



Planning Proposal 19/005

**» Rural Industry Definition
Change Ballina LEP1987**

January 2020 (V2. Exhibition) 20/3479

ballina
shire council



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Contents

1.	Introduction.....	2
1.1	Summary of Planning Proposal	2
1.2	Background	2
1.3	Council Resolutions.....	5
1.4	Gateway Determination	5
2.	Objectives & Intended Outcomes	6
3.	Explanation of the Proposal	6
3.1	Land to Which the Planning Proposal Applies	6
3.2	The Proposal – Explanation of Provisions	6
4.	Justification	6
4.1	Section A – Need for the Planning Proposal.....	6
4.2	Section B – Relationship to Strategic Planning Framework	7
4.3	Section C – Environmental, Social and Economic Impact.....	8
4.4	Section D – State and Commonwealth Interests.....	9
5.	Mapping.....	9
6.	Community Consultation	9
7.	Timeline.....	10
8.	Appendices	11
	Appendix 1 – Maps	12
	Appendix 2 – Section 9.1 Direction Checklist	13
	Appendix 3 – Council Reports.....	16
	Appendix 4 – Gateway Determination	26

Ballina Shire Council

1. Introduction

1.1 Summary of Planning Proposal

This planning proposal applies to that part of Ballina Shire to which Ballina LEP 1987 applies.

This planning proposal seeks to substitute the definition of *rural industry* applicable to Ballina LEP 1987 with the definition of *rural industry* contained within the Standard Instrument – Principal Local Environmental Plan.

1.2 Background

Development Application 2018/597 (the DA) was lodged in September 2018. It sought consent for the establishment and operation of a *water supply system*. The application included the drawing of water from two existing bores, the construction of a shed and associated works, and the transport of water to a remote site for bottling.

Community consultation associated with the DA resulted in excess of 1000 submissions objecting to the proposed development.

The level of community objection to the DA resulted in Councillors debating a Notice of Motion at the Ordinary Council meeting on 22 November 2018.

The Notice of Motion expressed concern relating to the impact of potential ground water extraction on the aquifers located on the Alstonville Plateau and other underground water resources within the shire. Council resolved as follows in respect to the Notice of Motion:

1. *That Council receives a report on options to amend the LEP to prohibit water extraction for the purposes other than for agricultural or domestic uses.*
2. *That Council write to the relevant State Government Departments and the Minister for Primary Industries, Lands and Water, Mr Niall Blair and other relevant Ministers calling for a halt to any new water licences for non-agricultural purposes such as bottled water within the Ballina Shire. As part of this correspondence clarification is requested on whether existing licences can be transferred to third parties for non-agricultural uses.*
3. *That Council engage with Rous Water with regards to water supply security for the Ballina Shire and neighbouring Councils.*

This planning proposal resulted from Council's consideration of a report at its Ordinary Meeting on the 28 November 2019, which dealt with item 1 of the above resolution. A copy of that report is contained within Appendix 3.

The characterisation of the development proposed by the DA concluded that what was proposed was a *light industry*. This is a use prohibited within the RU1 and RU2 zones under the provisions of Ballina LEP 2012. The applicant however, contended that the proposed

8.12 Planning Proposal - Rural Industry Definition Change

Planning Proposal 19/005 Rural Industry Definition Change Ballina LEP 1987

use should be characterised as a *water supply system*, which is a use, permitted with development consent in both the RU1 and RU2 zone.

The DA was subsequently withdrawn in October 2019. The reasons for its withdrawal were not specified by the applicant.

The report which considered the statutory framework related to water extraction for non-agricultural or domestic use within the shire's rural area (refer Appendix 3) concluded that such use may also be characterised as a *rural industry* using the definition applicable under the provisions of Ballina LEP 1987. If characterised as a *rural industry* then such development would be permissible with consent within the Ballina LEP 1987 zones referenced in the table below:

Zone	Rural Industry Permitted with Development Consent
1(a1) Rural (Plateau Lands Agriculture)	✓
1(a2) Rural (Coastal Lands Agriculture)	✓
1(b) Rural (Secondary Agricultural Land)	✓
1(d) Rural (Urban Investigation)	✓
1(e) Rural (Extractive and Mineral)	✓
2 (b) Village Area Zone	✓
7 (d) Environmental Protection (Scenic/Escarpment)	✓
7 (d1) Environmental Protection (Newrybar Scenic/Escarpment)	✓
7 (i) Environmental Protection (Urban Buffer)	✓
9 (a) Roads (Main Roads Proposed)	✓
9 (b) Roads (Local Roads Proposed)	✓

The definition of *rural industry* applicable to Ballina LEP 1987 is contained within the [Environmental Planning and Assessment Model Provisions 1980](#). That definition provides as follows:

rural industry means *handling, treating, processing or packing of primary products and includes the servicing in a workshop of plant or equipment used for rural purposes in the locality.*

Ballina Shire Council

The above definition of *rural industry* is also applicable to Tweed LEP 2000. This definition has been utilised by both Ballina Shire and Tweed Shire Councils to characterise, and subsequently approve, of a number of water extraction and bottling facilities prior to the coming into force of new Standard Instrument LEPs (Ballina LEP 2012 and Tweed LEP 2014).

The definition of *rural industry* contained within the Standard Instrument – Principal Local Environmental Plan and Ballina LEP 2012 is as follows:

rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following—

- (a) agricultural produce industries,*
- (b) livestock processing industries,*
- (c) composting facilities and works (including the production of mushroom substrate),*
- (d) sawmill or log processing works,*
- (e) stock and sale yards,*
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*

The major difference between the two definitions is that the earlier (1980 Model Provisions) definition is more broad in nature as it references primary products which are not defined. The later definition (Standard Instrument) limits products to animal or plant agricultural products. In so doing resources such as water, which at one time was considered to be a primary product, is no longer encompassed by the Standard Instrument definition of *rural industry*.

1.3 Council Resolutions

A copy of the report to the Council is contained in Appendix 3.

Council considered the matter at its Ordinary meeting held on 28 November 2019. The Council resolved as follows:

1. *That Council prepare a planning proposal which seeks to substitute the definition of rural industry contained within Ballina LEP 1987 with the Standard Instrument definition of rural industry.*
2. *That the planning proposal once prepared be forwarded to the Department of Planning Industry and Environment for a Gateway determination.*
3. *That the Department of Planning Industry and Environment be advised that Council seeks to exercise the functions of the local plan-making authority under section 3.36(2) of the Environmental Planning and Assessment Act 1979 for this LEP amendment.*
4. *That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.*
5. *That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal and after the release of the final report of the NSW Chief Scientist and Engineer into the Impacts of the Bottled Water Industry on Groundwater Resources in the Northern Rivers Region of NSW.*

1.4 Gateway Determination

A Gateway determination allowing the planning proposal to proceed to public exhibition, subject to conditions, was issued on 14 January 2020.

A copy of the Gateway determination is contained within Appendix 4.

Ballina Shire Council

2. Objectives & Intended Outcomes

To amend Ballina LEP 1987 to:

- exclude from its provisions a reference to the definition of *rural industry* as contained within the Environmental Planning and Assessment Model Provisions, and
- insert within Ballina LEP 1987 the definition of *rural industry* as contained within the Standard Instrument – Principal Local Environmental Plan.

3. Explanation of the Proposal

3.1 Land to Which the Planning Proposal Applies

This planning proposal will apply to those parts of Ballina Shire to which Ballina LEP 1987 still applies.

3.2 The Proposal – Explanation of Provisions

This planning proposal seeks to substitute the definition of *rural industry* as referenced in Ballina LEP 1987 with the definition of *rural industry* as contained in the Standard Instrument – Principal Local Environmental Plan.

This is being done to remove the potential for water harvesting for non-agricultural or domestic purposes from being characterised as a rural industry by application of the 1980 Model Provisions definition.

One way in which the proposed outcome may be achieved is by:

- Inserting a reference to *rural industry* within clause 6(a) of Ballina LEP 1987, and
- Inserting the Standard Instrument - Principal Local Environmental Plan definition of *rural industry* within clause 5 Interpretation of Ballina LEP 1987.

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No.

This planning proposal arose as a consequence of the examination of the statutory basis upon which water extraction and bottling facilities have historically been approved within the Ballina and Tweed local government areas (LGAs). The report which considers this issue is contained within Appendix 3.

6

A planning proposal is considered to be required to remove the anomaly that is created by having two separate definitions of *rural industry* apply within Ballina Shire. In some cases, where rural properties are affected by dual zonings (Ballina LEP 1987 and 2012), both definitions are applicable. This then results in significantly different permissibility outcomes which may give rise to confusion.

Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. A local council sponsored planning proposal is the best way of addressing this issue given the applicable circumstances.

Ideally, the anomaly and confusion created by having two different *rural industry* definitions apply, within LEPs applicable to the same LGA, should be addressed at the State level through an appropriate legislative amendment. As this has not occurred this planning proposal is the best means available at the local council level to achieve the consistency sought to be applied to the definition of *rural industry*.

The final report of the NSW Chief Scientist and Engineer, into the Impacts of the Bottled Water Industry on Groundwater Resources in the Northern Rivers Region of NSW, has not specifically address the permissibility issue. Therefore there is considered to be no conflict between this planning proposal and the recommendations made by the NSW Chief Scientist and Engineer.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

North Coast Regional Plan 2036

Ballina Shire is subject to the North Coast Regional Plan 2036 (NCRP) and is identified as being located within the Far North Coast subregion of the plan.

This planning proposal is consistent with NCRP Direction 11 and Action 11.5. as detailed below:

Direction 11 – Protect and enhance productive agricultural lands.

Action 11.5 – Address sector – specific considerations for agricultural industries through local plans.

Comment: The establishment of agricultural industries will be facilitated by ensuring a consistent definition of *rural industry* is contained within applicable LEPs.

Productive agricultural lands will be enhanced by ensuring that ground water resources are retained for agricultural production as opposed to being harvested for transport to distant bottling plants.

Ballina Shire Council

- Q4 Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

Ballina Shire Council Community Strategic Plan 2017-2027

The proposal is considered to be consistent with the Healthy Environment theme contained within Council's Community Strategic Plan 2017 – 2027.

Specifically it is consistent with Healthy Environment outcome:

HE2 We use our resources wisely

- Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?**

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

- Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?**

No.

A number of section 9.1 directions are relevant to the planning proposal. A section 9.1 checklist is provided at Appendix 2. Inconsistencies are noted and are considered to be justified due to the minor significance of this planning proposal.

4.3 Section C – Environmental, Social and Economic Impact

- Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No.

- Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

No.

Q9 Has the planning proposal adequately addressed any social and economic effects?

This planning proposal seeks to provide consistency to the definition of *rural industry* as contained within environmental planning instruments applicable to Ballina Shire. In this respect, it is considered that any social and economic effects, which may arise from this planning proposal, are likely to be positive in nature.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

Issues related to the public infrastructure are not relevant for this planning proposal.

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation with the following public authorities is being undertaken as required by the Gateway determination:

- Department of Planning, Industry and Environment - Water Group
- NSW Rural Fire Service
- NSW Chief Scientist and Engineer

5. Mapping

No mapping is proposed to support this planning proposal.

6. Community Consultation

This planning proposal is being publically exhibited from 22 January 2020 until 21 February 2020 in accordance with the terms of the *Environmental Planning and Assessment Act 1979*.

This period complies with the minimum 28-day period specified in the Gateway determination.

Ballina Shire Council

7. Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	January 2020
Completion of Technical Information	NA
Government Agency Consultation if required.	NA
Public Exhibition Period	February 2020
Public Hearing	N/A
Submissions Assessment	March 2020
Local Plan Making Authority (LPMA) Assessment of Planning Proposal and Exhibition Outcomes	March 2020
LPMA Decision to Make the LEP Amendment (if delegated)	April 2020
Submission of Endorsed LEP to DPI&E for Finalisation	April 2020

Council is proposing to exercise plan finalisation functions under delegation as the Local Plan Making Authority.

8. Appendices

8.12 Planning Proposal - Rural Industry Definition Change

Ballina Shire Council

Appendix 1 – Maps

There are no maps applicable to this planning proposal

Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 Direction Checklist	
Planning Proposal – Rural Industry Definition Change Ballina LEP 1987	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Consistent.
1.2 Rural Zones	Consistent
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Consistent
2. Environment and Heritage	
2.1 Environmental Protection Zones	Consistent.
2.2 Coastal Management	Justifiably inconsistent. Some land located within the coastal zone is impacted by this planning proposal. This planning proposal does not seek to introduce provisions within BLEP1987 that give effect to the matters specified in clause (4) of this Direction. This inconsistency is considered to be justified due to the minor significance of this planning proposal. The delegate for the Secretary, Department of Planning Industry and Environment, has agreed to this inconsistency in correspondence dated 14 January 2020. Refer Appendix 4.
2.3 Heritage Conservation	Consistent. Ballina LEP 1987 contains appropriate provisions which facilitate the conservation of items of environmental heritage (refer to clauses 18 to 20).
2.4 Recreation Vehicle Areas	Consistent.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Consistent.
3.2 Caravan Parks and Manufactured Home Estates	Consistent.
3.3 Home Occupations	Consistent, Ballina LEP 1987 contains provisions which address this Direction.
3.4 Integrated Land Use and Transport	Not applicable
3.5 Development Near Licensed Aerodromes	Not applicable.
3.6 Shooting Ranges	Not applicable.

Ballina Shire Council

Section 9.1 Direction Checklist	
Planning Proposal – Rural Industry Definition Change Ballina LEP 1987	
Direction No.	Compliance of Planning Proposal
3.7 Reduction in non-hosted short term rental accommodation period	Not applicable.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	<p>Justifiably inconsistent</p> <p>BLEP1987 already contains provisions relating to Acid Sulfate Soils.</p> <p>The delegate for the Secretary, Department of Planning Industry and Environment, has agreed to this inconsistency in correspondence dated 14 January 2020. Refer Appendix 4.</p>
4.2 Mine Subsidence and Unstable Land	<p>Consistent</p> <p>This planning proposal does not apply to land within a mine subsidence district.</p> <p>This planning proposal does not propose to permit development of unstable land.</p>
4.3 Flood Prone Land	<p>Justifiably Inconsistent</p> <p>Some land affected by this planning proposal may be classified as flood prone land. This planning proposal does not seek to introduce provisions into BLEP1987 as referenced in clause (4) of this Direction.</p> <p>Given the nature of this planning proposal the inconsistency is considered to be of minor significance.</p> <p>The delegate for the Secretary, Department of Planning Industry and Environment, has agreed to this inconsistency in correspondence dated 14 January 2020. Refer Appendix 4.</p>
4.4 Planning for Bushfire Protection	<p>Justifiably Inconsistent</p> <p>This planning proposal may affect bushfire prone land. Consultation with the NSW Rural Fire Service is being undertaken concurrently with the exhibition of this planning proposal.</p> <p>Given the nature of this planning proposal, Direction 4.4 is not considered to be of direct relevance.</p> <p>Council has been advised by the Department of Planning Industry and Environment that it may need to obtain the agreement of the Secretary to comply with the requirements of this direction and should ensure this occurs prior to the plan being made.</p>
5. Regional Planning	
5.1 Implementation of Regional Strategies	Does not apply to Ballina Shire.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Consistent

Section 9.1 Direction Checklist	
Planning Proposal – Rural Industry Definition Change Ballina LEP 1987	
Direction No.	Compliance of Planning Proposal
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Consistent This planning proposal does not seek to introduce provisions into BLEP1987 as referenced in clause (4) of this Direction.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1	Revoked.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.
5.10 Implementation of Regional Plans	Consistent. No inconsistencies with the North Coast Regional Plan 2036 have been identified.
5.11 Development of Aboriginal Land Council land	Does not apply to this planning proposal.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.
6.3 Site Specific Provisions	Consistent.
7. Metropolitan Planning	
7.1 to 7.10	These Directions do not apply to Ballina Shire.

Ballina Shire Council

Appendix 3 – Council Reports

8.4 Local Environmental Plan Framework - Water Extraction

8.4 Local Environmental Plan Framework - Water Extraction

Delivery Program Strategic Planning

Objective To provide Council with information relating to the permissibility of water extraction within rural zones for non agricultural or domestic use purposes and seek direction on this matter in relation to the LEP framework in the Shire.

Background

Development application DA 2018/597 was lodged on 26 September 2018. The application proposed the establishment and operation of a *water supply system*. The proposal included the drawing of water from two existing bores, the construction of a shed and associated works, and the transport of water to a remote site for bottling.

The DA2018/597 related to a site known as Lot 15 DP 1067330, Ellis Road, Rous (Lot 15).

Lot 15 is zoned partly RU1 Primary Production (RU1) under the provisions of Ballina LEP 2012 (LEP 2012) and partly 7(c) Environmental Protection (Water Catchment) under the provisions of Ballina LEP 1987 (LEP 1987). The works and activities proposed by the DA were confined to that part of Lot 15 zoned RU1.

In considering issues arising in relation to the extraction of water for bottled water production and other non agricultural or domestic uses Council at the Ordinary meeting held 22 November 2018 resolved as follows:

- 1. That Council receives a report on options to amend the LEP to prohibit water extraction for the purposes other than for agricultural or domestic uses.*
- 2. That Council write to the relevant State Government Departments and the Minister for Primary Industries, Lands and Water, Mr Niall Blair and other relevant Ministers calling for a halt to any new water licences for non-agricultural purposes such as bottled water within the Ballina Shire. As part of this correspondence clarification is requested on whether existing licences can be transferred to third parties for non-agricultural uses.*
- 3. That Council engage with Rous Water with regards to water supply security for the Ballina Shire and neighbouring Councils.*

Items 2 and 3 have previously been actioned.

This report relates to Item 1 of the above resolution and presents options to prohibit water extraction other than for agricultural or domestic uses.

The report has been prepared at this time as DA 2018/597 was formally withdrawn on 21 October 2019.

8.4 Local Environmental Plan Framework - Water Extraction

The applicant did not provide written reasons for the withdrawal of the application (an applicant is not required to give reasons for withdrawal of an application under the *Environmental Planning and Assessment Act*).

This report examines the permissibility of water extraction in Ballina Shire's rural areas for purposes unrelated to uses otherwise permitted on the land.

Key Issues

- Characterisation of water extraction as a land use
- Consideration of legal advice
- Planning proposal preparation

Information

A key factor in the consideration of the provisions of the LEP relative to water extraction is the definition of particular land uses. Attachment 1 contains the definitions applicable to the terms in italics within this section of the report.

Ballina LEP 2012

Council has obtained legal advice which indicates, based on the details of the application submitted, that the use as proposed under DA 2018/597 would reasonably be characterised as a *light industry* rather than a *water supply system*, and is therefore a prohibited use in the RU1 zone.

Water supply systems are permitted with consent within the RU1 and RU2 zones under the provisions of LEP 2012 whereas *light industry* is a prohibited use.

The applicant also obtained legal advice. The applicant's advice expresses the view that the development should be characterised as a *water supply system* and not a *light industry*.

The applicant's legal advice was referred to Council's solicitors and barrister for further advice. Following review of the applicant's information, the legal advice obtained by Council maintains the original position being that the use proposed under DA 2018/597 is a prohibited use within the RU1 zone.

The advice obtained by Council from its legal representatives is considered sound. It also confirms the conclusions reached by senior planning staff prior to seeking the advice.

Ultimately, the Land and Environment Court may have been required to determine this issue had the application not been withdrawn.

In summary, based on the legal advice obtained by Council, water extraction for uses not otherwise permitted within the RU1 or RU2 zone, such as what was proposed by DA 2018/597, are prohibited.

This being the case an amendment to LEP 2012 is not required to prohibit such use.

Ballina Shire Council

8.4 Local Environmental Plan Framework - Water Extraction

It is noted that the letter received from the Hon. Scot MacDonald MLC, Parliamentary Secretary for Planning, the Central Coast and the Hunter, (Attachment 2) states that:

"there are currently no planning policies specifically covering water extraction and bottling in NSW and that such developments are generally prohibited in rural areas."

The subject letter was one of a number of responses received following the actioning of Item 2 of Council's November 2018 resolutions.

The permissibility comments made by the Parliamentary Secretary also add some weight to the view that water extraction for bottling is not a use intended to be permitted in rural areas.

In considering the above, it is important to not though that permissibility is determined based on the manner in which a use is characterised.

The characterisation process in turn is required to consider the particular details of any proposed application and relevant case law. This means that every proposal is required to be individually assessed and characterised.

Tweed LEP 2000 and 2014 and planning proposal to prohibit water bottling facilities in the RU2 zone.

A Gateway determination was issued in May 2019, by the Department of Planning and Environment, to amend Tweed LEP 2014 so as prohibit water bottling facilities in the RU2 zone.

The Tweed RU2 zone is similar to the Ballina RU2 zone in various respects including that both zones permit with consent a *water supply system*, and prohibit *light industry*.

Tweed Shire Council had previously approved a number of water bottling and extraction plants within its rural zones under the provisions of Tweed LEP 2000. Such uses appear to have been characterised at the time as a *rural industry*. This *rural industry* definition changed when Tweed LEP 2014 came into force in June 2014. From that time it was considered to no longer permit the water bottling and extraction plants previously approved.

To facilitate the expansion of a water bottling and extraction plant in 2015 Tweed Shire Council prepared a planning proposal to permit *water bottling facility* within the RU2 zone.

Tweed Shire Council initially sought to limit the application of the planning proposal to those sites that already had approved water bottling and extraction plants rather than permit them throughout the RU2 zone. The Department of Planning and Environment, however, required that the planning proposal proceed as a general zone amendment as opposed to an additional permitted use on a few sites.

The consequence of the above was that a number of new DAs were submitted to Tweed Council for *water bottling facilities*. Community opposition to the proposed new facilities led to the Council resolving (November 2018) to prepare a new planning proposal.

Ballina Shire Council
28/11/19

Ordinary Meeting of Ballina Shire Council
Page 3

8.4 Local Environmental Plan Framework - Water Extraction

This new planning proposal now seeks to amend Tweed LEP 2014 (removal of clause 7.15 *Water bottling facilities in the RU2 zone*) and will, once the LEP amendment is made, restore the previous position being the prohibition of water bottling facilities in the RU2 zone.

The Tweed case is of interest because neither Tweed Council, nor the Department of Planning, Industry and Environment, have sought to insert additional provisions within the Tweed LEP 2014 which seek to reinforce the prohibition of *water bottling and extraction facilities* within the RU2 zone.

Tweed LEP 2014 and Ballina LEP 2012 share Standard Instrument definitions for *water supply system* and *light industry*, with the former being permitted with consent, and the latter being prohibited, in the respective RU2 zones (light industry is also prohibited in the Ballina LEP 2012 RU1 zone). It therefore reinforces the view that water extraction for commercial purposes such as bottling is a use that is prohibited within the RU2 zone in both LEPs.

Ballina LEP 1987 (LEP1987)

A portion of Ballina Shire is still subject to the provisions of LEP 1987, being those areas subject to deferred matters resulting from the proposed application of environmental protection zones under the Standard Instrument LEP.

The definition of *rural industry* and *light industry* contained within LEP 1987 are the same as contained within Tweed LEP 2000.

The matrix below shows relevant LEP 1987 zones which permit with consent *rural industry* and or *light industry*.

Table 1 - Ballina LEP 1987 Permissibility Matrix (Permitted ✓ Prohibited x)

Zone	Rural Industry	Industry / Light Industry
1(a1) Rural (Plateau Lands Agriculture)	✓	x
1(a2) Rural (Coastal Lands Agriculture)	✓	x
1(b) Rural (Secondary Agricultural Land)	✓	✓
1(d) Rural (Urban Investigation)	✓	x
1(e) Rural (Extractive and Mineral)	✓	✓
2 (b) Village Area Zone	✓	✓
7 (d) Environmental Protection (Scenic/Escarpment)	✓	x
7 (d1) Environmental Protection (Newrybar Scenic/Escarpment)	✓	x
7 (i) Environmental Protection (Urban Buffer)	✓	x
9 (a) Roads (Main Roads Proposed)	✓	✓
9 (b) Roads (Local Roads Proposed)	✓	✓

The approach used by Tweed Council to characterise water bottling and extraction facilities, under the provisions of Tweed LEP 2000, as a *rural industry* requires water to be classified as a primary product.

Ballina Shire Council

8.4 Local Environmental Plan Framework - Water Extraction

It is not clear as to whether water in 2019 would still be regarded as a primary product. It is however, arguable that water could be regarded as a primary product within the context of the applicable definition for *rural industry*.

Primary products, in a contemporary context, consist of plant and animal derived products not resources such as water. This is reinforced by the new Standard Instrument definition of *primary industry* contained in LEP 2012. However, the previously applicable definition could be interpreted far more broadly to include resources such as water.

Ballina Shire Council has historically applied a similar approach to Tweed Council in relation to water bottling and rural industry. In 1993 Ballina Shire Council also consented to a *rural industry* on a property in Ferleigh being for the processing and bottling of spring water. The land the subject of this consent is now zoned RU1 Primary Production under the provisions of LEP2012.

Water bottling and extraction facilities may also, in certain circumstances, be characterised as *light industry or industry* under the provisions of LEP 1987. Were this to occur then such use would also be permitted with development consent within the zones indicated above.

The location of the LEP 1987 zones that permit rural industry, and or industry / light industry on the Plateau, as indicated in Table 1 are shown on the maps contained in Attachment 3.

Attachment 4 only shows the 1(b) Rural (Secondary Agricultural Land) on the Plateau and adjoining areas.

In summary, by applying definitions as outlined above, it remains possible to establish a water bottling facility or otherwise extract water for bottling under the current provisions of the Ballina LEP 1987.

Amending Ballina LEP 1987

LEP 1987 may be amended to address the permissibility of water bottling facilities (and water extraction for other non agricultural or domestic uses) through the planning proposal process. This is discussed further in the options section of this report.

Whilst an amendment to address definitions and permissibility in this instance is not likely to be technically difficult, the difficulty Council may face relates to the reasons behind the deferred matters and the ongoing operation of the Ballina LEP 1987. That is, the Department of Planning, Industry and Environment may take a position that seeks to encourage Council to address other Standard Instrument LEP related matters that are not related to the water extraction matter at hand.

To address this potential difficulty, it is recommended that any amendment of LEP 1987 should be kept as simple as possible. Ideally, it should avoid introducing new specific provisions and minimise the locations in the LEP where changes are proposed.

8.4 Local Environmental Plan Framework - Water Extraction

LEP 1987 zones that permit *industries* or *light industries* consist of the 1(e) Rural (Extractive and Mineral) zone the 1(b) (Secondary Agricultural Land) zone.

The extractive mineral industry zone affects four Plateau sites. Of these two are owned by Council, one is owned by the RMS and the other is privately owned (land located off Stokers Lane at Teven). These sites are not considered at high risk of being further developed for ground water harvesting purposes.

The land within the 1(b) (Secondary Agricultural Land) zone, as indicated on the map forming part of Attachment 4, affects numerous sites. There is therefore a risk that some of this land may be proposed to be utilised for ground water harvesting purposes in the future.

Some 1(b) (Secondary Agricultural Land) zoned land was deferred from LEP 2012 due to its higher ecological value. Transitioning of this land to into LEP 2012 is in progress in accordance with Council's previous April 2017 resolution covering deferred areas. This is also the case for the land zoned 1(e) Rural (Extractive and Mineral).

Although timing for this transition is not yet confirmed (this is dependent on mapping that is in preparation), it is recommended that no further action be taken at this time in terms of addressing the *industry / light industry* permissibility issue as this will be resolved once the land is transitioned into LEP 2012. This is because of the greater degree of complexity involved in addressing this issue and a lower relative risk associated with this avenue being pursued to enable water extraction for non agricultural or domestic purposes.

The sites that permit *rural industry* under the provisions of LEP1987 are far more extensive and include the 1(b) and 1(e) zoned sites. For this reason an approach which seeks to replace the definition of *rural industry* contained within LEP1987, with the current Standard Instrument definition of *rural industry*, through a planning proposal is recommended.

Such an approach maintains the integrity of zones and minimises legal drafting complexities. This approach has also been discussed with Department of Planning, Industry and Environment (DPIE) planning staff who have indicated that it appears to be a supportable, and a relatively uncomplicated option.

The above approach does risk the DPIE exerting pressure to broaden the planning proposal to incorporate other matters related to the transitioning of E zones under LEP 1987 to LEP 2012. If this were to occur then this matter can be reported back to Council for the consideration of appropriate responses.

Overall, the recommended approach in relation to the LEP 1987 is to pursue the most technically simple amendment to exclude water bottling facilities from being permissible in the majority of the deferred matter areas. This approach though does not entirely eliminate the potential for this use to occur in rural areas.

Ballina Shire Council

8.4 Local Environmental Plan Framework - Water Extraction

Report of the NSW Chief Scientist and Engineer (NSWCSE) – Independent Review of the Impacts of the Bottled Water Industry on Groundwater Resources in the Northern Rivers region of NSW

The initial report of the NSWCSE was published in February 2019.

This report was focused on information gathering and analysis as well as documenting stakeholder views.

Stakeholders are awaiting the release of the final report. Council's November 2018 submission to the NSWCSE raised, amongst other matters, the issue of a lack of a clear planning framework, including State based guidelines, to regulate the extraction of ground water for the bottled water industry.

It is hoped that the final report of the NSWCSE will address this issue and provide some clear recommendations related to appropriate State and local planning controls for regulation of this industry.

The timing for the release of the final report is not known to Council.

Sustainability Considerations

- **Environment**

The preparation of a planning proposal, which removes substantially the potential for water extraction not associated with uses otherwise permitted within Ballina's rural hinterland, is considered to give rise to significant environmental benefits. It better maintains regional water security by providing a source of drinking and agricultural water for use especially in times of drought.

The proposed restriction on industrial type uses from being established within the rural parts of the Shire also assists to maintain the environmental and scenic amenity of these areas by reducing heavy vehicle traffic and presence of industrial style buildings.

- **Social**

It is clear from the number and nature of submissions received against DA2018/597 that a large number of Plateau community residents do not support water extraction not associated with uses otherwise permitted within Ballina's rural hinterland.

Preparation of a planning proposal, which seeks to reduce the likelihood of similar water extraction development being again proposed, is considered to have net social benefits. It will likely assist to reinforce the sense of community which exists amongst the Plateau's rural community.

- **Economic**

There are considered to be no substantive adverse economic consequences from adopting a strategy designed to prohibit the extraction of water for uses not otherwise permitted within rural zones or other zones.

8.4 Local Environmental Plan Framework - Water Extraction

Legal / Resource / Financial Implications

There are no specific legal or financial implications associated with the preparation of a planning proposal, which seeks to substitute the *rural industry* definition contained within LEP1987 with the Standard Instrument definition of *rural industry*.

Progression of this matter can be accommodated within the existing resources of the Planning and Environmental Health Division.

Consultation

Should the matter proceed, an affirmative Gateway determination will specify government agencies consultation requirements and the minimum community consultation period. It is considered that a minimum consultation period of 14 days is appropriate given that the planning proposal will seek to better align LEP 1987 with LEP 2012.

At this stage no specific public agency consultation is proposed.

Options

The following options are presented for Council's consideration.

1. Council may resolve to prepare a planning proposal which seeks to substitute the definition of *rural industry* contained within Ballina LEP 1987 with the Standard Instrument definition of *rural industry* for submission to the Department of Planning, Industry and Environment for Gateway determination.

The finalisation of such a planning proposal would then ideally await the release of the final report of the NSWCE so as to ensure that there is no conflict between both documents.

This is the preferred and recommended option.

2. Council may resolve to prepare a planning proposal which addresses the *rural industry* as well as *industry / light industry* issues identified within this report related to LEP 1987, as well as seeking to reinforce the position that certain types of water extraction are prohibited within the RU1 and RU2 zones.

This option is not supported as it is considered to add significant complexity to the planning proposal and may not result in a positive Gateway determination being received. Such a planning proposal may also have unintended consequences for zones contained within LEP 1987 and LEP 2012.

It may also affect uses already legitimately established as was the case when Tweed Shire Council introduced its 2014 LEP. Substantial research would be required to clarify how existing established uses are likely to be impacted. Such a process will add significantly to the cost and time involved in preparing a planning proposal.

8.4 Local Environmental Plan Framework - Water Extraction

3. Council may defer consideration of this report pending the release of the report of the NSWCSE and then further consider its options with respect to the preparation of a planning proposal or the taking of other action.

This is also a sound option, which would enable Council to further consider the scope of any planning proposal that it may resolve to prepare. This option also reduces the potential for any significant amendment of a planning proposal to incorporate matters that may be recommended by the NSWCSE for implementation at the local government level.

This action has not been recommended as the alignment of the definition of *rural industry* contained in LEP 1987 and LEP 2012 is logical and is a relatively simple amendment to complete (assuming it is supported by the Department of Planning, Industry and Environment).

Option 1 addresses this issue by commencing the planning proposal process and then delaying finalisation until such time that the final report of the NSWCSE has been considered.

4. Council may resolve to note the contents of this report and take no further action.

This action has not been recommended on the basis that it does not result in any additional limitation on water extraction activities in the deferred matter areas that are subject to the Ballina LEP 1987. The reasons why the change is recommended are outlined in this report.

If however, the position of Council is not to change the existing situation, this approach is the appropriate course of action.

5. Council may also defer this report to a briefing if there are any issues identified that require explanation beyond that contained within this report.

This approach is not recommended at this stage. However, a briefing could be held post exhibition of proposed changes to the LEP to enable considering of key issues arising before Council makes a decision on the implementation of the changes.

RECOMMENDATIONS

1. That Council prepare a planning proposal which seeks to substitute the definition of rural industry contained within Ballina LEP 1987 with the Standard Instrument definition of rural industry.
2. That the planning proposal once prepared be forwarded to the Department of Planning Industry and Environment for a Gateway determination.
3. That the Department of Planning Industry and Environment be advised that Council seeks to exercise the functions of the local plan-making authority under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* for this LEP amendment.

8.4 Local Environmental Plan Framework - Water Extraction

4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal and after the release of the final report of the NSW Chief Scientist and Engineer into the Impacts of the Bottled Water Industry on Groundwater Resources in the Northern Rivers Region of NSW.

8.4 Local Environmental Plan Framework - Water Extraction

281119/1 **RESOLVED**

(Cr Eoin Johnston/Cr Sharon Cadwallader)

1. That Council prepare a planning proposal which seeks to substitute the definition of rural industry contained within Ballina LEP 1987 with the Standard Instrument definition of rural industry.
2. That the planning proposal once prepared be forwarded to the Department of Planning Industry and Environment for a Gateway determination.
3. That the Department of Planning Industry and Environment be advised that Council seeks to exercise the functions of the local plan-making authority under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* for this LEP amendment.
4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal and after the release of the final report of the NSW Chief Scientist and Engineer into the Impacts of the Bottled Water Industry on Groundwater Resources in the Northern Rivers Region of NSW.

FOR VOTE - All Councillors voted unanimously.

Attachment(s)

1. Relevant LEP Definitions
2. Letter from Hon Scot MacDonald MLC
3. Location of Ballina LEP 1987 zones referenced in Table 1
4. Location of 1(b) Rural (Secondary Agricultural) zone - Alstonville Plateau

Ballina Shire Council

Appendix 4 – Gateway Determination



PP_2019_BALLI_005_00 / IRF19/7849

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

Dear Mr Hickey

Planning proposal PP_2019_BALLI_005_00 to amend Ballina Local Environmental Plan 1987

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to substitute the definition of rural industry applicable to Ballina LEP 1987 with the definition of rural industry contained within the Standard Instrument – Principal Local Environmental Plan.

As delegate of the Minister for Planning and Public Spaces, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination. Nevertheless, the Department strongly encourages Council to move forward immediately with a planning proposal which implements the recommendations of the Northern Councils E Zone Review Final Recommendations Report. Implementation of the E Zone Review and the application of Ballina LEP 2012 to all land across the Shire would help provide greater certainty and clarity for the community and a single set of consistent planning controls.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistencies with section 9.1 Directions 2.2 Coastal Management, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are justified in accordance with the terms of the Direction. No further approval is required in relation to these Directions.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant section 9.1 Direction 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to the plan being made.

It is noted that Council has requested to be authorised as the local plan-making authority. I have considered the nature of Council's planning proposal and have conditioned the Gateway for Council to be authorised as the local plan-making authority.

320 Pitt Street Sydney NSW 2000 | GPO Box 39 Sydney NSW 2001 | planning.nsw.gov.au

The amending local environmental plan (LEP) is to be finalised within six months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office six weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning, Industry and Environment.

The state government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any enquiries about this matter, I have arranged for Ms Kate Campbell to assist you. Ms Campbell can be contacted on 5778 1401.

Yours sincerely



14-1-2020

Jeremy Gray
Director, Northern Region
Local and Regional Planning

Encl: Gateway determination
Authorised plan-making reporting template

Ballina Shire Council



Planning,
Industry &
Environment

Gateway Determination

Planning proposal (Department Ref: PP_2019_BALLI_005_00): to substitute the definition of rural industry applicable to Ballina LEP 1987 with the definition of rural industry contained within the Standard Instrument – Principal Local Environmental Plan.

I, the Director at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ballina Local Environmental Plan (LEP) 1987 to substitute the definition of rural industry with the definition of rural industry contained within the Standard Instrument – Principal Local Environmental Plan should proceed subject to the following conditions:

1. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
2. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - Department of Planning, Industry and Environment - Water Group
 - NSW Rural Fire Service
 - NSW Chief Scientist and Engineer

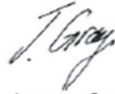
Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

28

4. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
5. The time frame for completing the LEP is to be 6 months following the date of the Gateway determination.

Dated 14 day of January 2019.



Jeremy Gray
Director Northern Region
Local and Regional Planning
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces



OUT 20/1667

Mr Klaus Kerzinger
Strategic Planner
Ballina Shire Council
PO Box 450
BALLINA NSW 2478
Email: klaus.kerzinger@ballina.nsw.gov.au

Dear Mr Kerzinger

Re: Consultation Letter – Chief Scientist & Engineer – Ballina Shire Council Planning Proposal BSCPP 19/005 Rural Industry Definition Substitution

I refer to your letter seeking comment on Planning Proposal PP 19/005 by Ballina Shire Council, as mandated under the requirements of a Gateway Determination under Section 3.34(1) of the *Environment Planning and Assessment Act 1979*.

Having reviewed the material provided, I have not been able to identify any reference to the findings of the Independent review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region of NSW (the Review), apart from the Proposal noting that the final report did not 'specifically address the permissibility issue' of the industry and that therefore there is no conflict between the Proposal and Review recommendations.

I do not believe this is an adequate representation of the extensive work undertaken by the Review. A determination about the bottled water industry was not within the Review Terms of Reference, which is a matter of policy. However, Review findings were intended to inform decision-makers and a range of issues relevant to the Proposal were addressed in the course of the Review.

I therefore request that the final Review report be provided in full as part of advice to Council on this issue and any associated reports. I also draw your attention to the following.

The Review was supported by independent experts in hydrology, surface water, groundwater, surface and groundwater interactions, modelling, monitoring, statistics and uncertainty analysis. A one-day multidisciplinary workshop was convened, drawing on experts from NSW, South Australia and Queensland in the above fields, as well as climate modelling, geology, groundwater ecology and planning. Over the course of the review representatives from state and local government, community and industry were consulted.

Lack of data on actual extraction is clearly an issue at local and regional scale. Relevant is the requirement by the Natural Resource Access Regulator in 2018 to have four of the operators in the Northern Rivers region install meters as well as the state-wide metering policy being rolled out by 2023.

The Review identified seven operators in the Northern Rivers region actively extracting for water bottling purposes with total allocations of 240.5 ML/y, representing 0.55% of total water licences and basic landholder rights across four groundwater sources. One operator in the Ballina Shire was identified, with an allocation of 7.5 ML/year from the Alstonville Basalt Plateau groundwater source. To place this in context, this source has an estimated total

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storage of 640,000 ML, with total requirements of 9,086 ML/year as at October 2019, comprised of basic landholder rights of 2,014 ML/year, local water utility licences of 1,230 ML/year and all other licences of 5,842 ML/year.

Scenarios of potential future industry growth were developed and tested, having regard to factors influencing production and consumption volumes. This analysis concluded the industry (nationally) is likely to grow at a rate of less than 2% per annum to 2024 and that the Northern Rivers is likely to follow this trend.

An analysis of the North Coast Fractured and Porous Rock Water Sharing Plan (WSP) was undertaken, finding that the WSP incorporates a reasonable level of conservatism for the extraction limits when the groundwater sources are not fully allocated and where they are fully allocated at Alstonville, monitoring is applied.

Under the WSP, environmental water and basic landholder rights are given priority over licensed water extraction and utilities are prioritised over commercial licensed purposes. The WSP assumes that all allocations are used to a maximum level. Elements of conservatism in the WSP identified include:

- reservation of 100% of estimated aquifer storage for the environment (i.e. 0% is available for allocation)
- reservation of 100% of recharge (rainfall) in areas of high environmental value (i.e. 0% is available for allocation)
- inclusion of a sustainability index which factors in area-specific socio-economic and environmental risk (thereby further reducing the quantum of potential allocations)
- an interim review of the WSP every five years, with a full review every 10 years.

Recommendations included strengthening planning by incorporating climate change into the development of recharge estimates and incorporating geological heterogeneity and soil and vegetation types into recharge estimates where practicable.

Localised elements of conservatism through the licensing process include:

- acceptable drawdown limits (relating to the water table and groundwater pressure)
- setbacks distances outlined in the Rules Summary Sheet: Alstonville Basalt Plateau Groundwater Source (e.g. distance from other bores, from groundwater dependent ecosystems, streams etc.)
- an adaptive management approach through the annual determination process (volume/ licence share).

The Review noted that in response to the Millennium drought in a highly allocated area (Alstonville) an embargo was placed on issuing new licences and additional monitoring bores were added to the Network. The monitoring network in the Northern Rivers includes 13 sites with 31 bores, of which there are 12 sites of nested bores in the Alstonville Groundwater source. Data from these bores was analysed for the period 2006-2019. The Review found observations from deep piezometers showed a greater stability and a steady upward trend over time of groundwater levels and/or pressures. In contrast, readings from shallower piezometers showed greater variability and appear to be recharged regularly with rainfall.

Looking forward, a recommendation was made for the Northern Rivers that additional monitoring of piezometric water levels should be considered in locations with a perceived risk and/or lack of knowledge of groundwater responses and flow directions. While Alstonville Plateau has a considerable network already in place, should areas of additional risk emerge, such as increased population and use of groundwater, then monitoring should be considered.

An analysis of hydrogeological reports provided by proponents was undertaken. Recommendations included that these reports include assessment of aquifer connectivity with overlying shallow groundwater and surface water through well-designed pump tests; that guidance is developed on the contents of hydrogeology reports required from proponents; that information requirements are standardised; and that extraction and monitoring data is made available in standardised formats through open and accessible portals.

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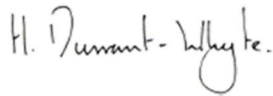
8.12 Planning Proposal - Rural Industry Definition Change

A recommendation was also made for work to be undertaken by state agencies and local government to clarify roles and responsibilities to streamline assessment and approval processes, to avoid duplication of effort, and to address any gaps in the assessment and approvals process.

The community had expressed concerns about trucks, including compliance with licence conditions, road damage, safety and amenity. There are available technologies and mechanisms to address these issues. Plastics is an issue on a global scale. However, factors including changing consumer expectations are likely to drive change, with major companies committing to increasing the proportion of recycled plastics used. Research is being undertaken, particularly in the materials, chemistry and synthetic biology sciences to help substitute, repurpose and recycle.

Should you have any questions, please contact Suzanne Pierce, Director Policy, Science and Research who can be reached at suzanne.pierce@chiefscientist.nsw.gov.au.

Yours Sincerely



Professor Hugh Durrant-Whyte
Chief Scientist & Engineer

4 March 2020

Cc Jeremy Gray, Director Northern Region, Local and Regional Planning, Department of Planning, Industry and Environment

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Joanne Stevenson

Hi there,

I am in support of ensuring the ongoing safety of our aquifers. I agree that we need to protect our natural resources for domestic and agricultural purposes.

Our future relies on clean fresh water for local use.

Thanks for your time.

Joanne Stevenson

Veronica Webber

I'm writing in the sincere hope that Council takes the monumental step to protect the precious Alstonville Plateau's groundwater resource protecting precious groundwater from industries such as water-mining and water-bottling.

Thank you

Veronica Webber

Belinda Diggins

Dear Sir/Madam

I write in support of the changes proposed in Planning Proposal 19/005, to substitute the definition of rural industry applicable to Ballina LEP 1987 with the definition of rural industry contained within the Standard Instrument – Principal Local Environmental Plan. I urge Ballina Shire Council to make this change to ensure:

- the precious resource of groundwater is available for domestic and agricultural purposes
- groundwater is used locally and kept within the local water cycle
- Council's actions are in alignment with community needs and wishes
- access to water for the local region for as long as possible, as longevity of this resource is unknown
- protection of local ecosystems

Isabella Reddel

I support the proposal to limit the use of the Alstonville aquifer to agricultural uses only. It should not be used to make a profit for the Bottled Water industry, as this would decrease the water available to the area that is designated State Significant Farmland.

Christine Scarvell

Submission in Favour of :- Planning Proposal 19/005

» Rural Industry Definition Change Ballina LEP 1987


I, the undersigned totally support the actions of Ballina Shire Council to submitting the change within the Ballina LEP 1987.

I support this action on the following grounds:

1. Alstonville Aquifer Water is a finite resource
2. Any water extracted from the Aquifer should stay and be used where it is extracted
3. To support existing agricultural industry within the Shire
4. To support stock and domestic consumption within the Shire
5. The Alstonville Aquifer has Scientifically been classified as both fully allocated and under stress
6. Overwhelming local support against Water Mining and subsequent bottling into plastic (adding to plastic waste issues) or sold to multinational companies for huge profit.
7. Protection of the Environment, flora and fauna, Ground Dependant Ecosystems and Adjacent Wetlands, Waterways, Creeks, Streams and Rivers.

In recent weeks our spring fed creek stopped flowing for the first time in living memory. Fish have been rescued and moved to larger bodies of water along the creek. Our much valued Platypus habitat is under threat. Even with 'normal' rainfall patterns the groundwater is under more stress than ever before.

Name: Christine Scarvell

Signed: 

Louise Andrews

Councillors,

I wish to express my support for the proposal to limit the use of the Alstonville aquifer to agricultural purposes only.

The aquifer is a public resource and should not be harvested for financial benefit by the Bottled Water industry.

The area is designated as State Significant Farmland and the potential negative impacts of ground water harvesting for non-agricultural purposes on stream flow rates and the potential biodiversity impacts are issues of great concern.

I support your proposal to protect our precious groundwater resources and hope this protection will extend to also include a study of the impact of agricultural chemicals on the ground and surface water at Alstonville Plateau.

Sincerely,

Louise Andrews

Craig F Johnston

I write to support an amendment of the Ballina LEP to change the definition of 'rural industry' to one that is identical with that in the LEP Standard Instrument. For 2 reasons. First, I think it is useful for all LEPs across New South Wales to use a common template of definitions for land-use and development matters. This would make understanding and implementation of decisions relating to land-use easier for all stakeholders. (Such standardization does not need to extend to identical provisions in LEPs, which best serve an LGA and the state by having specific provisions that reflect local circumstances -- of course). Second, I understand that such an amendment would narrow the range of land-uses that are possible on land zoned 'rural industry' and would therefore clarify a legal issue relevant to DA 2018/597 (withdrawn October 2019), and, moreover, help prevent inappropriate DAs on such land in the future.

Ted and Marilyn Perkins

Submission: Change to Ballina LEP 2012 definition of 'rural industry'.

We support the proposed change of the definition of 'rural industry' from that currently included in the Council's LEP to the definition in the Standard Instrument - Principal Local Environment Plan.

It seems this change of definition will protect groundwater from being extracted and utilised for non-agricultural purposes, and stop water mining industries from accessing this precious resource.

We thank Council for working towards this protection for agricultural industries in Ballina Shire so efficiently and promptly.

Yours sincerely,
Ted & Marilyn Perkins

Kay Collins and Paul Martin

Dear Sir/Madam

We would like to express our strong support for the proposed change of definition of 'rural industry' to limit the extraction of groundwater for non-agricultural purposes.

Our groundwater is a critical resource that our people, food production and flora and fauna depend on. It must be protected for the greatest good of the community, not be harvested for the commercial gain of a few. As this resource is inevitably becoming more limited, it must be used ever more wisely and for the benefit of the community and environment.

We congratulate Ballina Council and the Alstonville community for taking this progressive step and strongly urge you to approve this change of definition.

Regards
Kay Collins and Paul Martin

Warren J Gorton

I wish to make the following submission re the above subject.

I am pleased to acknowledge your Council is taking this important and progressive step in better defining and thus protecting our exceptional rural industry and lands here in our Shire.

I live on the state significant soils of the Alstonville Plateau, an area that must be forever protected from so called industries that are not totally rural pursuit, such as water mining, weddings and tourists cabins or any other industry that is not absolutely rural production. Well done Ballina Council, but please look further than just water mining in your definitions to protect our important rural lands.

Yours faithfully
Warren J Gorton

Robin Delaney

It was with great relief that I received the information that Ballina Shire Council was proposing a change of definition of Rural Industry from that in the Ballina Shire Council LEP to the definition in the Standard Instrument - Principal Local Environment Plan.

The mining of water from the Alstonville Plateau aquifer has been, in my mind and in the opinion of many residents in this area, an outrageous drain on a valuable natural resource and foolish in the extreme considering the very real possibility of continued climate change events of drought and wildfire. Also although we have been blessed recently with rain, I have read that the likelihood of aquifers being replenished by rainwater is very uncertain.

I am therefore very happy to endorse Council's decision to pursue this sensible change to avoid confusion in matters of this sort in the future.

Yours sincerely,

Robin Delaney.
Wollongbar Resident.

CR & C S Quick, 624 Ellis Road, Rous

SUBMISSION RE: BALLINA LOCAL ENVIRONMENT PLAN 1987: PLANNING PROPOSAL BSCPP 19/005 - RURAL INDUSTRY DEFINITION CHANGE

With regard to the above proposal it is noted from reading the attached documents to the submission that the current definition of 'rural industry' was too broad.

This was in response to ensure water security within the whole of the Ballina Shire Council area in view of the water bottling scenario at Ellis Road Rous NSW 2477, specifically DA 2018/597 to which there were over 1000 submissions were received by Council. At this point in time the developer has withdrawn the development application.

We support the Council's intentions to substitute the definition of rural industry contained in Ballina LEP 1987 with the Standard Instrument definition of rural industry. This based on the understanding that it would protect the potential ground water extraction on the aquifers located throughout the Ballina Shire area.

While agreeing that the above matter requires priority we also draw Council's attention to the matter of the definition of 'agriculture'. We contend that the definition under BLEP 2012 included in the rural industry definition is too broad and needs to be specific under listing of (a) agricultural produce industries. This has been our contention for the last 14 years.

We wrote to BSC in 2005 suggesting that the definition of 'agriculture' needed refining in view of the proliferation of wholesale plant nurseries and the myriad of problems that occur to adjoining landholders.

As proof of this we refer you to Matthew Wood's email of 09.01.2006 & Rod Willis which specifically states the anomalies that existed and for

which an opportunity to change the same has not taken place for 14 years thus far.

The littoral definition of 'agriculture' is 'the cultivation of land' and the definition of 'cultivation' is 'to bestow labour upon the land in raising crops'.

There is a need for these large wholesale plant nurseries and plant nurseries in general to be redefined from 'agriculture'- the land is not used it is plants in plastic pots in potting mixture - and the harvesting of water is paramount to success.

The covering of prime agricultural land with impervious black plastic and gravel completely destroys the land for further agricultural use. The land is deprived of rainfall, humus and it kills all biological activity below the plastic changing the soil temperature by up to 10 degrees.

A Bond must be lodged with the D/A for restoration, as is required by the mining industry.

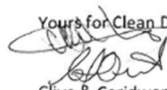
It should be noted that most Council's do not allow these types of activities in Water Catchment Zones and definitely no 'retention'/Waste Water pollution dams. Most do not allow 'retention dams' within 500 metres of any watercourse and then only with the 'proper' nutrient stripping zones built to Department of Agriculture specifications or CSIRO standards to stop nutrients, chemicals etc. polluting rivers, creeks and ground water.

Limitations should be set on the location and number allowed in the BSC area. The associated processes that are required in the industry should also be taken into account i.e. chemicals, traffic which includes ordinary vehicles, small trucks, larger trucks, service vehicles, semi-trailers, b-doubles and the like and the general neighbourhood amenity.

We look forward to supporting Council in another BSCPP on the matter of redefining 'agriculture' in light of the abovementioned facts.

Finally, to re-iterate - Ballina Shire Council has over 900 objectors to the water bottling scenario in Ellis Road Rous and as such it should be confident that it has community support for BSCPP 19/005.

NASA satellites are showing the shrinking size of the world's aquifers. We must take immediate action to protect our future water supplies. Ballina Shire Council claims to acknowledge climate change, let's protect our agricultural assets.


Yours for Clean Drinking Water, the Environment & Our Childrens Future
Clive & Ceridwen Quick

Bryan Douglas

This submission supports Ballina Shire Council's proposal to substitute the definition of rural industry applicable to Ballina LEP 1987 with the definition of rural industry contained within the Standard Instrument – Principal Local Environmental Plan.

The initiative is supported for the reason stated in the Planning Proposal – namely, to remove the potential for water harvesting for non-agricultural or domestic purposes from being characterised as a rural industry by application of the 1980 Model Provisions definition.

In particular the Planning Proposal, if accepted, will prevent water mining of the Alstonville aquifer for bottling and other industrial purposes.

L Andren

Having read the document I support the actions of Ballina Shire Council to change the definition of 'rural industry' in the Ballina LEP 1987 to match that in the Standard Instrument – Principal Local Environment Plan.

I support this action on the following grounds:

- The Alstonville aquifer is a finite natural source upon which the flora and fauna, groundwater-dependant ecosystems and adjacent surface wetlands, waterways, creeks, streams and rivers of the plateau and surrounding areas depend.
- The aquifer also supports existing agricultural industry, stock and domestic consumption within the Shire.
- This aquifer has been classified as both fully allocated and under stress.
- To ensure the continued health of the environment and productivity of the plateau, the water that is extracted from the aquifer should stay and be used where it is extracted.
- There is overwhelming local support against water mining, because bottled water is unnecessary in a country that has extremely high water quality standards and availability, and because the bottled water industry contributes to increased plastic waste that negatively impacts the environment.

Thank you for providing the opportunity to comment on this planning proposal and for responding to genuine community concerns in this matter.

Ballina Environment Society

Ballina Environment Society is supportive of Council's amendment of the LEP to change the definition of rural industry such that groundwater extraction is not permissible other than for agricultural or domestic uses. The Society is grateful that Council is being proactive on this issue.

Peter Saeuger, Jennifer Doucet, Gloria Brooks, Ian Barnett, Margaret Paddon, Chris Paddon, Anna Tonkin, John Tonkin, Paula Franklin, Brian Richards, Rosi Brown, Richard Billson, P Bradford, R G Smith, L Hogan, Donna Byer-Smith, Melissa Towner, Grant Tait, Kathryn Smith, Andrew Roberts, M Grady, S Fawns, Cath Bolton, Vicky Heathwood, Bamy A Pratt, Chris Mackie, Jenny Johnson, Greg Heathwood, M Meginess, P J McCarthy, Peter Ranford, Kerry Crew, Stan Sillitoe, P Lanville, R Radloff, Greg Flynn, J Gleeson, Helen Saenger, Ray Rowe, Bev Wilton, Marcia M, K Caban, Allen Eggins, Joanne Eggins, Kay Huett, David Huett, Michael Robson, Warren Gorton, Gary Swadling, Wayne Clifton, Pamela Robson, Rita Camilleri, Jan Regan, Les Regan, Rebecca Buckley, Les Buckley, Kathryn Rawson, Lyn Rice, Harold Rice, Helen McNiven, Debbie and Warren Diggins, W Camilleri, Christine Johnston, Elizabeth Fawns, J Gardiner, G Gardiner, BA Johnson, Andrew Scarvell, Stuart Bailey, K Gowans, Michael Hogan, Kay B.

There were 13 additional signatories whose names were indecipherable or provided only a signature.

I, the undersigned totally support the actions of Ballina Shire Council to submitting the change within the Ballina LEP 1987

I support this action on the following grounds

1. Alstonville Aquifer Water is a finite resource
2. What water that is extracted from the Aquifer should stay and be used where it is extracted
3. To support existing agricultural industry within the Shire
4. To support stock and domestic consumption within the Shire
5. The Alstonville Aquifer has Scientifically been classified as both fully allocated and under stress
6. Overwhelming local support against Water Mining
7. Protection of the Environment, flora and fauna, Ground Dependant Ecosystems and Adjacent Wetlands, Waterways, Creeks, Streams and Rivers