

Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

- (iii) The mediator appointed pursuant to this clause must;
 - (a) Have reasonable qualifications and practical experience in the area of disputes; and
 - (b) Have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (iv) The mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (v) The Parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation.
- (vi) The Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement.
- (vii) In relation to costs and expenses
 - (a) Each Party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (b) The cost for the mediator will be shared equally by the Parties unless the mediator determines a Party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full cost of the mediation to be borne by that Party.

9.6 Expert Determination

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If the dispute is not resolved under clause 9.3 or 9.5 the dispute may, by agreement between the Parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- (i) The dispute must be determined by an independent expert in the relevant field:
 - (a) Agreed upon and appointed jointly by the Council and the Developer; or
 - (b) In the event that no agreement is reached or appointment made within 30 business days, appointed on application of a Party by the then current President of the Law Society of New South Wales;
- (ii) The expert must be appointed in writing and terms of the appointment must not be inconsistent with this clause;
- (iii) The determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and containing reasons for the determination;
- (iv) The expert will determine the rules of the conduct for the process, but must conduct the process in accordance with the rules of natural justice;
- (v) Each Party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- (vi) Any determination made by an expert pursuant to this clause is final and binding upon the Parties except where the determination is in respect of, or relates to, termination or purported termination of this Deed by any Party, in which event the expert is deemed to be giving a non-binding appraisal and any Party may commence litigation in relation to the dispute if it

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has not been resolved within 20 business days of the expert giving his decision.

9.7 Litigation

If the dispute is not finally resolved in accordance with this clause, either Party is at liberty to litigate the dispute.

9.8 Continue to Perform Obligations

Each Party must continue to perform its obligations under this Deed, notwithstanding the existence of a dispute.

10. Enforcement

Nothing in this Deed prevents either Party from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Deed or any matter to which this Agreement relates.

11. Notices

11.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below; or
- (b) Faxed or emailed to that Party at its fax number or email address set out below.

Council

Attention: General Manager

Address: 40 Cherry Street BALLINA NSW 2478

Fax Number: 02 6686 7035

Developer

Attention: Ballina Waterways Pty Limited

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Address: 2 Castlereagh Street, PENRITH NSW 2750

Email address: matthew@freeburnsurveyors.com

- 11.2 If a Party gives the other Party three business days' notice of a change of its postal or email address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, sent or faxed to the latest postal or email address or fax number.
- 11.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number
 - (d) If it is sent by email, as soon as the sender has sent the email without receipt of a message that the email was undeliverable.
- 11.4 If any notice, consent, information, application or request is delivered or sent via email or any error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5:00pm on that day in the place of the Party to whom it is sent, it is to be treated as being given or made at the beginning of the next business day.

12. Approvals and Consent

Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

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13. Assignment and Dealings

Until the Material Public Benefit is provided in full, the Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempt or purport to do so unless the Developer:

13.1 Gives Council no less than ten 10 business days' notice in writing of the proposed sale, transfer, assignment, novation, charge, encumbrance or other dealing with its rights in respect of the Land;

13.2 Procures that any buyer, transferee, assignee or novatee promptly executes a Deed in favour of Council whereby the buyer, transferee, assignee or novatee becomes contractually bound with Council to perform the Developer's obligations under this Deed.

14. Costs

Council's costs of and incidental to the preparation and execution of this Deed and any related documents and registration of same shall be borne by the Developer.

15. Entire Deed

This Deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

16. Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Deed and all transactions incidental to it.

17. Governing law and jurisdiction

This Deed is governed by the law of New South Wales. The Parties submit to the nonexclusive jurisdiction of its courts and courts of appeal from them. The

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Parties will not object to the exercise of jurisdiction by those courts on any basis.

18. Joint and individual liability and benefits

Except as otherwise set out in this Deed, any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

19. No fetter

19.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

19.2 This Deed does not restrict the creation of easements for Council approved purposes nor fetter the creation of Biobank credits which can be used to improve or maintain biodiversity values of the Land. Biobank credits created on the Land may be used to offset the impact of development on the Land and the impact of development on other land, pursuant to the *Threatened Species Conservation Act 1995*.

20. Representations and warranties

The Parties represent and warrant that they have power to enter into this Deed and comply with their obligations under the Deed and that entry into this Deed will not result in the breach of any law.

21. Severability

If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of a clause is to be treated as removed from this Deed but the rest of this Deed is not affected.

22. Modification

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No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

23. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

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EXECUTED by the Parties as a Deed.

EXECUTED BY THE COUNCIL OF THE)
SHIRE OF BALLINA)
Date.....)
.....)

EXECUTED BY BALLINA WATERWAYS)
PTY LIMITED)
Date.....)
.....)
Director / Secretary)

DRAFT

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SCHEDULE 1 – DEVELOPMENT CONTRIBUTIONS SCHEDULE

The Developer agrees to provide the following material benefits:

1. Prior to the grant of Development Consent for any Development of the Land pursuant to and permitted in the R2 Low Density Residential or RU2 Rural Landscape zone or pursuant to the Additional Permitted Use provisions of Schedule 1 of the LEP (other than a Development Application for the subdivision of the Land to create an allotment for the intended Biobank site or other activities in pursuit of the registration of the Biobanking Agreement), the whole of that part of the Land zoned RU2 Rural Landscape under the LEP shall be the subject of a Biobanking Agreement pursuant to Division 2 of Part 7A of the *Threatened Species Conservation Act 1995*. The Biobanking Agreement shall:
 - i. establish as a Biobank Site that part of the Land to which it applies;
 - ii. be registered on the title for that part of the Land; and
 - iii. remain in perpetuity in accordance with Division 2 of Part 7A of the *Threatened Species Conservation Act 1995* and the *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*.
2. Prior to the lodgement of a Development Application for any Development of the Land pursuant to and permitted in the R2 Low Density Residential or RU2 Rural Landscape zone or pursuant to the Additional Permitted Use provisions of Schedule 1 of the LEP (other than a Development Application for the construction of a trial fill embankment with settlement monitoring plates) comprehensive and detailed geotechnical investigations shall be carried out to accurately assess the required depths of fill for preloading including the construction of a trial fill embankment with settlement monitoring plates.

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Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Ballina Shire Council ABN 53 929 887 369 of 40 Cherry Street, Ballina, NSW 2478
(Council)

Ballina Waterways Pty Limited of 46 Evan Street South Penrith NSW 2750
(Landowner of Lot 4 DP 537419)

Description of Land to which this Draft Planning Agreement applies:

Lot 4 DP 537419 (the Land)

Description of Proposed Change to Environmental Planning Instrument, Ballina Local Environmental Plan 2012 (BLEP 2012)

The changes proposed to BLEP are as follows:

- An amendment to change the zoning of part of the Land from RU2 Rural Landscape zone to R2 Low Density Residential zone.
- An amendment to incorporate that part of the Land zoned 1(d) Rural (Urban Investigation) zone under the provisions of Ballina Local Environmental Plan 1987 (BLEP 1987) and apply a part R2 Low Density Residential zone and a part RU2 Rural Landscape zone to the Land.
- An amendment to permit live – work purposes within the R2 Low Density Residential zone proposed for the Land as additional permitted uses.

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- An amendment to apply a 0.7:1 Floor Space Ratio to that part of the Land proposed to be zoned R2 Low Density Residential zone.
- An amendment to apply a 40 hectare minimum lot size to that part of the Land proposed to be zoned RU2 Rural Landscape zone and a 450m² minimum lot size to that part of the Land proposed to be zoned R2 Low Density Residential.
- An amendment to apply an 8.5 metre maximum building height provision to the Land.
- An amendment to apply a 2.7metre Australian Height Datum (AHD) Building Height Allowance to the Land.
- An amendment to remove the Strategic Urban Growth Area affectation from the Land and associated changes to buffer areas.
- Amendments to incorporate that part of the Land zoned under the provisions of BLEP 1987 and show such land on the Land Application Map, Acid Sulfate Soils Map and the Flood Planning Map.
- An amendment to permit within the area proposed to be zoned RU2 Rural Landscape zone a restaurant or café incorporating information and education facilities and a dwelling, contained within a curtilage having a maximum area of 1300m² as an additional permitted use.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The Objectives, Nature and Effect of the Draft Planning Agreement is to ensure that:

- a. part of the Land is reserved as a Biobanking Site for the purposes of a Biobanking Agreement; and
- b. detailed geotechnical investigations are carried out on that part of the Land proposed to be developed for purposes other than environmental protection to ensure that it is suitable for development for uses permissible in the zone.

Assessment of the Merits of the Draft Planning Agreement

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The Planning Purposes Served by the Planning Agreement

The Planning Agreement reasonably provides for the achievement of the following planning purposes:

- to provide for the environmental and ecological protection and enhancement of land in connection with the Development; and
- to promote the orderly and economic use and development of the Land to which the agreement applies.

How the Planning Agreement Promotes the Public Interest

Provides for local development in a manner that protects environmental and social values.

How the Planning Agreement Promotes the Elements of the Council's Charter

The Planning Agreement, by making provision for the reservation of part of the Land as a Biobank Site for the purpose of a Biobanking Agreement, and for detailed geotechnical investigations to be carried out on that part of the Land proposed to be developed for purposes other than environmental protection, benefits the wider community and promotes the following elements of the Council's charter:

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

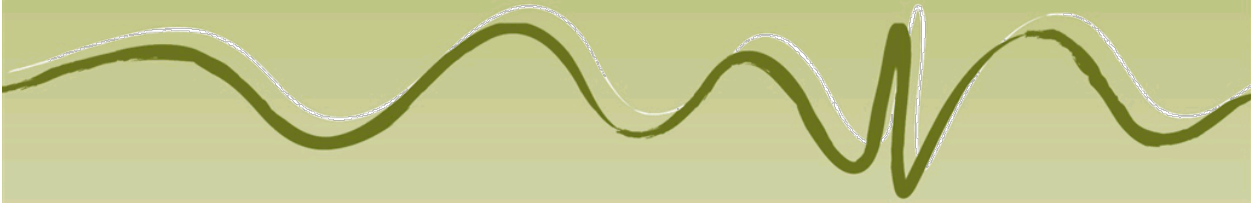
Whether the Planning Agreement Conforms with the Authority's Capital Works Program

The Planning Agreement does not affect or conflict with Council's Capital Works Program.

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Peer Review Supplementary Report

Burns Point Ferry Road Planning Proposal



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Prepared for: Ballina Shire Council
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<i>UPR</i>	<i>Description</i>	<i>Date Issued</i>	<i>Issued By</i>
2599-1007	First issue	28/03/2017	Simon Waterworth
2599-1008	Second issue	13/04/2017	Simon Waterworth
2599-1009	Third issue	27/04/2017	Simon Waterworth

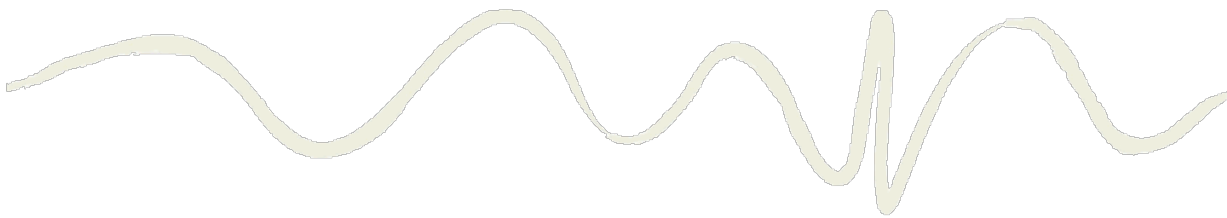


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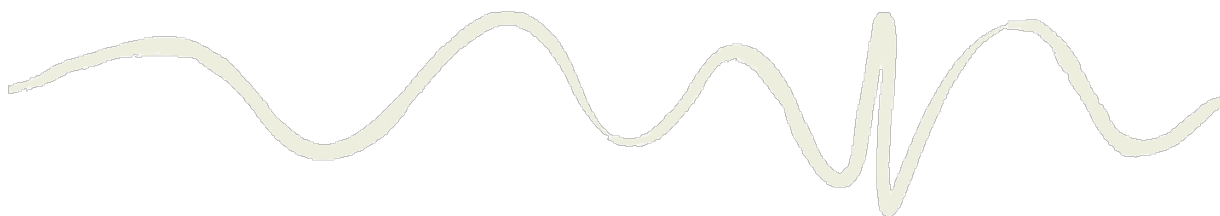
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1. Introduction

GeoLINK were engaged by Ballina Shire Council to assist it with assessing a Planning Proposal for land described as Lot 4 DP 537419, Burns Point Ferry Road, West Ballina. This initial engagement included:

Stage 1: Documentation Review including review of the Planning Proposal and peer review of supporting information submitted by the proponent. This involved identification and resolution of information gaps and verification that specialist studies adequately address the relevant issues. This review was prepared as a report and formed part of the publically exhibited documentation.

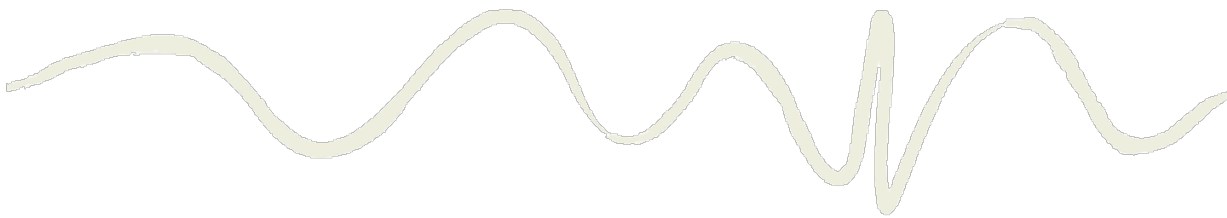
Stage 2: Preparation of a planning assessment report for consideration by Council after public exhibition of the Planning Proposal. The report considered submissions and provided recommendations relating to the progression of the Planning Proposal.

Council considered the Planning Proposal at its ordinary meeting held on 15 December 2016 when it resolved that the *“matter be deferred pending further investigation in relation to ecological and any other environmental impacts”*.

GeoLINK has subsequently been requested by Council to prepare a brief supplementary report on the major issues associated with the Planning Proposal and the factors taken into account by GeoLINK which lead to the view that this Planning Proposal should now proceed to be finalised. The issues include:

- The strategic planning framework for the site;
- Additional permitted use proposal outlined in the Planning Proposal for a 1300m² site to facilitate the construction of the restaurant, café, interpretative centre and dwelling;
- Acceptability of site filling proposals and treatment of adjoining property interfaces;
- Acceptability of ecological impacts including impacts on the grass owl and its habitat;
- Adequacy of information relating to biodiversity offsets and whether the extent of offsets required for a biobanking agreement should be determined prior to the Planning Proposal being determined;
- Buffer requirements for Asset Protection Zone (APZ) bushfire zones and where these should be located (on the proposed residential site or the biobanking site) and how this will be enforced;
- Mosquito impacts and adequacy of submitted information;
- Flooding impacts;
- An overview of the major issues raised in submissions and GeoLINK's views as to the reasonableness or otherwise of the objections raised;
- Preparation, responsibility and timing of the required Development Control Plan (DCP); and
- Potential for conflicts between the live and work components of the development and how they may be resolved if problematic.



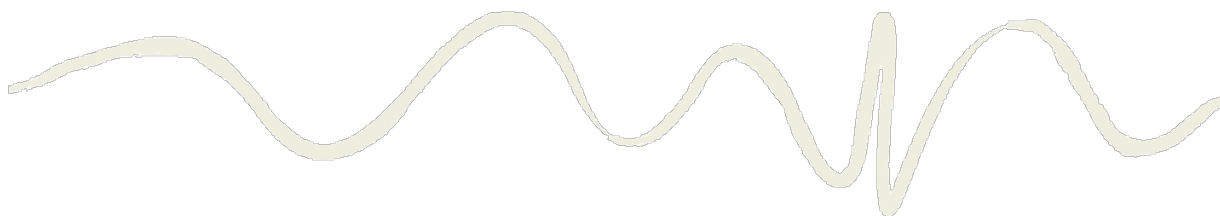


2. Report Purpose

The purpose of this report is to provide additional information and commentary on the key Planning Proposal issues to assist Council in its consideration of the Planning Proposal.



Peer Review Supplementary Report - Burns Point Ferry Road Planning Proposal
2599-1009



3. Strategic Planning Framework

One of the most important criteria for rezoning land as part of a Planning Proposal is that the land is identified in a strategic planning framework including the local Growth Management Strategy and the Regional Strategy.

The Ballina Shire Growth Management Strategy (GMS) 2012 provides the strategic planning context for urban development in Ballina Shire. The GMS identifies part of the site (the area currently zoned RU2 under the Ballina Local Environmental Plan (LEP) 2012) as a strategic growth area. Part of the area proposed for urban development is outside the identified strategic growth area identified in the GMS. GeoLINK is of the opinion that this minor inconsistency is considered acceptable for the purposes of progressing to a more detailed site assessment and having regard for the potential delivery of environmental outcomes for the residue of the site.

The North Coast Regional Plan 2036 (NCRP 2036) was recently launched (in March 2017) by the NSW Government. This Plan updates and combines the previous Far North Coast Regional Plan and Mid-North Coast Regional Plan. The Plan will guide the NSW Government's land use planning priorities and decisions to 2036. It is intended to provide an overarching framework to guide subsequent and more detailed land use plans, development proposals and infrastructure funding decisions. The NCRP 2036 also contains urban growth maps for the various Local Government Areas in the North Coast. The whole of the subject site is identified as an Investigation Area for Urban Land (refer **Illustration 2.1**). It should be noted, however, that the Plan states that not all land identified within the growth areas can be developed for urban uses. All sites will be subject to more detailed investigations to determine capability and future yield.

The site was also identified in the Far North Coast Regional Strategy (superseded by the NCRP) which identified the whole site as a proposed future urban release area with high level constraints.

It is therefore considered that the Planning Proposal is supported by the relevant Strategic Planning Framework.

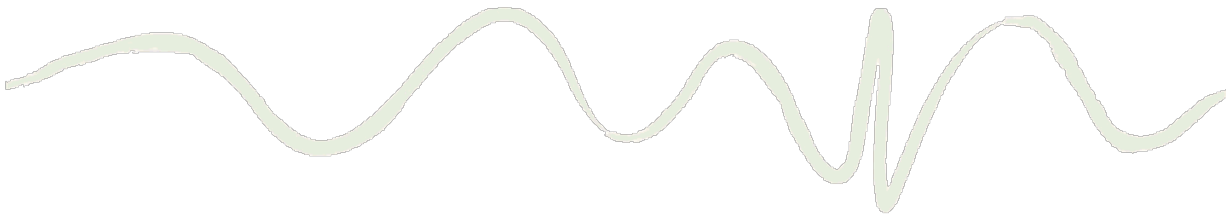
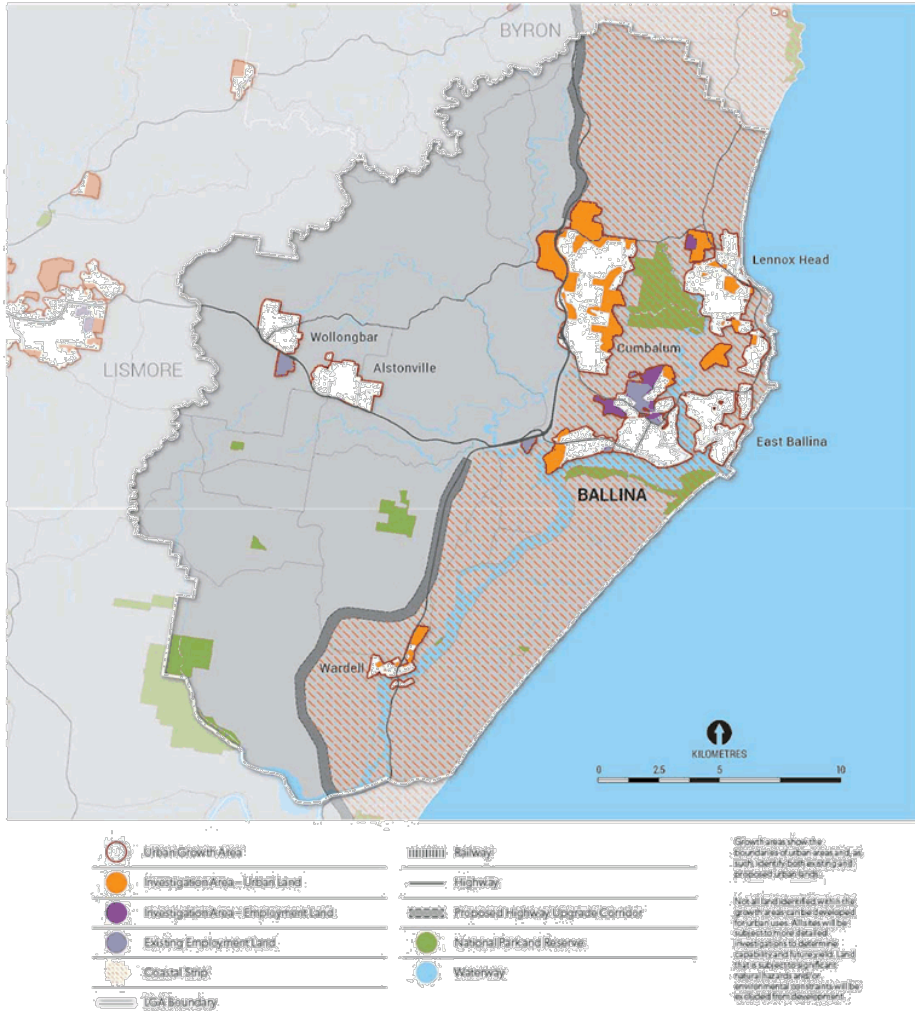
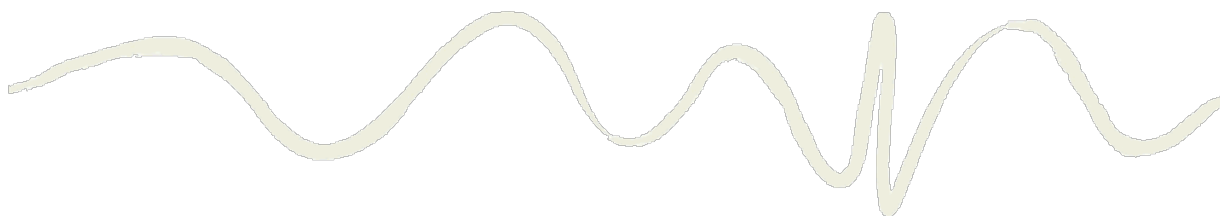


Illustration 3.1 NCRP 2036 - Ballina Local Government Area Urban Growth Map





4. Adequacy of information

4.1 Overview

GeoLINK has previously prepared a Peer Review and Gap Analysis Report on the Planning Proposal which formed part of the documentation when the Proposal was placed on public exhibition. Through this Review and Analysis Report it was concluded that the information provided by the proponent addressed most of the requirements outlined in the Gateway determination and correspondence from Council, Office of Environment and Heritage (OEH) and Fisheries NSW. Additional information was required of the proponent to further clarify the Proposal which was subsequently provided to Council.

Some of the information provided by the proponent was dated over 10 years old, however this was given detailed consideration as part of the peer review and gap analysis and concluded that, despite the age of some of the reports, the information provided was still relevant and adequately addressed the specific issues concerned. Some of the specific issues that were of concern and were raised during the assessment of the Planning Proposal are discussed further in this supplementary report.

It should also be noted that this is the rezoning phase of the development and that the Development Application (DA) phase of the Proposal will require updated and more detailed information to be provided by the proponent to ensure the Proposal complies with all local, State and Federal government requirements. The Planning Proposal also requires a site specific DCP for the site which will require compliance with various development controls and provision of specific information to be submitted with any future DA.

4.2 Proposed restaurant, café, interpretative centre and dwelling

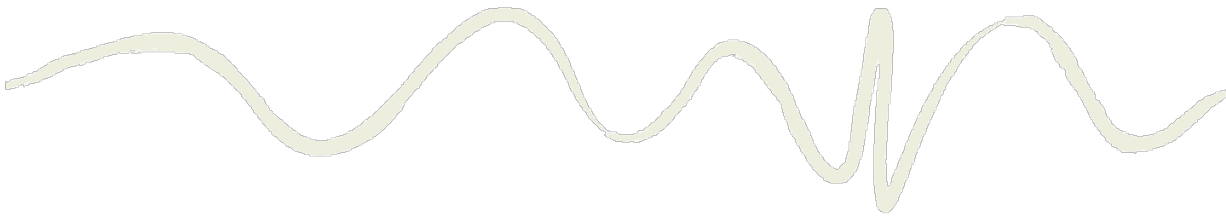
The Planning Proposal included provision of a 1300m² site for a cafe facility/interpretive centre and dwelling as an adjunct to the biobanking conservation precinct and would provide interpretive information about the conservation area. The café/ interpretive centre/ dwelling is proposed to be zoned RU2 and utilise the additional permitted use provisions contained within Ballina LEP 2012 to permit the proposed use.

Council's Development Services staff have expressed the view that:

- the site should be specifically nominated;
- that the proposed area of 1300m² is too small an area to accommodate the range of proposed uses; and
- that noise related impacts to residents living opposite Burns Point Ferry Road will become problematic.

The original location of the proposed facility was proposed in the south-eastern corner of the site at the end of Burns Point Ferry Road. The Peer Review and Gap Analysis Report recommended that additional information be provided that demonstrates the proposed site's suitability in terms of potential flood and tidal impacts. Subsequent to this recommended request for additional information, the Planning Proposal was amended so that the additional permitted use area applied to the whole of the Lot 4 residual area. The reason stated in the Planning Proposal was that the river end of Burns Point Ferry Road is within an Extreme Flood Risk Precinct as mapped in Ballina DCP 2012. Residential accommodation was not considered 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.





The proposed change would also provide future flexibility in terms of the location for the facility which would be determined as part of the preparation of the site specific DCP.

With regard to the size of the land for the facility, the proposed area was specified by the proponent. It would be up to the proponent to design a facility that would be accommodated within the proposed area. Limiting the area also limits the eventual scale and size of the facility.

The facility, when designed and as part of any DA, would need to demonstrate that it would comply with relevant noise guidelines and not create a noise or amenity nuisance to residents in the locality.

The proponent considers that the proposed café/ interpretive centre/ dwelling site are critical to the long term operation, management and conservation of the biodiversity offset lands. The conservation area is to be managed within the framework of the Threatened Species Conservation (Biodiversity Banking) Regulation 2008 Regime, however the proponent believes that the café/ interpretive centre/ dwelling site, in addition to being a useful local amenity asset for Ballina and West Ballina, will provide for public accessibility and awareness of the land. It is therefore considered that the proposed amendment to Ballina LEP 2012 to allow for the proposed café/ interpretive centre/ dwelling site has merit.

4.3 Filling of the site

The site will need to be filled to ensure an appropriate level of flood immunity and ensure adequate stormwater treatment and drainage. The specific details of the fill and how it will interface with adjoining land has not been provided by the proponent. The Soil Survey Report submitted by the proponent estimates that fill will need to be introduced to the site to raise the level of the land. The level will need to be at the 1 in 100 (1% AEP) flood height. It is estimated that approximately one to two metres of fill would need to be imported to the site. Given the conceptual nature of the Proposal, however, the interface of the fill with adjoining land cannot be comprehensively assessed at this (Planning Proposal/rezoning) stage.

It should also be noted that flood impacts from the filling of the site have been assessed and incorporated into Council's integrated flood model. Therefore, flood impacts from the filling of the site are considered acceptable from a broader floodplain perspective.

The filling of the site will need to be carried out to ensure that it does not have a significant impact on adjoining properties and the surrounding environment. This matter can and should be assessed and given detailed consideration as part of the preparation of the proposed DCP and also as part of the DA preparation and assessment process. It can also be given further consideration at the Construction Certificate phase of the approval process. It is therefore our view that provision of detailed information on the filling of the site is not required at the Planning Proposal stage.

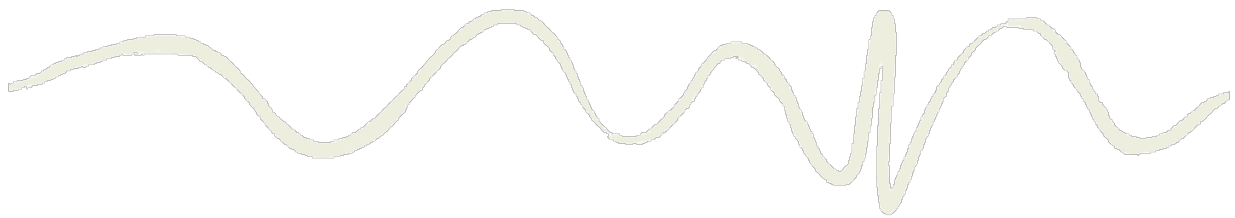
4.4 Ecological impacts

4.4.1 Flora

The site has been historically disturbed from clearing, grazing and altered hydrology (drainage). The site contains a mosaic of several vegetation communities including:

- Swamp Oak forest
- Mangroves





- Saltmarsh
- Freshwater wetlands
- Regrowth (wattle).

Three Endangered Ecological Communities (EECs) occur at the site (overall):

- Swamp Oak Floodplain Forest (SOFF)
- Freshwater Wetlands (FW)
- Coastal Saltmarsh.

The SOFF and DW EECs occur within the proposed rezoning area.

No threatened flora species have been found at the site by any of the investigations to date.

Mapping and identification of EECs has differed between various consultants to date. It is accepted that two EECs (SOFF, FW) occur within the proposed development area. The extent of SOFF is largely agreed with by recent ecologists (and Councils ecologist). There is also general consensus on the extent of FW in the east of the development area. Differing opinions occur as to the occurrence and extent of FW within the west of the development area – dominated by improved pasture which is disturbed by grazing, but including several lower areas which retain moisture and wetland species. In GeoLINK's assessment (2016), the following was stated:

"...these areas appear to resemble disturbed freshwater wetlands; however, it is doubtful that they would support standing water at any frequency or for any duration. At a landscape scale, it is considered these areas are minor depressions within a disturbed pasture mosaic which support some wetland species. However, in comparison with the dense reedland present in the east of the site they are clearly not wetlands and are a separate community with differing influences subject to a number of disturbance regimes (grazing, slashing, weed invasion)".

GeoLINK still supports this view. Council's ecologist, however, differs with this approach and considered these areas comprise FW and an area of one hectare of FW occurs within the north-west of the rezoning area.

4.4.2 Fauna

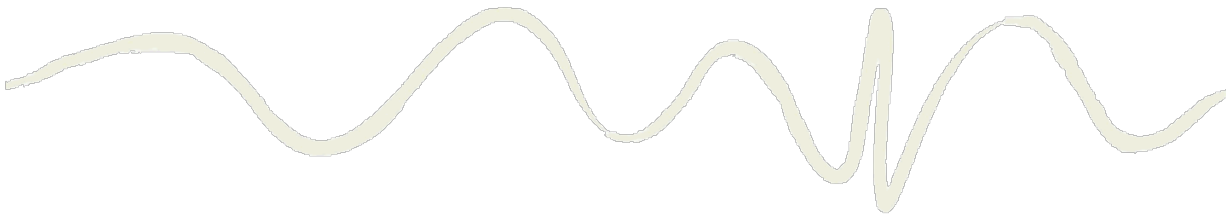
The Eastern Grass Owl has been previously recorded at the site, with no records in recent years (despite some targeted survey). Records occur in the locality from 2007 and 2010, indicating Grass Owls are likely to be present within nearby habitat areas. It is likely that slashing and grazing of the site has resulted in disturbance to Grass Owl habitat and hence the lack of recent records. Grass Owls may also potentially roost in reed-dominated vegetation in the east of the site and/ or forage over the site for prey items as part of a larger foraging range. On this basis, it is considered the site comprises potential habitat for the species based on known historical records and records known from the locality.

4.4.3 Potential impacts of the Planning Proposal

Potential impacts of the Planning Proposal (and subsequent development) include

- Loss of EECs;
- Loss of native vegetation;
- Impacts to Grass Owl habitat;





- Indirect impacts to residual land in the south of the south from weed invasion, dumping, stormwater etc. This includes impacts to mangroves and saltmarsh communities; and
- There may also be additional loss of FW EEC and other vegetation based on the APZs proposed within the residual land.

4.4.4 Mitigation measures

Proposed mitigation measures include:

- Designing stormwater services to ensure any discharged water to residual land has been appropriately treated.
- Identifying buffer areas, including how these are managed and any use in stormwater management.
- Preparation of biobanking statement to determine credits required for EECs (SOFF, FW) and the Eastern Grass Owl.

4.4.5 Findings

As a result of reviewing all of the ecological assessments undertaken by Blackwood, Melaleuca Group, Peter Parker and Aspect North and undertaking own site investigations, GeoLINK's position is that the northern part of the site is generally suitable for rezoning for urban development as proposed, subject to appropriate biobanking offsets or compensatory habitat being established.

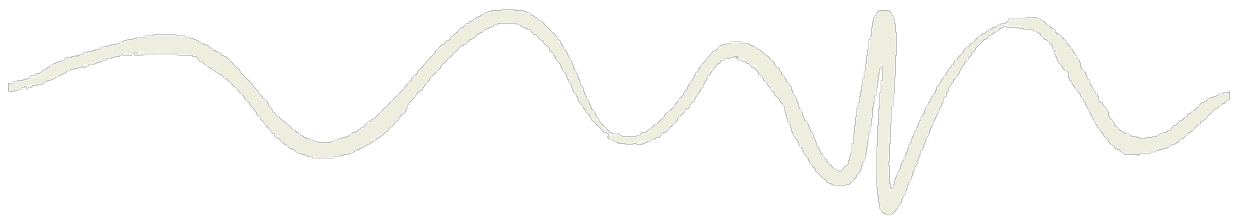
4.5 Biobanking agreement

The OEH have recommended that a biobanking statement be obtained prior to finalising the Planning Proposal. This requirement will delay the rezoning by approximately six months to a year (proponent's consultant has estimated two years and a cost of \$50,000 based on their experience). Given the timeframe restrictions of processing planning proposals, the Planning Proposal may need to be withdrawn whilst the biobanking agreement is prepared by the proponent and assessed and approved by OEH.

As an alternative to this, the landowner has proposed a Voluntary Planning Agreement (VPA) to secure the requirement for a biobanking agreement prior to development consent for the future urban development of the site. The biobanking agreement will therefore be approved by OEH before the proponent lodges a DA with Council. This agreement would involve a comprehensive ecological assessment of the land that would be subject to the biobanking agreement under the biobanking legislation. This ecological assessment would be considered and approved by OEH as part of the agreement. If the proponent chooses to offset the biodiversity impacts of the future development of the land (i.e. the R2 and additional permitted use development) by way of a biobanking agreement, then Council would not be required (or able to) assess ecological impacts from the development under the Threatened Species Conservation Act as part of its assessment of the DA as these impacts would already have been considered, assessed and determined under the biobanking legislation within the biobanking agreement issued by OEH.

The VPA will enable the Planning Proposal to proceed whilst securing a biobanking agreement for the proposed conservation area within the site. It is GeoLINK's position that this affords Council sufficient security in terms of the proponent securing a biobanking statement prior to development consent being issued.





4.6 Locating and securing bushfire asset protection zones

Due to the conceptual nature of the Proposal it is difficult to determine the exact APZ requirements for the likely future subdivision layout as the layout could change significantly as a result of further design refinement and the preparation of a DCP for the site. A bushfire assessment has, however, been prepared assessing the conceptual layout and has recommended minimum APZ's for the concept proposal. These APZ's have been included on the concept plan and area located on the land to be zoned RU2. The APZ's would likely require vegetation removal and would be subject to ongoing maintenance requirements. The most logical option would be to secure the APZ's by including them in a Section 88B Instrument as a Restriction as to User under the Conveyancing Act to enable them to be appropriately maintained. The impact of preparing the APZ's would be required to be assessed as part of the biobanking statement.

4.7 Mosquito impacts

The Mosquito Impact Assessment report, prepared by Mosquito Consulting Services Pty Ltd, was prepared over ten years ago. Council's Development Services Section has recommended that an updated report be prepared addressing the new development footprint. However, the assessment is considered to be generally consistent with Ballina DCP 2012. The extent of development envisaged in the Mosquito Impact Assessment report (2005) has since been reduced in size. There has also been no obvious change in the general characteristics of the subject site and the locality. As such, GeoLINK's position is that no further mosquito trapping or assessment is considered necessary to progress the Planning Proposal. However, careful assessment and consideration of mosquito impacts and management will be required during the preparation and assessment of any DA for future development of the land.

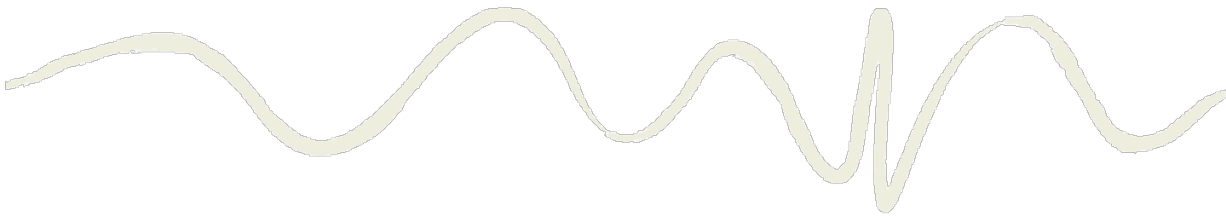
4.8 Flooding impacts

The Post Gateway Report technical reports bundle contained two reports that relate specifically to the subject site. The first report (BMT WBM 2008) involved a flood assessment and flood modelling to determine if filling and development of part of the land would have an adverse impact on surrounding areas. The report used the existing hydrodynamic flood model of the floodplain around Ballina also developed by BMT WBM. The 2008 Flood Impact Assessment determined that the filling of the development footprint:

"causes less than 5 mm increase to peak flood levels in both local catchment and Richmond River dominated flood events. This is due to the 100 year ARI flood level generally being less than 0.5 m above the existing ridge line across the site. In some places, the 100 year ARI flood level is within 0.1 m of the existing ground level. Since flow velocities across the site are low, the total flow across the site is minimal in existing conditions. There is a reduction in flood storage due to the development, although this forms a negligible volume in comparison to the overall storage of the Richmond River floodplain."

The second report (BMT WBM 2014) assessed the development footprint as proposed in Post Gateway Report. This report concludes that as the proposed new development footprint is less in area than what was originally modelled in the 2008 report the flood impact would be lesser and therefore the flood impact maps presented in the May 2008 flood impact assessment can be considered a 'worst case scenario' for impacts associated with the new development footprint.





It is considered that the additional technical information provided by the proponent as part of the Planning Proposal adequately demonstrates that the Proposal is unlikely to result in flood impacts to the surrounding area.

4.9 Live/ Work Proposal

The Post Gateway Report provides additional information on the live/ work concept that the Proposal is trying to achieve. The report states that although these types of planned and integrated land uses have yet to be developed within the Ballina Shire, there are many examples of the concept working in other locations. The live/ work concept also encourages the development of the creative industries sector which is recognised in the Ballina Shire Economic Profile as an emerging industry within the shire. Further, the live/ work concept further seeks to achieve a reduction in home to work commuting times and a sense of community identity through creating a vibrant mix of residential and commercial/ light industrial land uses.

Concern has been raised about potential land use conflict within and around the precinct when developed. The Planning Proposal seeks to amend Ballina LEP 2012 by rezoning part of the site to R2 Low Density Residential Zone and applying associated land use control provisions to enable development of part of the subject land for "live/ work" (residential and employment) purposes. Employment purposes are proposed to be permitted utilising the mechanisms of clauses 2.5 and Schedule 1 of Ballina LEP 2012. The provisions would restrict inappropriate land uses that would cause conflict with residential land uses. Approved uses would also need to comply with the requirements of the DCP which likely include matters such as restriction on hours of operation and the requirements for provision of adequate noise insulation between work and residential areas.

It is still GeoLINK's position that the proposed zoning (R2 and Schedule 1 amendment) as outlined in the current planning proposal is the most appropriate zone for the proponent's proposed future use of the site.

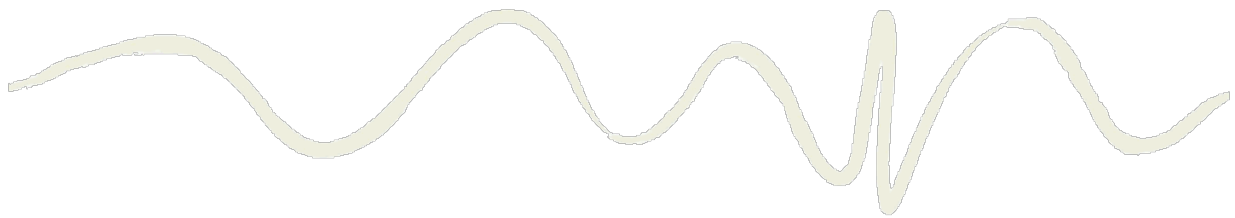
4.10 Proposed Development Control

4.10.1 Purpose of the DCP

As discussed above, it is recommended that Council resolves to prepare a draft amendment to Ballina Shire DCP 2012 to introduce site specific controls relating to the future development of the site for live/ work development and environmental protection and enhancement purposes. The purpose of this DCP would be to:

- Promote and implement the principles of ecologically sustainable development identified in aims of Ballina LEP 2012, in the planning, development and management of the site;
- Contribute to affordable housing, biodiversity conservation and social and cultural improvements;
- Define a compatible mix and density of business, office, residential, retail, light industry and other development on parts of the site;
- Enhance and protect the bio-physical environment, particularly the Endangered Ecological Communities, grass owl vegetation and wildlife habitat adjacent to the site;
- Enhance and protect ground water and surface water quality and hydrology; and





- Ensure that the siting, scale and intensity of development enhance and protect Ballina's livability attributes by:
 - responding to local and regional values, community needs and aspirations;
 - reflecting Ballina's character and scale;
 - ensuring that development of the site contributes to the range of services available and the identity of West Ballina; and
 - ensuring that site access does not compromise the amenity or safety of adjacent residential areas.

4.10.2 Likely requirements within the DCP

The DCP would contain site specific requirements for:

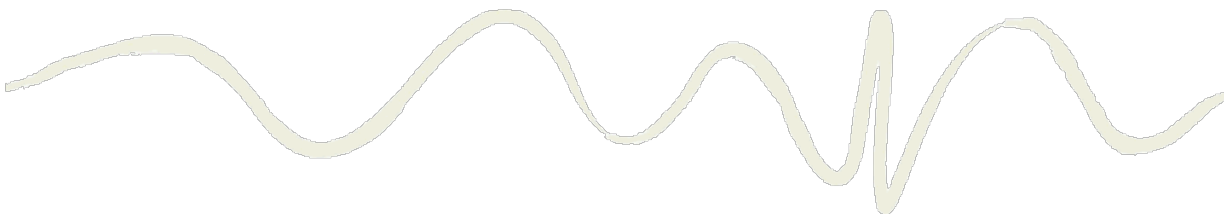
- Desired Future Character and Development Principles
- Statement of Desired Future Character
- Planning Principles
- Achieving the Desired Future Character
- A Precinct Plan
- Design and Development Controls including requirements for:
 - Land Use, Management and Environmental Assessment requirements
 - Car Parking
 - Building Design
 - Floor Space Ratio
 - Site and Open Space Design
 - Lot Size and Subdivision
 - Street Design
 - Water Cycle Management
 - Ecological Enhancement.

4.10.3 Responsibility and timing of the DCP preparation

There are a few options for Council to consider with regard to the DCP preparation. Given that the site is owned by one entity, it is considered reasonable that the proponent be responsible for the entire cost of preparing the DCP. Council, of course, would need to have full control over its preparation including format and content. Council has discussed this position with the proponent's representative who has offered no objection. However, there is currently no formal mechanism in place with regard to this Planning Proposal to compel the proponent to fund the cost of the DCP preparation. This could be addressed by one of the following options:

Option 1 – Include the site as an Urban Release Area under Ballina LEP 2012

This would involve amending the Planning Proposal to include the subject land as an Urban Release Area under Clause 6.3 of Ballina LEP 2012. The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a DCP that includes specific controls has been prepared for the land. Development consent must not be granted for development on land in an urban release area unless a DCP addressing specific matters has been prepared for the land. This would mean delaying the DCP until after the Planning Proposal has been determined. Given the concerns raised



by Council's Development Services Section it is considered that it would be more appropriate for the DCP to be prepared prior to the determination of the planning proposal.

Option 2 – Negotiate with the proponent to amend the VPA to include a requirement for the DCP to be funded by the proponent

This option would make it very clear that the proponent would fund the DCP. However, as with the first option, this would mean delaying the DCP until after the Planning Proposal has been determined.

Option 3 – Advise the proponent that the Planning Proposal would not be finalised until the DCP is prepared and that Council's position is that the cost of funding of the DCP should be met by the proponent.

This is the recommended option as it would ensure that DCP is prepared prior to the Planning Proposal being determined and could give due consideration to the issues raised by Council's Development Services Section.

4.11 Submissions

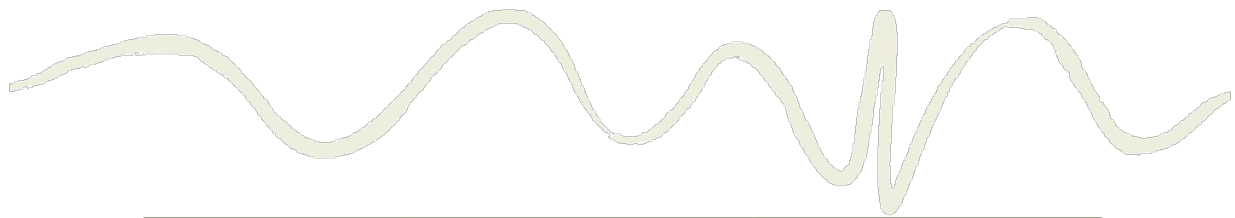
The Planning Proposal and draft VPA, including the Explanatory Note were placed on exhibition for community feedback from 8 June to 8 July 2016. The exhibition process included approximately 400 letters forwarded to nearby property owners, an advertisement within the Ballina Advocate, and documentation being made available for viewing in Council's libraries and the Customer Service Centre, as well as on Council's web site.

A total of two public submissions were received in response to the public exhibition process. One submission supported the Proposal and one raised concerns with the Proposal. A summary of the issues raised and comments on the issues was included in the Assessment Report to Council and is included in **Table 3.1** below.

Table 4.1 Summary of Submissions

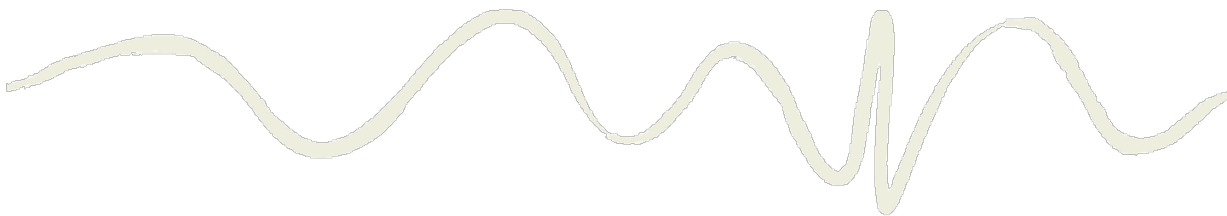
<i>Organisation or Person</i>	<i>Summary of Comments / Issues Raised</i>	<i>Planning Comments</i>
Newton Denny Chapelle (on behalf of Mr Chris Elliot and Mr David Westaway, owners of adjoining land - Lot 1 DP 522558 old Ferry Boat Motel site).	<ul style="list-style-type: none"> Do not object to the planning proposal or to the development foreshadowed therein. Wish to work with the proponents with the view of providing improved access to the development site from Burns Point Ferry Road over part of their property. 	Noted.
Ballina Waterfront Village and Tourist Park (adjoins the	Disagrees with the planning proposal on the grounds listed below:	





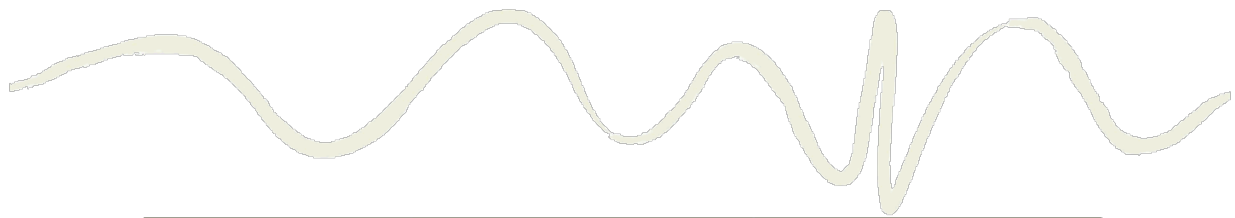
Organisation or Person	Summary of Comments / Issues Raised	Planning Comments
subject site)	<ul style="list-style-type: none"> • Appropriateness of the concept of a live/ work development for not only the site but for the town of Ballina. • Need for another industrial site when there are already two major industrial sites in the town and the potential for this development to become even more industrial? • Economic impact on existing businesses in Ballina. • Traffic impacts have not been assessed. • Impacts on neighbouring residential developments to the east and west of the site • Impact on flooding and stormwater on adjoining land. 	<p>Although the live/ work concept is new to Ballina it has been successfully adopted in other localities. There are many case studies that demonstrate that the concept works and has significant advantages in terms of reduced travel costs, affordable housing and work/ life balance.</p> <p>The Proposal is not another industrial area but rather a mixed use development that will offer alternatives to a traditional industrial estate.</p> <p>The limited size of the proposed area to be rezoned is not expected to have a significant negative impact on existing businesses in Ballina. Proprietors of live/ work uses often find it difficult to locate their businesses/ residences due to traditional planning restrictions and commercial/ industrial rental and land purchase circumstances. The Proposal seeks to encourage a small live/ work community which would have a positive impact within the Ballina LGA.</p> <p>Additional information on traffic has been provided by the proponent and is discussed within the assessment section of the Planning Report.</p> <p>Land use conflict with adjoining owners can be addressed through the Council's DCP to guide future development of the site. It is recommended that Council resolve to prepare site specific DCP provisions to achieve this.</p> <p>The site is flood liable and flood and stormwater impacts were assessed as part of the planning proposal and the assessment report that was prepared by GeoLINK. Flood and stormwater impacts are also discussed below in the assessment section of the planning report is report.</p>



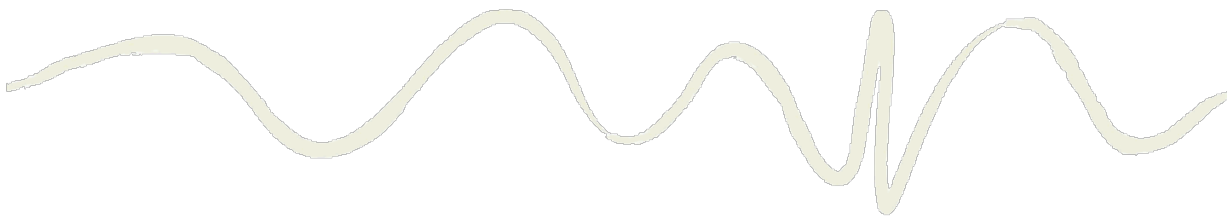


Organisation or Person	Summary of Comments / Issues Raised	Planning Comments
	<ul style="list-style-type: none"> • Social and crime impacts 	<p>Future development would be designed to ensure the principles of Crime Prevention Through Environmental Design are incorporated into the development. The Proposal would not create any significant social impacts or crime risk.</p>
	<ul style="list-style-type: none"> • Issues raised by government agencies and Council's Development Services Section. 	<p>The comments raised by government agencies and Council's Development Services and Environmental Health Sections are addressed below.</p>
<p>Richmond River Cane Growers' Association Ltd</p>	<ul style="list-style-type: none"> • Do not have any objection to the development although have raised some broader concerns which are outlined below. • Concerned that any further development of this nature may seriously impact the viability of the sugar cane industry that has been part of the local community for over 120 years. 	<p>Noted.</p> <p>Ad hoc spot rezoning of land can impact on the viability of agricultural land. The subject site has been identified as having a potential for rezoning as part of a comprehensive strategic planning process. It adjoins residential land to the east and a tourist park to the west. It is considered that the agricultural viability of the land is very low, albeit that the land has previously supported sugar cane production.</p>
<p>Department of Primary Industries - Water</p>	<p>Water Supply and Licensing</p> <ul style="list-style-type: none"> • The planning proposal does not outline the intended water supply to service any future development on the site. • Council should carefully consider the water supply to service this area to ensure a reliable supply exists for the future development of the land. • Basic Landholder rights – concern about the increase in landowners' rights to access water for domestic purposes. 	<p>The proponent has advised that it is intended that the water supply for the project will be the reticulated Rous/Ballina Shire Council system.</p> <p>The site is identified in various strategic plans as a potential urban release area. The water network can be augmented to meet the requirements of the urban use of the land.</p> <p>The future urban development of the site will be serviced by reticulated water. It is not anticipated that there will be an increase in landholders seeking to access water through the use of bores.</p>



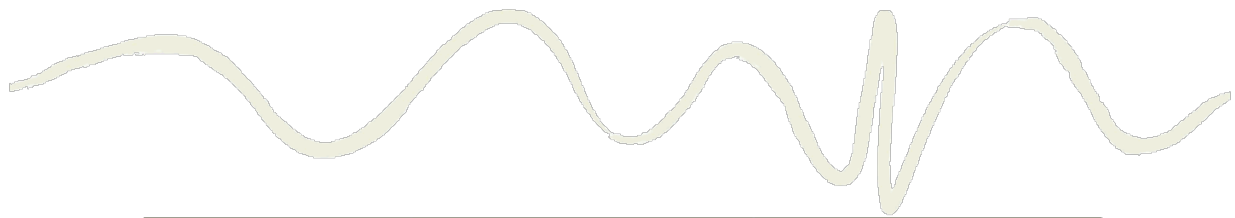


Organisation or Person	Summary of Comments / Issues Raised	Planning Comments
	<ul style="list-style-type: none"> • Groundwater interception. • Watercourse Management and the need for Controlled Activity Applications. • Sewerage Infrastructure. • Future Development Application requirements and the need for specialist studies and investigations. 	<p>The site would need to be filled to ensure flood immunity. The future development of the site can be designed to ensure that impacts to groundwater are minimised. Any likely interception of ground water would be assessed at the DA stage and would require approval from DPI – Water.</p> <p>Noted. Controlled Activity applications would be lodged at the DA stage for any future development of the site.</p> <p>Any future development would be connected to Council's reticulated sewer system.</p> <p>All of the listed potential impacts would be addressed via specialist investigations and studies as part of any future DA.</p>
<p>Department of Primary Industries – Fisheries</p>	<ul style="list-style-type: none"> • Buffers between urban development and conservation interface need to be revised to reduce impacts on fish habitat. 	<p>It is likely that the buffers proposed in the concept design (included in the Planning Proposal) will not be appropriate given the occurrence of sensitive wetland and estuarine communities south of the proposed urban area.</p> <p>Details relating to ecological buffers will need to be justified and set as part of the design and development application stage. Parameters can also be set and reinforced through DCP based provisions for the land.</p>
<p>Department of Primary Industries – Agriculture</p>	<ul style="list-style-type: none"> • No additional comments to those previously made in February 2015. Previously indicated that no major implications for agriculture were identified. Recommended consultation with NSW Office of Water, Fisheries and the local cane industry. 	<p>Noted. Consultation as recommended was undertaken with comments received contained within this report.</p>

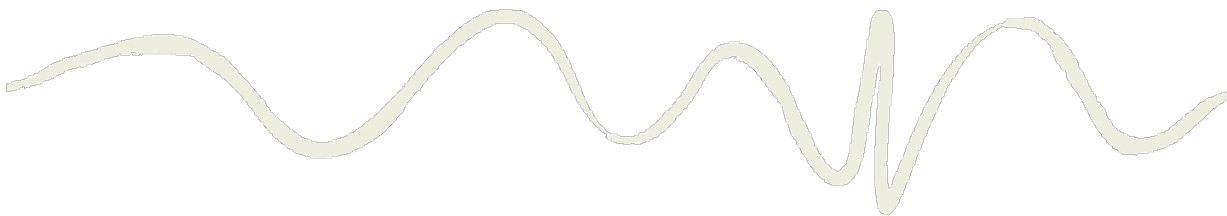


Organisation or Person	Summary of Comments / Issues Raised	Planning Comments
Department of Primary Industries – Aquaculture	<ul style="list-style-type: none"> No objection provided that the resultant lots are connected to reticulated sewerage and future development does not adversely affect the Priority Oyster Aquaculture Areas located both upstream and downstream of the site. 	Noted. Reticulated sewer is available to the land. This matter will also be further addressed at the development application stage.
Office of Environment and Heritage (OEH)	<ul style="list-style-type: none"> Rezoning area should be reduced to limit biodiversity impacts 	Biodiversity impacts of the development will be offset by a biobanking agreement which is in accordance with current OEH policy.
	<ul style="list-style-type: none"> The area proposed to be rezoned needs to contain all impacts associated with future development scenarios 	The concept plan may require adjustment at the DA stage to ensure all impacts are contained within the rezoned area. Any future development application (which would include specialist investigations and studies) would need to demonstrate this.
	<ul style="list-style-type: none"> A revised biobanking statement should be obtained prior to finalising the planning proposal. 	<p>Requiring the preparation of a biobanking agreement before the land is rezoned will delay the rezoning by approximately six months to a year (proponent's consultant has estimated two years and a cost of \$50,000 based on their experience). Given the timeframe restrictions of processing planning proposals, the planning proposal may need to be withdrawn whilst the biobanking agreement is prepared by the proponent and assessed and approved by OEH.</p> <p>As an alternative to this, the landowner has proposed a Voluntary Planning Agreement (VPA) to secure the requirement for a biobanking agreement prior to development consent for the future urban development of the site.</p> <p>This will enable the planning proposal to proceed whilst securing a biobanking agreement for the proposed conservation area within the site. This is considered an acceptable outcome.</p>



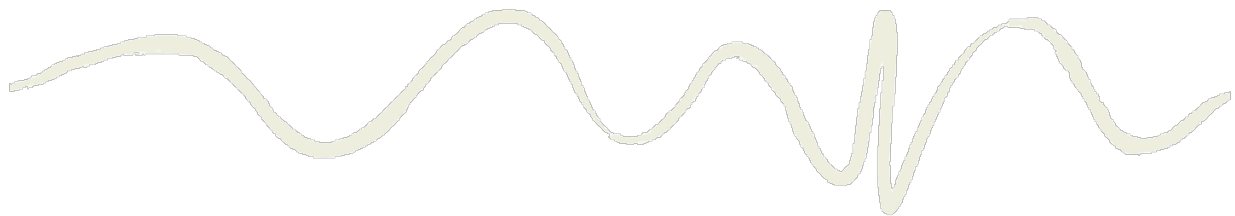


Organisation or Person	Summary of Comments / Issues Raised	Planning Comments
	<ul style="list-style-type: none"> The VPA should ensure that all biodiversity credits required to offset the impacts of the future development of the site are retired prior to any development application being approved for the site. 	<p>Refer comments above. The VPA will secure the requirement for a biobanking agreement prior to development consent for the future urban development of the site. The biobanking statement will specify when credits are required to be retired. Credits could be retired prior to development consent or more reasonably prior to a construction certificate being issued.</p> <p>The proponent is required to negotiate the terms of the biobanking agreement with the Minister for the Environment. It is through this process that the OEH's position can be negotiated with the proponent.</p>
Roads and Maritime Services	<ul style="list-style-type: none"> It would be beneficial to both road safety and traffic efficiency to remove the delay created by U-turns at the Pacific Highway interchange roundabout due to the proposed left in/left out access treatment on River Street. 	<p>The proposed left in/left out system is an interim measure. The traffic engineering report proposes that a roundabout will be constructed in River Street to service the future development.</p> <p>The proponent has advised that discussions have been held with adjoining property owners about obtaining access via Burns Point Ferry Road; however the proponent's preferred approach is the implementation of the roundabout scheme.</p>



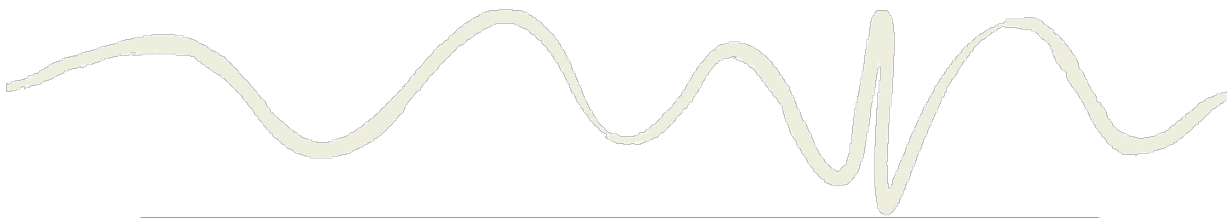
Organisation or Person	Summary of Comments / Issues Raised	Planning Comments
<p>Ballina Shire Council Development Services</p>	<ul style="list-style-type: none"> Concerns about the proposed planning controls including, floor space ratio residential land use, land use conflict, character of the precinct, approval requirements, compliance issues, flooding, geotechnical matters etc. 	<p>It is considered that the proposed LEP and DCP controls will adequately regulate the future development of the site. The detail raised by Council's Development Services Section in regard to floor space ratio, land use conflict, development guidelines and future character of the precinct can be addressed in DCP provisions.</p> <p>BSC Development Services Section has suggested this approach and the proponent has advised that no objection is raised to the requirement for DCP provisions to be prepared and adopted to guide future development of the site. It is therefore recommended that Council resolve to prepare site specific DCP provisions to guide future development of the land.</p>
	<ul style="list-style-type: none"> Market demand for this type of land use. 	<p>Although the live/ work concept is new to Ballina it has been successfully adopted in other localities. There are many case studies that demonstrate that the concept works and has significant advantages in terms of reduced travel costs, affordable housing and work/life balance. Like most development proposals there is always an element of risk involved. It would be up to the developer to ensure the proposed development is viable whilst complying with Council's development controls.</p>





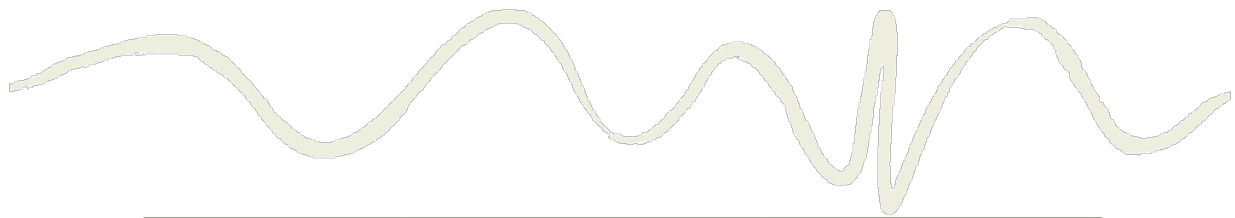
Organisation or Person	Summary of Comments / Issues Raised	Planning Comments
	<ul style="list-style-type: none"> <li data-bbox="625 432 927 504">• Inconsistencies with the Growth Management Strategy <li data-bbox="625 898 927 1041">• Interface between existing and approved adjoining land uses requires further consideration and resolution at the planning proposal stage. 	<p data-bbox="965 432 1297 884">The Proposal is inconsistent with the provisions of the Ballina Shire Local Growth Management Strategy. The urban footprint proposed extends beyond the identified growth area. In the circumstances, given that the land is currently zoned 1(d) Rural – Urban Investigation (as a result of the E zone deferral) and the land is identified as a proposed future urban release area under the State Government's Far North Coast Regional Strategy, and having regard for detailed site assessment and the potential delivery of environmental outcomes for the residue of the site, this is considered acceptable.</p> <p data-bbox="965 898 1297 1108">It is considered that matters such as buffers, land use conflicts, APZs, vegetation of land and filling cannot be comprehensively addressed at the rezoning stage due to the conceptual nature of the Proposal. In relation to these items they can be considered in a DCP and/ or via the DA process.</p>





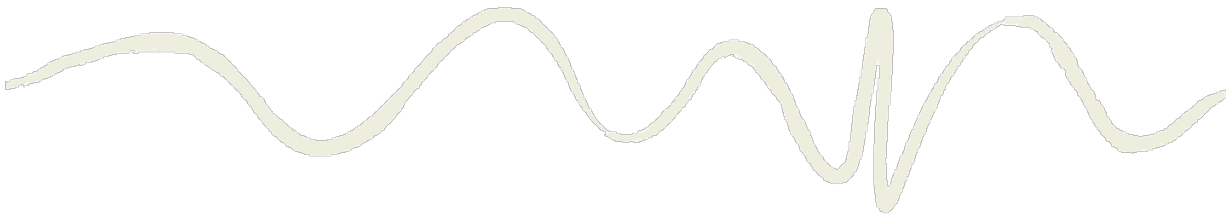
Organisation or Person	Summary of Comments / Issues Raised	Planning Comments
	<p>Ecological Issues including:</p> <ul style="list-style-type: none"> • Distribution of Freshwater EEC • Threatened Species EEC • Predicted Impacts to EEC habitat. 	<p>Ecological assessments have been undertaken for the northern part of the site which identifies the presence of several endangered ecological communities.</p> <p>These vegetation communities, whilst representative of EECs, have been found by Blackwood Ecological Services 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.</p> <p>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.</p>
	<p>Mosquito Management including:</p> <ul style="list-style-type: none"> • Requirement of additional mosquito assessment to assess amended layout. • Age of assessment. • Buffer requirements. 	<p>The Mosquito Impact Assessment report prepared by Mosquito Consulting Services Pty Ltd, was prepared over ten years ago. However, the assessment is considered to be generally consistent with Ballina DCP 2012. The extent of development envisaged in the Mosquito Impact Assessment report (2005) has since been reduced in size. There has also been no obvious change in the general characteristics of the subject site and the locality. As such no further mosquito trapping or assessment is considered necessary to progress the Planning Proposal. Careful assessment and consideration of mosquito impacts and management will be required during the preparation of any development application for future development of the land.</p>





Organisation or Person	Summary of Comments / Issues Raised	Planning Comments
	<ul style="list-style-type: none"> • Acid Sulphate Soils – the information submitted is sufficient. An ASSMP will need to be implemented prior to any constructions works. 	Noted
	<ul style="list-style-type: none"> • Contaminated land – information is adequate except for the southern portion of the site. 	The report did not undertake any soil sampling and analysis in the south of the site. Notwithstanding this it is considered that land contamination presents a relatively low risk to the proposed rezoning of the site. A Phase 2 ESA and potentially a remediation plan will need to be undertaken as part of a DA for the proposed future development of the land.
	<ul style="list-style-type: none"> • Ground water extraction licence may be required. 	Refer to planning comments above on DPI – Water’s response.
	<ul style="list-style-type: none"> • Controlled activity approval may be required. 	Refer to planning comments above on DPI – Water’s response.
	<ul style="list-style-type: none"> • Impact on amenity/land use conflict. 	Refer to previous planning comment above.
	<ul style="list-style-type: none"> • The above issues must be considered and adequately addressed at the planning proposal stage. 	It is considered that the issues raised by Council’s Development Services Section have been adequately addressed in the planning proposal and the additional information provided by the proponent.



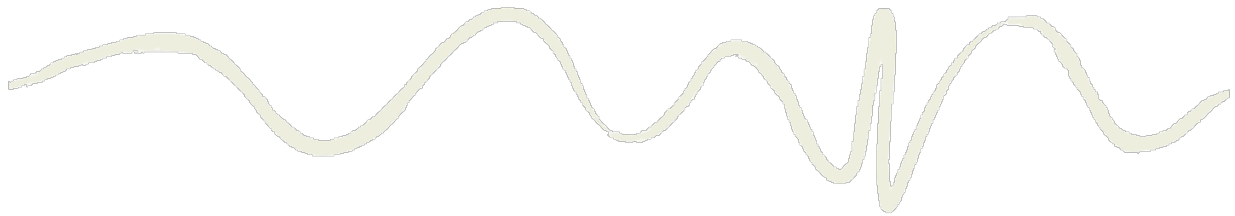


5. Conclusion

As outlined in the planning report considered by Council at its ordinary meeting held on 15 December 2016, Council has the following options available to it:

- Option 1: Finalise the Planning Proposal and Voluntary Planning Agreement
- Option 2: Discontinue the Planning Proposal and Voluntary Planning Agreement Process
- Option 3: Defer the Planning Proposal and request additional information from the proponent.

After having reviewed the information provided, including the Planning Proposal, technical reports and supporting information provided by the proponent and government and public submissions, it is our position that the planning proposal should be finalised and sent to the Department of Planning and Environment for finalisation.



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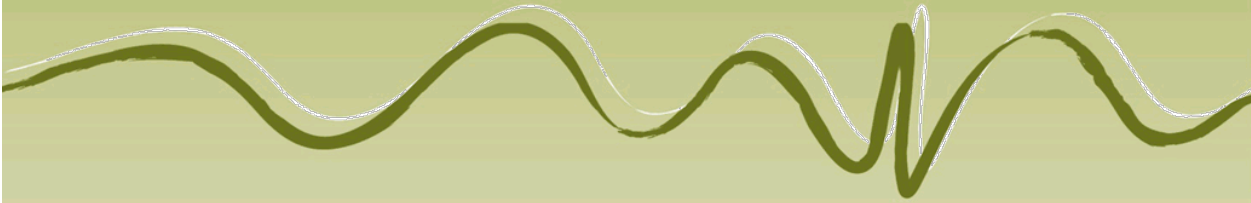
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Peer Review Supplementary Report - Burns Point Ferry Road Planning Proposal
2599-1009

Stage 1 Peer Review and Gap Analysis Report

Burns Point Ferry Road Planning Proposal



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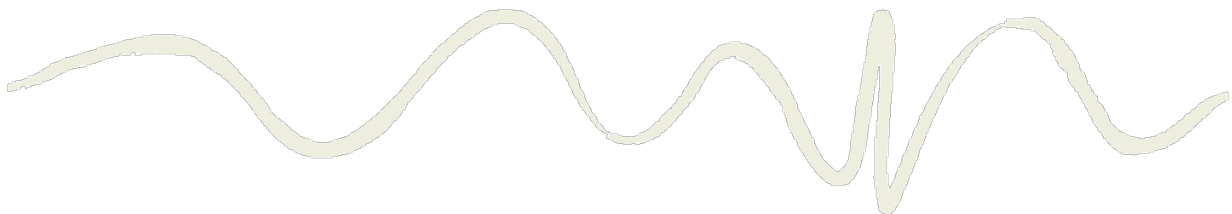
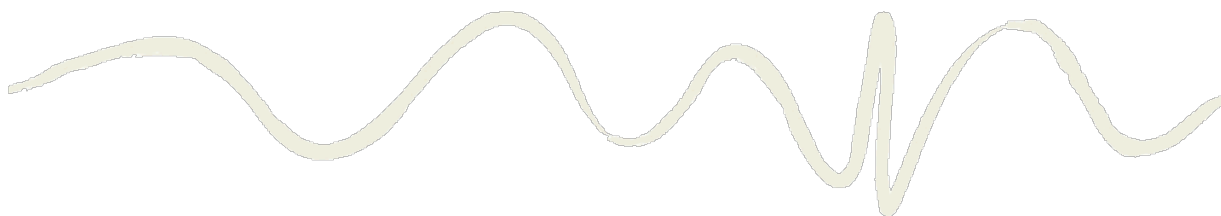


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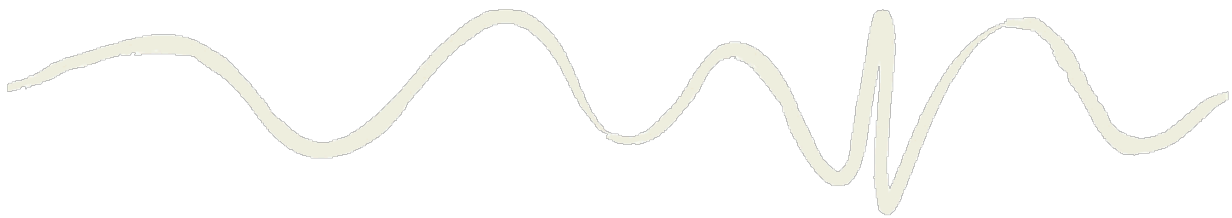
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1. Introduction

1.1 Purpose of this Report

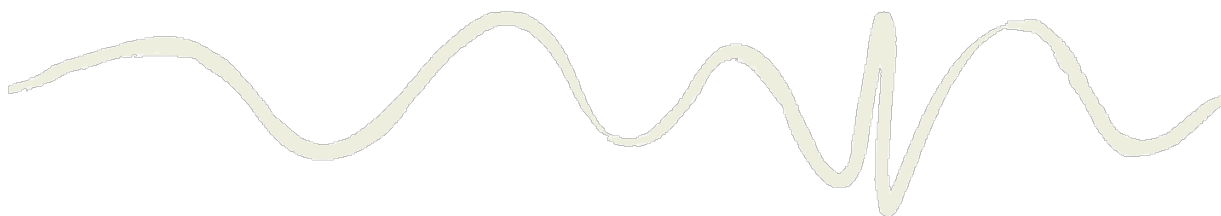
GeoLINK have been engaged by Ballina Shire Council to undertake gap analysis and peer review of the proponent's 'Post Gateway Report' (prepared by Planners North) and supporting technical documentation (prepared by various consultants) for a Planning Proposal for land described as Lot 4 DP 537419, Burns Point Ferry Road, West Ballina. The Post Gateway Report and associated technical information was prepared in response to the additional information required by the Gateway Determination, Ballina Shire Council, the Office of Environment and Heritage and Fisheries NSW. The purpose of this report is to identify any missing information and/ or issues requiring resolution from the Post Gateway Report and supporting technical information provided by the proponent. The report includes:

- Consideration of the key technical issues, including relevant legislation and/ or government policy with respect to the application of the proposed zones to the subject land and associated amendments to Local Environment Plan (LEP) maps (Minimum Lot Size, Maximum Height of Buildings, Additional Permitted Uses).
- A detailed review of the proponent's submission, any changes to the Planning Proposal and identification of any gaps or deficiencies that exist in the information and technical studies provided.
- A review of the referral advice/ comments provided by Council staff and other government agencies, following their review of the technical reports.

1.2 Gateway Determination

The Burns Point Ferry Road Planning Proposal received conditional Gateway approval 25 September 2014 subject to:

- Community consultation for a period of 28 days.
- Public authority consultation with:
 - Roads and Maritime Services;
 - NSW Office of Environment and Heritage (OEH);
 - Department of Primary Industries – Fisheries; and
 - Department of Primary Industries – Agriculture.
- Provision of the following additional assessments to support the Planning Proposal prior to public exhibition:
 - Ecological/ flora and fauna.
 - Acid sulfate soils.
 - Land contamination.
 - Geotechnical.
 - Stormwater impact.
 - Entomological (mosquitoes).
 - Bushfire hazard.
 - Archaeological/ cultural heritage.
 - Flooding.



1.3 Council's Internal Comments on the Proposal

After initial internal review of the proposal, Council subsequently wrote to the proponent on 11 May 2015 advising of key issues that require addressing as part of the additional information. These issues are summarised as:

- Zoning – conflict between industrial residential land uses.
- Appropriateness of café/ house site given flooding, ecological values and tidal influences.
- Concept plan – infrastructure provision, buffers, stormwater management, access and traffic circulation.
- Ecological impacts – freshwater wetlands, Grass Owl habitat and buffers.
- Road access and traffic generation impacts.

These matters are discussed in **Sections 2** and **3**.

1.4 Government Agency Comments on the Proposal

1.4.1 NSW Office of Environment and Heritage

Council undertook post gateway consultation with OEH whom responded in a letter dated 6 March 2015. OEH raised the following matters in its response:

- Mapping of freshwater wetlands.
- Conservation in perpetuity of certain lands.
- Need for further investigations in relation to wetland habitat.
- Need for further investigations in relation to the Eastern Grass Owl.
- Appropriate provision of bushfire Asset Protection Zones (APZs).
- Implementation of riparian buffers.
- Revision of the Biobanking Statement to have regards to offsets including APZs and the like.
- Consistency with the Ballina Floodplain Risk Management Plan.

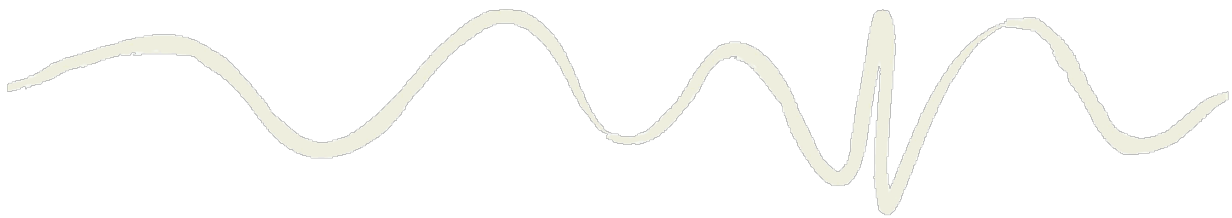
These matters were addressed in the Post Gateway Report and are discussed in **Section 3**.

1.4.2 Fisheries NSW

Council undertook consultation with Fisheries NSW whom responded with comments in correspondence dated 27 February 2015. Issues raised by Fisheries NSW were:

- Compliance with SEPP 62 Aquaculture.
- Buffers to aquatic habitats.
- Proposed restaurant site.
- Development offsets.
- Proposed zoning of conservation block.

These matters were addressed in the Post Gateway Report and are discussed in **Sections 3** and **4**.

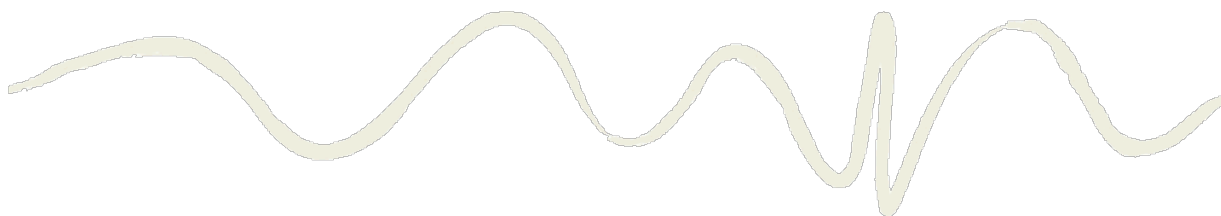


1.5 Amended Gateway Determination

Council wrote to the NSW Department of Planning and Environment seeking advice as to whether or not changes to the zoning in the Planning Proposal would require an amended Gateway determination. The Department advised Council that:

“As the Gateway Determination specifically refers to a rezoning for ‘residential and employment uses’, if employment zones (i.e. B or IN) are no longer being considered, it may be prudent to seek an amended Gateway. As the completion date for the PP is coming due in April 2016, Council would need to seek an amended Gateway in any case to extend the time period (and we could incorporate this zoning change at the same time).”

Council will therefore need to seek a new Gateway determination for the Planning Proposal.



2. Proposed Amendments to BLEP 2012

This section of the report assesses the key technical issues previously raised by Council regarding the proposed new zoning of the land the associated amendments to LEP maps (Minimum Lot Size, Maximum Height of Buildings, and Additional Permitted Uses).

2.1 “Live Work” Precinct

2.1.1 Zoning

The Planning Proposal originally sought to rezone the northern part of Lot 4 DP 537419 for residential and employment uses. After initial internal review of the proposal, Council subsequently wrote to the proponent on 11 May 2015 advising of concern about the potential for land use conflict between industrial and residential land uses as an outcome of the proposed zoning arrangement that facilitates live work type development. Council requested that alternative zoning approaches to this part of the site be investigated to reduce any future conflict and that further analysis and justification be provided to support the live work development concept and underpin provisions that would enable this development outcome. As a result of these concerns, the Post Gateway Report now proposes:

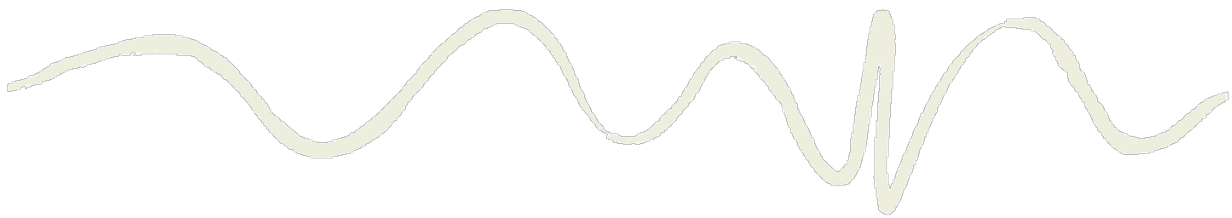
- a R2 Low Density Residential zone for the proposed development precinct in the north of the site; and
- a Schedule 1 amendment to BLEP 2012 to allow for small scale commercial premises and light industries in association with a dwelling house.

The Post Gateway Report also provides additional information on the live work concept that the proposal is trying to achieve. The report states that although these types of planned and integrated land uses have yet to be developed within the Ballina Shire, there are many examples of the concept working in other locations. The live work concept also encourages the development of the creative industries sector which is recognised in the Ballina Shire Economic Profile as an emerging industry within the shire. Further, the live work concept further seeks to achieve a reduction in home to work commuting times and a sense of community identity through creating a vibrant mix of residential and commercial/ light industrial land uses.

It is considered that the amended zoning (R2 and Schedule 1 amendment) as outlined in the Post Gateway Report is the most appropriate zone for the proponent's proposed future use of the site.

2.1.2 Lot Size

The Post Gateway Report requests that, in addition to the above zoning amendments, Council amend the Lot Size Map to provide for a minimum area of subdivision of 450 m² for the R2 zoned land. The smallest allowable lot size under BLEP 2012 is 450 m² and has been used in a small number of areas within the shire. No justification for the requested lot size is provided in the Post Gateway Report; however, it is considered that the proposed lot size of 450 m² is appropriate given that the land will be relatively flat and the proposed live work land use concept lends itself to greater flexibility in lot size.



2.1.3 Height of Buildings

The Post Gateway Report requests a maximum height of 8.5 m which is consistent with adjoining land and the majority of the LGA. No justification for the requested maximum height of buildings has been provided in the Post Gateway Report; however, it is considered that a maximum height of 8.5 m is appropriate in the circumstances.

2.1.4 Floor Space Ratio

The Post Gateway Report requests a maximum floor space ratio of 0.7:1. The majority of the shire has no set maximum floor space ratio including much of the land zoned for residential and industrial purposes. However, Clause 4.4(2A) of BLEP 2012 limits the FSR of dwelling houses to 0.5:1. The 0.7:1 FSR proposed would allow an additional 90m² of floor area on a 450m² lot. It is considered that this request is reasonable given that the planning proposal is seeking an amendment to the BLEP 2012 allows for a live work land use mix and future development would be guided by BDCP 2012 provisions such as building envelopes.

2.2 Café/ Dwelling Site

2.2.1 Proposed Amendment to Zoning

The Post Gateway Report states that this component of the proposal would involve:

“Provision of a 1300 m² site for cafe facility and dwelling above at the river extremity of Burns Point Ferry Road. Much like facilities such as Sea Acres Rainforest Centre (Port Macquarie) and the Dorrigo Rainforest Centre (Dorrigo), this use will be an adjunct to the BioBanking conservation precinct and will provide interpretive information about the conservation area.”

The café/ interpretive centre/ dwelling is proposed to be zoned RU2 zoning and the permissibility of the centre is proposed to be dealt with by way of an addition to Schedule 1 of BLEP 2012.

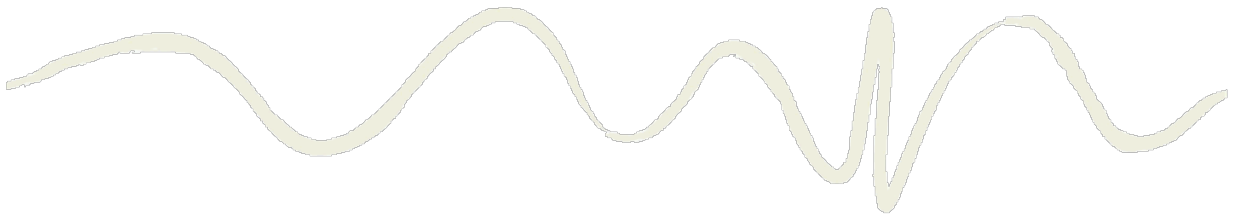
The proponent considers that the proposed café/ interpretive centre/ dwelling site are critical to the long term operation, management and conservation of the biodiversity lots. The conservation area is to be managed within the framework of the Threatened Species Conservation (Biodiversity Banking) Regulation 2008 Regime however the proponent believes that the café/ interpretive centre/ dwelling site, in addition to being a useful local amenity asset for Ballina and West Ballina, will give the conservation lot its reason to be.

Subject to the provision of additional information outlined in **Section 4**, it is considered that the proposed amendment to BLEP 2012 to allow for the proposed café/ interpretive centre/ dwelling site has merit.

2.2.2 Lot Size, Height of Buildings and Floor Space Ratio

No minimum lot size, height of buildings or floor space ration was proposed for the café/ dwelling site. It is considered that this section of the site should have:

- a maximum height of buildings of 8.5 m;
- no set floor space ratio; and

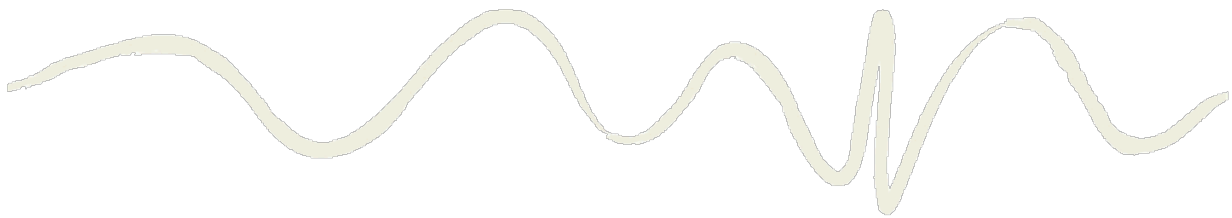


- a minimum lot size that would ensure that the site could not be subdivided in the future (for example 40 ha).

2.3 Residue Land

The Post Gateway Report states that it is likely that the balance of the property will eventually be zoned E2; however, such a zoning classification is not permitted pursuant to the direction given by the Minister for Planning. Since the preparation of the Post Gateway Report, the Northern Rivers E Zone Review Final Recommendations Report (October 2015) now permits Council to introduce an E zone. However, Ballina Council has not yet resolved to introduce E zones into the BLEP 2012. This would be considered under on a shire wide approach with broader community consultation.

The proponent proposes that the residue land retains its' "deferred matter" status. It is considered that this appropriate.



3. Review of Specialist Studies/ Additional Information

3.1 Flora and Fauna

3.1.1 Technical Information Provided

Numerous reports regarding flora and fauna of the subject site have been prepared over the last 11 years. In summary, these comprise:

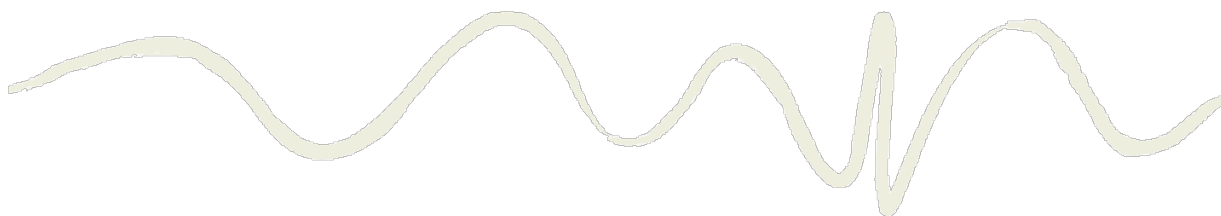
1. Aspect North/ LandPartners (2005/ 2006) identified ecological constraints as including Eastern Grass Owls and Endangered Ecological Communities (EECs) including *Freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions* (referred to herein as Freshwater Wetland EEC).
2. LandPartners (2007) provided updated mapping which included more extensive mapping of Freshwater Wetland EEC communities.
3. Peter Parker (2012) completed a Biobanking assessment.
4. Melaleuca Group (2013) specifically assessed the Freshwater Wetland EEC assessment and determined that Freshwater Wetland EEC does not occur at the site based on a detailed analysis of the Final Determination (FD).
5. Blackwood Ecological Services (2014) completed an ecological assessment for the area subject to the Planning Proposal in the northern portion of the property. This assessment identifies two EECs at the site; *Swamp oak floodplain forest of the NSW North Coast, Sydney Basin and South East Corner bioregions* and Freshwater Wetland.
6. Peter Parker (2015) revises Biobanking assessment.

The main ecological issues associated with the site relate to:

- the occurrence and distribution of the Freshwater Wetland EEC;
- impacts to Grass Owl habitat; and
- incorporation of these issues (when resolved) into future BioBanking assessments.

A review of documentation was completed by OEH (March 2015). The following recommendations were made with regard to biodiversity matters:

- Resolve the Freshwater Wetland EEC mapping issue.
- Determine if Freshwater Wetland EEC occurs in the west of site (as mapped by LandPartners).
- Conduct additional investigation for the Grass Owl.
- Revise BioBanking statements to consider impacts to the Freshwater Wetland EEC.
- Buffers need to be reconsidered.



3.1.2 Adequacy of Information

The information provided regarding Freshwater Wetland EEC mapping by Blackwood (2014) has been prepared in accordance with current legislation, incorporates a comprehensive review of background documents, analyses the subject site with regard to the FD for the Freshwater Wetland EEC and compares the similarities/ differences of the subject site to relevant court cases.

The Biobanking statement issued by Parker (2015) revises that provided in 2012; however, Parker does not acknowledge the presence of the Freshwater Wetland EEC and therefore has not considered impacts to this community. Impacts to threatened fauna (including the Eastern Grass Owl) have also not been considered.

Additional Grass Owl investigations are not proposed as GeoLINK is of the opinion that the presence/ absence of Grass Owls is likely related to slashing and disturbance of habitat previously occupied by the species in the west of the site. When Grass Owls were recorded as active at the site, it is understood the site was largely unmanaged and no slashing occurred. Since that time, slashing of the site has occurred and continues to occur. While slashing of known Grass Owl habitat in the west of the site occurs, the species is less likely to occur, nest or roost within this area.

It should be noted that Grass Owls may potentially roost in reed-dominated vegetation in the east of the site and/ or forage over the site for prey items as part of a larger foraging range. While there are no recent records of the species in the BioNet Wildlife Atlas, three records of the species in the last ten years include South Ballina quarry (LandPartners 2007) and on land near Teven Road associated with the Ballina Bypass (Biosis 2009, Greenloaning Biostudies 2010). On this basis, it is considered the site should be considered as potential habitat for the species based on known historical records and records known from the locality. BioBanking assessments should include the Grass Owl as a principal species in calculations based on the loss of suitable habitat areas (i.e. communities 4 and 5 of vegetation mapping by Blackwood 2014).

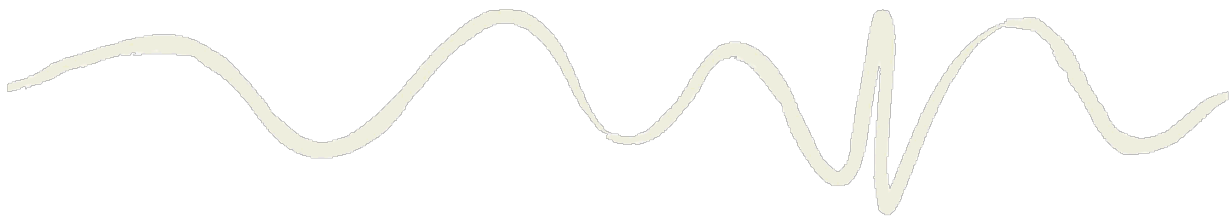
3.1.3 Discussion

3.1.3.1 Freshwater Wetlands

A site inspection was completed on 9 February 2016 when the northern portion of the site was traversed on foot for approximately four person hours. The eastern portion of the site was inundated with standing water typically 200–250 mm deep. This corresponds with rainfall data from the Ballina Airport Weather Station, where 39.8 mm of rain had occurred in the previous week. The purpose of the site inspection was familiarisation with the site and to inspect grassland and reedland communities with regard to occurrence of the Freshwater Wetland EEC community.

It is considered that the eastern portion of the site (mapped as Community 4 Tall Reedland by Blackwood 2014) is representative of Freshwater Wetland EEC on the following basis:

- A number of species within the FD occur within the Tall Reedland in the east of the site. Although this community is species poor and almost a monoculture of Common Reed (*Phragmites australis*), other species observed that are listed in the FD included: Marsh Club-rush (*Bolboschoenus fluviatilis*) and *B. caldwellii* (not recorded in any previous assessments), *Lemna* sp., *Eclipta prostrata*, *Azolla pinnata*, Slender Knotweed (*Persicaria decipiens*), *Juncus usitatus* and Water Couch (*Paspalum distichum*).



- In the south-east of the site, dense mats of *Paspalum distichum* (refer to **Plate 3.1**) occur as per Clause 4 of the FD which states: "Wetlands or parts of wetlands that lack standing water most of the time are usually dominated by dense grassland or sedgeland vegetation, often forming a turf less than 0.5 m tall and dominated by amphibious plants including *Paspalum distichum* (water couch)".
- Based on the inundation present, the reedland community satisfies Clause 6 of the FD which notes that "flooding is periodic and standing fresh water persists for at least part of the year in most years".
- Soil mapping appears to satisfy edaphic considerations in the FD, where the community occurs on "silts, muds or humic loams in depressions, flats, drainage lines, backswamps, lagoons and lakes associated with coastal floodplains."



Plate 3.1 Area of dense water couch



Plate 3.2 25 cm deep standing water with *Lemna* sp.

The western portion of the site has a distinctly different vegetation composition and no standing water was observed at the time of inspection (although some areas were noticeably damp). This community comprises a grassland mosaic which is disturbed and currently grazed and which changes subtly with topography. The overall grassland composition is dominated by pasture grasses, with some areas featuring *Phragmites australis* being co-dominant with introduced Vasey Grass (*Paspalum urvillei*). In these areas other species typically comprise common agricultural weeds.

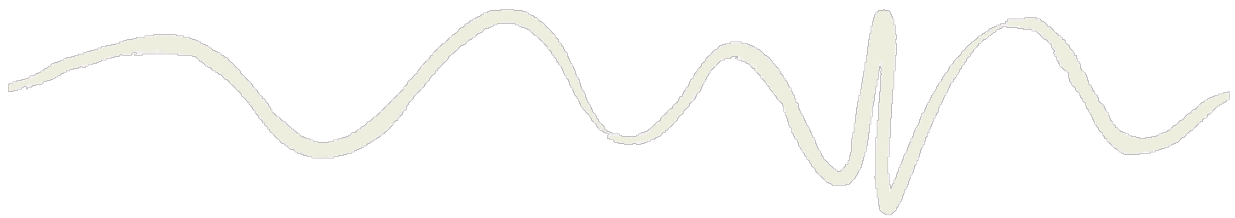


Plate 3.3 Grassland dominated by Vasey Grass in western portion of the site



Plate 3.4 Singapore Daisy amongst disturbed grassland in western portion of the site

However, several areas within the western portion occur where *Phragmites australis* is dominant, and these show clearly as areas of darker green in aerial photography (refer to **Figure 3.1**). Other species in these areas are associated with moist environments and include *Persicaria decipiens*, Spotted Knotweed (*Persicaria strigosa*), Willow Primrose (*Ludwigia octovalvis*) and the introduced species Singapore Daisy (*Sphagneticola trilobata*) and *Commelina benghalensis*. On this basis, these areas appear to resemble disturbed freshwater wetlands; however, it is doubtful that they would support standing water at any frequency or for any duration. At a landscape scale, it is considered these areas are minor depressions within a disturbed pasture mosaic which support some wetland species. However, in comparison with the dense reedland present in the east of the site they are clearly not wetlands and are a separate community with differing influences subject to a number of disturbance regimes (grazing, slashing, weed invasion). On this basis, these areas are not considered to support the Freshwater Wetland EEC, and the vegetation mapping by Blackwood (2014) is supported.

An area of the site west of the development area flanking Emigrant 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 it is not considered to support the Freshwater Wetland EEC.

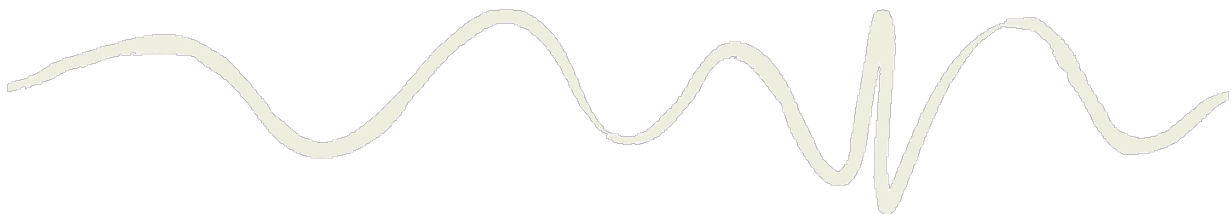


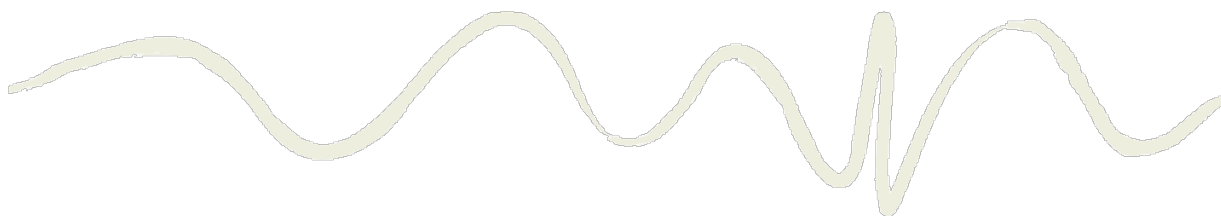
Figure 3.1 Areas where *Phragmites australis* is dominant

3.1.3.2 Buffers

A buffer of 21 m is proposed between the village area and the conservation zone. The buffer is presumably a low grade batter to the conservation land from filling of the village area. Due to bushfire requirements the buffer would also need to ensure that any planted vegetation is not a bushfire hazard – as such, landscaping and mown grass would appear the most likely treatments. Full revegetation is unlikely to be accepted by the Rural Fire Service as it compromises bushfire safety. It is noted that the concept plan does not propose any perimeter roads along the southern extent of the village whereby stormwater could be collected and directed to treatment devices. Evidence supported by design is required to show that the buffer would not direct any untreated stormwater flows to the south into the conservation zone where elevated nutrients and/ or contaminants may result in adverse environmental impacts.

It is noted that the width of the buffer has not been determined from any ecological perspective, but has been determined by bushfire requirements. Buffer width is often a vexed issue, with there being few accepted standards for environmental buffers in NSW. For example, the *Living and Working in Rural Areas Handbook* (Learmonth *et al.* 2007) recommends a 100 m buffer between wetlands and urban development, while a minimum buffer of 50 m to SEPP 14 Coastal Wetlands is generally regarded as adequate. The *Policy and guidelines for fish habitat conservation and management* (DPI 2013), state that buffers of 50 m are required to mangrove communities and buffers of 50-100 m are required to saltmarsh communities; this has been achieved in the concept design.

As such, the proposed buffer width is generally accepted as adequate as a minimum, and only if it is demonstrated that measures are in place to control stormwater from entering the conservation zone. Until further information is provided, it can only be assumed that the buffers as proposed are not appropriate given the occurrence of sensitive wetland and estuarine communities south of the village zone.



3.1.3.3 Stormwater

Limited information was provided in regard to impacts on stormwater. As discussed in **Section 3.5**, stormwater disposal will need to be designed to provide for the treatment of stormwater to mitigate the risk of pollution. Future development of the site will also need to carefully consider the hydrology of the site and ensure stormwater continues to flow into the wetland areas south of the development precinct in a similar way to what it does now.

Pursuant to Council's document "*Stormwater Management Standards for Development*" which was updated in February 2016, the detention of stormwater on the site would not be required as it would discharge into either directly into the Richmond River or other tidal waterway or waterbody (Emigrant Creek).

3.1.3.4 The Café/ Dwelling Site

The café site is not discussed or assessed in reports by Blackwood or Melaleuca Group, and it is mapped as Swamp Oak Forest by Parker (although is missing from the legend). While this area is disturbed and modified there is no mention of buffer requirements to adjacent habitat areas. Although it is accepted that the café site is likely to have relatively low impacts on biodiversity, the matter of buffers and stormwater treatment and disposal requires clarification.

3.1.4 Recommendation

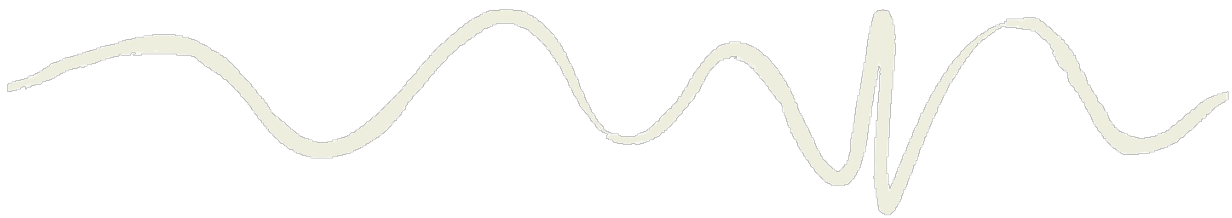
Based on the information review undertaken, the following information is required to progress the Planning Proposal:

- The proponent provides information and assessment on proposed ecological buffer treatments and stormwater detention and treatment for the proposed development areas. This additional assessment needs to have regard to relevant development controls, policies and guidelines. Evidence supported by design is required to show that the buffer would not direct any untreated stormwater flows to the south into the conservation zone where elevated nutrients and/ or contaminants may result in adverse environmental impacts.

3.2 Acid Sulfate Soils

3.2.1 Technical Information Provided

The Post Gateway Report technical reports bundle included a Preliminary Acid Sulfate Soil Assessment for Lot 4 DP 537419 (the subject site) prepared by Aspect North dated April 2005. This investigation involved testing for the presence of acid sulfate soils (ASS) and potential acid sulfate soils (PASS) at six locations within the area proposed to be rezoned for urban purposes in the north of the site. The report found no evidence of ASS or PASS over the site; however, the report contained management principles in the case that ASS or PASS is intercepted during the development of the site. This was due to the limited sampling regime and the fact that the site is identified as having a "high probability" containing ASS. This preliminary assessment was discussed in the Hammond & Associates engineering overview report (also contained within the technical reports bundle).



3.2.2 Adequacy of Information

The Preliminary ASS Assessment prepared by Aspect North is over ten years old and undertook a limited soil sample regime. It also did not undertake any ASS sampling of the area proposed for a restaurant and dwelling in the south-east of the site. Notwithstanding this it is considered that ASS presents a relatively low risk to the proposed rezoning of the site as:

- potential interception of PASS/ ASS can adequately be addressed at the Development Application (DA) stage through additional testing and a comprehensive ASS Management Plan if the land gets rezoned; and
- the future development footprint will require filling to raise to the required flood planning level therefore limiting the amount of excavation required into soil that may contain ASS.

3.2.3 Recommendation

The Post Gateway Report contains sufficient information to assess the impacts of ASS and no additional information is required to progress the Planning Proposal.

3.3 Land Contamination

3.3.1 Technical Information Provided

The Post Gateway Report technical reports bundle included a Contamination Site Investigation of the subject site prepared by EAS dated September 2005. This investigation involved:

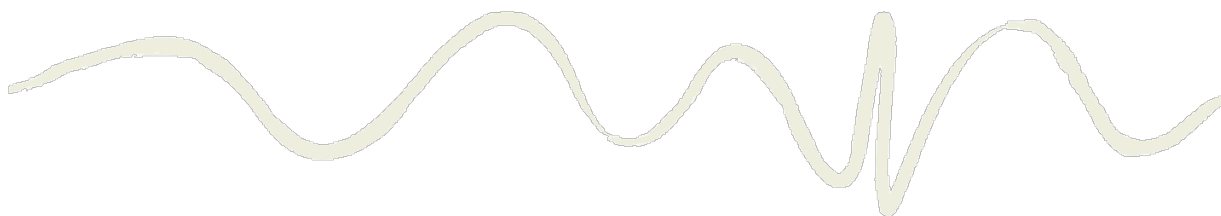
- a site history review including interviews with previous land owners and a review of aerial photographs, historical titles and Council records;
- site visit, soil sampling and investigations;
- data analysis; and
- reporting.

The EAS report made the following findings:

- A house and shed were located on the site which may have stored chemicals and other potentially contaminating agricultural products.
- Contamination may exist across the site from past agricultural practices.
- A garbage disposal area was located on the site which was identified as a potential hot spot requiring further investigation due to elevated lead concentrations.
- All other samples taken showed concentrations below health investigation levels.

The report recommended that further investigations may be required to further determine the extent of contamination across the site.

The contamination assessment was discussed in the Hammond & Associates engineering overview report (contained within the technical reports bundle).



3.3.2 Adequacy of Information

The Contamination Assessment Report prepared by EAS is over ten years old. The report is consistent with the information contained Phase 1 Environmental Site Assessment (ESA) pursuant to NSW EPA's *Contaminated Sites, Guidelines for Consultants Reporting on Contaminated Sites* (EPA, 1997). A Phase 1 ESA is generally considered suitable for the determination of a Planning Proposal/ rezoning unless significant contamination or potential risk is discovered. A Phase 2 ESA and potentially a remediation plan will need to be undertaken as part of a DA for the proposed future development of the land.

The report is over ten years old; however, the site is unlikely to have undergone any contaminating activities during this period aside from illegal dumping of waste. The report did not undertake any soil sampling and analysis of the area proposed for a restaurant and dwelling in the south-east of the site. Notwithstanding this it is considered that land contamination presents a relatively low risk to the proposed rezoning of the site.

3.3.3 Recommendation

The Post Gateway Report contains sufficient information to assess the impacts of land contamination and no additional information is required to progress the Planning Proposal.

3.4 Geotechnical

3.4.1 Technical Information Provided

The Post Gateway Report technical reports bundle contains two geotechnical assessments that have been undertaken at the site. These reports include:

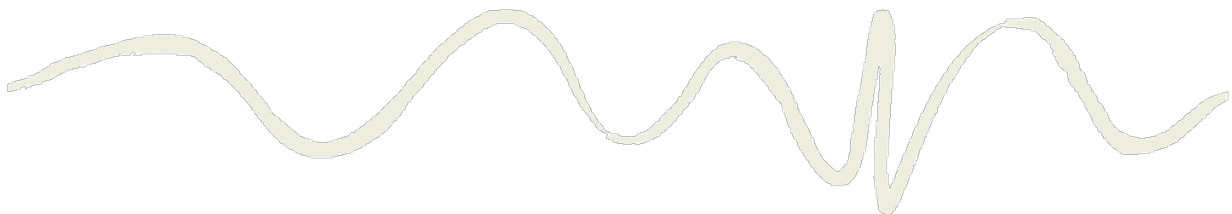
- Preliminary Geotechnical Investigation prepared by Soil Surveys dated June 2005; and
- Peer Review Report of the abovementioned Soil Surveys report prepared by RCA Australia dated February 2007.

Both assessments were also reviewed in the Hammond & Associates engineering overview report (contained within the technical reports bundle).

All three reports identified that the site was subject to geotechnical constraints. These constraints mainly related to soil strength and stability which often result in poor foundation conditions for structures. However, all of the assessments concluded that the soil constraints would not preclude future development of the site. All reports recommended further geotechnical investigation be carried out to inform detail design of the future development of the site.

3.4.2 Adequacy of Information

The geotechnical investigations provided as part of the Post Gateway Report are between eight and ten years old (Soil Surveys' Preliminary Geotechnical Investigation 2005 and RCA's Review of this report 2007). It is considered, however, that there would have been no material change in soil structure or stability during this time. All reports conclude that additional geotechnical investigations



would be required to inform the detailed design of the future development of the site. These investigations can occur as part of the DA and/ or construction certificate process.

3.4.3 Recommendations

The Post Gateway Report contains sufficient information to assess the geotechnical limitations of the site for the proposed rezoning. Therefore no additional geotechnical information is required to assess and progress the Planning Proposal.

3.5 Stormwater Impact

3.5.1 Technical Information Provided

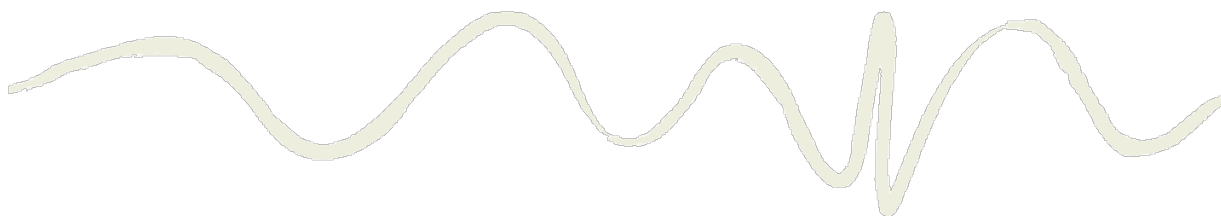
No specific stormwater assessment or management plan was provided as part of the Post Gateway Report or the technical reports bundle. The Hammond & Associates engineering overview report (contained within the technical reports bundle) briefly addresses stormwater and the need to comply with Ballina Development Control Plan and the Northern Rivers Local Government Development Design Manual. Hammond & Associates have concluded that, in view of the close proximity of the subject site to Emigrant Creek and the available land area within the site, there would not be any insurmountable constraints that would result in non-compliance with Council's stormwater requirements. The report also concludes that Council's stormwater requirements could be met through a combination of detention structures, bio retention structures and grassed swales and overland flow paths. Hammond & Associates further advise that the design of any in-ground stormwater drainage elements should consider the recommendations of a final geotechnical report, particularly in relation to estimates of secondary consolidation (settlement).

3.5.2 Adequacy of Information

The Post Gateway Report references a Stormwater Management Plan prepared for the site in 2005; however, this was not included in the technical reports bundle. This report was provided by the proponent upon request. The Stormwater Management Plan, prepared by Aspect North, is for a different development footprint for the site but still highlights the need for Water Sensitive Urban Design principles to be adopted for the site which would be achieved through the use of grass swale drains, sedimentation ponds and wetland filters.

Currently surface water flows through a series of constructed open grassed drainage channels and into a main drainage channel running centrally through the site or otherwise dissipated on-site by virtue of the available land area. As discussed in **Section 3.1** of this report, the site contains habitat that could be impacted upon by poor stormwater management practices. Stormwater disposal will need to be designed to provide for the treatment of stormwater to mitigate the risk of pollution and in accordance with *Stormwater Management Standards for Development*. At this point there is no information that clearly demonstrates that land and buffer areas would be sufficient in area to treat stormwater from the development areas.

Pursuant to Council's document *Stormwater Management Standards for Development* which was updated in February 2016, the detention of stormwater on the site would not be required as it would discharge into either directly into the Richmond River or other tidal waterway or waterbody (Emigrant Creek).



3.5.3 Recommendations

It is recommended that the proponent provide a Concept Stormwater Management Plan that outlines:

- proposed methods of stormwater treatment for both development areas (live work and café/ dwelling); and
- calculations demonstrating that there is sufficient areas provided for in the Concept Layout Plan to accommodate stormwater treatment in accordance with *Stormwater Management Standards for Development*.

3.6 Entomology (Mosquitoes)

3.6.1 Technical Information Provided

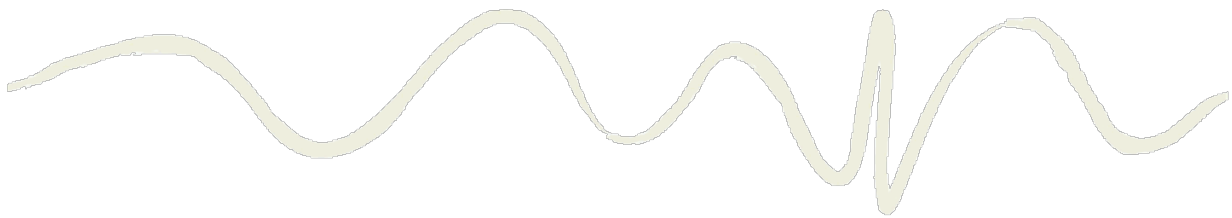
The site is identified within an area of high mosquito risk pursuant to Chapter 2 Part 3.6 of Ballina Shire Council's Development Control Plan 2012 (BDCP 2012). The Post Gateway Report technical reports bundle includes an assessment of the impacts of mosquitoes on the proposed future development of part of the site. This assessment was prepared by Mosquito Consulting Services Pty Ltd in 2005. The Mosquito Impact Assessment report identified that the land has a low to moderate risk of exposure to mosquitos after extensive site trapping and survey during 2004 and 2005. The assessment determined that there could be increased benefit to the local area as mosquito breeding habitat (even though only of low to moderate risk) would be reduced by the future development of the site.

3.6.2 Adequacy of Information

The Mosquito Impact Assessment report prepared by Mosquito Consulting Services Pty Ltd, was prepare over ten years ago. However, the assessment is considered to be generally consistent with BDCP 2012. It is important to note that the extent of development envisaged in the Mosquito Impact Assessment report (2005) has since been reduced in size. There has also been no obvious change in the general characteristics of the subject site and the locality. As such no further mosquito trapping or assessment is considered necessary to progress the Planning Proposal.

3.6.3 Recommendations

The Mosquito Impact Assessment identifies that the land can be developed without significant risk from mosquitos subject to various mitigation measures. Additional assessment would be required as part of any future development of the site to ensures construction standards, stormwater management design etc. are designed to ensure mosquito impacts are mitigated.



3.7 Bushfire Hazard

3.7.1 Technical Information Provided

The Post Gateway Report technical reports bundle contained a bushfire threat assessment prepared by Bushfire Certifiers. This assessment identified that the subject site is not mapped as Bushfire Prone Land. Notwithstanding this, Bushfire Certifiers undertook a bushfire threat assessment in accordance with Section 91 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Planning for Bushfire Protection (2006) as the site contains unmanaged lands (grassland and patches of forested wetlands) which could present a bushfire risk to the future development of site. The future development of the site would involve subdivision of land and would likely be referred to the Rural Fires Service under Section 100B of the *Rural Fires Act 1997*. The assessment identified the vegetation type as a mixture of forest wetland, grassland and saline wetland and discusses appropriate asset protection zones (APZ) and appropriate construction standards.

The bushfire report concludes that:

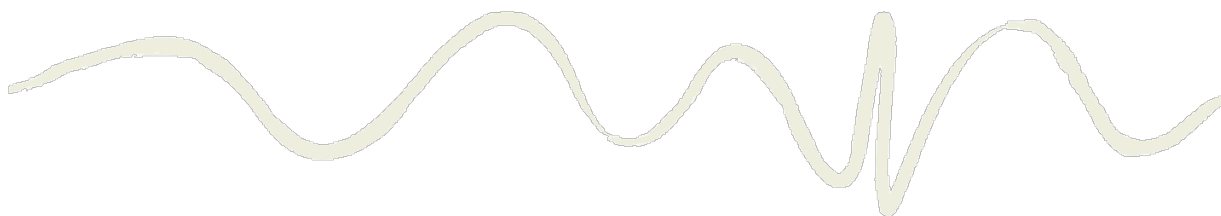
- compliant APZs can be achieved for future subdivision in the north and restaurant and residential area in the south-east of the site;
- the land available for the required APZs will allow construction of future dwellings to be undertaken in accordance with a maximum of BAL 29 AS 3959-2009 and out of the 'flame zone' although the majority of buildings are likely not to require any specific bushfire construction level;
- the existing residential development to the east supports a reticulated water and electricity supply. The DA for future subdivision would need to investigate and provide details on the existing reticulated water and electricity supply and design details for the extension of these services to comply with s4.1.3 of Planning for Bushfire Protection 2006; and
- the existing public road system is capable of fully complying with the requirements of s4.1.3 of Planning for Bushfire Protection 2006.

3.7.2 Adequacy of Information

The bushfire threat assessment report was undertaken by a certified BPAD L3 Certified Practitioner in 2014 and involved an extensive analysis of the site in accordance with the relevant standards and documents (mentioned above). The report is adequate and clearly determines that the proposal allows for full compliance with Planning for Bushfire Protection 2006 to be achieved.

3.7.3 Recommendations

The bushfire assessment report contained within the Post Gateway Report provides sufficient information to demonstrate compliance with relevant bushfire guidelines and Australian Standards.



3.8 Archaeology/ Cultural Heritage

3.8.1 Technical Information Provided

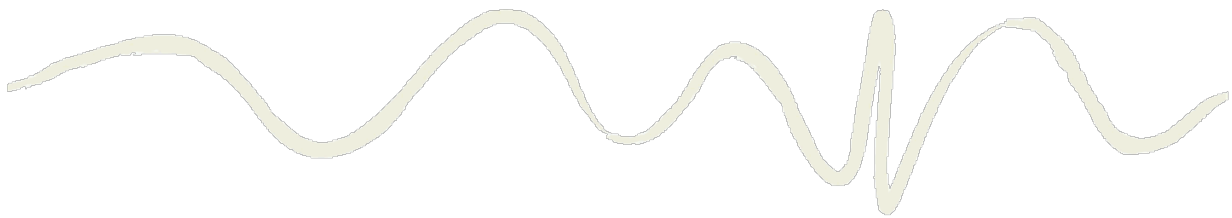
An Aboriginal cultural heritage due diligence assessment was undertaken by Everick Heritage Consultants in November 2014. This assessment was supported by previously prepared Cultural heritage assessments prepared by Piper in 1998 and Heritage Surveys in 2005. The latest Everick due diligence assessment involved:

- a search of relevant Aboriginal heritage registers;
- a site inspection conducted with a representative of the Jali Local Aboriginal Land Council;
- a review of the archaeological and cultural heritage assessments pertinent to the potential heritage values associated with the site;
- review contemporary photographs of the site; and
- assessment of the potential for the site to contain significant Aboriginal heritage and the impact the rezoning may have on that heritage.

The cultural assessment contained the following findings:

- No Indigenous cultural heritage sites or relics were identified within the site.
- No areas were identified that are considered to potentially contain subsurface deposits of significant Aboriginal heritage.
- An attempt to verify the location of Site 04-5-0044, an open site recorded in 1972, was unsuccessful finding no evidence of the site either in the form of shell fragments or stone artefactual materials. It is the opinion of the survey team that the site area has been filled since 1972 to provide building pads for one or two permanent residences on the bank of Emigrant Creek. The site for practical study purposes has been in effect destroyed, and of no further archaeological significance.
- The survey team located small <3.0 cm shell fragments on the western margins of the study close to the bank of Emigrant Creek (Figure 7). The shell fragments are Eumarcia fumigata a small pipi-like bivalve not known to be an Aboriginal food source. As these fragments were located on the margin of a shallow drain and too small to be considered a food option the survey team considers that they are the result of disturbance to natural shell refuse exposed by excavation of the drain. The shell material has no archaeological or Aboriginal significance.
- The entire site has been disturbed in a manner which constitutes 'disturbance' within the meaning of the Due Diligence Code and is consistent with the Due Diligence Code.
- Through discussion and assistance from representatives of the Jali LALC it was determined that site holds no mythological significance nor are there areas within the site to which the Land Council attaches any significance.
- It was agreed in discussion with Jali LALC representative that no further Aboriginal cultural heritage investigation was required.

The report also provided recommendations to be adopted as safeguards in any future development of the site if the rezoning proceeds.



3.8.2 Adequacy of Information

It is considered that the additional technical information provided by the proponent as part of the Planning Proposal adequately demonstrates that the future development of the site is unlikely to result in harm to Aboriginal Heritage.

3.8.3 Recommendations

No additional archaeological/ cultural heritage assessment is required to assess and progress the Planning Proposal.

3.9 Flooding

3.9.1 Technical Information Provided

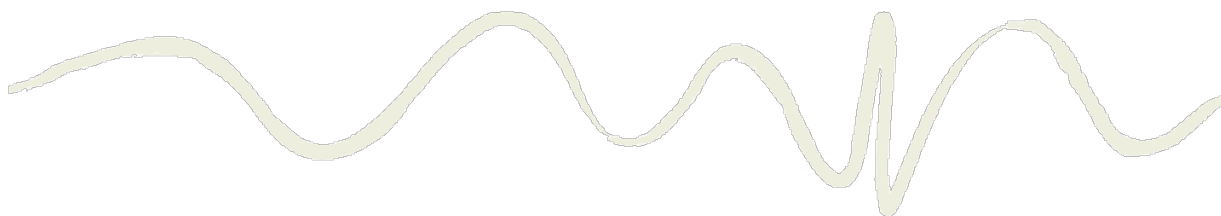
The Post Gateway Report technical reports bundle contains two documents that assess flood impacts of the subject site. These documents are:

- Flood Impact Assessment for the Ballina Waterways Development prepared by BMT WBM December 2008; and
- Flood Impact Assessment Planning Proposal for Lot 4 DP537419, Burns Point Ferry Road, West Ballina prepared by BMT WBM December 2014.

These two reports relate specifically to the subject site. The first report (BMT WBM 2008) involved a flood assessment and flood modelling to determine if filling and development of part of the land would have an adverse impact on surrounding areas. The report used the existing hydrodynamic flood model of the floodplain around Ballina also developed by BMT WBM. The 2008 Flood Impact Assessment determined that the filling of the development footprint:

"causes less than 5 mm increase to peak flood levels in both local catchment and Richmond River dominated flood events. This is due to the 100 year ARI flood level generally being less than 0.5 m above the existing ridge line across the site. In some places, the 100 year ARI flood level is within 0.1 m of the existing ground level. Since flow velocities across the site are low, the total flow across the site is minimal in existing conditions. There is a reduction in flood storage due to the development, although this forms a negligible volume in comparison to the overall storage of the Richmond River floodplain."

The second report (BMT WBM 2014) assessed the development footprint as proposed in Post Gateway Report. This report concludes that as the proposed new development footprint is less in area than what was originally modelled in the 2008 report the flood impact would be lesser and therefore the flood impact maps presented in the May 2008 flood impact assessment can be considered a 'worst case scenario' for impacts associated with the new development footprint.



3.9.2 Adequacy of Information

It is considered that the additional technical information provided by the proponent as part of the Planning Proposal adequately demonstrates that the future development of the proposed live work site (i.e. proposed R2 Low Density Residential land) is unlikely to result in flood impacts to the surrounding area.

In its letter dated 11 May 2015, Council requested that the proponent provide further information on the proposed café and dwelling site. Specifically, the proponent was required to provide justification for the need for, and siting of, the proposed restaurant/ caretakers residence at the southern end of the site. Council's concerns related to the tidal and flooding constraints on the proposal.

The proponent states that the café/ interpretive centre and dwelling on the site are critical to the long term operation of the conservation area as it would give the conservation area reason to be. The proponent also states that the café/ interpretive centre/ dwelling site would also be useful local amenity asset for Ballina and West Ballina given its proximity to the River and Burns Point Ferry. The Post Gateway Report however, does not provide any information on the impacts of flooding and tidal influences on the proposed café/ dwelling.

3.9.3 Recommendations

Additional information should be required to assess the potential flood and tidal impacts on the future café and dwelling site. This additional information is required to assess the sites suitability to be rezoned to allow for the proposed use. Such assessment needs to address the ability of the proposal to comply with Councils Development Controls for flood affected land and include an assessment of flood and tidal risks and flood affectation, strategy for flood evacuation and required floor levels.

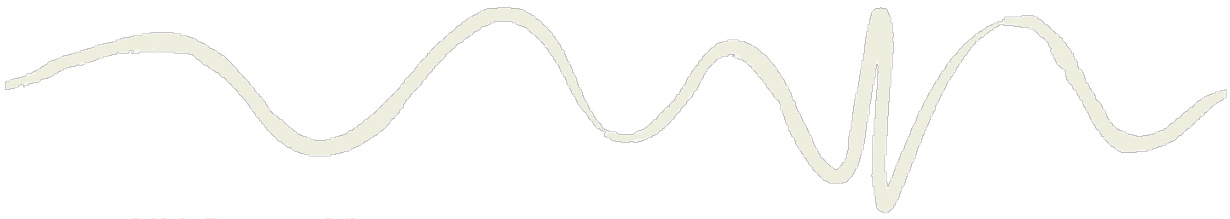
3.10 Traffic and Access

3.10.1 Technical Information Provided

In its letter dated 11 May 2015, Council requested that the proponent provide further information in relation to the expected intensity of the future urban development of the site and estimated traffic generation levels. This is required to assess the capacity and sufficiency of the existing local road network to accommodate increased traffic levels. The Post Gateway Report technical reports bundle contains a report prepared by Planners North outlining traffic generation.

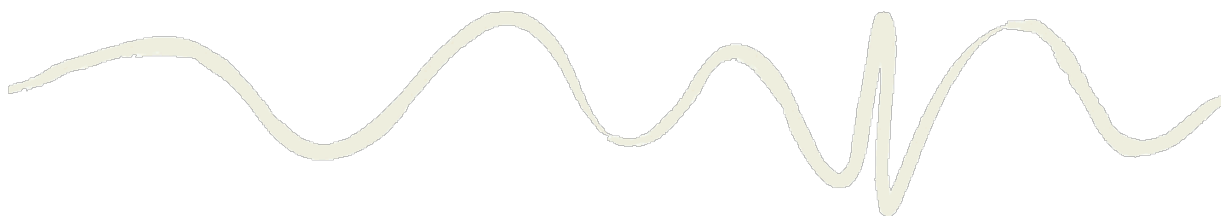
3.10.2 Adequacy of Information

The report prepared by Planners North estimates the traffic generation likely to occur as a result of the future development of the land. It is considered that the method of calculating traffic generation is adequate and gives a reasonable overview of how much traffic will be generated as a result of the proposal. However, no assessment has been provided on the capacity and sufficiency of the existing local road network to accommodate the increased traffic levels. An engineering assessment of the existing road networking having regard to Councils engineering standards on road design (Development and Design Manual, Standard Drawings and Construction Manual) should be provided to demonstrate that the proposal will not significantly impact on the existing road network.



3.10.3 Recommendations

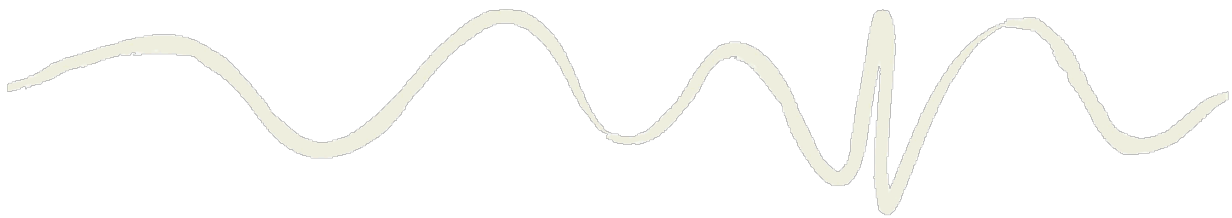
Additional information should be required from the applicant that assesses the capacity and sufficiency of the existing local road network to accommodate the increased traffic levels.



4. Required Additional Information

The Post Gateway Report and accompanying technical reports bundle address most of the requirements outlined in the Gateway determination and correspondence from Council, OEH and Fisheries NSW. There are a few minor information gaps discussed within this report which should be addressed prior to the Planning Proposal proceeding. It is therefore recommended that the proponent be required to provide the following additional information:

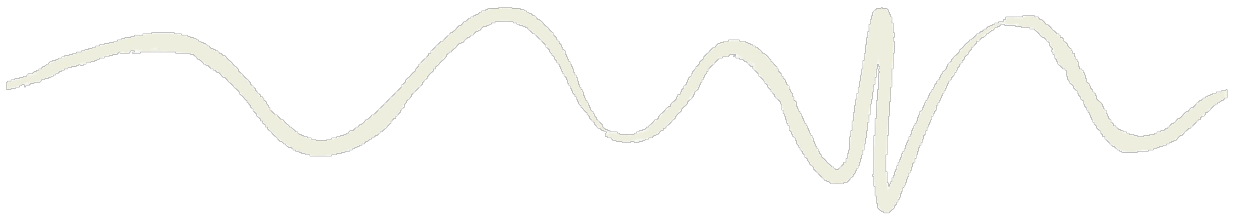
- Provision of minimum lot size and maximum height of buildings for the café/ dwelling site as follows:
 - A maximum height of buildings of 8.5 m.
 - a maximum lot size that would insure that the site could not be subdivided in the future (for example 40 ha).
- Information on the proposed ecological buffer treatments to both the live work area and the café/ dwelling site.
- Information on stormwater treatment for the proposed development areas. This additional assessment shall have regard to relevant development controls, policies and guidelines and should include:
 - Proposed methods of stormwater treatment for both development areas (live work and café/ dwelling).
 - Calculations demonstrating that there is sufficient areas provided for in the Concept Layout Plan to accommodate stormwater treatment.
- Information that assesses the capacity and sufficiency of the existing local road network to accommodate the increased traffic levels.
- Information that assesses the potential flood and tidal impacts on the future café and dwelling site. Such assessment needs to address the ability of the proposal to comply with Councils Development Controls for flood affected land and include an assessment of flood and tidal risks and flood affectation, strategy for flood evacuation and required floor levels.



Review Team

This Gap Analysis and Adequacy Report was prepared by the following team members.

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