conservation zoning for the site in Draft Ballina Local Environmental Plan 2011. In response, Council resolved to grant the proponent additional time to prepare a rezoning proposal and to zone part of the site rural in accordance with its December 2008 resolution. This resolution included the applicable land use zoning for the site would be reviewed in 12 months.
May 2012	LEP amendment request received to rezone Lot 1 DP 522558 (former Ferry Boat Motel site) to allow medium density residential development.
July 2012	LEP amendment request received from SJ Connelly to rezone Lot 4 DP 537419 (Ballina Waterways site) comprising a mix of urban and environmental conservation land uses (including biobanking).
September 2012	LEP amendment request for Lot 1 DP 522558 (former Ferry Boat Motel site) reported to Council with recommendation to proceed with preparation of a planning proposal for Lot 1 only. Proposal for Lot 4 to be assessed and reported separately.
October 2012	Council request to SJ Connelly for additional information in relation to rezoning proposal for Lot 4, including request for proponent agreement to engage third party ecological consultant to review ecological characteristics of site. No specific response received.
February 2013	Ballina Local Environmental Plan 2012 is made and zones the 4.76 hectare area (identified in the December 2008 Council resolution) as RU2 Rural Landscape. The remainder of the site (proposed for E2 Environmental Conservation under the Draft LEP) is deferred and remains zoned 1(d) – Rural (Urban Investigation) as per the Ballina Local Environmental Plan 1987.
June 2013	Matter reported to Council for direction as to how to proceed in relation to current proposal having regard to Council's previous (December 2011) resolution and the proponent's failure to respond to Council's October 2012 correspondence. Council resolved to defer consideration of the matter for up to 6 months allowing the proponent to submit additional information.
January 2014	Matter reported to Council for direction as to how to proceed following the lapsing of 6 months from the June 2013 resolution and the absence of additional information from the proponent. Council resolves to continue processing the amendment subject to the following: - undertaking of an independent ecological review at cost of applicant (to be completed by May 30), and, - Council seeking advice from the (then) Department of Planning and Infrastructure in relation to the ability to apply environmental protection zones to the site.

9.2 Planning Proposal - Burns Point Ferry Road, West Ballina.DOC

Date	Action
May 2014	Independent ecological consultant (Blackwood Ecological Services) provides report on the assessment of the ecological values of the site.
June 2014	The proponent acknowledges the findings and recommendations of the Blackwood Ecological Services report and makes a written commitment to enter a voluntary planning agreement with Council to achieve satisfactory ecological outcomes for the site should the LEP amendment proposal proceed.
July 2014	Matter reported to Council addressing items in January 2014 resolution. Council resolved to submit the proposal to the Department of Planning and Environment for Gateway determination and to engage a consultant to undertake a third party review of the proposal following government agency consultation.
September 2014	Gateway determination issued by Department of Planning and Environment in favour of the proposal subject to additional assessment undertaken prior to public exhibition.
December 2014	Additional information supporting the proposal submitted by the proponent in response to the requirements of the Gateway determination.
February 2015	Consultation with government agencies and Council technical staff.
August 2015	Additional information submitted by proponent suitable to enable third party review of planning proposal to proceed.
March 2016	Peer Review and Gap Analysis Report prepared by GeoLINK
April 2016	Alteration to Gateway determination issued by the Department of Planning and Environment. The altered Gateway determination related to the part R2 and part RU2 zones, proposed planning controls and the proposed additional permitted uses. The period in which the LEP was required to be completed was also extended until 1 April 2017.
May 2016	Submission of supplementary information addressing previously identified information gaps related to Stormwater Management and Traffic Impact. Submission of this information enabled the planning proposal to proceed to public exhibition.

Appendix B – Concept Rezoning Submission July 2012

(Available Electronically on Council's Web Site)

Appendix C – Report to Council’s Ordinary Meeting of July 2014 & Resolution

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

Delivery Program Strategic Planning

Objective To update the Council and to seek the Council's direction with regard to the progress of a proposal to rezone part of Lot 4 DP 537149 in West Ballina for urban purposes.

Background

Council received a request from SJ Connelly (now Planners North) on behalf of the landholder to amend the zoning of the land identified as Lot 4 DP 537149, Burns Point Ferry Road, West Ballina on 18 July 2012. A locality map identifying the site is included in Attachment One.

After seeking additional information, the matter was subsequently reported to the Council's Ordinary Meeting held on 27 June 2013 where it was resolved to defer the consideration of the matter pending receipt of further information and clarification of a number of related issues. The matter was then reported to the Council's Ordinary Meeting held on 23 January 2014 where it was resolved (Minute No. 230114/6):

1. That Council continue the processing of the LEP amendment request relating to Lot 4 DP 537149 Burns Point Ferry Road, West Ballina.
2. That prior to the preparation of a planning proposal, the following steps be undertaken:
 - (a) That, based on the agreement of the proponent in correspondence dated 7 June 2013, Council engage an independent ecologist to undertake a review of the ecology of the land within the proposed urban footprint on Lot 4 DP 537149, Burns Point Ferry Road, West Ballina, with the cost of such engagement to be borne by the proponent.
 - (b) That, given the e-zone review has not yet been completed, Council obtains advice from the Department of Planning and Infrastructure in relation the availability and potential for use of environmental protection zones under the BLEP 2012 in relation to the proposed rezoning.
3. Where the independent ecological study is not completed before 30 May 2014, or the outcomes of the study indicate that there are significant constraints to the proposed land uses, that the LEP amendment request be reported to the Council for further consideration.

The purpose of this report is to advise the Council of actions taken in response to the above resolution and to seek the Council's direction as to the progression of the LEP amendment request. Following the receipt of the additional information in accordance with the resolution of 23 January 2014, the Council is now in a position to determine whether or not to proceed with the proposal and further assess and consider the rezoning of parts of the subject site to enable development for urban purposes.

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

It should be noted that the subject site has an extensive history of rezoning proposals and has been considered by respective Councils on numerous occasions over the last 20 years. This history has been addressed in previous reports to the Council. For the information of Councillors, and to assist in the consideration of this report, an updated chronology of events relating to the land use planning of the site is provided in Attachment Two.

Key Issues

- Suitability of parts of the site for urban land uses.
- Progression of the rezoning proposal for the site.

Information

The LEP amendment request before the Council in this instance is a proposal to amend the zoning of parts of the land to enable urban development. The proponent seeks appropriate zoning of the site to enable a mix of employment and residential land uses in the northern section of the site. The majority of the site (residue areas) is to be retained for its ecological values. The proposal also includes an area of the site at its southeastern corner for development as a restaurant. A copy of the current concept plan for the site submitted in support of the LEP amendment request is included in Attachment Three.

The Council's resolution at its Ordinary Meeting held on 23 January 2014 essentially required two primary matters to be addressed to enable the proposal to proceed, which are:

- The completion of an independent ecological assessment of the site to clarify its ecological attributes and to assist in the determination of the suitability of part of the site for future urban development, and
- Clarification from the Department of Planning and Environment in relation to the availability and potential for use of environmental protection zones under the BLEP 2012 in relation to the proposed rezoning.

Ecological Assessment

In agreement with the proponent, and at the proponent's cost, Council engaged Blackwood Ecological Services (Blackwood) to undertake the independent ecological assessment of the northern section of the site (the majority of the area proposed for urban uses). This assessment was undertaken in April 2014 with a final report detailing the findings of the assessment provided to Council on 29 May 2014. A copy of the completed ecological assessment is contained in Attachment Four.

The independent assessment by Blackwood identified several vegetation communities within the area proposed for urban land uses having varying levels of ecological value and quality. The report clarifies the extent of endangered ecological communities (within the meaning of the *Threatened Species Conservation Act 1995*) within the assessment area and identifies areas that are not considered to be of high ecological significance. Based on the Blackwood assessment it appears that there is potential for parts of the site to accommodate urban development without significant adverse impacts on the key ecological attributes of the land. There may also be opportunity to

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

mitigate potential ecological impacts associated with proposed urban development in more sensitive parts of the site.

If the proposal proceeds through Gateway determination, it is proposed that the entire matter be subject to an independent third party review in accordance with Council's processing practice for amendment requests of this type. This process would include more detailed consideration of potential ecological impacts and associated mitigation and management options.

With respect to the ecological attributes, the report specifically identifies the eastern section of the assessment area as containing freshwater wetland having high ecological values. Notably, the concept plans submitted in support of the amendment proposal include areas identified in the Blackwood report as containing vegetation of ecological significance. The proponent was requested to provide its position in relation to how the impacts of the proposed urban rezoning on the ecologically significant areas of the site would be addressed.

In response, the proponent has sought to proceed with the concept design as submitted and is prepared to address the ecological impacts by way of a biobanking scheme over the southern part of the site supported by a confirmation of commitment in a voluntary planning agreement (VPA). The content of a VPA would be negotiated post a Gateway determination if the matter proceeds.

The Blackwood assessment sufficiently identifies the levels of ecological significance of the vegetation on the northern part of the site. Based on this assessment, Council staff are of the view that the proposal to rezone this part of the site to enable urban development warrants further consideration and more detailed assessment. In this regard, it is the recommendation of this report that the proposal to amend the LEP to rezone parts of the subject site be formalised in a planning proposal and forwarded to the Department of Planning and Environment for Gateway determination.

Environmental Protection Zones

In the time since this matter was last reported to the Council (January 2014) the issue regarding environmental protection zones in the *Ballina Local Environmental Plan 2012* has been further considered by the NSW Government (see report to Council's 26 June 2014 Ordinary Meeting). Although Council has now had the opportunity to comment on E zone interim reporting released by the Department of Planning and Environment, there is no indication of timing to conclude the Government's review process, or indeed the outcomes.

In the absence of any clear or immediate resolution to the issue, the proponent has indicated a willingness to commit to a VPA to address the protection of the environmental attributes of the site. This approach, depending on the ultimate content of a VPA (that is, what the proponent is prepared to offer), could result in positive environmental outcomes.

Having regard for the above, it is considered that the rezoning of parts of the subject site as proposed warrants further investigation and that a planning proposal should be initiated to enable this. As such, it is the recommendation of this report that the Council authorise the submission of a planning proposal

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

to the Department of Planning and Environment for Gateway determination and subsequent detailed assessment.

Sustainability Considerations

• **Environment**

As clarified in the assessment by Blackwood Ecological Services, the subject site has significant ecological values. The Blackwood assessment also clarifies the lesser significance of parts of the site which may be suitable for urban development subject to further detailed assessment of environmental impacts and the implementation of appropriate mitigation measures. If the proposal proceeds further, a more detailed investigation will be undertaken to assess the potential environmental impacts of future urban development of the site and options for mitigating these impacts.

• **Social**

The further consideration of the site for rezoning and future urban development will enable greater assessment of the social impacts of the proposed change to the zoning of the land. In general, it is considered that use of parts of the site for urban land uses will result in positive social impacts. In addition, it is considered that long term overall social benefits can be expected as a result of the environmental restoration of the majority of the site that could be facilitated by the rezoning proposal.

• **Economic**

Subject to the matter proceeding to finalisation, the future development of parts of the site for urban land use purposes would result in direct economic benefits for the owners of the land and indirect economic benefits to the wider community through the provision of additional land for urban development.

Legal / Resource / Financial Implications

This matter is being reported to the Council for its consideration and endorsement to enable the further, more detailed assessment of the land use planning outcomes and potential environmental impacts arising from the rezoning proposal.

If the Council resolves to support the progress of this proposal, the costs of further assessment will be borne by the proponent in accordance with Council's standard practice for planning proposals of this nature. This would include involvement of an independent consultant to undertake a review and assessment of the proposal. Because of this, there are no significant public legal or resource implications presented by the proposal.

The progress of the proposal to Gateway determination is also subject to the proponent paying the applicable planning proposal preparation fee.

Council, as the relevant planning authority, has the legal responsibility to manage the administration of the proposal in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*. The management and coordination of the proposal, should it proceed, will be

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

incorporated into the existing work program of the Strategic and Community Facilities Group.

Consultation

Other than engagement with the proponent and the independent ecological consultant, no consultation with the public, government agencies or Council's internal staff has been undertaken to date. Should the Council resolve to support the progress of the matter, further consultation will be undertaken in accordance with the Gateway determination and the requirements of the *Environmental Planning and Assessment Act 1979*.

Options

The primary consideration for the Council in relation to this matter is to determine whether or not to proceed with the amendment to the LEP as proposed. The Council has the option to give in-principle support to the LEP amendment request as submitted by the proponent on 18 July 2012 (and subsequently amended) and endorse the planning proposal in Attachment Five for submission to the Department of Planning and Environment for Gateway determination. Alternatively, the Council may decline the LEP amendment request and advise the proponent that it is not prepared to support the proposal in its current configuration.

Having regard for the information submitted in support of the LEP amendment request and the findings of the independent ecological assessment, staff are of the view that there are sufficient grounds to warrant further consideration of the proposal. These include:

- Provision of the opportunity to address the zoning of the site as a whole and integrate positive environmental outcomes,
- Potential economic benefits to the shire based on additional and diversified urban environments (comprising a mix of employment and residential land uses),
- Opportunities to resolve long standing land use planning considerations for the subject site,
- Provision of an enhanced entry treatment for West Ballina, and
- Enabling a planned and well-designed contiguous extension to the existing urban environment.

Based on the information contained in this report, the recommended option is to give in-principle support to the proposal and authorise the submission of the draft planning proposal (Attachment Five) to the Department of Planning and Environment for Gateway determination.

As part of the submission of the proposal to the Gateway, the Council will need to consider whether it will seek delegation from the Department of Planning and Environment in the finalisation of the LEP amendment. As it is likely that the Gateway will delegate the finalisation to the Council, it is recommended at this time that the Council resolve to proceed on this basis. It should be noted that Council can choose not to exercise delegation following the public exhibition of the proposal.

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

RECOMMENDATIONS

1. That in relation to the proposal to amend the *Ballina Local Environmental Plan 2012* as it applies to Lot 4 DP 537149, Burns Point Ferry Road, West Ballina, Council submit the planning proposal attached to this report (Attachment Five) to the Department of Planning and Environment for review and Gateway determination.
2. That the Department of Planning and Environment be advised that at this stage of the process it is Council's intention to exercise its delegated plan making functions.
3. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the proponent be required to submit the technical documentation necessary to enable a comprehensive assessment of the proposal and potential environmental, social and economic implications.
4. That upon the requested information being submitted by the proponent, Council initiate a third party review including preparation of an environmental assessment and planning report relating to this planning proposal. Costs for this engagement are to be borne by the proponent.
5. That a further report be presented to the Council in relation to this matter following the preparation of the independent environmental assessment and planning report and at the conclusion of the community and Government agency consultations, as specified by the Gateway.

Attachment(s)

1. Locality Map
2. Chronology of Planning History
3. Concept Plan
4. Ecological Assessment
5. Planning Proposal

240714/9 RESOLVED

(Cr Sharon Cadwallader/Cr Robyn Hordern)

1. That in relation to the proposal to amend the *Ballina Local Environmental Plan 2012* as it applies to Lot 4 DP 537149, Burns Point Ferry Road, West Ballina, Council submit the planning proposal attached to this report (Attachment Five) to the Department of Planning and Environment for review and Gateway determination.
2. That the Department of Planning and Environment be advised that at this stage of the process it is Council's intention to exercise its delegated plan making functions.
3. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the proponent be required to submit the technical documentation necessary to enable a comprehensive assessment of the proposal and potential environmental, social and economic implications.
4. That upon the requested information being submitted by the proponent, Council initiate a third party review including preparation of an environmental assessment and planning report relating to this planning proposal. Costs for this engagement are to be borne by the proponent.
5. That a further report be presented to the Council in relation to this matter following the preparation of the independent environmental assessment and planning report and at the conclusion of the community and Government agency consultations, as specified by the Gateway.

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

**Appendix D – Ecological Assessment Blackwood Ecological Services
(2014)**

(Under Separate Cover and Available Electronically on Council's Web Site)

Appendix E – Offer to Enter into VPA (2014)



abn: 56 291 496 553
6 Byron Street, PO Box 538,
Lennox Head NSW 2478
Telephone: 1300 66 00 87

17 June 2014
Our reference: 1219-791

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

Attention: Mr Lachlan Sims & Mr Matthew Wood.

Dear Sir,

Re: Planning Proposal concerning land at Burns Point Ferry Road, West Ballina.

Thank you for the opportunity for the writer to meet with your Messrs. Sims and Wood concerning the Ecological Assessment prepared by Blackwood Ecological Services with respect to Lot 4, DP 537419, Burns Point Ferry Road, Burns Point, West Ballina.

Further to the abovementioned meeting, and having regard to the site planning/zoning difficulties which arise for Council in relation to applying Environmental Protection Zonings over important ecological land, we would be pleased if Council would proceed with our Planning Proposal on the basis of environmental offsets attributable to the development being made pursuant to the BioBanking legislations in the southern part of the site. Other than for the small area proposed as a restaurant facility, we see the southern part of the land being set aside by way of a BioBanking agreement for environmental and ecological enhancements purposes in perpetuity. We propose that this arrangement be confirmed by way of a Voluntary Planning Agreement prepared before and exhibited concurrently with the Planning Proposal.

We trust that the above advice satisfactorily outlines our position in relation to development conservation management associated with this project. However, should Council require any additional information in which to clarify any matter raised by this advice please feel free to contact the writer at any time.

Yours faithfully,
PLANNERS NORTH

Stephen Connelly FPIA CPP
PARTNERSHIP PRINCIPAL
(m) 0419 237 982
(e) steve@plannersnorth.com.au

sjc809972

Appendix F – Report to Council's Ordinary Meeting 24 July 2014

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

Delivery Program Strategic Planning

Objective To update the Council and to seek the Council's direction with regard to the progress of a proposal to rezone part of Lot 4 DP 537149 in West Ballina for urban purposes.

Background

Council received a request from SJ Connelly (now Planners North) on behalf of the landholder to amend the zoning of the land identified as Lot 4 DP 537149, Burns Point Ferry Road, West Ballina on 18 July 2012. A locality map identifying the site is included in Attachment One.

After seeking additional information, the matter was subsequently reported to the Council's Ordinary Meeting held on 27 June 2013 where it was resolved to defer the consideration of the matter pending receipt of further information and clarification of a number of related issues. The matter was then reported to the Council's Ordinary Meeting held on 23 January 2014 where it was resolved (Minute No. 230114/6):

1. *That Council continue the processing of the LEP amendment request relating to Lot 4 DP 537149 Burns Point Ferry Road, West Ballina.*
2. *That prior to the preparation of a planning proposal, the following steps be undertaken:*
 - (a) *That, based on the agreement of the proponent in correspondence dated 7 June 2013, Council engage an independent ecologist to undertake a review of the ecology of the land within the proposed urban footprint on Lot 4 DP 537149, Burns Point Ferry Road, West Ballina, with the cost of such engagement to be borne by the proponent.*
 - (b) *That, given the e-zone review has not yet been completed, Council obtains advice from the Department of Planning and Infrastructure in relation the availability and potential for use of environmental protection zones under the BLEP 2012 in relation to the proposed rezoning.*
3. *Where the independent ecological study is not completed before 30 May 2014, or the outcomes of the study indicate that there are significant constraints to the proposed land uses, that the LEP amendment request be reported to the Council for further consideration.*

The purpose of this report is to advise the Council of actions taken in response to the above resolution and to seek the Council's direction as to the progression of the LEP amendment request. Following the receipt of the additional information in accordance with the resolution of 23 January 2014, the Council is now in a position to determine whether or not to proceed with the proposal and further assess and consider the rezoning of parts of the subject site to enable development for urban purposes.

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

It should be noted that the subject site has an extensive history of rezoning proposals and has been considered by respective Councils on numerous occasions over the last 20 years. This history has been addressed in previous reports to the Council. For the information of Councillors, and to assist in the consideration of this report, an updated chronology of events relating to the land use planning of the site is provided in Attachment Two.

Key Issues

- Suitability of parts of the site for urban land uses.
- Progression of the rezoning proposal for the site.

Information

The LEP amendment request before the Council in this instance is a proposal to amend the zoning of parts of the land to enable urban development. The proponent seeks appropriate zoning of the site to enable a mix of employment and residential land uses in the northern section of the site. The majority of the site (residue areas) is to be retained for its ecological values. The proposal also includes an area of the site at its southeastern corner for development as a restaurant. A copy of the current concept plan for the site submitted in support of the LEP amendment request is included in Attachment Three.

The Council's resolution at its Ordinary Meeting held on 23 January 2014 essentially required two primary matters to be addressed to enable the proposal to proceed, which are:

- The completion of an independent ecological assessment of the site to clarify its ecological attributes and to assist in the determination of the suitability of part of the site for future urban development, and
- Clarification from the Department of Planning and Environment in relation to the availability and potential for use of environmental protection zones under the BLEP 2012 in relation to the proposed rezoning.

Ecological Assessment

In agreement with the proponent, and at the proponent's cost, Council engaged Blackwood Ecological Services (Blackwood) to undertake the independent ecological assessment of the northern section of the site (the majority of the area proposed for urban uses). This assessment was undertaken in April 2014 with a final report detailing the findings of the assessment provided to Council on 29 May 2014. A copy of the completed ecological assessment is contained in Attachment Four.

The independent assessment by Blackwood identified several vegetation communities within the area proposed for urban land uses having varying levels of ecological value and quality. The report clarifies the extent of endangered ecological communities (within the meaning of the *Threatened Species Conservation Act 1995*) within the assessment area and identifies areas that are not considered to be of high ecological significance. Based on the Blackwood assessment it appears that there is potential for parts of the site to accommodate urban development without significant adverse impacts on the key ecological attributes of the land. There may also be opportunity to

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

mitigate potential ecological impacts associated with proposed urban development in more sensitive parts of the site.

If the proposal proceeds through Gateway determination, it is proposed that the entire matter be subject to an independent third party review in accordance with Council's processing practice for amendment requests of this type. This process would include more detailed consideration of potential ecological impacts and associated mitigation and management options.

With respect to the ecological attributes, the report specifically identifies the eastern section of the assessment area as containing freshwater wetland having high ecological values. Notably, the concept plans submitted in support of the amendment proposal include areas identified in the Blackwood report as containing vegetation of ecological significance. The proponent was requested to provide its position in relation to how the impacts of the proposed urban rezoning on the ecologically significant areas of the site would be addressed.

In response, the proponent has sought to proceed with the concept design as submitted and is prepared to address the ecological impacts by way of a biobanking scheme over the southern part of the site supported by a confirmation of commitment in a voluntary planning agreement (VPA). The content of a VPA would be negotiated post a Gateway determination if the matter proceeds.

The Blackwood assessment sufficiently identifies the levels of ecological significance of the vegetation on the northern part of the site. Based on this assessment, Council staff are of the view that the proposal to rezone this part of the site to enable urban development warrants further consideration and more detailed assessment. In this regard, it is the recommendation of this report that the proposal to amend the LEP to rezone parts of the subject site be formalised in a planning proposal and forwarded to the Department of Planning and Environment for Gateway determination.

Environmental Protection Zones

In the time since this matter was last reported to the Council (January 2014) the issue regarding environmental protection zones in the *Ballina Local Environmental Plan 2012* has been further considered by the NSW Government (see report to Council's 26 June 2014 Ordinary Meeting). Although Council has now had the opportunity to comment on E zone interim reporting released by the Department of Planning and Environment, there is no indication of timing to conclude the Government's review process, or indeed the outcomes.

In the absence of any clear or immediate resolution to the issue, the proponent has indicated a willingness to commit to a VPA to address the protection of the environmental attributes of the site. This approach, depending on the ultimate content of a VPA (that is, what the proponent is prepared to offer), could result in positive environmental outcomes.

Having regard for the above, it is considered that the rezoning of parts of the subject site as proposed warrants further investigation and that a planning proposal should be initiated to enable this. As such, it is the recommendation of this report that the Council authorise the submission of a planning proposal

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

to the Department of Planning and Environment for Gateway determination and subsequent detailed assessment.

Sustainability Considerations

- **Environment**
As clarified in the assessment by Blackwood Ecological Services, the subject site has significant ecological values. The Blackwood assessment also clarifies the lesser significance of parts of the site which may be suitable for urban development subject to further detailed assessment of environmental impacts and the implementation of appropriate mitigation measures. If the proposal proceeds further, a more detailed investigation will be undertaken to assess the potential environmental impacts of future urban development of the site and options for mitigating these impacts.
- **Social**
The further consideration of the site for rezoning and future urban development will enable greater assessment of the social impacts of the proposed change to the zoning of the land. In general, it is considered that use of parts of the site for urban land uses will result in positive social impacts. In addition, it is considered that long term overall social benefits can be expected as a result of the environmental restoration of the majority of the site that could be facilitated by the rezoning proposal.
- **Economic**
Subject to the matter proceeding to finalisation, the future development of parts of the site for urban land use purposes would result in direct economic benefits for the owners of the land and indirect economic benefits to the wider community through the provision of additional land for urban development.

Legal / Resource / Financial Implications

This matter is being reported to the Council for its consideration and endorsement to enable the further, more detailed assessment of the land use planning outcomes and potential environmental impacts arising from the rezoning proposal.

If the Council resolves to support the progress of this proposal, the costs of further assessment will be borne by the proponent in accordance with Council's standard practice for planning proposals of this nature. This would include involvement of an independent consultant to undertake a review and assessment of the proposal. Because of this, there are no significant public legal or resource implications presented by the proposal.

The progress of the proposal to Gateway determination is also subject to the proponent paying the applicable planning proposal preparation fee.

Council, as the relevant planning authority, has the legal responsibility to manage the administration of the proposal in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*. The management and coordination of the proposal, should it proceed, will be

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

incorporated into the existing work program of the Strategic and Community Facilities Group.

Consultation

Other than engagement with the proponent and the independent ecological consultant, no consultation with the public, government agencies or Council's internal staff has been undertaken to date. Should the Council resolve to support the progress of the matter, further consultation will be undertaken in accordance with the Gateway determination and the requirements of the *Environmental Planning and Assessment Act 1979*.

Options

The primary consideration for the Council in relation to this matter is to determine whether or not to proceed with the amendment to the LEP as proposed. The Council has the option to give in-principle support to the LEP amendment request as submitted by the proponent on 18 July 2012 (and subsequently amended) and endorse the planning proposal in Attachment Five for submission to the Department of Planning and Environment for Gateway determination. Alternatively, the Council may decline the LEP amendment request and advise the proponent that it is not prepared to support the proposal in its current configuration.

Having regard for the information submitted in support of the LEP amendment request and the findings of the independent ecological assessment, staff are of the view that there are sufficient grounds to warrant further consideration of the proposal. These include:

- Provision of the opportunity to address the zoning of the site as a whole and integrate positive environmental outcomes,
- Potential economic benefits to the shire based on additional and diversified urban environments (comprising a mix of employment and residential land uses),
- Opportunities to resolve long standing land use planning considerations for the subject site,
- Provision of an enhanced entry treatment for West Ballina, and
- Enabling a planned and well-designed contiguous extension to the existing urban environment.

Based on the information contained in this report, the recommended option is to give in-principle support to the proposal and authorise the submission of the draft planning proposal (Attachment Five) to the Department of Planning and Environment for Gateway determination.

As part of the submission of the proposal to the Gateway, the Council will need to consider whether it will seek delegation from the Department of Planning and Environment in the finalisation of the LEP amendment. As it is likely that the Gateway will delegate the finalisation to the Council, it is recommended at this time that the Council resolve to proceed on this basis. It should be noted that Council can choose not to exercise delegation following the public exhibition of the proposal.

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

RECOMMENDATIONS

1. That in relation to the proposal to amend the *Ballina Local Environmental Plan 2012* as it applies to Lot 4 DP 537149, Burns Point Ferry Road, West Ballina, Council submit the planning proposal attached to this report (Attachment Five) to the Department of Planning and Environment for review and Gateway determination.
2. That the Department of Planning and Environment be advised that at this stage of the process it is Council's intention to exercise its delegated plan making functions.
3. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the proponent be required to submit the technical documentation necessary to enable a comprehensive assessment of the proposal and potential environmental, social and economic implications.
4. That upon the requested information being submitted by the proponent, Council initiate a third party review including preparation of an environmental assessment and planning report relating to this planning proposal. Costs for this engagement are to be borne by the proponent.
5. That a further report be presented to the Council in relation to this matter following the preparation of the independent environmental assessment and planning report and at the conclusion of the community and Government agency consultations, as specified by the Gateway.

Attachment(s)

1. Locality Map
2. Chronology of Planning History
3. Concept Plan
4. Ecological Assessment
5. Planning Proposal

**9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina
240714/1 Resolved
(Cr Sharon Cadwallader/Cr Robyn Hordern)**

1. That in relation to the proposal to amend the *Ballina Local Environmental Plan 2012* as it applies to Lot 4 DP 537149, Burns Point Ferry Road, West Ballina, Council submit the planning proposal attached to this report (Attachment Five) to the Department of Planning and Environment for review and Gateway determination.
2. That the Department of Planning and Environment be advised that at this stage of the process it is Council's intention to exercise its delegated plan making functions.

9.2 LEP Amendment Request - Burns Point Ferry Road, West Ballina

3. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the proponent be required to submit the technical documentation necessary to enable a comprehensive assessment of the proposal and potential environmental, social and economic implications.

4. That upon the requested information being submitted by the proponent, Council initiate a third party review including preparation of an environmental assessment and planning report relating to this planning proposal. Costs for this engagement are to be borne by the proponent.

5. That a further report be presented to the Council in relation to this matter following the preparation of the independent environmental assessment and planning report and at the conclusion of the community and Government agency consultations, as specified by the Gateway.

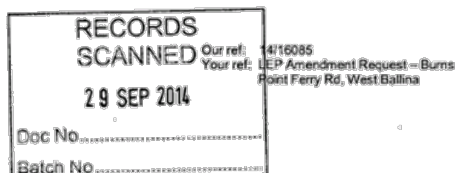
FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Johnson, Cr Susan Meehan, Cr Ken Johnston, Cr Paul Worth, Cr Robyn Hordern and Cr Ben Smith

AGAINST VOTE - Cr Jeff Johnson and Cr Keith Williams

Appendix G - Gateway Determination



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



Attention: Lachlan Sims

Dear Mr Hickey

Planning proposal to amend Ballina Local Environmental Plan 2012

I am writing in response to your Council's letter dated 19 September 2014 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 rezone Lot 4 DP 537419, Burns Point Ferry Rd, West Ballina for residential and employment uses and RU2 Rural Landscape.

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

I have also agreed the planning proposal's inconsistencies with S117 Directions 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 4.1 Acid Sulfate Soils and 4.3 Flood-Prone Land are of minor significance. No further approval is required in relation to these Directions.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. 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 18 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 of Planning and Environment 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.

Northern Region 49 Victoria St Grafton NSW 2460 | Locked Bag 9022 Grafton NSW 2460
 T: 02 6641 6600 | F: 02 6641 6601 | E: northcoast@planning.nsw.gov.au | www.planning.nsw.gov.au

Should you have any queries in regard to this matter, I have arranged for Mr Craig Diss of the Department's regional office to assist you. Mr Diss can be contacted on (02) 6701 9685.

Yours sincerely

 25 September 2014
Stephen Murray
General Manager, Northern Region
Planning Services

Encl:
Gateway Determination
Written Authorisation to Exercise Delegation
Attachment 5 – Delegated Plan Making Reporting Template



Gateway Determination

Planning proposal (Department Ref: PP_2014_BALLI_007_00): to rezone Lot 4 DP 537419, Burns Point Ferry Rd, West Ballina for residential and employment uses and RU2 Rural Landscape.

I, the General Manager, Northern Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to rezone Lot 4 DP 537419, Burns Point Ferry Rd, West Ballina for residential and employment uses and RU2 Rural Landscape 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 and Environment 2013)*.

2. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
 - Roads and Maritime Services in relation to road access and maritime issues
 - NSW Office of Environment and Heritage
 - Department of Primary Industries – Fisheries and Aquaculture
 - Department of Primary Industries – Agriculture

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.


3. The following further assessments to support the proposal shall be completed and included in the material placed on public exhibition:
 - ecological / flora and fauna
 - acid sulfate soils
 - land contamination
 - geotechnical
 - stormwater impact
 - entomological (mosquitoes)
 - bushfire hazard
 - archaeological / cultural heritage
 - flooding

4. Existing and proposed maps consistent with the Department's technical requirements to support the proposal are to be prepared and placed on public exhibition for the following:
 - Land Zoning
 - Lot Size
 - Height of Buildings

Ballina PP_2014_BALLI_007_00 (14/15938)

- Land Application Map
 - Building Height Allowance Map
 - Acid Sulfate Soils
 - Flood Planning
 - Strategic Urban Growth Area
5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. The timeframe for completing the LEP is to be **18 months** from the week following the date of the Gateway determination.

Dated 25th day of September 2014.


Stephen Murray
General Manager, Northern Region
Planning Services
Department of Planning and Environment
Delegate of the Minister for Planning



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Ballina Shire Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2014_BALLI_007_00	Planning proposal to rezone Lot 4 DP 537419, Burns Point Ferry Rd, West Ballina for residential and employment uses and RU2 Rural Landscape

In exercising the Minister's functions under section 59, the Council must comply with the Department of Planning and Environment's "A guide to preparing local environmental plans" and "A guide to preparing planning proposals".

Dated 25 *SEPTEMBER* 2014


Stephen Murray
 General Manager, Northern Region
 Planning Services
 Department of Planning and Environment

Ballina_PP_2014_BALLI_007_00 (14/15938)

Altered Gateway Determination April 2016



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

Our ref: 14/15938
Your ref: BSCPP 14/008



Attention: Klaus Kerzinger

Dear Mr Hickey

Planning Proposal PP_2014_BALLI_007_00 – Alteration of Gateway Determination

I refer to your letter of 23 March 2016 in relation to revisions to and an extension of time to complete Planning Proposal PP_2014_BALLI_007_00 for rezoning of land at Burns Point Ferry Road, West Ballina.

I have determined as the delegate of the Minister, in accordance with section 56(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 25 September 2014 for PP_2014_BALLI_007_00. The Alteration of the Gateway Determination and amended written authorisation to Exercise Delegation are enclosed.

If you have any questions in relation to this matter, I have arranged for Mr Paul Garnett to assist you. Mr Garnett can be contacted on (02) 6641 6607.

Yours sincerely

8 April 2016

Craig Diss
Acting Director Regions, Northern
Planning Services

Encl:
Alteration to Gateway Determination
Written Authorisation to Exercise Delegation

Northern Region 49 Victoria St Grafton NSW 2460 | Locked Bag 9022 Grafton NSW 2460
T: 02 6641 6600 | F: 02 6641 6601 | E: northcoast@planning.nsw.gov.au | www.planning.nsw.gov.au



Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2014_BALLI_007_00)

I, the Acting Director Regions, Northern at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(7) of the *Environmental Planning and Assessment Act 1979* (the Act) to alter the Gateway determination dated 25 September 2014 for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Change the description of the Planning Proposal

from

Planning proposal (Department Ref: PP_2014_BALLI_007_00) to rezone Lot 4 DP 537419, Burns Point Ferry Rd, West Ballina for residential and employment uses and RU2 Rural Landscape.

I, the General Manager, Northern Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to rezone Lot 4 DP 537419, Burns Point Ferry Rd, West Ballina for residential and employment uses and RU2 Rural Landscape should proceed subject to the following conditions:

to

Planning proposal (Department Ref: PP_2014_BALLI_007_00) to rezone Lot 4 DP 537419, Burns Point Ferry Road, West Ballina to part R2 Low Density Residential and part RU2 Rural Landscape, apply appropriate planning controls to the land and enable the development of "work" related land uses in the R2 Zone, and a restaurant or café incorporating information and education facilities and a dwelling in the RU2 Zone as additional permitted uses.

I, the Acting Director Regions, Northern at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to rezone Lot 4 DP 537419, Burns Point Ferry Road, West Ballina to part R2 Low Density Residential and part RU2 Rural Landscape, apply appropriate planning controls to the land and enable the development of "work" related land uses in the R2 Zone, and a restaurant or café incorporating information and education facilities and a dwelling in the RU2 Zone as additional permitted uses should proceed subject to the following conditions:

2. Delete:

6. The timeframe for completing the LEP is to be 18 months from the week following the date of the Gateway determination.

and replace with a new Condition 6:

6. The LEP is to be completed by 1 April 2017.

Ballina_PP_2014_BALLI_007_00_14/15938

3. Insert new condition 7:

- "7. Prior to community consultation, the planning proposal is to be amended to remove references to:
- (a) including the controls for live/work developments in clause 5.4 of the LEP; and
 - (b) the potential application of an environmental zone to the land.

A plain English explanation of the intended live/work controls without reference to clause 5.4 is to be included in *Part 2 - Explanation of the Proposal*. This will enable the most appropriate legal drafting method to be employed when finalising the LEP amendment without requiring further changes to the planning proposal.

4. Insert new condition 8:

- "8. During community consultation the relevant planning authority is to consult with the Local Aboriginal Land Council. A copy of the planning proposal, the Aboriginal Cultural Heritage Assessment and the Archaeological Survey is to be provided to the Local Aboriginal Land Council and it is to be given at least 21 days to comment on the proposal.

Dated 8 day of April 2016



Craig Diss
Acting Director Regions, Northern
Planning Services
Department of Planning and Environment
Delegate of the Minister for Planning

Ballina_PP_2014_BALLI_007_00 (14/15938)

Appendix H – Ecological Assessment Melaleuca Group (2013) & Parker (2015)

(Under Separate Cover and Available Electronically on Council's Web Site)

Appendix I – Preliminary Acid Sulfate Soil Assessment (2005)

(Under Separate Cover and Available Electronically on Council's Web Site)

Appendix J – Contaminated Site Investigation (2005)

(Under Separate Cover and Available Electronically on Council's Web Site)

Appendix K – Preliminary Geotechnical Investigation (2005) and Peer Review (2007)

(Under Separate Cover and Available Electronically on Council's Web Site)

Appendix L – Stormwater and Civil Engineering Assessment (2014)

(Under Separate Cover and Available Electronically on Council's Web Site)

Appendix M – Mosquito Impact Assessment (2005)

(Under Separate Cover and Available Electronically on Council's Web Site)

Appendix N – Bushfire Threat Assessment Report (2014)

(Under Separate Cover and Available Electronically on Council's Web Site)

Appendix O – Aboriginal Cultural Heritage Assessment (2014) & Archaeological Survey (1998)

(Under Separate Cover and Available Electronically on Council's Web Site)

Appendix P – Flood Impact Assessment (2008) and Review (2014)

(Under Separate Cover and Available Electronically on Council's Web Site)

Appendix Q – Government Authority & Council Technical Responses Post Gateway



File No: NTH06/00602; CR2015/000501
Your Reference: BSCPP 14/008 – Burns Point Ferry Road (1624)

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

Dear Sir

Planning Proposal – BSCPP 14/0008, Burns Point Ferry Road, West Ballina.

I refer to your email of 27 February 2015, requesting comment from Roads and Maritime Services in relation to the abovementioned planning proposal at West Ballina.

Roles & Responsibilities

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

Roads and Maritime Comments.

To assess likely future traffic performance of the adjoining road network, a detailed traffic study should be undertaken that takes into account the key issues relevant to the scale of this proposal as set out in Table 2.1 of the Roads and Traffic Authority's current 'Guide to Traffic Generating Developments' (copy attached) for each proposal.

It is recommended that the traffic study consider an access to River Street consistent with the West Ballina Old Pacific Highway Corridor Access Management Plan. The traffic study should include information relating to:

- Total impact of existing and proposed development on the road network.
- Intersection sight distances
- Existing and proposed access conditions
- Improvements for road junctions / intersections
- Detail of servicing and parking arrangements
- Connectivity to existing developments
- Impact on Transport (Public and School Bus Routes)
- Provisions for pedestrians, alternative transport modes such as bicycles
- Impact of Road Traffic Noise

Current AUSTROADS standards should be adopted for any necessary upgrading of the surrounding road infrastructure.

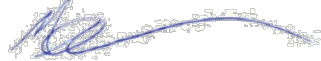
Roads & Maritime Services

76 Victoria Street, Grafton NSW 2460 | PO Box 676 Grafton NSW 2460
T 02 6640 1362 | F 02 6640 1304 | E development.northern@rms.nsw.gov.au

www.rms.nsw.gov.au | 13 22 13

Should you have any further enquiries regarding the above comments please do not hesitate to contact Michael Baldwin on 6640 1362 or email development.northern@rms.nsw.gov.au.

Yours sincerely,



for Monica Sirol
Network & Safety Manager, Northern Region

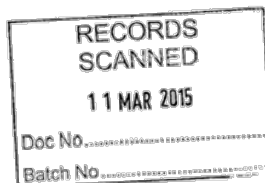
23 March 2015

Enc: Table 2.1 – Guide to Traffic Generating Developments



Your reference: BSCPP 14/008
 Our reference: DOC15/28397
 Contact: Krister Waern (02) 6640 2503

General Manager
 Ballina Shire Council
 PO Box 450
 Ballina NSW 2478



Attention: Mr Lachlan Sims

Dear Mr Hickey

Re: Planning Proposal – BSCPP 14/008, Burns Point Ferry Road, West Ballina

Thank you for the letter received on 29 January 2015 requesting comment from the NSW Office of Environment and Heritage (OEH) in accordance with the Gateway Determination issued by the Department of Planning and Environment under s56(2) of the *Environmental Planning and Assessment Act 1979* for the above planning proposal. I appreciate the opportunity to provide input.

OEH has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), Aboriginal and historic heritage, OEH estate, and flooding, coasts and estuaries. Matters relating to noise, air and water quality and any licensing requirements under the *Protection of the Environment Operations Act 1997* should be addressed separately to the Environment Protection Authority as this Agency is now independent of OEH.

OEH has reviewed the planning proposal and associated documentation. Detailed OEH comments are provided in **Attachment 1** to this letter.

On the basis of this review OEH recommends that:

1. Mapping of the Freshwater Wetland Endangered Ecological Community (EEC) within the planning area is resolved prior to finalising the planning proposal so that it can be appropriately addressed by the planning proposal.
2. The eastern portion of the planning area containing Freshwater Wetland EEC be zoned for environmental conservation purposes and suitably protected in perpetuity for such purposes.
3. Additional investigation is undertaken to confirm or discount the presence of Freshwater Wetland EEC on land within the western portion of the planning area, as detailed in Attachment 1 to this letter. If this land is found to contain Freshwater Wetland EEC, then this area should be zoned for environmental conservation purposes and suitably protected in perpetuity.
4. Additional investigation is undertaken to confirm or discount the presence of Freshwater Wetland EEC and suitable habitat for the Eastern Grass Owl on land within the south-western portion of the planning area as detailed in Attachment 1 to this letter. If this land is found to contain high

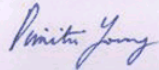
Locked Bag 914, Coffs Harbour NSW 2450
 Federation House, Level 7, 24 Moonee Street
 Coffs Harbour NSW
 Tel: (02) 6651 5946 Fax: (02) 6651 6187
 ABN 30 841 387 271
 www.environment.nsw.gov.au

conservation values, then this land should be zoned for environmental conservation purposes and suitably protected in perpetuity.

5. Land comprising high conservation values is not utilised for Bushfire Asset Protection Zones (APZ's) or stormwater management and that suitable buffers are provided between future development areas and sensitive land to minimise impacts at the development assessment stage. Alternatively, such impacts should be adequately quantified and offset at the planning proposal stage.
6. The riparian buffer area of the mixed use community title precinct be zoned RE1 Public Recreation and that a management plan is prepared to ensure that the conservation values of the land are managed appropriately in perpetuity.
7. A revised BioBanking Statement and BioBanking Agreement (as detailed in Attachment 1 to this letter) is prepared to determine whether impacts from the planning proposal (associated with future development of the land) would be adequately offset by the rehabilitation and protection of high conservation value land within the planning area.
8. Council should ensure that the planning proposal is not inconsistent with the draft Ballina Floodplain Risk Management Plan which is currently on exhibition.

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 Senior Operations Officer, Mr Krister Waern, on (02) 6640 2503.

Yours sincerely

 6 March 2015

DIMITRI YOUNG
Senior Team Leader Planning, North East Region
Regional Operations

Attachment 1 – Detailed OEH Comments – Planning Proposal, Burns Point Ferry Road

Biodiversity Comments

OEH has reviewed the Planning Proposal and associated documentation. The following comments are provided for consideration by Ballina Shire Council:

- The mapping of the Freshwater Wetland Endangered Ecological Community (EEC) appears to remain unresolved. The EEC mapping prepared by Peter Parker, Blackwood Ecological and Landpartners all differ in their interpretation of the EEC.
The Blackwood Ecological and Landpartners EEC mapping is consistent for the eastern part of the proposed rezoning area, however the EEC mapping by Peter Parker identifies this area as Swamp Oak EEC rather than the Freshwater Wetland EEC.
This matter should be resolved prior to finalising the planning proposal so that it can be appropriately addressed by the planning proposal.
- OEH advocates that areas of high ecological value such as EEC's should be retained in situ rather than impacted and offset. On the basis that there is consensus by the consultants in that the eastern portion of the planning area comprises EEC (despite the discrepancies between the type of EEC), OEH recommends that this area be protected for its ecological values and zoned accordingly for environmental conservation purposes.
- OEH notes that Blackwood Ecological identifies Freshwater Wetland EEC only in the eastern portion of the planning area. In comparison, Landpartners identifies Freshwater Wetland EEC in the eastern portion and the western portion of the planning area, whilst Blackwood Ecological identifies the western portion of the planning area as a low closed grassland/reedland community.
Although the low closed grassland/reedland community is dominated by exotic grasses, the Blackwood report also identifies a number of native grasses and reeds within this area, which are also found in the Freshwater Wetland EEC community. Further, the vegetation may be low in stature due to regular slashing of the site. In light of this, some of the land within the western portion of the planning area may also comprise Freshwater Wetland EEC.
In this regard, Council should further explore the presence of Freshwater Wetland EEC within the western portion of the planning area. If further surveys are deemed appropriate to achieve this, then the floristic composition may be more discernible if the survey is undertaken after the area has been left to regrow for a period of time.
- OEH notes that the Blackwood Ecological report does not comprise surveys of the south-western portion of the planning area, which is proposed to contain the majority of the mixed use community title precinct. There is potential that this area supports habitat for the Eastern Grass Owl and Freshwater Wetland EEC. In this regard, further investigation should be undertaken to ascertain if the south-western portion of the planning area comprises high ecological values and if so, then this land should be zoned for environmental conservation purposes and suitably protected in perpetuity.
- OEH notes that the riparian buffer area of the mixed use community title precinct is proposed for open space (drainage/pedestrian linkage). Given that there are high ecological values and water quality issues associated with this area, OEH recommends this area be zoned RE1 Public Recreation and that a management plan is prepared to ensure that the conservation values of the land are managed appropriately in perpetuity.
- OEH notes that Asset Protection Zones (APZ's) extend into the area to be set aside for environmental conservation (Figure 1 of the Bushfire Report). Land comprising high conservation values should not be utilised for bushfire APZ's or stormwater management. Further, suitable buffers should be provided between future development areas and sensitive land to minimise impacts at the development assessment stage. Alternatively, such impacts should be adequately quantified and offset at the planning proposal stage.

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- If Council is seeking to use the BioBanking Assessment Methodology to determine whether the proposed rezoning (and associated future development) would be adequately offset by the rehabilitation and protection of high conservation value land within the planning area, the following matters need to be addressed:

An updated BioBanking statement is required for the area proposed to be zoned for future development, which takes into consideration, direct and indirect (i.e. APZ's) impacts to Freshwater Wetland EEC. This is required to ascertain the amount of biodiversity credits to be retired. Note: the current BioBanking statement only includes impacts to 0.6ha of Swamp Oak Forest EEC.

The draft BioBanking agreement contained within the preliminary BioBanking assessment report prepared by Peter Parker (19 December 2014) is required to be updated to reflect the presence of Freshwater Wetland EEC within the proposed offset area. This will enable the calculation of biodiversity credits that would be generated by rehabilitating and conserving this area.

Finalisation of the above matters will enable OEH to compare the BioBanking statement and BioBanking agreement calculations to determine if the impacts associated with the area to be zoned for future development can be offset on the remainder of the site. Note: according to the BioBanking Assessment Methodology an offset does not need to be on the same property and could potentially be located on another property within the Northern Rivers region.

- OEH notes that the proponent has committed to a voluntary planning agreement that will apply to land within the planning area set aside to offset impacts associated with future urban development of the land. OEH supports this approach.

The former Minister for Planning and Infrastructure's decision to defer the creation of environmental protection zones within standard instrument local environmental plans for the Far North Coast Region of NSW (including Ballina) and to undertake a review of the application of such zones creates uncertainty for planning proposals given that this review has not yet been completed.

Consequently, if the outcome of the review of the environmental protection zones is to deny Ballina Shire Council the ability to rezone areas of the site containing high biodiversity values for environment protection purposes, then OEH recommends that such values are protected by another suitable land use zone (such as RE1 Public Recreation or RU1 Rural Landscape and transferred to Council for dedication as a public reserve or protection in perpetuity by a suitable land management agreement respectively).

Flooding comments

OEH accepts the outcomes from the BMT WBN flooding assessments that states the proposed development filling footprint accompanying the planning proposals has 'very little impact' on the 100 year ARI event flood levels.

It is noted that as the planning proposal intends to rezone land from rural purposes to industrial purposes, Council is required to seek approval from the Director General of the Department of Planning and Environment in accordance with Section 117 (2) of the *Environmental Planning and Assessment Act 1979* as detailed below.

Section 117 (2) EP&A 1979 - Local Planning Directions - 4.3 Flood Prone Land:

(1) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.

Consistency

(9) A draft LEP may be inconsistent with this direction only if council can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that:

- (a) the draft LEP is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or*
(b) the provisions of the draft LEP that are inconsistent are of minor significance.

In this regard, OEH acknowledges that Ballina Shire Council is currently exhibiting the draft Ballina Floodplain Risk Management Plan. Council should ensure that the planning proposal is not inconsistent with the draft Floodplain Risk Management Plan.

OEH Recommendations:

Prior to the planning proposal being finalised Ballina Shire Council should:

1. Resolve mapping inconsistencies for Freshwater Wetland Ecological Community (EEC) within the planning area.
2. Undertake additional investigation to confirm or discount the presence of Freshwater Wetland EEC on land within the western portion of the planning area.
3. Undertake additional investigation to confirm or discount the presence of Freshwater Wetland EEC and suitable habitat for the Eastern Grass Owl on land within the south-western portion of the planning area.
4. Apply an E2 Environmental Conservation zone (or other suitable land use zone) to any land within the planning area containing high conservation values (i.e. Freshwater Wetland EEC and habitat for the Eastern Grass Owl).
5. Ensure that land containing high conservation values is protected in perpetuity via a suitable land management agreement.
6. Ensure that bushfire APZ's and stormwater management measures do not impact on land set aside for environmental purposes and that adequate buffers are provided between future development area and adjoining high conservation value land. Alternatively offsets for such impacts should be quantified and offset at the planning proposal stage.
7. Apply an RE1 Public Recreation zone to the riparian buffer area of the mixed use community title precinct and ensure that the land is managed appropriately in perpetuity via the implementation of a plan of management.
8. Ensure that a revised BioBanking Statement and BioBanking Agreement is provided, addressing the matters raised above.
9. Ensure that the planning proposal is not inconsistent with the draft Ballina Floodplain Risk Management Plan which is currently on exhibition.



Our Ref: C15/28

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

27 February 2015

Attention: Mr Lachlan Sims

Dear Mr Sims

Re: Planning proposal – BSCPP 14/008, Burns Point Ferry Road,
West Ballina, Ballina LGA

Thank you for your letter of 23 January 2015 inviting Fisheries NSW to comment on the above mentioned planning proposal.

Fisheries NSW is responsible for ensuring that fish stocks are conserved and that there is "no net loss" of key fish habitats upon which they depend. To achieve this, the Aquatic Habitat Protection Unit assesses activities under Part 5 of the *Environmental Planning and Assessment Act 1979* in accordance with the objectives of the *Fisheries Management Act 1994*, the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)*. In addition Fisheries NSW is responsible for ensuring the sustainable management of commercial, quality recreational fishing and viable aquaculture within NSW.

Several matters are highlighted for consideration before determining the Gateway proposal.

SEPP 62 Aquaculture

Fisheries NSW notes that the proposal contains a Section 117 Direction Checklist (Appendix C). Item 1.4 of that checklist **incorrectly** states that s117 direction regarding oyster aquaculture does not apply to this planning proposal. The 117 Direction does however recommend that development that includes "subdivision of land adjacent to a river or estuary or adjacent to a Crown foreshore reserve" or "development involving earthworks on potential or actual acid sulphate soils" be referred to Fisheries NSW for consideration. This project satisfies both these criteria cognisant that most Priority Oyster Aquaculture Areas (POAAs) are within the Richmond estuary are located within 10km of the proposal and the nearest POAA is located approximately 300m downstream of the development site (mapping attached).

Division of Primary Industries, Fisheries NSW
1243 Bruxner HWY WOLLONGBAR NSW 2477
Tel: 02 6626 1397 Fax: 02 6626 1377 ABN 72 189 919 072 www.dpi.nsw.gov.au

1 of 3



Buffers to aquatic habitats

It is noted that the proposal does not yet incorporate buffers between areas to be developed and the proposed environmental area. Preliminary block layouts occupy to the boundaries of the proposed rezoned lands. Buffers between these areas and the Conservation Block, lot 203 (41.284 ha) are not identified. Such buffers for bushfire asset protection, mosquito buffer zones and aquatic habitat buffers should be planned for within the footprint of the developed areas. Furthermore the use of perimeter roads is a technique recommended in the NSW Coastal Design Guidelines and could be incorporated particularly at the southern boundary of the proposal. Mosquito and bushfire zones can be used for water sensitive urban design features and beyond these infrastructure items a habitat buffer can be established and maintained.

Proposed restaurant site

The proposed restaurant site, in particular, may result in direct impacts on marine vegetation at its southern boundary. While it is appreciated that part of this area has been filled construction and operation of a restaurant at the site is likely to result in ongoing and cumulative impacts on the foreshore mangroves and the adjacent seagrass area.

Development offsets

Fisheries NSW understands the planning hierarchy incorporates Avoidance, Mitigation and Offsetting. As is identified above, the present rezoning proposal does not present the true footprint of the proposal as the footprint of fill batters, fire / mosquito hazard buffers and then habitat buffers have not been identified. Consequently it is not possible to assess or delineate between areas to be offset as part of the proposed development and any remaining area that might be available for future biodiversity offset credits.

Proposed zoning of conservation block

Fisheries NSW recommend that the conservation block (with its area subject to refinement subject to the previously raised issues) be zone as E2. Such a zoning is more compatible with the intended future use of the site yet still likely to permit the necessary environmental works to restore ecological processes at the site to favour ecosystem services over dis-services such as mosquito production, weed incursion and poor water quality. A key component of this work will be assessment of the present drainage network and its impact on the hydrology at the site and consideration of the options to remove constructed levees and spoil mounds and fill drains.

Division of Primary Industries, Fisheries NSW
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