



# Planning Proposal

**August 2018**

## **Burns Point Ferry Road**

Lot 4 DP 537419

Burns Point Ferry Road & River Street, West Ballina



40 cherry street • po box 450 • ballina nsw 2478  
t 1300 864 444 • f 02 6686 7035 • e [council@ballina.nsw.gov.au](mailto:council@ballina.nsw.gov.au)  
[ballina.nsw.gov.au](http://ballina.nsw.gov.au)

## Mapping

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# INTRODUCTION

## Site Details

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

Lot 4 is bound to the east by Burns Point Ferry Road, to the north by River Street, to the west by Emigrant Creek and to the south by the Richmond River. Lot 4 is contiguous with the existing residential areas of West Ballina. The location and extent of the subject land is shown in Figure 1.

## Background to the Amended Planning Proposal

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

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

The concept rezoning submission requested an LEP amendment which would permit the creation of Torrens Title live / work allotments (112), mixed use tourist and recreational precincts, an extension of local roads and infrastructure and the retention of the residue area as an environmental protection area.

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

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

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

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



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

At its Ordinary Meeting of 24 July 2014 the Council resolved to submit the planning proposal to the NSW Department of Planning and Environment for Gateway determination.

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

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

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

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

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

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

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

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

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

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

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

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

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

The planning proposal, together with a draft VPA, was publically exhibited from 8 June 2016 until 8 July 2016. The Council considered the planning proposal and draft VPA at its Ordinary Meeting on 15 December 2016 together with submissions received. Council resolved at that time to defer consideration of this proposal pending further investigation in relation to ecological and any other environmental impacts. Appendix F contains a copy of the report considered by the Council on 15 December 2016.

GeoLINK were subsequently engaged to prepare a supplementary report relating to the major issues associated with the planning proposal. Appendix S (17/32246) contains a copy of the GeoLINK *Peer Review Supplementary Report*.

The Council considered advice from GeoLINK at a briefing on 29 March 2017 and subsequently gave further consideration to the planning proposal, and draft VPA, at its Ordinary Meeting on 25 May 2017 when it was resolved as follows [Minute No 250507/7]:

- 1. That Council endorses the amendment of the Ballina Local Environmental Plans 1987 and 2012 to rezone Lot 4 537419, Burns Point Ferry Road, West Ballina, by applying a part R2 Low Density Residential Zone and a part RU2 Rural Landscape Zone to the land, together with associated controls and additional permitted uses as detailed in Planning Proposal BSCPP 14/008.*
- 2. That, in amending the Minimum Lot Size Map in relation to that part of the site proposed to be zoned R2 Low Density Residential Zone, Council endorses a minimum lot size of 450m<sup>2</sup>.*
- 3. That Council resolves to prepare a draft amendment to Ballina Shire Development Control Plan 2012 to introduce site specific controls relating to the future development of Lot 4 DP 537419 for live – work and environmental protection and enhancement purposes.*
- 4. That Council consider a further report once the draft DCP has been prepared and prior to its public exhibition.*
- 5. That Council authorises the General Manager to proceed to finalise and implement Planning Proposal BSCPP 14/008 under delegated authority subject to the proposed draft DCP amendments being adopted by Council and the Voluntary Planning Agreement being executed and registered on the title of Lot 4 DP 537419.*
- 6. That Council authorises the use of the Common Seal to execute the Voluntary Planning Agreement associated with Planning Proposal BSCPP 14/008.*

*7. That Council give further consideration to replacing the proposed RU2 Rural Landscape Zone with an environmental protection zone as part of its deferred matters integration program.*

*8. That upon the planning proposal being finalised Council seek an amendment to the North Coast Regional Plan 2036 so as to remove the sites Investigation Area – Urban Land designation, and amend the Ballina Shire Growth Management Strategy to reflect the extent of the planned urban area.*

A copy of the report considered by the Council at its Ordinary Meeting on 25 May 2017 is contained within Annexure F.

The VPA was subsequently executed in June 2017 and is contained within Appendix V. The agreement obligates the developer to enter into a Biobanking Agreement in respect to that part of the site proposed to be zoned RU2 Rural Landscape zone prior to the grant of development consent for uses permitted within the proposed R2 and RU2 zones. The agreement also requires certain geotechnical investigations to be undertaken prior to the lodgement of a development application. At this stage the agreement has not been registered on the title of the subject land.

In August 2017 the Biodiversity Conservation Act 2016 became operative and replaced the Threatened Species Conservation Act, 1995. The proponent has, however, obtained approval from the Office of Environment and Heritage to finalise the Biobanking Agreement under the previous Act using the transitional provisions of the Biodiversity Conservation Act 2016 and Regulation. This then enables the VPA relating to Lot 4 to remain in place unaltered as it contains a requirement for a Biobanking Agreement under the provisions of the Threatened Species Conservation Act, 1995.

Council's resolution on 25 May 2017 required that a draft DCP amendment to Ballina Shire Development Control Plan 2012 be prepared to introduce site specific controls relating to the subject land. It was during the preparation of the draft DCP that a number of issues were required to be resolved which led to this planning proposal being reviewed and ultimately triggered a need for an altered Gateway determination to be obtained and the planning proposal to be re-exhibited.

On 27 February 2018 the Department of Planning and Environment issued an altered Gateway determination extending the period in which the LEP amendment is required to be finalised until 1 October 2018. Annexure G contains a copy of the altered Gateway determination.

Council at its Ordinary Meeting on 24 May 2018 considered the draft DCP provisions and proposed changes to the previously exhibited planning proposal and resolved as follows [Minute No 240518/6]:

- 1. That the planning proposal as it relates to Lot 4 DP 537419, Burns Point Ferry Road, West Ballina, be amended generally as detailed in Table 1 to this report and an altered Gateway determination be sought from the Department of Planning and Environment.*
- 2. That the Department of Planning and Environment be advised that at this stage of the process it is Council's intention to exercise its delegated plan making functions.*
- 3. That upon an altered Gateway determination being received from the Department of Planning and Environment, the amended planning proposal and the draft amendments to Chapters 3 and 4 of the Ballina Shire Development Control Plan 2012 (as contained in Attachments 2 and 3), be publically exhibited in accordance with the terms of the Environmental Planning and Assessment Act and the associated Regulation.*

4. That a further report be submitted to the Council following the public exhibition of the amended planning proposal and the draft amendments to Chapters 3 and 4 of the Ballina Shire Development Control Plan 2012.

A copy of the report to the Council's Ordinary meeting on 24 May 2018 is contained in Annexure F.

In summary the changes to this planning proposal from the planning proposal exhibited in June – July 2016 relate to the following matters:

- The location of the proposed additional permitted use of a restaurant or café, incorporating information and education facilities and a dwelling within the RU2 zone has now been clarified. This will enable the additional permitted use provisions to be applied only to that part of the site identified for this use as opposed to the whole of the proposed RU2 area.
- Increasing the area permitted for the proposed additional permitted use of a restaurant or café, incorporating information and education facilities and a dwelling from 1,300m<sup>2</sup> to 3,300m<sup>2</sup>. The increased area is required so that buffers required for mosquito control and bushfire protection are contained within the proposed additional permitted use area and do not extend into that part of the site designated for biobanking purposes.
- Restricting the area permitted for live – work development to only part of the area proposed to be zoned R2 as opposed to the previous proposal which sought to permit live work development in all areas proposed to be zoned R2.
- Altering the live – work concept from one which would have permitted light industry, or business premises, other than funeral home, or office premises in conjunction with residential premises; to a concept based on permitting home businesses with a floor area of up to 120m<sup>2</sup>.

## Existing Zoning

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

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

## Proposed Rezoning

The planning proposal seeks to amend the BLEP 2012 by applying a R2 Low Density Residential Zone to the northern part of the site (16ha) and an RU2 Rural Landscape zone to the southern part of the site (40ha).

Part of the proposed R2 zoned area will have a live – work focus (residential and home business). The remaining part of the proposed R2 zone is proposed to have a single dwelling focus. The live – work focus is proposed to be achieved by permitting home businesses with a floor area of up to 120m<sup>2</sup> within this area (home businesses are otherwise restricted to a maximum floor area of 50m<sup>2</sup> under the provisions of BLEP 2012).

That part of the site proposed to be zoned RU2 (currently subject to the BLEP 1987), is proposed to be set aside for environmental protection and enhancement purposes via a Biobanking Agreement under the provisions of the *Threatened Species Conservation Act 1995*. Part of this area is also proposed to be subject to additional permitted use provisions to permit a restaurant or café, incorporating information and education facilities and a dwelling (interpretive centre).

A voluntary planning agreement (VPA) has been executed between Council and the proponent to achieve the proposed environmental protection and enhancement objectives. The VPA addresses proposed ecological offset arrangements via a biobanking scheme. The VPA also details certain geotechnical site preparation requirements. The VPA is contained within Appendix V.

The proposed zoning plan is shown at Figure 3.

A draft Structure Plan for the proposed subdivision and development is shown at Figure 4.

Figure 1 – Site Identification Map





Figure 2 – Existing Zoning Map

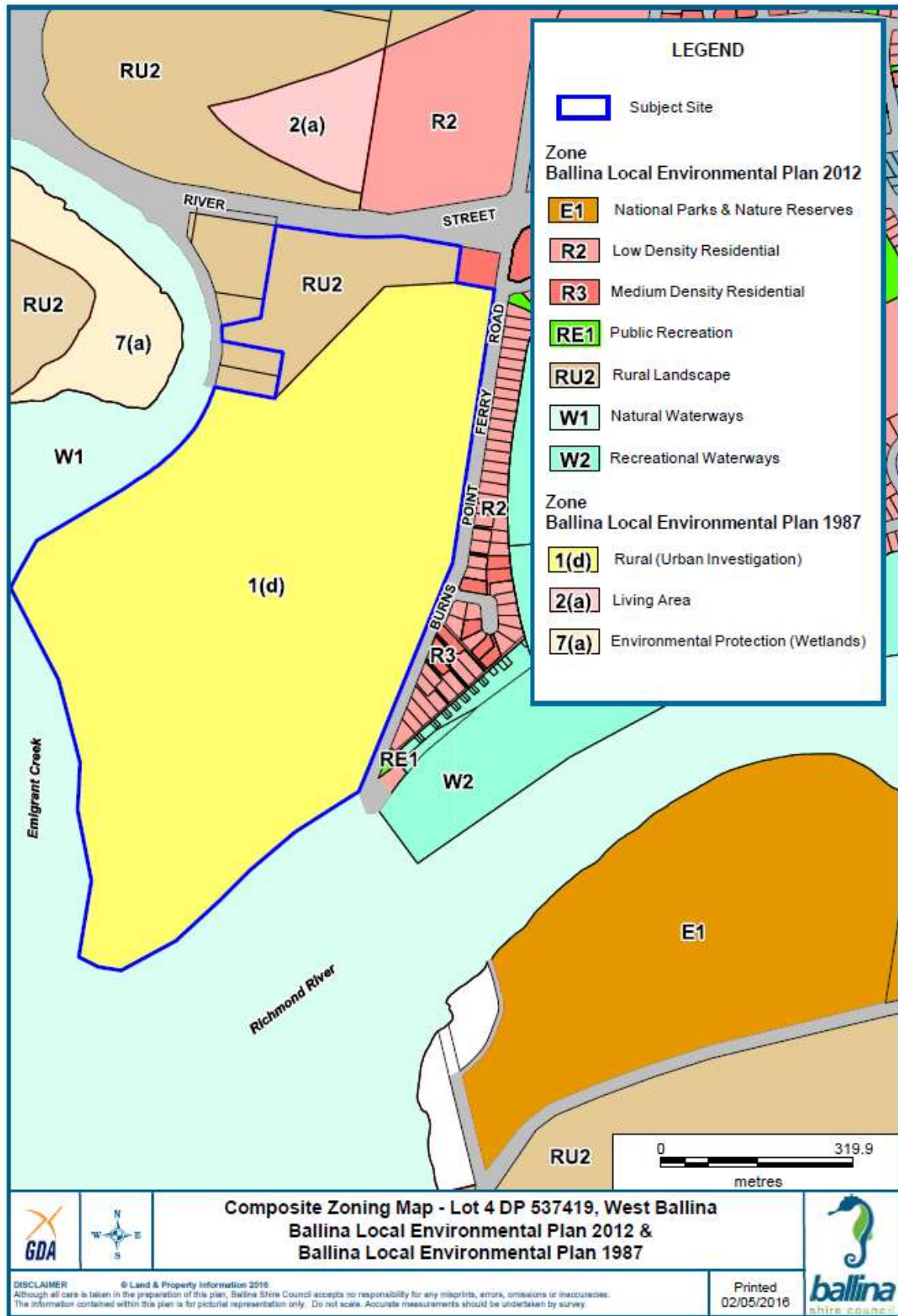


Figure 3 – Proposed Zoning Map

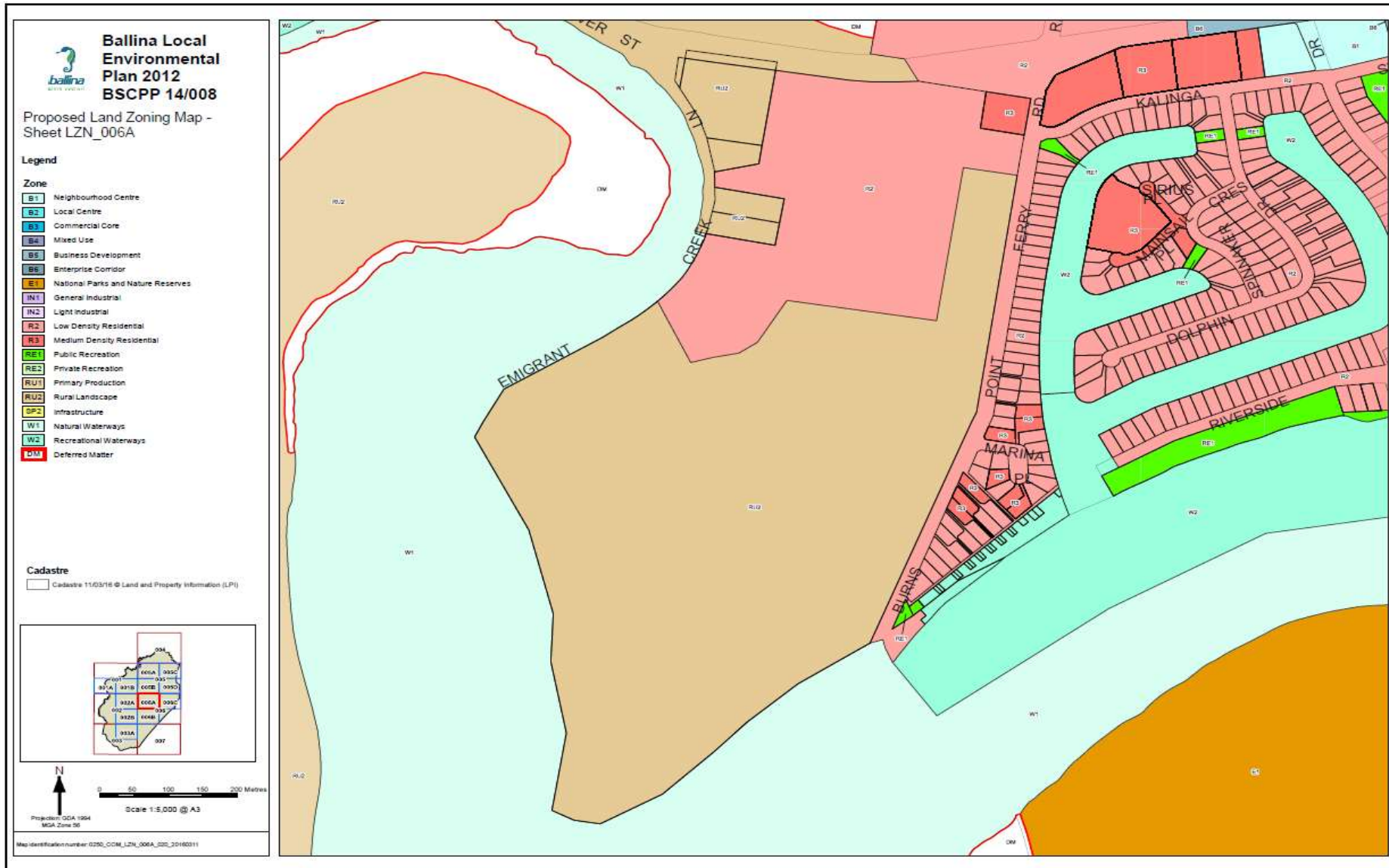


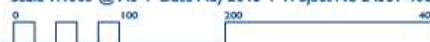


Figure 4 – Structure Plan proposed subdivision and development (May 2018)



**Burns Point, Ballina**  
Residential Intensity Plan

Scale 1:4000 @ A3 | Date May 2018 | Project No 24337-10D



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## Strategic Planning Context

### Far North Coast Regional Strategy

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

### North Coast Regional Plan 2036

The North Coast regional plan designates the entire Burns Point Ferry site as an Investigation Area – Urban Land.

### Ballina Shire Local Growth Management Strategy 2012

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

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

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

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

### Ballina Local Environmental Plan 2012

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

This proposal seeks to rezone this part of the site to facilitate residential and home business related land uses as detailed in the draft Structure Plan (Figure 4).

Development standards proposed to be applied to the R2 zone include a 450m<sup>2</sup> minimum lot size as well as an 8.5 metre building height limit.

### Ballina Local Environmental Plan 1987

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

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

## PART 1 – OBJECTIVES & INTENDED OUTCOMES

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

An R2 Low Density Residential zone is proposed to be applied to the residential zoned precinct, which has an approximate area of 16ha, together with:

- Application of a minimum 450m<sup>2</sup> minimum lot size standard;
- Creating a live – work focused area within part of the R2 zone by permitting home businesses with a maximum floor area of up to 120m<sup>2</sup> within such area;
- Application of a 0.7:1 maximum floor space ratio (FSR) to the proposed live – work focused area of which a maximum 0.2:1 FSR relates to the home business area;
- Utilisation of the additional permitted use provisions contained within BLEP 2012 to permit live – work development within a specific part of the area proposed to be zoned R2;
- Incorporation of part of the R2 zoned area within the BLEP 2012 Land Application Map, Flood Planning Map and Acid Sulfate Soils Map; and
- Removal of the Strategic Urban Growth Area affectation from part of Lot 4 and changes to the associated buffer areas.

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

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

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

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

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

## PART 2 – EXPLANATION OF THE PROPOSAL

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

An R2 Low Density Residential zone is proposed to be applied to an area (approximately 16ha) located in the northern part of the site. Part of the proposed R2 zone will have a live – work focus to be achieved by permitting home businesses having a maximum floor area of 120m<sup>2</sup> within this area. Floor space ratio controls are also proposed to be applied to the live – work focused part of the proposed R2 zoned area.

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

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

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

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

That part of Lot 4 not proposed to be developed for urban purposes is proposed to be zoned RU2 Rural Landscape zone under the provisions of BLEP 2012. This land contains similar vegetation communities as are contained within the area proposed to be rezoned R2. It is this area (approximately 40ha) that is proposed to be restored and rehabilitated as part of a VPA associated with this proposal.

Proposed to be located within part of the RU2 zoned area adjoining Emigrant Creek is a café / interpretive centre and associated dwelling. To enable this to occur an additional permitted use provision is proposed for the purpose of a *restaurant or café* incorporating *information and education facilities* and a *dwelling* (Interpretation Centre), contained within a curtilage having a maximum area of 3,300m<sup>2</sup>. A maximum area has been specified to limit the impact of the proposed facility on an area which has ecological value.

In conjunction with the amendments to the current zoning of the site, it is proposed to apply a minimum lot size of 450m<sup>2</sup> to the R2 area with the remainder of the site being subject to a minimum lot size of 40 hectares. A maximum building height of 8.5 metres is proposed for the entire site.

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

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

Draft Amendment to Schedule 1 of BLEP 2012	Plain English Explanation of Proposed Clause
<p><b>Use of Certain land at West Ballina</b></p> <p>(1) This clause applies to land adjacent to Emigrant Creek, West Ballina, being part Lot 4 DP 537419 and identified as “Area J” on the <i>Additional Permitted Uses Map</i>.</p> <p>(2) Development for the purpose of a restaurant or café incorporating information and education facilities and a dwelling, contained within a curtilage having a maximum area of 3,300m<sup>2</sup>, is permitted with development consent.</p>	<p>The clause is intended to apply to a part of Lot 4 proposed to be zoned RU2 Rural Landscape as show on the <i>Additional Permitted Use Map</i>.</p> <p>Uses additional to those permitted, with development consent, in the RU2 Rural Landscape zone have been specified. These uses are <i>restaurant or café incorporating information and education facilities and a dwelling</i>. Together these uses will function as an interpretive centre relating to the adjoining land the subject of a proposed Biobanking Agreement.</p> <p>It is proposed that the interpretive centre be restricted to a maximum site area of 3,300m<sup>2</sup> which is sufficient to contain the use as well as associated mosquito and bushfire buffer areas. Only one such development is proposed to be permitted.</p>

**Note:**

The proponent has requested that an area of 3,300<sup>2</sup>, within the RU2 zone located in an area adjoining Emigrant Creek and also adjoining the south western extremity of the proposed live – work precinct, be permitted to be used as an interpretive centre. This facility is envisaged to operate in a manner similar to the Sea Acres Rainforest Centre (Port Macquarie) and the Dorrigo Rainforest Centre (Dorrigo). It is proposed that it would provide an adjunct to the biobanking conservation precinct and be used to facilitate the provision of interpretative information relating to this precinct.

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

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



Suggested amendments to Ballina LEP 2012 as they relate to the live – work precinct located in part of the proposed R2 zoned area are as follows:

<b>Draft Amendment to Schedule 1 of BLEP 2012</b>	<b>Plain English Explanation of Proposed Clause</b>
<p><b>Use of certain land at West Ballina</b></p> <p>(1) This clause applies to being part Lot 4 DP 537419 Burns Point Ferry Road, West Ballina and identified as “Area I” on the <i>Additional Permitted Uses Map</i>.</p> <p>(2) Development for the purpose of a home business having a maximum floor area of 120m<sup>2</sup> is permitted with development consent.</p>	<p><b>Use of certain land at West Ballina</b></p> <p>This clause is intended to apply to that part of Lot 4 proposed to be zoned R2 Low Density Residential as identified as “Area I” (live-work precinct) on the Additional Permitted Use Map contained within Appendix U.</p> <p>The Dictionary to BLEP 2012 defines a <i>home business</i> as:</p> <p><b>home business</b> means a business that is carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling and that does not involve:</p> <p>(a) the employment of more than 2 persons other than those residents, or</p> <p>(b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or</p> <p>(c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or</p> <p>(d) the exhibition of any signage (other than a business identification sign), or</p> <p>(e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building, but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.</p> <p>Clause 5.4 of Ballina LEP 2012 limits a home business to a maximum floor area of 50m<sup>2</sup>. In the live – work precinct it is proposed to increase this floor area to a maximum of 120m<sup>2</sup>. The increased floor area is designed to encourage a broader range of home industries to establish within this precinct and to create room for expansion beyond the size of home businesses traditionally found in residential areas.</p>
<p><b>Additional provisions to regulate live – work development for Ballina LEP 2012</b></p> <p><b>Live - Work Development</b></p> <p>(1) The home business permitted under this Plan in “Area I” as identified in Schedule 1, must not exceed:</p> <p>(a) 120 square metres, or</p> <p>(b) 0.2:1 floor space ratio.</p> <p>(2) A dwelling associated with live - work development must have a floor space ratio not exceeding 0.5:1.</p>	<p><b>Plain English Explanation of Proposed Clause</b></p> <p><b>Live - Work Development</b></p> <p>To ensure that the home business remains compatible with residential development a maximum floor area control of 120 square metres or 0.2:1 floor space ratio is proposed. This means that on a lot having an area of 450m<sup>2</sup> the maximum sized home business permitted will be 90m<sup>2</sup>. This floor area may then increase in line with increases in the lot area to a maximum of 120m<sup>2</sup>.</p> <p>A limit on dwelling size has been nominated by applying a maximum 0.5:1 floor space ratio. This is consistent with that specified by Ballina Shire DCP 2012 for dwelling houses within the R2 zone.</p>

### Section A - Need for the Planning Proposal

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

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

The area outside the identified strategic urban growth area in the LGMS is currently zoned 1(d) Rural (Urban Investigation) reflecting its historic recognition as a potential urban growth area.

The entire site is identified in the North Coast Regional Plan 2036 as an Investigation Area – Urban Land.

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

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

### Section B - Relationship to the Strategic Planning Framework

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

The proposal is consistent with the North Coast Regional Plan 2036, which provides the regional framework for the consideration of policy development and the overall vision of the future.

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

As identified above, the proposal will result in an inconsistency with the provisions of the Ballina Shire Local Growth Management Strategy. Given the potential for the overall outcomes for the site to be positive, and the consistency of the proposal with the North Coast Regional Plan 2036 and the present zoning arrangements, it is considered appropriate for the proposal to proceed to public exhibition.

**5. Is the planning proposal consistent with applicable State Environmental Planning Policies?**

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

**6. Is the planning proposal consistent with the applicable Ministerial Directions (S. 9.1 directions)?**

The Gateway determination dated 25 September 2014 found that there were a number of minor inconsistencies with the following S9.1 Directions which did not require further approval:

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

An updated Section 9.1 Direction checklist for the planning proposal is contained in Appendix T.

### **Section C - Environmental, Social and Economic Impact**

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

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

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

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

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

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

The potential impacts associated with filling the site for the purpose of flood mitigation has been assessed as part of Council's floodplain management



planning process, undertaken in accordance with the NSW Floodplain Management Manual. This broader assessment supports the principles of the planning proposal.

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

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

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

**Section D - State and Commonwealth Interests**

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

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

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

Consultation in 2015 was undertaken in accordance with the requirements of the Gateway determination dated September 2014. The Gateway determination required consultation with the following public authorities:

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

Council in 2015 referred the planning proposal to the above agencies and received responses to inform the technical assessment of the planning proposal. Responses received are contained within Appendix Q.

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

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

Authority	Advice Provided	Comments
<p>NSW Office of Environment and Heritage</p> <p>(March 2015)</p>	<p>Mapping of Freshwater Wetland EEC to be resolved within the planning area.</p> <p>The eastern portion of the planning area containing Freshwater Wetland be zoned for environmental conservation and suitably protected in perpetuity.</p> <p>Additional investigation be undertaken to confirm or discount the presence of Freshwater Wetland within the western portion of the planning area.</p> <p>Land comprising high conservation values not to be used for Bushfire Asset Protection Zones or stormwater management. Alternatively impacts are to be offset.</p> <p>Riparian buffer areas of the mixed use community title precinct be zoned RE 1 Public Recreation and a management plan be prepared.</p> <p>A revised BioBanking Statement and BioBanking Agreement should be prepared.</p> <p>Council to ensure that the planning proposal is not inconsistent with the draft Ballina Floodplain Risk Management Plan (BFRMP).</p>	<p>Impact Assessment was subsequently submitted and is contained within Appendix W.</p> <p>The extent of Freshwater wetland EEC has been resolved in the GeoLINK peer review. No further assessment in this respect is considered to be required in conjunction with the rezoning process.</p> <p>The south - eastern portion of the site is proposed to be zoned RU2 at this time pending the incorporation of E zones more broadly within BLEP 2012.</p> <p>Additional investigation was undertaken by GeoLINK who have expressed the view that this area is not considered to support Freshwater Wetland EEC.</p> <p>Additional information has been required in relation to buffer areas. This issue requires further assessment.</p> <p>An RE1 zone is not proposed at this time consistent with Council's standard practice when rezoning land. Once the extent of land designated for public recreation has been determined as part of the subdivision process and dedicated to Council these areas will then be zoned RE1 as part of the general annual housekeeping amendment process.</p> <p>A revised biobanking statement and biobanking agreement will be required to be prepared prior to any development of the site for the additional purposes permitted by the planning proposal.</p> <p>The planning proposal is consistent with the Ballina Floodplain Risk Management Plan. It is noted here that the Geolink peer review required additional assessment relating to potential tidal and flooding impacts on the café and dwelling site. Assessment associated with the preparation of this planning proposal has however found the proposed site may be unsuitable due to flood hazard.</p>
<p>Department of Primary Industries – Fisheries and Aquaculture</p> <p>(February 2015)</p>	<p>SEPP 62 Aquaculture applies to the site. Issues of relevance have been satisfied through Fisheries consultation.</p> <p>Buffers have not been shown to the conservation block.</p> <p>The proposed restaurant site may result in direct impacts on marine vegetation – foreshore mangroves and seagrass.</p> <p>As buffers have not been shown it is not possible to assess any remaining areas available for biodiversity offset credits.</p> <p>Recommend that the conservation lot be zoned E2.</p>	<p>Noted</p> <p>Buffers have now been shown in supplementary information submitted in May 2016 and contained within Appendix W.</p> <p>The originally proposed restaurant site is now considered to be inappropriate therefore overcoming concerns raised in respect to marine vegetation.</p> <p>An E2 zone is not proposed at this time due to the Northern Councils E zone review process.</p>

Authority	Advice Provided	Comments
	Advise that Fisheries manage the offsets for marine vegetation.	Noted
Department of Primary Industries – Agriculture  (February 2015)	No major implications for agriculture were identified. Recommended consultation with Fisheries Unit and NSW Office of Water. Local cane industry consultation also recommended regarding a flood gate adjacent to the site.	Noted. Consultation as recommended will take place as part of the public exhibition process.

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

The Jali Local Aboriginal Land Council were been requested to provide comments on the planning proposal in May 2016 and provided with a copy of the then planning proposal, the Aboriginal Cultural Heritage Assessment and the Archaeological Survey. No response was received.

It is proposed to re-exhibit the planning proposal subject to an altered Gateway determination allowing this amended planning proposal to proceed to exhibition being received. The minimum exhibition period proposed is 28 days and the planning proposal is proposed to be exhibited contemporaneously with draft amendments to Ballina Shire DCP 2012.

It is proposed to consult with the same range of stakeholders as were previously consulted in 2016, and also notify property owners located within a similar radius from the site as was the case in 2016.

## PART 4 – MAPPING

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

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

Copies of the above maps are provided in Appendix U.

## PART 5 – COMMUNITY CONSULTATION

Community consultation will be undertaken for this amended planning proposal in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. It is proposed that a minimum exhibition period of 28 days be allowed.

## PART 6 – TIMELINE

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

<b>Plan Making Step</b>	<b>Estimated Completion (Before)</b>
Altered Gateway Determination	July 2018
Government Agency Consultation and public exhibition	August 2018
Public Hearing	N/A
Submissions Assessment	September 2018
RPA Assessment of Planning Proposal and Exhibition Outcomes	October 2018
Submission of Endorsed LEP to P&I for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	October 2018
Forwarding of LEP Amendment to DPE for Notification (if delegated)	November 2018

## APPENDICES

### Appendix A - Chronology of Council Resolutions and Activity

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

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

Date	Action
<b>April 2010</b>	<p>Council request for clarification regarding proponent's progress in relation to the amendment. Request sought clarification in relation to the following:</p> <ol style="list-style-type: none"> <li>a. <i>whether or not your client intends to proceed with the current rezoning request; and</i></li> <li>b. <i>should your client still be proceeding with the rezoning proposal, the likely timeframe for the submission of the required technical information connected to the rezoning.</i></li> </ol> <p>No specific response was received.</p>
<b>May 2010</b>	<p>Council request to Department of Planning for entry of LEP amendment no.39 into the Gateway planning system. Amendment could not continue under the previous LEP amendment system.</p>
<b>June 2010</b>	<p>Department of Planning advice that conversion of the existing draft to a planning proposal under the Gateway system was not supported. This advice closed the consideration of the LEP amendment request (39) previously presented to Council.</p>
<b>October 2010</b>	<p>Advice from SJ Connelly that Part 3A submission lodged with Department of Planning. Council advised of a mixed urban/ environmental concept for the land (including biobanking).</p>
<b>May/ June 2011</b>	<p>Project identified as not being received into the Part 3A assessment system under reforms to Part 3A.</p>
<b>September 2011</b>	<p>Draft Ballina Local Environmental Plan 2011 placed on public exhibition proposing entire site to be zoned E2 Environmental Conservation.</p>
<b>December 2011</b>	<p>Submission received from SJ Connelly in relation to proposed environmental conservation zoning for the site in Draft Ballina Local Environmental Plan 2011. In response, Council resolved to grant the proponent additional time to prepare a rezoning proposal and to zone part of the site rural in accordance with its December 2008 resolution. This resolution included the applicable land use zoning for the site would be reviewed in 12 months.</p>
<b>May 2012</b>	<p>LEP amendment request received to rezone Lot 1 DP 522558 (former Ferry Boat Motel site) to allow medium density residential development.</p>
<b>July 2012</b>	<p>LEP amendment request received from SJ Connelly to rezone Lot 4 DP 537419 (Ballina Waterways site) comprising a mix of urban and environmental conservation land uses (including biobanking).</p>
<b>September 2012</b>	<p>LEP amendment request for Lot 1 DP 522558 (former Ferry Boat Motel site) reported to Council with recommendation to proceed with preparation of a planning proposal for Lot 1 only. Proposal for Lot 4 to be assessed and reported separately.</p>
<b>October 2012</b>	<p>Council request to SJ Connelly for additional information in relation to rezoning proposal for Lot 4, including request for proponent agreement to engage third party ecological consultant to review ecological characteristics of site.</p> <p>No specific response received.</p>
<b>February 2013</b>	<p>Ballina Local Environmental Plan 2012 is made and zones the 4.76 hectare area (identified in the December 2008 Council resolution) as RU2 Rural Landscape. The remainder of the site (proposed for E2 Environmental Conservation under the Draft LEP) is deferred and remains zoned 1(d) – Rural (Urban Investigation) as per the Ballina Local Environmental Plan 1987.</p>
<b>June 2013</b>	<p>Matter reported to Council for direction as to how to proceed in relation to current proposal having regard to Council's previous (December 2011) resolution and the proponent's failure to respond to Council's October 2012 correspondence. Council resolved to defer consideration of the matter for up to 6 months allowing the proponent to submit additional information.</p>
<b>January 2014</b>	<p>Matter reported to Council for direction as to how to proceed following the lapsing of 6 months from the June 2013 resolution and the absence of additional information from the proponent.</p> <p>Council resolves to continue processing the amendment subject to the following:</p> <ul style="list-style-type: none"> <li>- undertaking of an independent ecological review at cost of applicant (to be completed by May 30), and,</li> <li>- Council seeking advice from the (then) Department of Planning and Infrastructure in relation to the ability to apply environmental protection zones to the site.</li> </ul>

<b>Date</b>	<b>Action</b>
<b>May 2014</b>	Independent ecological consultant (Blackwood Ecological Services) provides report on the assessment of the ecological values of the site.
<b>June 2014</b>	The proponent acknowledges the findings and recommendations of the Blackwood Ecological Services report and makes a written commitment to enter a voluntary planning agreement with Council to achieve satisfactory ecological outcomes for the site should the LEP amendment proposal proceed.
<b>July 2014</b>	Matter reported to Council addressing items in January 2014 resolution. Council resolved to submit the proposal to the Department of Planning and Environment for Gateway determination and to engage a consultant to undertake a third party review of the proposal following government agency consultation.
<b>September 2014</b>	Gateway determination issued by Department of Planning and Environment in favour of the proposal subject to additional assessment undertaken prior to public exhibition.
<b>December 2014</b>	Additional information supporting the proposal submitted by the proponent in response to the requirements of the Gateway determination.
<b>February 2015</b>	Consultation with government agencies and Council technical staff.
<b>August 2015</b>	Additional information submitted by proponent suitable to enable third party review of planning proposal to proceed.
<b>March 2016</b>	Peer Review and Gap Analysis Report prepared by GeoLINK
<b>April 2016</b>	Alteration to Gateway determination issued by the Department of Planning and Environment. The altered Gateway determination related to the part R2 and part RU2 zones, proposed planning controls and the proposed additional permitted uses. The period in which the LEP was required to be completed was also extended until 1 April 2017.
<b>June 2016</b>	Exhibition of Planning Proposal and draft VPA.
<b>December 2016</b>	Council considered the planning proposal and VPA post exhibition at its Ordinary Meeting on 15 December 2016. Council resolved to defer the proposal pending further investigation in relation to ecological and any other environmental impacts.
<b>March 2017</b>	Alteration of Gateway determination to extend the time to finalise the planning proposal to 1 January 2018.
<b>March 2017</b>	Councillors briefed by GeoLINK in relation to ecological and other environmental impacts associated with the planning proposal.
<b>May 2017</b>	Council considers endorses planning proposal to apply an R2 zone and part RU2 zone to the site and additional permitted uses and controls as detailed in the exhibited planning proposal. Council also authorises the execution of the planning agreement and preparation of a draft DCP. Council resolved to require the draft DCP to be reported back to the Council prior to public exhibition [Minute No 250517/7].
<b>June 2017</b>	Council and property owner execute Planning Agreement
<b>June 2017</b>	GeoLINK engaged to prepare draft DCP after proponent agrees to meet costs
<b>October 2017</b>	Revised VPA prepared following coming into effect of Biodiversity Conservation Act in August 2017.
<b>November 2017</b>	Proponents submit additional information including site structure plan to enable draft DCP preparation to progress. Proponents agree that revised VPA is suitable for public notification with the draft DCP.
<b>February 2018</b>	Gateway Determination extended to require the LEP amendment to be completed by 1 October 2018.
<b>March 2018</b>	GeoLINK submit final draft DCP suitable for staff consultation and review by proponents.
<b>May 2018</b>	Council at its Ordinary Meeting on 24 May 2018 considered the amended planning proposal and draft DCP.



**Appendix B – Concept Rezoning Submission July 2012**

**(Available Electronically on Council's Web Site)**

## Appendix C – Report to Council’s Ordinary Meeting of 24 July 2014 & Resolution

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

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

Delivery Program Strategic Planning

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

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#### Background

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

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

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

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

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

#### **Key Issues**

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

#### **Information**

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

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

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

#### Ecological Assessment

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

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

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

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

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

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

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

#### Environmental Protection Zones

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

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

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



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

#### Sustainability Considerations

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

#### Legal / Resource / Financial Implications

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

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

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

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

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

#### Consultation

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

#### Options

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

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

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

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

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

#### RECOMMENDATIONS

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

#### Attachment(s)

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

**240714/9      RESOLVED**

(Cr Sharon Cadwallader/Cr Robyn Hordern)

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

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



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

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

## Appendix E – Offer to Enter into VPA (2014)



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

17 June 2014  
Our reference: 1219-791

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

Attention: Mr Lachlan Sims & Mr Matthew Wood.

Dear Sir,

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

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

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

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

Yours faithfully,  
**PLANNERS NORTH**

**Stephen Connelly** FPIA CPP  
PARTNERSHIP PRINCIPAL  
(m) 0419 237 982  
(e) [steve@plannersnorth.com.au](mailto:steve@plannersnorth.com.au)

sjc809972

**Appendix F – Reports to Council’s Ordinary Meeting 15/12/2016, 25/5/2017  
and 24/5/2018**

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

## Appendix G - Gateway Determination – 25 September 2014



Planning &  
Environment

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

Attention: Lachlan Sims



Our ref: 14/16085  
Your ref: LEP Amendment Request – Burns  
Point Ferry Rd, West Ballina

Dear Mr Hickey

### Planning proposal to amend Ballina Local Environmental Plan 2012

I am writing in response to your Council's letter dated 19 September 2014 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to rezone Lot 4 DP 537419, Burns Point Ferry Rd, West Ballina for residential and employment uses and RU2 Rural Landscape.

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

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


Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 18 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

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

Yours sincerely

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

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

## Gateway Determination

**Planning proposal (Department Ref: PP\_2014\_BALLI\_007\_00):** to rezone Lot 4 DP 537419, Burns Point Ferry Rd, West Ballina for residential and employment uses and RU2 Rural Landscape.

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

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning and Environment 2013)*.
2. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
  - Roads and Maritime Services in relation to road access and maritime issues
  - NSW Office of Environment and Heritage
  - Department of Primary Industries – Fisheries and Aquaculture
  - Department of Primary Industries – Agriculture

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
3. The following further assessments to support the proposal shall be completed and included in the material placed on public exhibition:
  - ecological / flora and fauna
  - acid sulfate soils
  - land contamination
  - geotechnical
  - stormwater impact
  - entomological (mosquitoes)
  - bushfire hazard
  - archaeological / cultural heritage
  - flooding
4. Existing and proposed maps consistent with the Department's technical requirements to support the proposal are to be prepared and placed on public exhibition for the following:
  - Land Zoning
  - Lot Size
  - Height of Buildings



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

Dated 25<sup>th</sup> day of September 2014.

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



**WRITTEN AUTHORISATION TO EXERCISE DELEGATION**

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

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

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

Dated 25 *SEPTEMBER* 2014

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

Ballina PP\_2014\_BALLI\_007\_00 (14/15938)

# Altered Gateway Determination 8 April 2016



Planning &  
Environment

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

Attention: Klaus Kerzinger

Dear Mr Hickey

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




## Planning Proposal PP\_2014\_BALLI\_007\_00 – Alteration of Gateway Determination

I refer to your letter of 23 March 2016 in relation to revisions to and an extension of time to complete Planning Proposal PP\_2014\_BALLI\_007\_00 for rezoning of land at Burns Point Ferry Road, West Ballina.

I have determined as the delegate of the Minister, in accordance with section 56(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 25 September 2014 for PP\_2014\_BALLI\_007\_00. The Alteration of the Gateway Determination and amended written authorisation to Exercise Delegation are enclosed.

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

Yours sincerely

  
8 April 2016

**Craig Diss**  
Acting Director Regions, Northern  
Planning Services

Encl:  
Alteration to Gateway Determination  
Written Authorisation to Exercise Delegation

## Alteration of Gateway Determination

### *Planning proposal (Department Ref: PP\_2014\_BALLI\_007\_00)*

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

1. Change the description of the Planning Proposal

**from**

*"Planning proposal (Department Ref: PP\_2014\_BALLI\_007\_00): to rezone Lot 4 DP 537419, Burns Point Ferry Rd, West Ballina for residential and employment uses and RU2 Rural Landscape.*

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

**to**

*"Planning proposal (Department Ref: PP\_2014\_BALLI\_007\_00): to rezone Lot 4 DP 537419, Burns Point Ferry Road, West Ballina to part R2 Low Density Residential and part RU2 Rural Landscape, apply appropriate planning controls to the land and enable the development of "work" related land uses in the R2 Zone, and a restaurant or café incorporating information and education facilities and a dwelling in the RU2 Zone as additional permitted uses.*

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

2. Delete:

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

and replace with a new Condition 6:

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

3. Insert new condition 7:

"7. Prior to community consultation, the planning proposal is to be amended to remove references to:

- (a) including the controls for live/work developments in clause 5.4 of the LEP; and
- (b) the potential application of an environmental zone to the land.

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

4. Insert new condition 8:

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

Dated 8 day of April 2016



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

Ballina PP\_2014\_BALLI\_007\_00 (14/15938)

## Altered Gateway Determination 8 April 2016



PP\_2014\_BALLI\_007\_00  
IRF18/709

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

Attention: Klaus Kerzinger

Dear Mr Hickey

**Planning Proposal PP\_2014\_BALLI\_007\_00 – Alteration of Gateway Determination**

I refer to your letter in relation to seeking an extension of time to complete Planning Proposal PP\_2014\_BALLI\_007\_00 for rezoning of land at Burns Point Ferry Road, West Ballina.

I have determined as the delegate of the Minister, in accordance with section 56(7) of the *Environmental Planning and Assessment Act 1979*, to alter the Gateway determination dated 25 September 2014 for PP\_2014\_BALLI\_007\_00 (as altered). The Alteration of the Gateway Determination is enclosed.

It is requested that Council provide the Department with 3-monthly updates as to the progress of the Planning Proposal.

If you have any questions in relation to this matter, I have arranged for Ms Heidi Naylor to assist you. Ms Naylor can be contacted on 6641 6604.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Gray'.

27-2-2018

**Jeremy Gray**  
**Director Regions, Northern**  
**Planning Services**

Encl: Alteration of Gateway determination



## Alteration of Gateway Determination

*Planning proposal (Department Ref: PP\_2014\_BALLI\_007\_00)*

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

1. Delete condition 6:

"6. The LEP is to be completed by 1 January 2018"

and replace with a new condition 6:

"6. The LEP is to be completed by 1 October 2018"

Dated 27day of February 2018



**Jeremy Gray**  
Director Regions, Northern  
Planning Services  
Department of Planning and Environment  
  
Delegate of the Minister for Planning

## Altered Gateway Determination – 24 July 2018



PP\_2014\_BALLI\_007\_00 / OBJ14/15938

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

Dear Mr Hickey

### Planning proposal PP\_2014\_BALLI\_007\_00 – Alteration of Gateway determination

I refer to your letter and email relating to the revision of planning proposal PP\_2014\_BALLI\_007\_00 to rezone Lot 4 DP 537419, Burns Point Ferry Road, West Ballina to part R2 Low Density Residential and part RU2 Rural Landscape, apply appropriate planning controls to the land and enable the development of "work" related land uses in the R2 Zone, and a restaurant or café incorporating information and education facilities and a dwelling in the RU2 Zone as additional permitted uses.

I have determined as the delegate of the Minister, in accordance with section 3.34(7) of the *Environmental Planning and Assessment Act 1979*, to alter the Gateway determination dated 25 September 2014 for PP\_2014\_BALLI\_007\_00 (as altered). The timeframe to complete the LEP has been extended to allow for further community and agency/organisation consultation. The Alteration of Gateway Determination is enclosed.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Gray'.

24-7-2018

Jeremy Gray  
Director Regions, Northern  
Planning Services

Encl: Alteration of Gateway determination



## Alteration of Gateway Determination

*Planning proposal (Department Ref: PP\_2014\_BALLI\_007\_00)*

I, Director Regions, Northern, at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 25 September 2014 (as since altered) for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Change the description of the Planning Proposal from:

**“Planning proposal (Department Ref: PP\_2014\_BALLI\_007\_00):** to rezone Lot 4 DP 537419, Burns Point Ferry Road, West Ballina to part R2 Low Density Residential and part RU2 Rural Landscape, apply appropriate planning controls to the land and enable the development of “work” related land uses in the R2 Zone, and a restaurant or café incorporating information and education facilities and a dwelling in the RU2 Zone as additional permitted uses.

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

to:

**“Planning proposal (Department Ref: PP\_2014\_BALLI\_007\_00):** to rezone Lot 4 DP 537419, Burns Point Ferry Road, West Ballina to part R2 Low Density Residential and part RU2 Rural Landscape, apply appropriate planning controls to the land and enable the development of “work” related land uses on part of the R2 Zone, and a restaurant or café incorporating information and education facilities and a dwelling in the RU2 Zone as additional permitted uses.

I, the Director Regions, Northern at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 3.34(2) of the EP&A Act that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to rezone Lot 4 DP 537419, Burns Point Ferry Road, West Ballina to part R2 Low Density Residential and Part RU2 Rural Landscape, apply appropriate planning controls to the land and enable the development of “work” related land uses on part of the R2 Zone, and a restaurant or café incorporating information and education facilities and a dwelling in the RU2 Zone as additional permitted uses should proceed subject to the following conditions:”

PP\_2014\_BALLI\_007\_00 / OBJ14/15938



2. Delete condition 6:

"6. The LEP is to be completed by 1 October 2018."

and replace with a new condition 6:

"6. The LEP is to be completed by 1 January 2019."

3. Insert new condition 9:

"9. Further public exhibition is required under section 3.34(2)(c) and schedule 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 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016)."

4. Insert new condition 10:

"10. Further consultation is required with the following public authorities and/ organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

- NSW Road and Maritime Services
- NSW Office of Environment and Heritage
- Department of Primary Industries – Fisheries and Aquaculture
- Department of Primary Industries – Agriculture

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.

5. Insert new condition 11:

"11. 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."

Dated 24 day of July 2018.



**Jeremy Gray**  
Director Regions, Northern  
Planning Services  
Department of Planning and Environment

**Delegate of the Minister for Planning**

PP\_2014\_BALLI\_007\_00 / OBJ14/15938

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

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

## **Appendix I – Preliminary Acid Sulfate Soil Assessment (2005)**

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



## **Appendix J – Contaminated Site Investigation (2005)**

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

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

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

## **Appendix L – Stormwater and Civil Engineering Assessment (2014)**

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

## **Appendix M – Mosquito Impact Assessment (2005)**

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

## **Appendix N – Bushfire Threat Assessment Report (2014)**

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

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

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



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

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

## Appendix Q – Government Authority & Council Technical Responses Post Gateway



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

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

Dear Sir

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

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

### **Roles & Responsibilities**

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

### **Roads and Maritime Comments.**

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

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

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

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

### **Roads & Maritime Services**

76 Victoria Street, Grafton NSW 2460 | PO Box 576 Grafton NSW 2460  
T 02 6640 1362 | F 02 6640 1304 | E [development.northern@rms.nsw.gov.au](mailto:development.northern@rms.nsw.gov.au)

[www.rms.nsw.gov.au](http://www.rms.nsw.gov.au) | 13 22 13

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

Yours sincerely,



for Monica Sirol  
Network & Safety Manager, Northern Region

23 March 2015

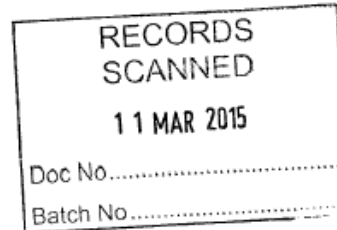
Encl: Table 2.1 – Guide to Traffic Generating Developments



Office of  
Environment  
& Heritage

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

General Manager  
Ballina Shire Council  
PO Box 450  
Ballina NSW 2478



Attention: Mr Lachlan Sims

Dear Mr Hickey

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

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

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

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

On the basis of this review OEH recommends that:

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

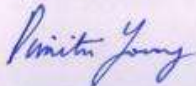
Locked Bag 914, Coffs Harbour NSW 2450  
Federation House, Level 7, 24 Moonee Street  
Coffs Harbour NSW  
Tel: (02) 6651 5946 Fax: (02) 6651 6187  
ABN 30 841 387 271  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

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

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

Should you require further information or clarification, or should Council be in possession of information that suggests that OEH's statutory interests may be affected, please contact Senior Operations Officer, Mr Krister Waern, on (02) 6640 2503.

Yours sincerely

 6 March 2015

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

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

### Biodiversity Comments

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

- The mapping of the Freshwater Wetland Endangered Ecological Community (EEC) appears to remain unresolved. The EEC mapping prepared by Peter Parker, Blackwood Ecological and Landpartners all differ in their interpretation of the EEC.

The Blackwood Ecological and Landpartners EEC mapping is consistent for the eastern part of the proposed rezoning area, however the EEC mapping by Peter Parker identifies this area as Swamp Oak EEC rather than the Freshwater Wetland EEC.

This matter should be resolved prior to finalising the planning proposal so that it can be appropriately addressed by the planning proposal.

- OEH advocates that areas of high ecological value such as EEC's should be retained in situ rather than impacted and offset. On the basis that there is consensus by the consultants in that the eastern portion of the planning area comprises EEC (despite the discrepancies between the type of EEC), OEH recommends that this area be protected for its ecological values and zoned accordingly for environmental conservation purposes.
- OEH notes that Blackwood Ecological identifies Freshwater Wetland EEC only in the eastern portion of the planning area. In comparison, Landpartners identifies Freshwater Wetland EEC in the eastern portion and the western portion of the planning area, whilst Blackwood Ecological identifies the western portion of the planning area as a low closed grassland/reedland community.

Although the low closed grassland/reedland community is dominated by exotic grasses, the Blackwood report also identifies a number of native grasses and reeds within this area, which are also found in the Freshwater Wetland EEC community. Further, the vegetation may be low in stature due to regular slashing of the site. In light of this, some of the land within the western portion of the planning area may also comprise Freshwater Wetland EEC.

In this regard, Council should further explore the presence of Freshwater Wetland EEC within the western portion of the planning area. If further surveys are deemed appropriate to achieve this, then the floristic composition may be more discernible if the survey is undertaken after the area has been left to regrow for a period of time.

- OEH notes that the Blackwood Ecological report does not comprise surveys of the south-western portion of the planning area, which is proposed to contain the majority of the mixed use community title precinct. There is potential that this area supports habitat for the Eastern Grass Owl and Freshwater Wetland EEC. In this regard, further investigation should be undertaken to ascertain if the south-western portion of the planning area comprises high ecological values and if so, then this land should be zoned for environmental conservation purposes and suitably protected in perpetuity.
- OEH notes that the riparian buffer area of the mixed use community title precinct is proposed for open space (drainage/pedestrian linkage). Given that there are high ecological values and water quality issues associated with this area, OEH recommends this area be zoned RE1 Public Recreation and that a management plan is prepared to ensure that the conservation values of the land are managed appropriately in perpetuity.
- OEH notes that Asset Protection Zones (APZ's) extend into the area to be set aside for environmental conservation (Figure 1 of the Bushfire Report). Land comprising high conservation values should not be utilised for bushfire APZ's or stormwater management. Further, suitable buffers should be provided between future development areas and sensitive land to minimise impacts at the development assessment stage. Alternatively, such impacts should be adequately quantified and offset at the planning proposal stage.



- If Council is seeking to use the BioBanking Assessment Methodology to determine whether the proposed rezoning (and associated future development) would be adequately offset by the rehabilitation and protection of high conservation value land within the planning area, the following matters need to be addressed:
  - An updated BioBanking statement is required for the area proposed to be zoned for future development, which takes into consideration, direct and indirect (i.e. APZ's) impacts to Freshwater Wetland EEC. This is required to ascertain the amount of biodiversity credits to be retired. Note: the current BioBanking statement only includes impacts to 0.6ha of Swamp Oak Forest EEC.
  - The draft BioBanking agreement contained within the preliminary BioBanking assessment report prepared by Peter Parker (19 December 2014) is required to be updated to reflect the presence of Freshwater Wetland EEC within the proposed offset area. This will enable the calculation of biodiversity credits that would be generated by rehabilitating and conserving this area.

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

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

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

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

#### **Flooding comments**

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

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

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

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

#### Consistency

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

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

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

**OEH Recommendations:**

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

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



## Department of Primary Industries

Our Ref: C15/28

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

27 February 2015

Attention: Mr Lachlan Sims

Dear Mr Sims

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

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

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

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

*SEPP 62 Aquaculture*

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

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

1 of 3





## Department of Primary Industries

### *Buffers to aquatic habitats*

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

### *Proposed restaurant site*

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

### *Development offsets*

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

### *Proposed zoning of conservation block*

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

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



## Department of Primary Industries

Lastly it should be noted that offsets for marine vegetation (seagrass mangroves and saltmarsh) are managed by Fisheries NSW under s205 and 220 of the *Fisheries Management Act 1994* and consistent with the Department's policy and guidelines. The Fisheries NSW policy and guidelines requires a minimum 2:1 offset for Type 1 – 3 key fish habitats to help redress both direct and indirect impacts of development. For further details I encourage Council and the proponent to visit:

[www.dpi.nsw.gov.au/fisheries/habitat/protecting-habitats/toolkit](http://www.dpi.nsw.gov.au/fisheries/habitat/protecting-habitats/toolkit)

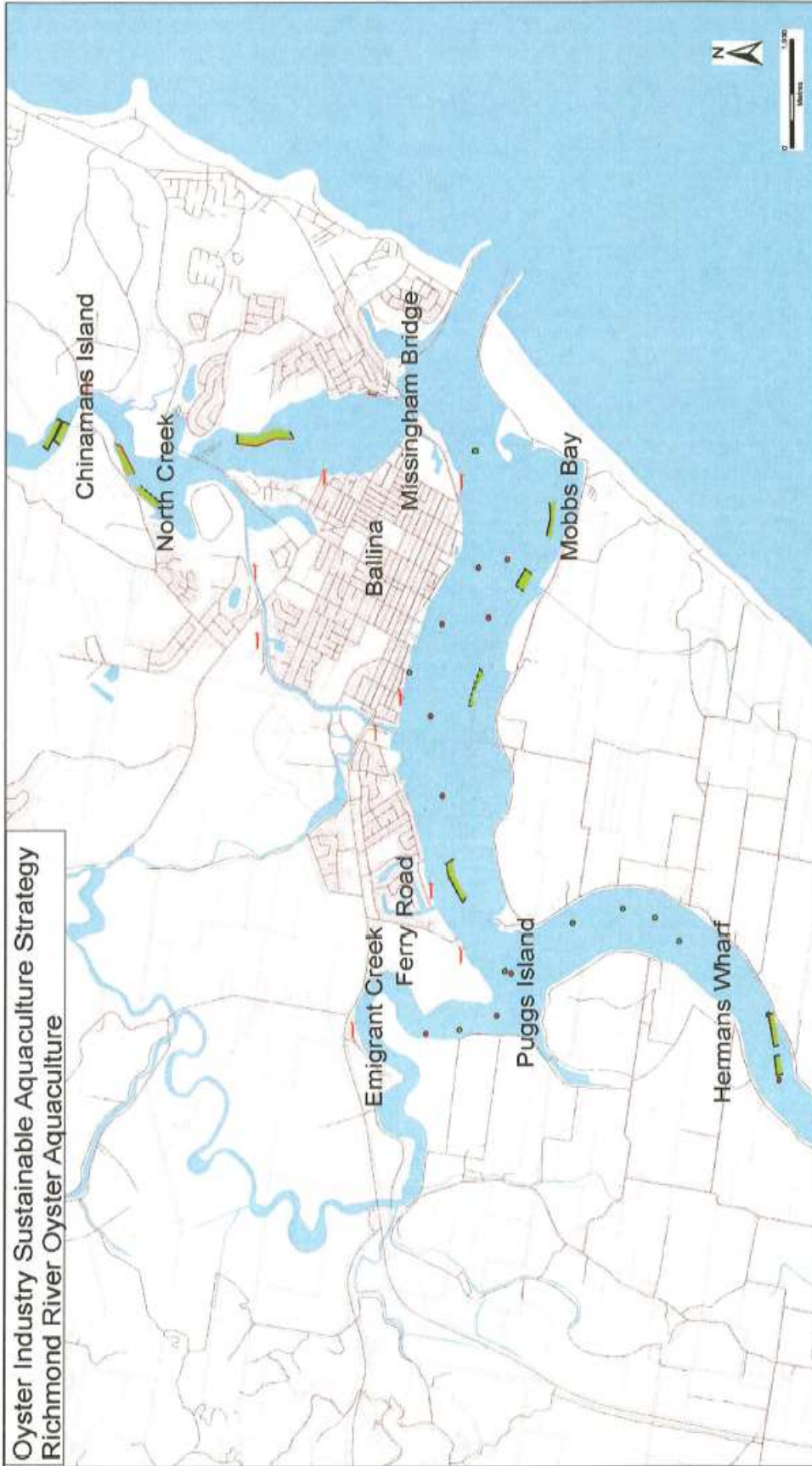
As Fisheries NSW manages offsets for marine vegetation close liaison will be required to ensure the offset component of the proposal satisfies the Department's requirements.

If you have any further enquiries please contact me on (02) 6626 1397.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Patrick Dwyer', with a long horizontal flourish extending to the right.

Patrick Dwyer  
**Regional Assessment Officer (North)**



NEW SOUTH WALES  
DEPARTMENT OF  
PRIMARY INDUSTRIES  
AUGUST 2018



OUT15/4234

23 February 2015

General Manager  
Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478

Attention: Lachlan Sims

Dear Sir/Madam

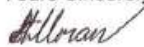
**Re: Planning Proposal – BSCPP 14/008, Burns Point Ferry Road, West Ballina**

Thank you for the opportunity to provide comments on the proposal to amend the Ballina LEP with respect to the rezoning of Lot 4 DP537419 as per your letter dated 23 January 2015. Agriculture NSW, a division of NSW Department of Primary Industries (DPI), provides the following comments.

No major implications for agriculture are identified within the proposal documents. Consultation with NSW Office of Water, the Fisheries unit within DPI and the local cane industry is recommended to discuss any implications associated with the flood gate adjacent to the subject site.

Should you wish to discuss further, please contact me on (02) 66261215 or Melissa Kahler on 66503125.

Yours Sincerely



Selina Stillman  
Resource Management Officer – North Coast

**BALLINA SHIRE COUNCIL – MEMORANDUM**

**MEMO TO:** Lachlan Sims  
**COPY:** David Kelly  
**MEMO FROM:** Patrick Knight  
**DATE:** 2 February, 2015  
**SUBJECT:** Response to Lachlan Sims Memo 27 January 2015  
Re: BSCPP 14/008 - Planning Proposal, Burns Point Ferry Road, West Ballina

---

**1. Access and Traffic**

The Post Gateway report does not address any traffic and access issues. Nor were traffic/access issues considered significant in the Gateway Approval of the site. However there are a number of access and traffic impact issues that require consideration.

**1.1 Access to Burns Point Ferry Road**

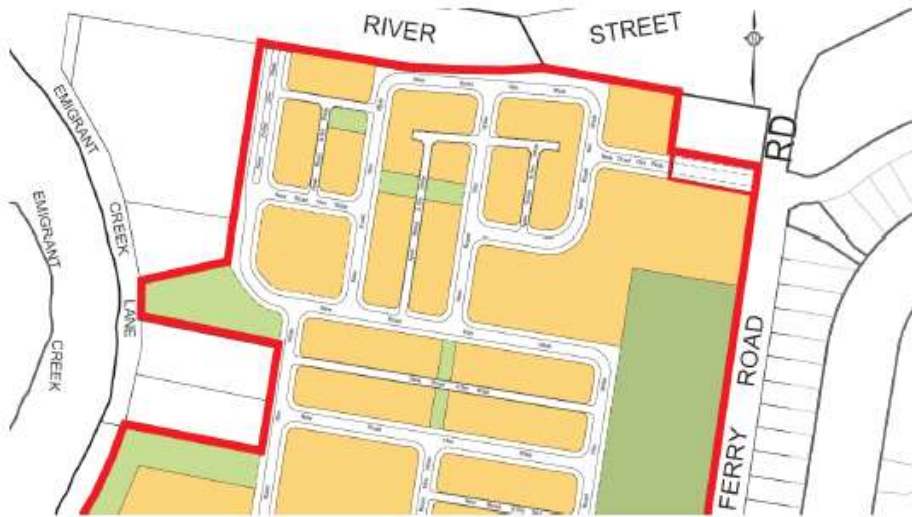
Whilst there is no consideration of access and traffic issues in the Post Gateway Report, there are references to traffic/access issues in Section 5.2 of the earlier "Preliminary Concept for LEP Amendment" report, submitted 18 July 2012:

*5.2 TRAFFIC.*

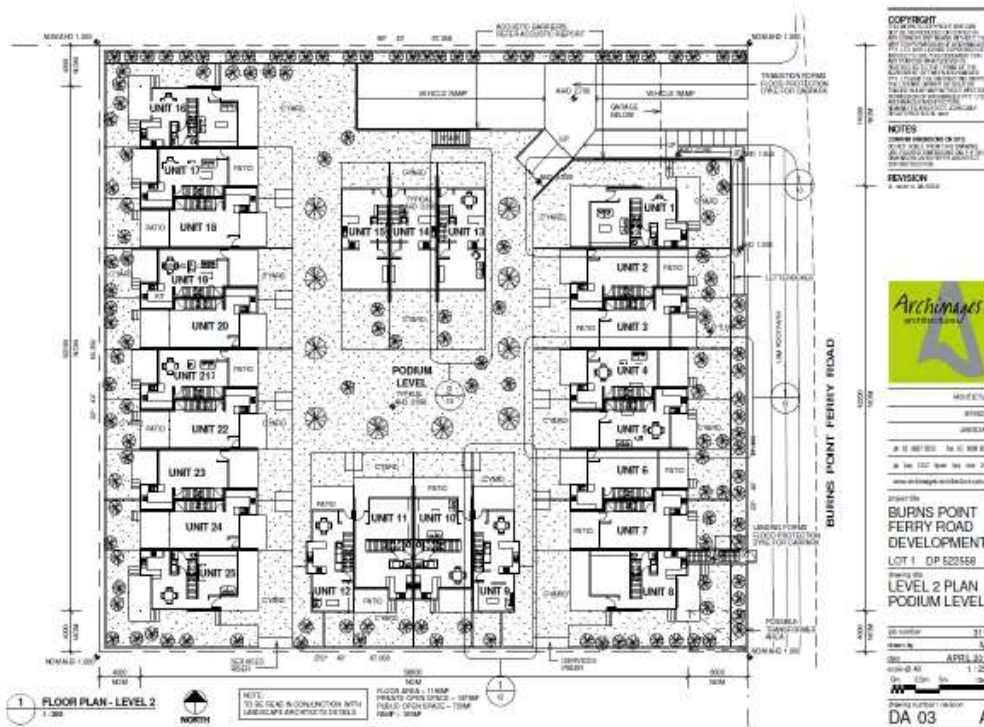
A traffic impact assessment was prepared for the land in November 2005. While this assessment is five years old and it examined the impact of a different proposal; there are a number of key benefits for the local traffic network that will be generated from by the project proposal:

- The owners of the land have made a commitment to access being provided to and across the site in accordance with the NSW Roads & Traffic Authority recommendations i.e. extension of Kalinga Street across the site to give alternative access to Emigrant Creek Lane.
- The changes to the regional road network including the completion of the Ballina by-pass and link road will alter the "amenity" of the land.
- The road network predicted in 2005, which has now been partially completed in 2010, will adequately cater for the proposed development.

In regard to the first dot point, this required the agreement of the owner of Lot 1 DP 522558 to dedicate a strip of land (sufficiently wide to accommodate a road) along the entire southern boundary of the lot. This now seems unlikely given that DA 2014/377 (see next page) was approved last year to construct 25 dwelling units on the land, and this development fully occupies the land required for the proposed road access. It is concluded that the access to Burns Point Ferry Road, proposed by the proponent of the rezoning in the Post Gateway Report is not deliverable.



Post Gateway Report - Plan 3.1 Concept Layout Plan



DA 2014/377 - Approved Ground Floor Plan

As the connection to Burns Point Ferry Road at the Kalinga Street intersection now seems compromised, an alternative connection further south should be provided. This would need to be sufficiently distant from Kalinga Street to create a staggered T junction, outside the functional area of the existing Kalinga Street junction. This would alter the internal layout of the subject land and could impact on part of the land now designated for conservation/open space.

**1.2 Access onto River Street**

2



River Street (Old Highway) is the major arterial road connecting the Pacific Highway interchange to Ballina and currently has traffic counts in excess of 20,000 vpd. Given the strategic arterial access function of River Street, individual development proposals and rezoning proposal must be configured to ensure the capacity and level of service of River Street are not compromised.

In this regard, Council commissioned consultants Cardno to prepare a "West Ballina Old Pacific Highway (River Street) Corridor Access Management Plan". This plan shows a roundabout intersection, generally in line with the western boundary of the subject land, which is intended for the proposed Western Bypass between River Street and Tamarind Drive. Also shown is the potential for a left in/left out access further east towards the centre of the subject land frontage to River Street. The layout with the land rezoning proposal is generally consistent with the Corridor Access Management Plan.



### 1.3 Traffic Generation

The applicant's proposed land use is shown in Table 3.1 of the Post Gateway Report, below:

**TABLE 3.1 CONCEPT LAND USE BUDGET**

	ha	%
Site area	57	100
Live-Work village	17	30
Conservation/habitat precinct	40	70

The report does not go on to estimate traffic generation from these prospective land uses, nor does it estimate traffic allocation to the surrounding network, or assess traffic impacts or capacity of the network to absorb the additional traffic.

## BALLINA SHIRE COUNCIL – MEMORANDUM

**MEMO TO:** Lachlan Sims – Strategic Planner  
**MEMO FROM:** Kristy Bell – Environmental Health Officer  
**Doc No.** 15/8645  
**COPY TO:** Andrew Smith – Development Services Manager, Peter Drew – Town Planner & Naomi McCarthy – Town Planner  
**DATE:** 24 February 2015  
**SUBJECT:** Review of Ballina Shire Council Planning Proposal – Burns Point Ferry Road, West Ballina

---

I have reviewed the delivered information and provide the following comments relating to relevant public and environmental health matters.

### **Potential Impacts on Amenity**

It is my understanding the proposed Zone IN2 – Light Industrial would include:

*a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise,*

Such proposed uses include depots, warehousing or distribution centres and vehicle repair stations. The submitted planning proposal failed to outline what measures will be implemented to reduce the impacts on amenity to nearby residents. Such proposed permitted uses may need to be refined taking into consideration their compatibility with residential land uses and the potential impacts on amenity.

Concept Layout Plan – Plan 3.1 from the Burns Point – Post Gateway Report prepared by Planners North, dated December 2014, does show the roads running beside the existing residential uses along Emigrant Creek Lane which will provide some distance attenuation from noise generating activities but otherwise no control measures have been proposed.

In addition the submitted proposal fails to include an assessment of road traffic noise on residents.

A noise impact assessment would therefore be required carried out in accordance with the requirements of the NSW EPA NSW Industrial Noise Policy and the NSW Environment Climate Change and Water NSW Road Noise Policy 2011.

### **Mosquito Management**

Assessments and conclusions outlined in the Mosquito Impact Assessment prepared by Darryl McGinn dated 30 September 2005 relate to a different site layout and size to that which is currently proposed.

The assessment discusses the developments ability to remove a large portion of the known breeding site and the inclusion of 20 - 30 m buffers by way of road corridors between housing allotments. This varies to that which is currently proposed.

Due to the differences between the former and current proposal, it is my view an additional mosquito assessment is required to take into consideration aspects of the most recent proposal, including the area of land on the southern portion of the site proposed to be used for commercial and residential purposes.

In addition this assessment must reflect the mosquito management requirements outlined in Chapter 2 of Ballina Shire Development Control Plan 2012.

**Acid Sulphate Soil**

The Acid Sulphate Soil Planning Maps show the site as Class 2 which indicates there is a high likelihood of acid sulphate soils occurring. Although the results of soil sampling did not indicate the presence of acid sulphate soils an Acid Sulphate Soil Management Plan has been prepared as a precautionary measure.

The submitted information is sufficient for the current planning proposal.

**Land Contamination**

Preliminary investigations outlined in the Contaminated Site Investigation prepared by EA Systems, dated 5 September 2015 indicates the site has been used for potentially contaminating activities. Sampling has indicated lead levels exceeded the health investigations levels in the north western portion of the site. This was likely due to the area being used for garbage disposal.

Additional investigations are required to further determine the extent of land contamination. Ground water contamination investigations need to be carried out due to the high ground water levels. These investigations also need to take into account the area of land on the southern portion of the site proposed to be used for commercial and residential purposes.

These investigations need to comply with the requirements of current EPA guidelines, SEPP No. 55 Remediation of Land and Council's Management of Contaminated Land Policy, to ensure the site is suitable for the proposed use and will pose no unacceptable risk to human health or the environment.

I agree with the conclusions outlined in the Civil Engineering Assessment prepared by Hammond & Associates Civil & Structural Engineers dated December 2014 that the abovementioned information can be provided at the development application stage.

**Groundwater Extraction**

Due to the high ground water level an application for a Groundwater Licence from the Department of Primary Industries – Office of Water may be required. This is something that may be required at development application stage.

**Controlled Activity Approval**

A controlled activity approval may be required from the Department of Primary Industries – Office of Water should works be carried out with 40 meters of a water course (Emigrant Creek). Again this can be conditioned at development application stage. However depending on the works and who carries out the work an exemption may apply.

**Land Use Conflict - Comment**

Although this is an area covered by Council's Environmental Officer I noted the Table 7 in the NSW DPI *Living and Working in Rural Areas – A handbook for managing land use conflict issues on the NSW North Coast* recommends a minimum buffer distance of 100m between residential areas and urban development and wetlands.

Kristy Bell  
**Environmental Health Officer**



## **BALLINA SHIRE COUNCIL – MEMORANDUM**

**MEMO TO:** Lachlan Sims, Strategic Planner  
**COPY:**  
**MEMO FROM:** Andrew Smith, Manager Development Services  
**DATE:** 6 March 2015  
**SUBJECT:** BSCPP 14/008 – Planning Proposal, Burns Point Ferry Road, West Ballina

---

Lachlan,

I refer to your memorandum of 27 January 2015 in relation to the above planning proposal (Trim record no. 15/3869). The Development Services Section raises the following issues as crucial in the determination of Planning Proposal 14/008:

### **1. Concept**

The 'Live-Work' concept, as detailed in both the documentation prepared by Planners North and also in the consultation material prepared by Ballina Shire Council, does not sufficiently describe the concept for future development assessment purposes nor address the appropriateness of the subject land for that particular future use. The limited details and the proposed zoning for the land do not, in or of themselves, sufficiently clarify exactly what future development is being encouraged to occur within the subject proposed area. For instance, if the development focus is to be industrial, with a caretaker's residence attached or included, then there are obvious amenity issues for surrounding existing and future (approved) permanent residential accommodation (both along Burns Point Ferry Road and River Street West), including the caravan park to the west. An assessment has not been provided in relation to the suitability of the land for this zoning (and future use) and the potential land use conflicts which could be created between residential, business, and industrial uses. The suite of permitted uses in the IN2 zone has the potential to create a range of issues (which includes the implications of "change of use" via the Codes SEPP) and do not provide a sufficient statutory framework to guide developers to the desired land-use outcomes. Refer to below comments regarding IN2 zoning. It is also unclear whether a retail component is envisaged as part of the 'Live-Work' concept. It is essential that the intent of the proposal be established and clearly defined so that suitable development controls can be developed to ensure this intent is achieved.

If the development focus is to be residential, with small light industrial/factory/technology as an ancillary/adjunct, then the proposed IN2 zoning including the range of permitted uses does not seem to be sufficiently specialised and does not appear to interpret this concept for development control purposes correctly

There may be opportunities to broaden the range of permitted uses in this case to also encompass home office type developments, which would be complementary. From the information provided in Section 3.1 of the Planners North document, this appears to be the concept to be catered for by the new zoning. It is acknowledged that the standard instrument template can be restrictive when it comes to inserting a new zone within a LEP, therefore in this regard it may be more prudent to treat the area as a residential zone with an additional permitted use (in a similar manner to the proposal for the restaurant site). This will also provide more of a continuation of the pattern of residential (existing and approved) development along River Street which will minimise the potential land use conflict within the development and also with adjacent land uses. Alternatively, consideration should be given to the requirement that each development is to incorporate a residential component on each site which may better achieve the aim of the intended 'Live-Work' concept, and may reduce the likelihood of the area being utilised for industrial purposes only.

The need for an additional general-type industrial area within the Ballina Shire LGA does not appear to have been comprehensively appraised, particularly given the potential capacity and suitability of existing zoned and developed industrial land to be utilised for the proposed use, as well as zoned industrial land not yet developed (or subdivided).

The document prepared by Planners North offers a limited analysis of the need and/or market demand for this form of land use concept and of the suitability of this location for such a use. Should the demand for this type of development not be realised, then the development outcome may be very different to that envisaged, particularly given the broad range of permissible uses in the IN2 zone.

The Growth Management Strategy depicts a smaller area of the subject site to be potentially rezoned/suitable for future development. The planning proposal provides for an expanded area, but the submitted documentation does not adequately describe or justify why an expanded area is required or the extent of likely impacts on the site and surrounding locality (and environment) and whether this type of development is appropriate for the gateway to West Ballina.

Further information should be sought to justify the need for a restaurant site at the nominated location. It is questioned whether this will set a precedent for other restaurants to be set up (or requests for future amendments to the BLEP) in rural locations.

## **2. Site Constraints and Future Development**

The technical reports pre-date the proposal and therefore do not give specific consideration to the current plan. These reports have not been 'pulled together' or sufficiently analysed by the Planners North document. In this regard, there are conflicts between the varying reports and there will be conflicts between Council's requirements (such as those relating to mosquito buffers, Asset Protection Zones, retention of vegetation, and the filling of land).

The documentation does not discuss the issues relating to the interface between the surrounding developments (which include a caravan park, dwelling houses and approved residential units) and the proposal, such as land use conflicts, required buffers, and differences in fill levels. All buffers required for the development should be provided within the confines of the new zoning, rather than placed on the adjoining land which is to be utilised for biobanking. In addition, there appears to have been little consideration given to the location of stormwater infrastructure within the proposed development area. These issues are likely to reduce the overall developable area. It should be clearly resolved at the planning proposal stage where the buffers will be provided and not deferred to the development assessment stage where environmental protection areas will inevitably be sought to be allocated for buffer use.

It appears that the fill levels required for the land are in the order of 1.7m on top of existing ground level, which is a large contrast to the existing surrounding development. Impacts of the additional fill should be considered (including impact on aesthetic and stormwater management) and also whether the land is capable of holding the fill (including settling issues).

## **3. Existence of Freshwater Wetland Endangered Ecological Community on Lot 4**

The ecological report prepared by Peter Parker (2012) did not identify the occurrence of the Freshwater Wetland EEC. To address this issue an independent ecological consultant's report undertaken in 2014 (Blackwood Ecological) confirmed that Freshwater Wetland EEC is present on Lot 4. Consequently, the planning proposal will be required to address this issue.

One point of contention remains unresolved in regard to the extent of the Freshwater Wetland EEC growing on Lot 4. It is considered that the correct location of the Freshwater Wetland EEC is depicted in the Landpartner's Endangered Ecological Communities map dated April 2008 (see attached map). Based on this figure approximately 13.55 ha of Freshwater Wetland EEC



occurs on Lot 4. However, the independent ecological report (Blackwood 2014) considers that the Freshwater Wetland EEC only occurs on the eastern portion of Lot 4.

The reason for this discrepancy is due to the independent ecological assessment being undertaken after clearing works (Plates 4 and 5 of Independent Report) were conducted by the landowner late in 2011. These clearing activities involved approximately 2.3 ha of Freshwater Wetland EEC. The ongoing slashing works and cattle grazing, combined with below average rainfall experienced from August 2013 until the end of April 2014 (timing of independent report), affected the structure of this section of the Freshwater Wetland EEC. An investigation of the Bureau of Meteorology (BOM) website confirms that during this period Ballina only received 47% of its long-term rainfall.

The Final Determination for Freshwater wetlands allows for such variations in wetland structure given it states;

*"The species composition of a site will be influenced by the size of the site, recent rainfall or drought conditions and by its disturbance history (including grazing, flooding, land clearing and pollution in the catchment). The number and relative abundance of species will change with time since flooding or significant rainfall, and may also change in response to changes in grazing regimes and land use in the catchment."*

As can be seen from the attached photographs the subject *Phragmites australis* wetland EEC has regenerated. It is considered that the most accurate depiction of the Freshwater Wetland EEC is provided in the Landpartner's Endangered Ecological Communities dated April 2008. As such, impact assessment for the proposed development should to be based on the mapped extent of the wetland in this report.



**Plate 1:** *Phragmites australis* wetland EEC growing within the northern portion of Lot 4.



**Plate 2:** *Phragmites australis* wetland EEC growing within the northern portion of Lot 4.

#### **4. Bio banking Statement**

On 28 January 2014 the NSW Office of Environment and Heritage (OEH) approved a Biobanking statement for the removal of 0.6 ha of Swamp Oak EEC on Lot 4. However, the Biobanking statement does not include all of the areas and/or all of the EECs which are subject to this rezoning application. The applicant will be required to obtain an amended Biobanking statement to address this issue. The revised Biobanking statement should also include vegetation removal required for the establishment of the restaurant, APZs and mosquito buffers, fill batters, stormwater discharge paths as well as identify areas of EEC that will be indirectly impacted by the alteration of existing wetland hydrology arising from the proposed filling etc.

The revised Biobanking statement will need to obtain Biobanking Ecosystem Credits for the areas of Freshwater Wetland EEC to be removed for the proposed development. OEH staff confirmed that an offsetting agreement via Biobanking typically attracts a 6:1 offset ratio. It is considered unlikely that the applicant will be able to offset the loss of the Freshwater Wetland EEC on the residual portions of Lot 4. The impacts to Freshwater EEC cannot fully be assessed at this stage given that it is considered neither of the ecological reports submitted to date detail the correct extent of Freshwater Wetland EEC on Lot 4. It does however appear likely that the landowner will be required to find additional Freshwater Wetland EEC Biobank sites to offset the impacts of the development as described to date.

An examination of the OEH Biobanking webpage has confirmed that no Biobanking Ecosystem Credits for Freshwater Wetland EECs are available within Ballina Shire and/or the northern rivers. The nearest Biobank site is located within the Hawkesbury/Nepean area. Consequently, the development is likely to represent a loss of biodiversity within Ballina Shire which cannot be adequately compensated for on a local scale. In the circumstances, Council should require additional ecological information to address these issues prior to further advancement of the planning proposal.

A development which is more consistent with the boundaries identified in the Growth Management Strategy would allow the majority of the Biobanking offsets to be located on Lot 4.



In an ecological context, and based on further detailed assessment, this option has some merit and should be considered by the proponent.

**5. Grass Owls**

Grass Owls are known to occur on Lot 4. However, the submitted rezoning application fails to address this issue. It is expected the development will also require Biobanking Species Credits for the loss of known Grass Owl habitat.

**6. Hydrology**

It remains unknown what impact the extent of proposed filling of the land and the introduction of stormwater will have on the hydrology of the identified environmental protection areas. These matters need to be addressed at the planning proposal stage.

**7. Long Term Environmental Management**

The proposal envisages that a very large area of the site will be retained as environmental protection areas, rehabilitated and managed. There has not been any detail provided on who will own these areas, how those areas outside of any activated Biobanking agreement will be financed and who will be responsible for undertaking the work. This is required to be resolved at the planning proposal stage to ensure adequate environmental resources are provided for the site in perpetuity, and should not be deferred to the development assessment stage.

**8. Stormwater discharge**

The manner in which stormwater will be discharged from the site has not been addressed by the rezoning proposal. It is noted that the previous rezoning application proposed to direct stormwater from the site through EEC dominated communities. Due to the elevation of Lot 4 stormwater discharge from the site is expected to be limited by tidal regimes and storm surges. These restrictions to flow were recently experienced on 4 February 2015 on a 1.7m high tide (see photos below). The ecological impact of stormwater discharge on downstream ecological communities requires detailed assessment. In addition, it is also expected the filling of the proposed restaurant site will also impact on the existing hydrological function of the wetland system.



**Plate 3:** Tidal inundation adjacent to the proposed restaurant.



**Plate 4:** Tidal inundation southern end of Burns Point Ferry Road





**Plate 5:** Tidal inundation immediately adjacent to the restaurant site.

After reviewing the relevant documentation relating the current planning proposal and history of the site it is our opinion that the above issues must be considered and adequately addressed at the planning proposal stage.

Please contact me if you require clarification on any of the matters raised.

Andrew Smith  
**Manager Development Services**

## **Appendix R – Planners North Post Gateway LEP Amendment Report**

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

## **Appendix S – Peer Review and Gap Analysis Report**

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

## Appendix T – Section 9.1 Checklist

Section 9.1 Direction Checklist (Updated Directions 2 April 2018) Planning Proposal Lot 4 DP 537419 Burns Point Ferry Road, West Ballina	
Direction No.	Compliance of Planning Proposal
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	Inconsistent - Inconsistency agreed to be minor in the Department of Planning and Environment's September 2014 Gateway determination which requires no further approval. The planning proposal seeks to expand the supply of land available for employment purposes in a live work style circumstance.
1.2 Rural Zones	Inconsistent - Inconsistency agreed to be minor in the Department of Planning and Environment's September 2014 Gateway determination which requires no further approval. The planning proposal proposes to rezone rural land for a mix of employment and residential purposes. The proposed new employment areas are generally consistent with the outcomes envisaged under the Ballina Shire Local Growth Management Strategy, approved by the Director-General of the Department of Planning & Environment (May 2013) and the Far North Coast Regional Strategy.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Consistent. A Priority Oyster Aquaculture Area is located 300m downstream from the development site. Consultation has been undertaken with the Department of Primary Industries Fisheries.
1.5 Rural Land	Inconsistent - Inconsistency agreed to be minor in the Department of Planning and Environment's September 2014 Gateway determination which requires no further approval. The planning proposal proposes to rezone rural land for predominantly residential purposes. Home businesses are proposed to be permitted in part of the proposed residential area at a size significantly larger than otherwise permitted by BLEP 2012.  The site is identified as an Investigation Area – Urban Land in the North Coast Regional Plan 2037.
<b>2. Environment and Heritage</b>	
2.1 Environmental Protection Zones	Inconsistent - Inconsistency agreed to be minor in the Department of Planning and Environment's September 2014 Gateway determination which requires no further approval. The planning proposal seeks to facilitate the protection of the environment through the mechanism of a Voluntary Planning Agreement which will require a biobanking offset solution to be developed and approximately 40ha of Lot 4 rehabilitated and maintained in perpetuity as a biobanking site.
2.2 Coastal Management	Inconsistent – the inconsistency is justified on the basis that Lot 4 is an infill site and it is proposed to zone the whole of the lot under the provisions of Ballina LEP 2012. Ballina LEP 2012 is subject to the provisions of SEPP (Coastal Management) 2018. Given that the SEPP applies to the land due regard must be given to the matters set out under clause 4 of this Direction.  The subject land is located within the NSW Coastal Zone.  The proposed new urban area is generally consistent with the Ballina Shire Growth Management Strategy, approved by the Director-General of the Department of Planning & Environment (May 2013).  The site is also identified as an Investigation Area – Urban Land in the North Coast Regional Plan 2037.
2.3 Heritage Conservation	Consistent. Consideration of Aboriginal cultural heritage and archaeological values of the site has occurred as part of the detailed assessment of the proposal. No specific provisions are required beyond those already contained within Ballina LEP 2012 relating to heritage conservation matters (clause 5.10).
2.4 Recreation Vehicle Areas	Consistent. Recreational vehicle areas are not proposed.

2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Consistent An E zone or an environmental overlay is not proposed to be introduced by this planning proposal.
<b>3. Housing, Environment and Urban Development</b>	
3.1 Residential Zones	Consistent. The subject site is contiguous with land zoned for residential purposes. The proposal seeks to facilitate residential development consistent with residential development permitted within the R2 zone under the provisions of Ballina LEP 2012. The minimum lot size proposed is 450m <sup>2</sup> which will facilitate greater housing choice on small lots. Part of the proposed residential area will enable live-work options to be developed.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. The subject land does not contain an existing caravan park or manufactured home estate. The planning proposal does not seek to make direct provision for caravan parks or manufactured home estates. The proposed new urban area is generally consistent with the Ballina Shire Growth Management Strategy, approved by the Director-General of the Department of Planning & Environment (May 2013). The site is also identified as an Investigation Area – Urban Land in the North Coast Regional Plan 2037.
3.3 Home Occupations	Consistent. The planning proposal does not alter the permissibility of home occupations in dwelling houses under the Ballina LEP 2012.
3.4 Integrated Land Use and Transport	Consistent. The further assessment of the proposal, has considered accessibility and transport options for the proposed residential and employment uses on the site. Bus route provisions have been incorporated within the proposed draft DCP provisions that are intended to apply to the land.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.
3.6 Shooting Ranges	Does not apply to planning proposal.
<b>4. Hazard and Risk</b>	
4.1 Acid Sulphate Soils	Inconsistent - Inconsistency agreed to be minor in the Department of Planning and Environment's September 2014 Gateway determination which requires no further approval. A Preliminary Acid Sulfate Soil Assessment has been prepared which found no evidence of acid sulfate soils or potential acid sulfate soils on Lot 4. However given the limited testing undertaken, and the probability that the site does contain some acid sulfate soils, the site has been designated as containing primarily Class 2 acid sulfate soils. This will trigger a requirement for further assessment to be undertaken as part of the DA process in accordance with the requirements of clause 7.1 of Ballina LEP 2012.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Inconsistent - Inconsistency agreed to be minor in the Department of Planning and Environment's September 2014 Gateway determination which requires no further approval. The subject site is identified as being flood prone. The impact of proposed site filling has been considered in detailed modelling undertaken by consultants BMT WBM. The reduction in flood storage as a consequence of filling has been found to be negligible.  In 2015 Ballina Shire Council adopted the Ballina Floodplain Risk Management Plan and a new risk based Flood Plain Management Development Control Plan. Flood Risk Precincts and Flood Planning Levels for Lot 4 have been developed in accordance with the requirements of the NSW Floodplain Development Manual.
4.4 Planning for Bushfire Protection	Does not apply to planning proposal.
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies	Consistent. The subject land is designated as an Investigation Area – Urban Land in the North Coast Regional Plan 2037.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Does not apply to planning proposal.
5.4 Commercial and Retail Development	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Repealed

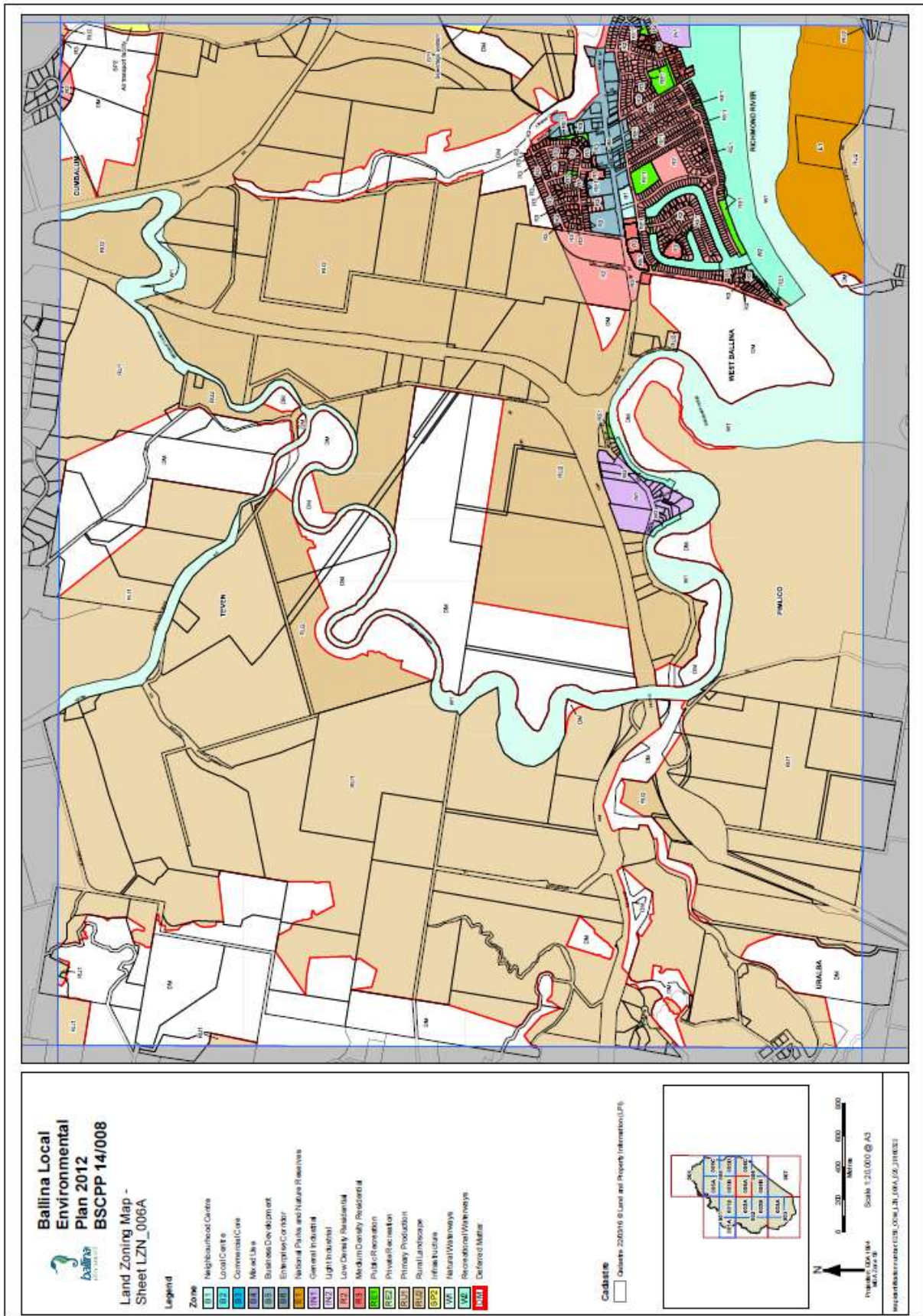
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Repealed
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Repealed
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The subject site does not currently comprise any land zoned or reserved for public purposes. It is anticipated that any public open space and other land to be dedicated for public purposes as part of the proposal will be considered as part of the further assessment of the proposal including suitable mechanisms to facilitate their dedication.
6.3 Site Specific Provisions	Does not apply to planning proposal.
<b>7. Metropolitan Planning</b>	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.



**Appendix U – Maps**  
**Site Identification Map**



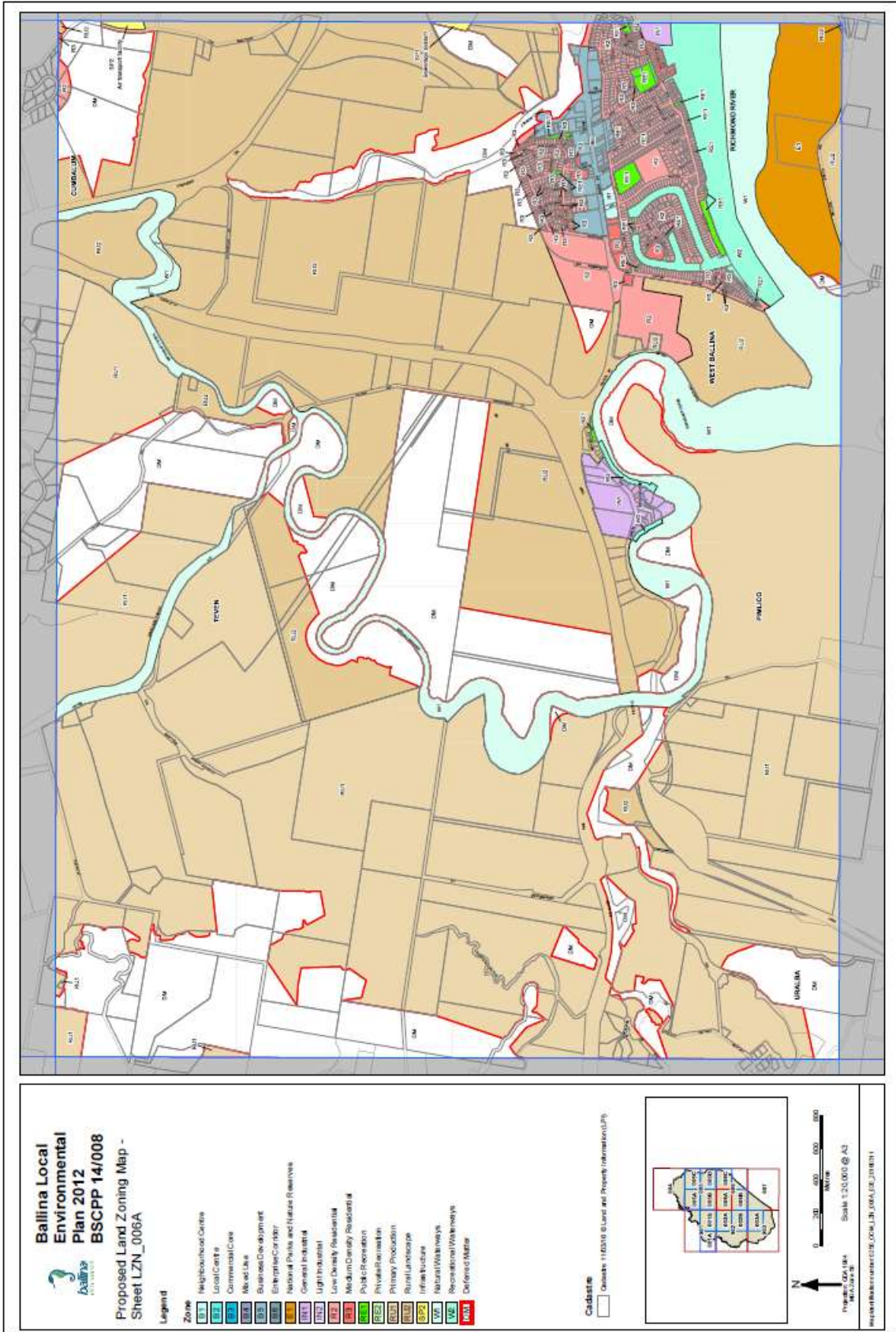
# Existing Land Zoning Map





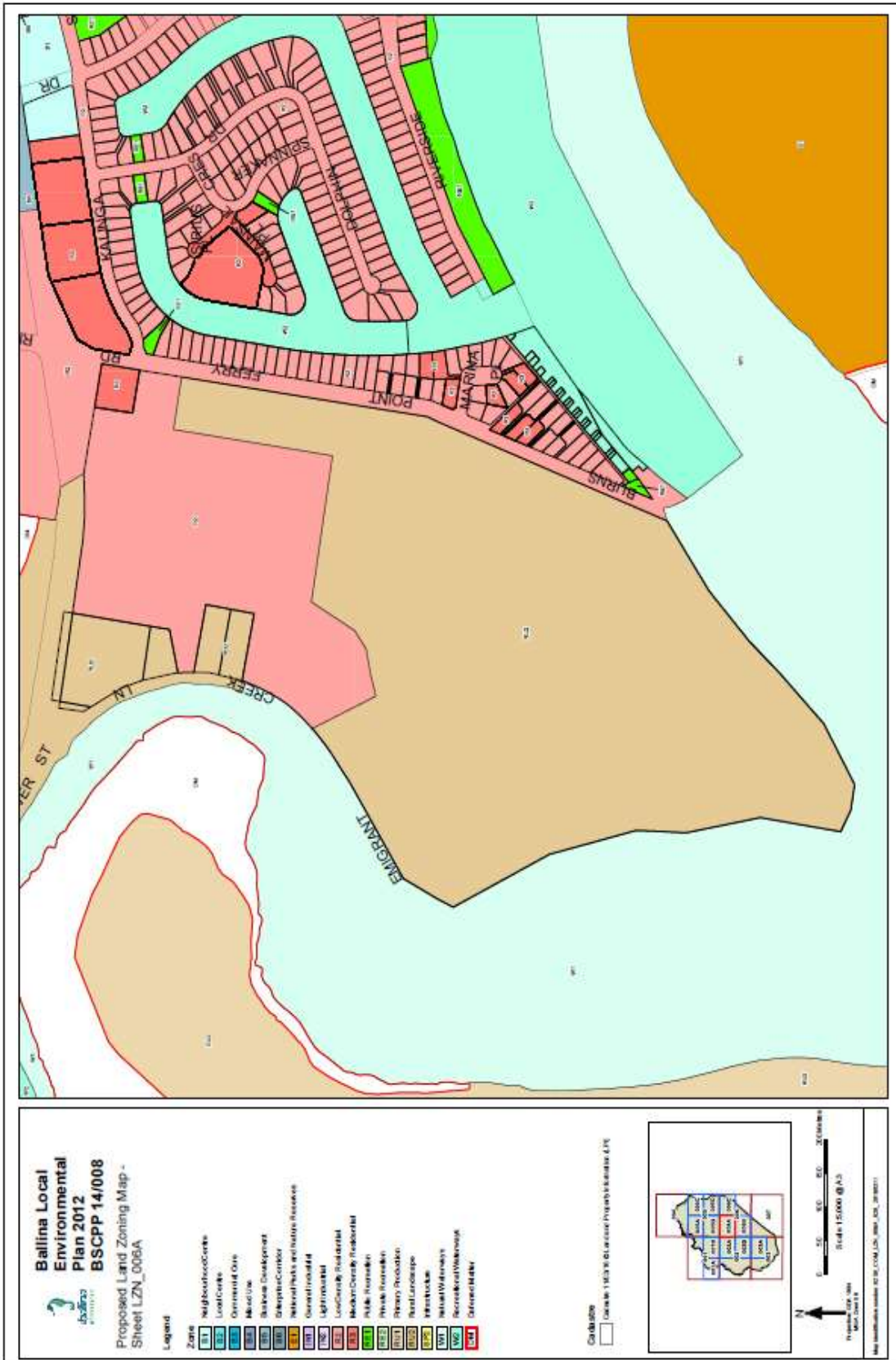


# Proposed Land Zoning Map

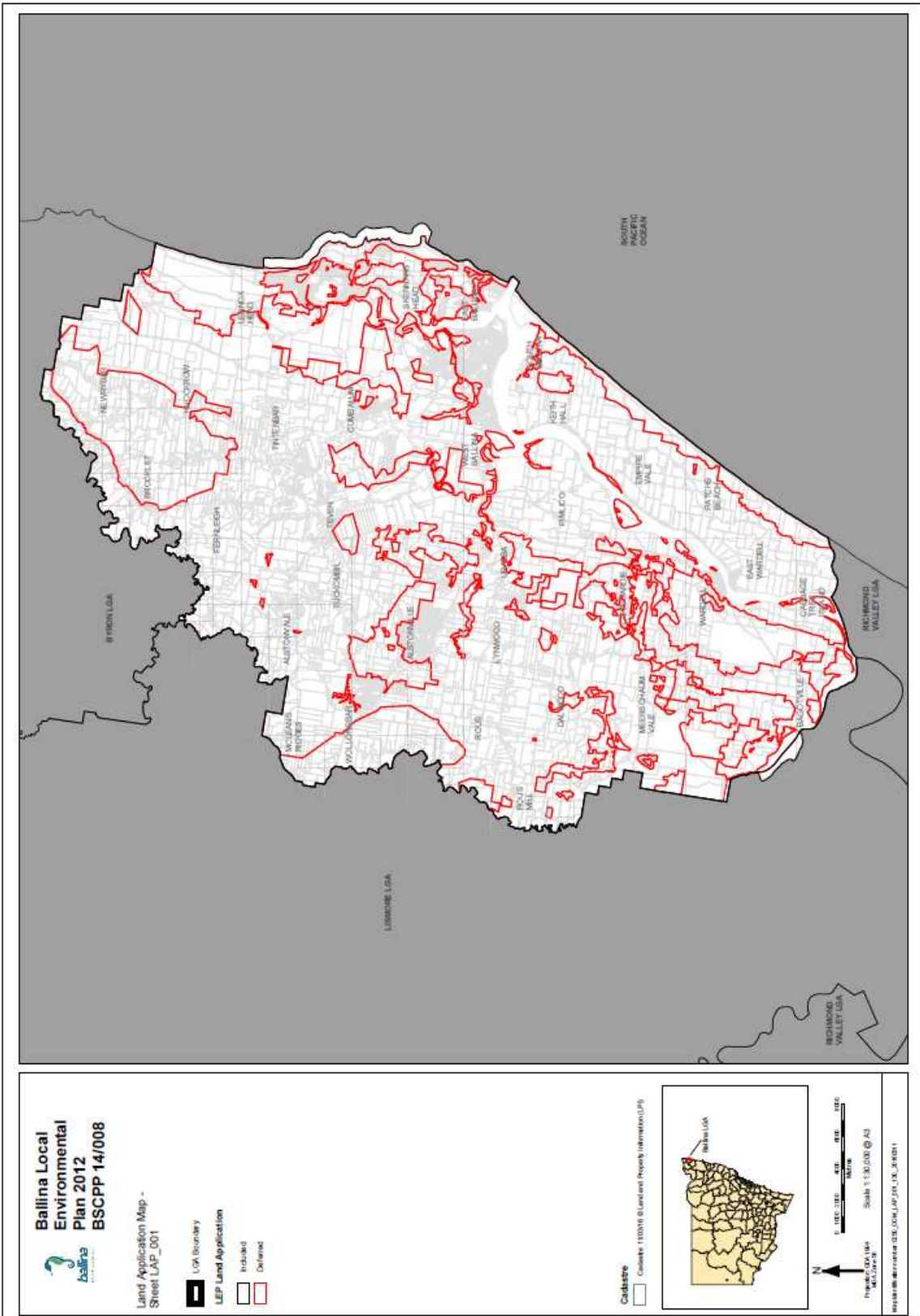




# Proposed Land Zoning Map – Zoomed



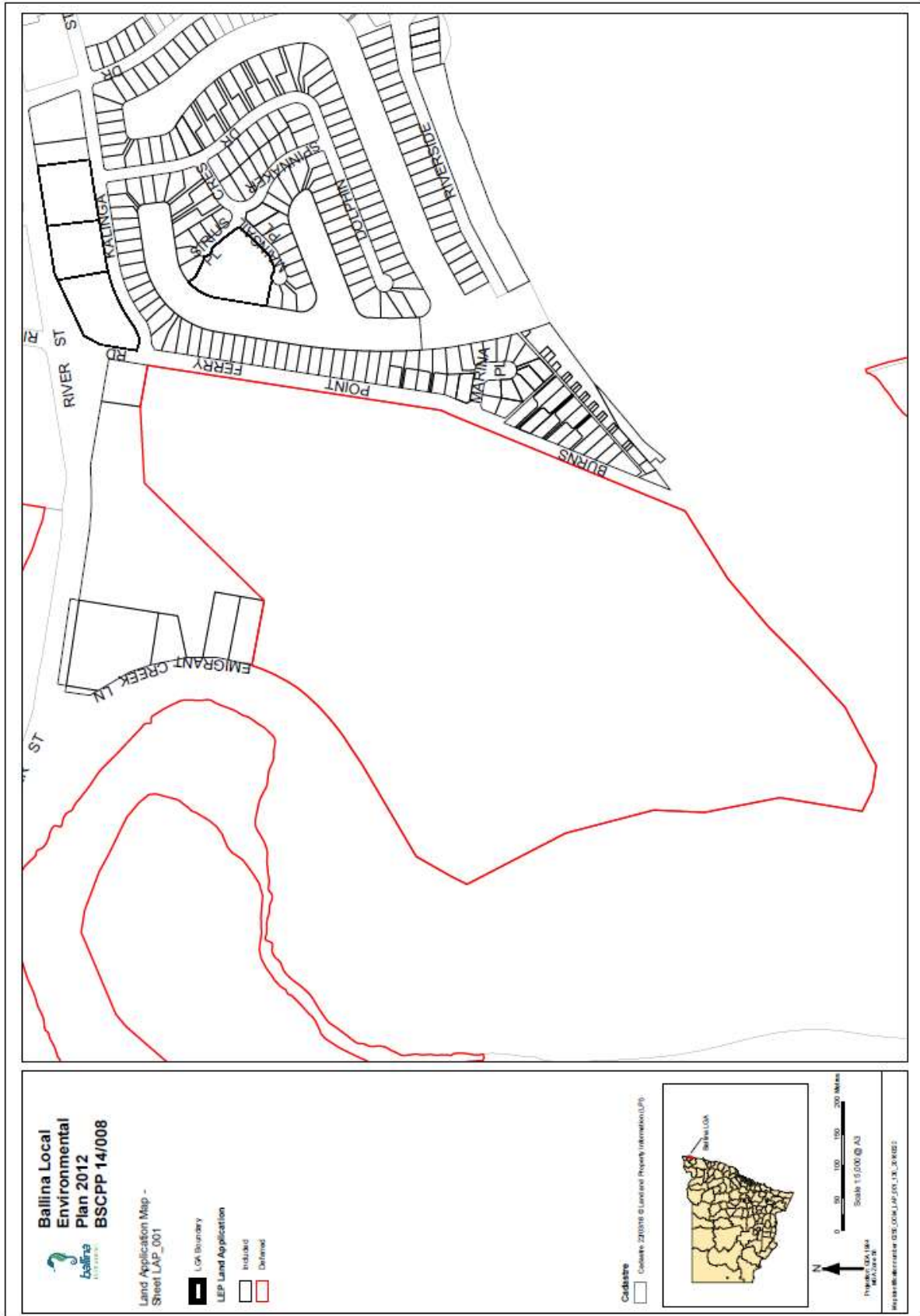
# Existing Land Application Map







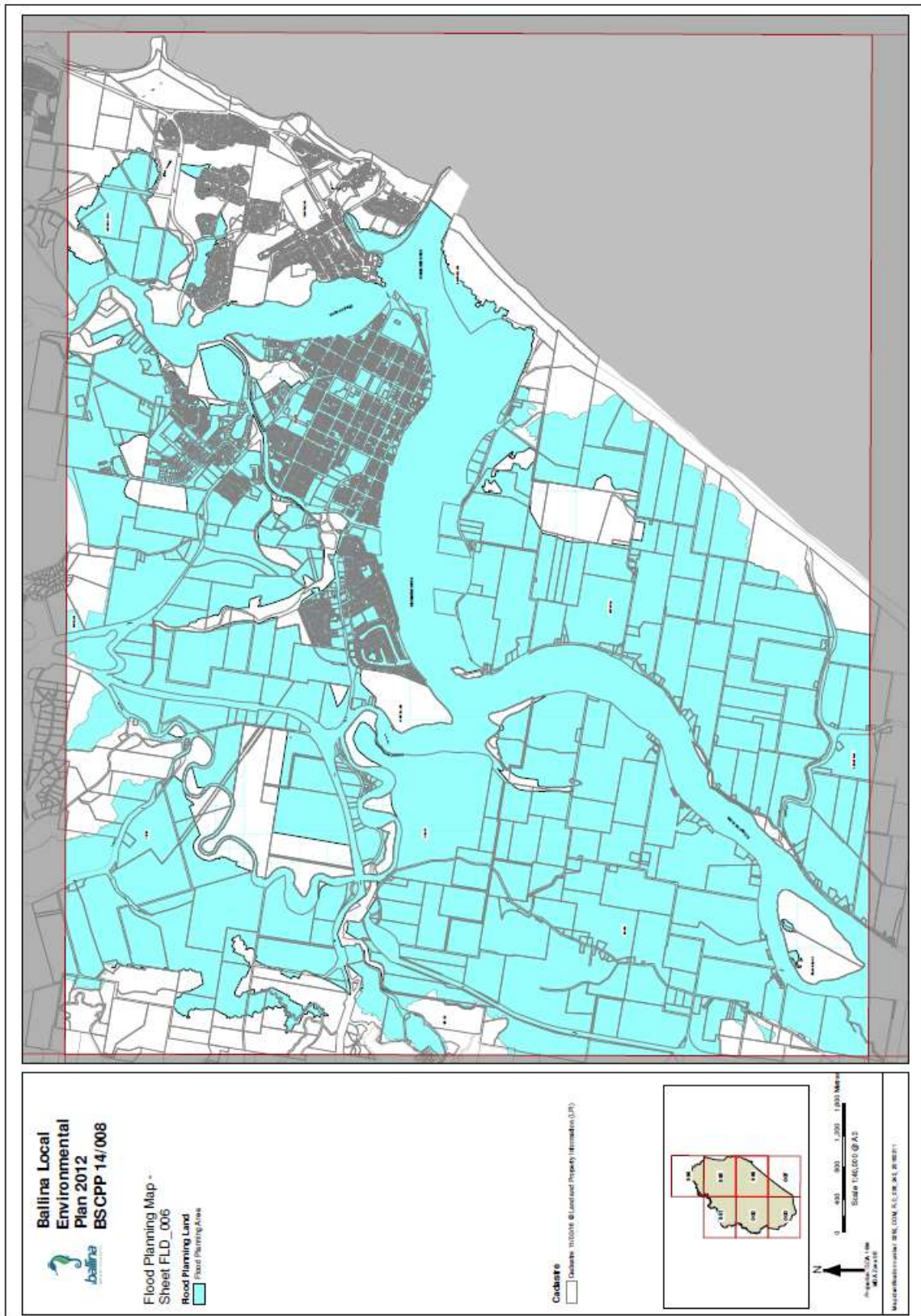
# Existing Land Application Map – Zoomed



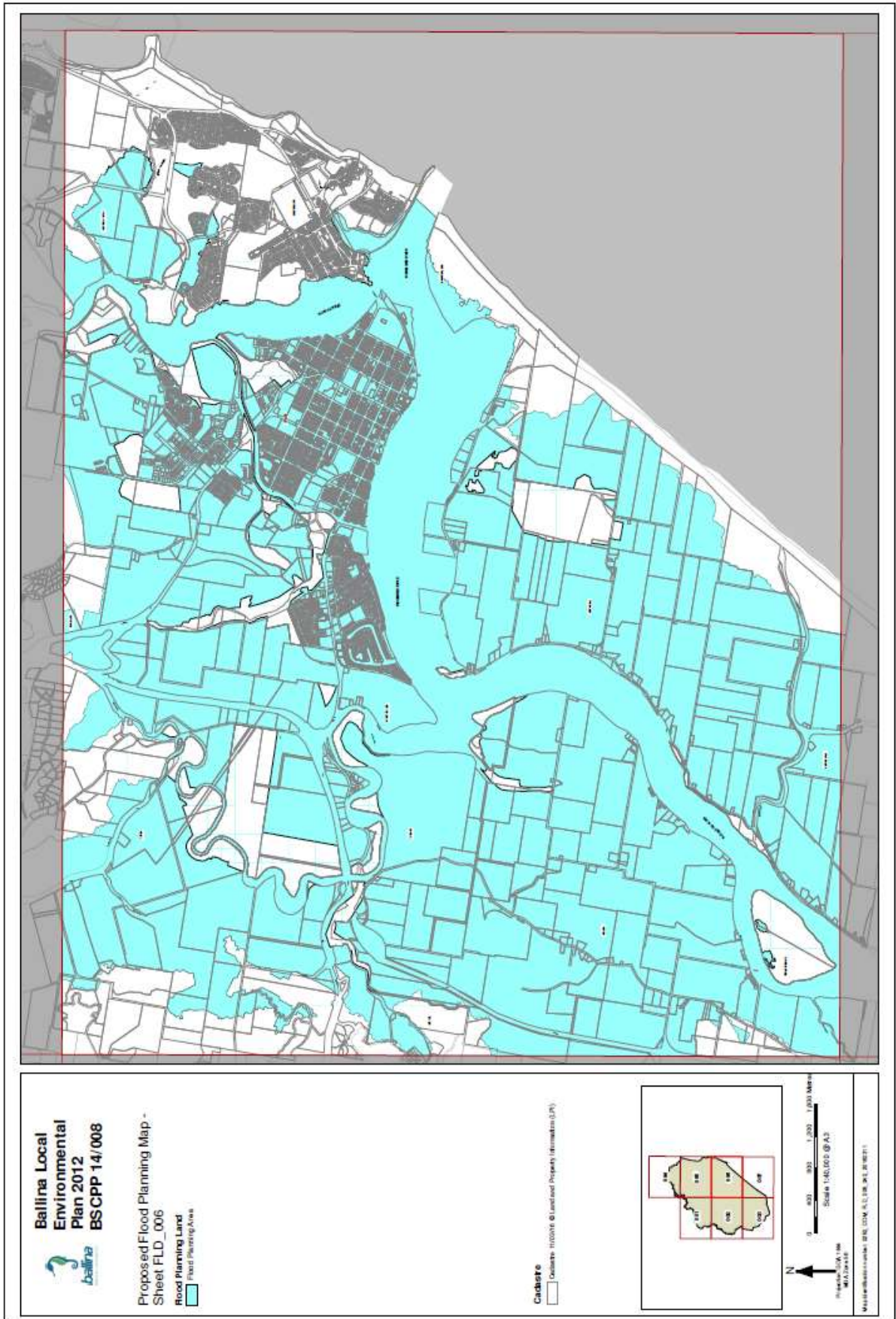




# Existing Flood Planning Map

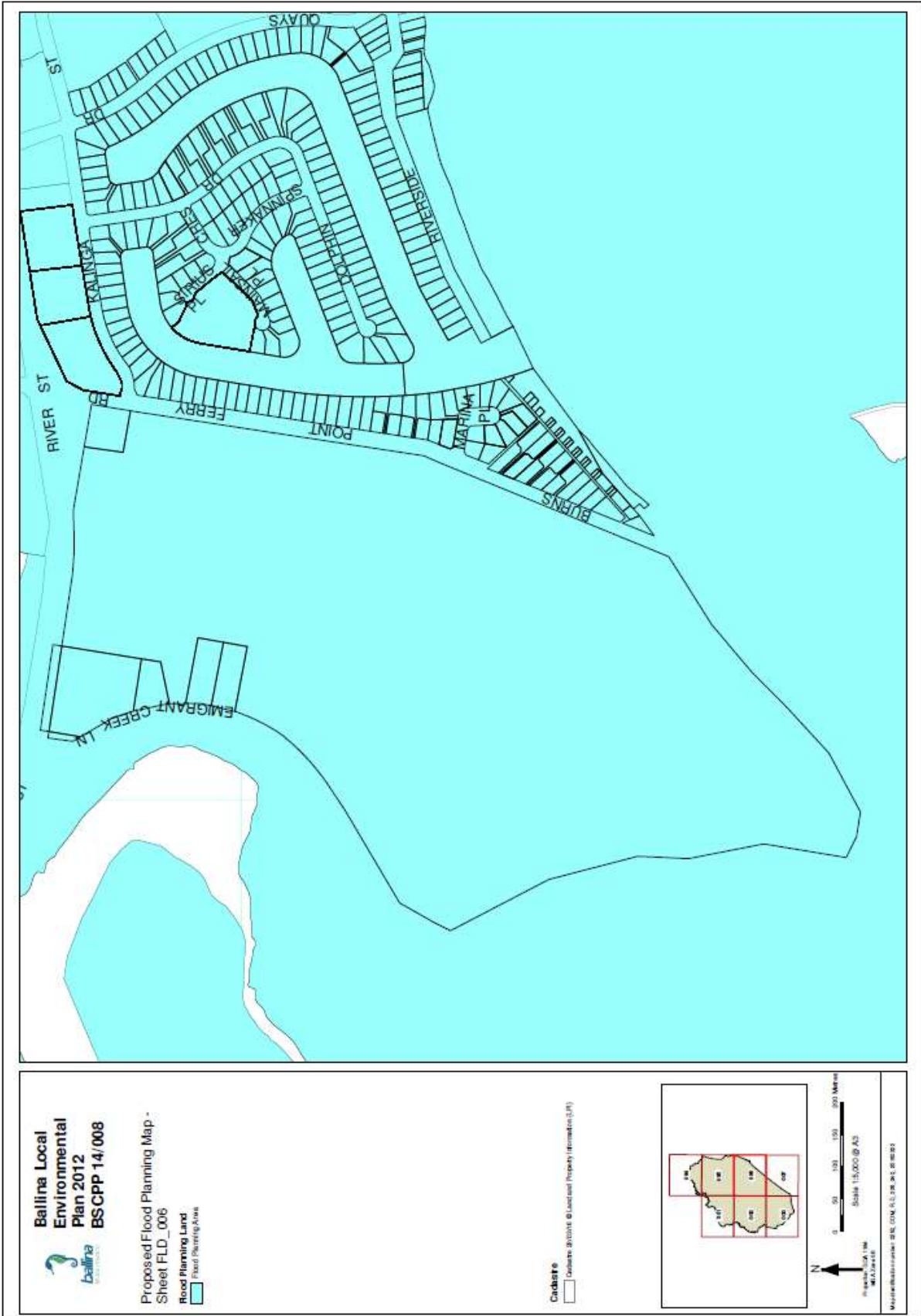


# Proposed Flood Planning Map

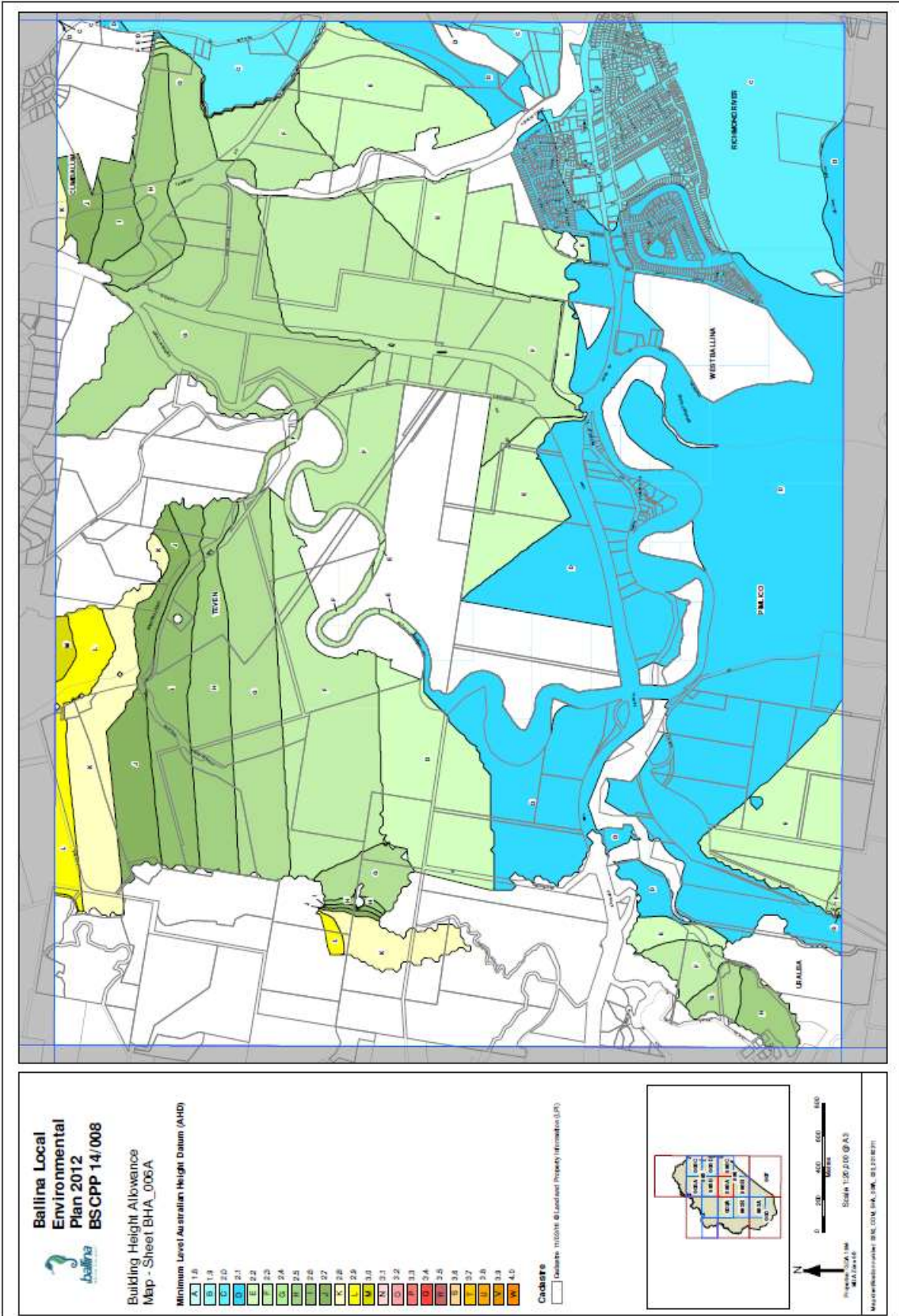




# Proposed Flood Planning Map – Zoomed

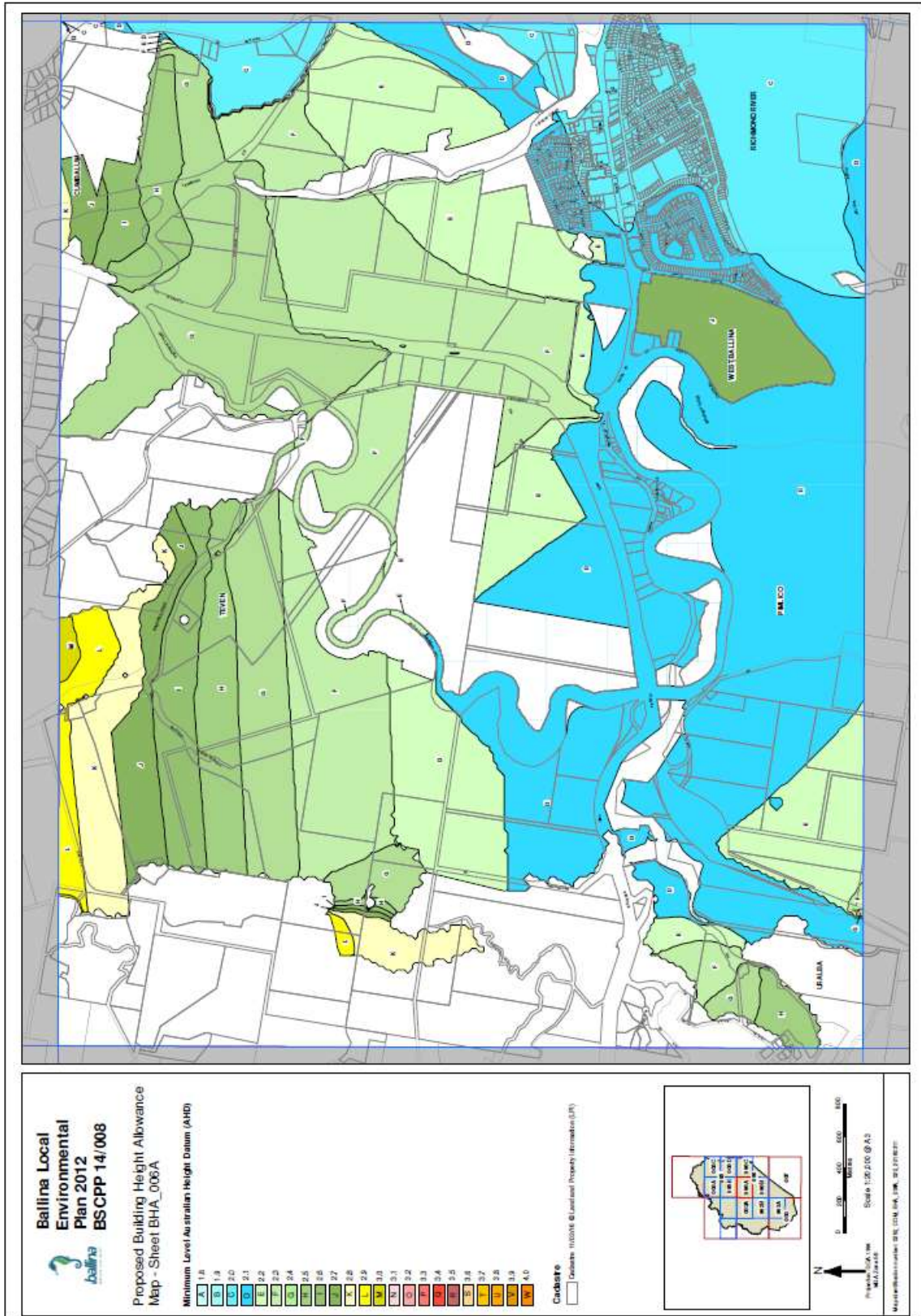


# Existing Building Height Allowance Map

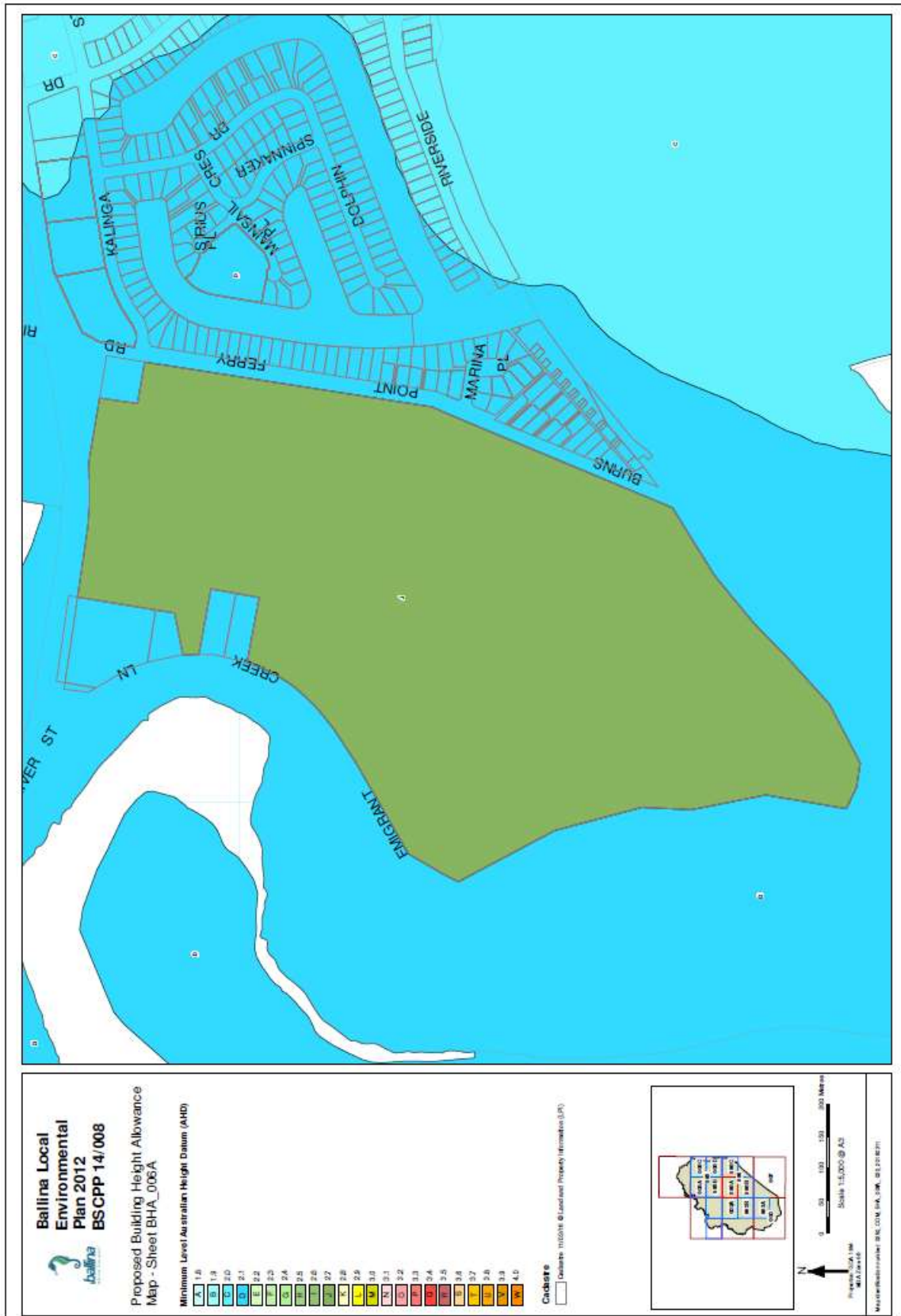




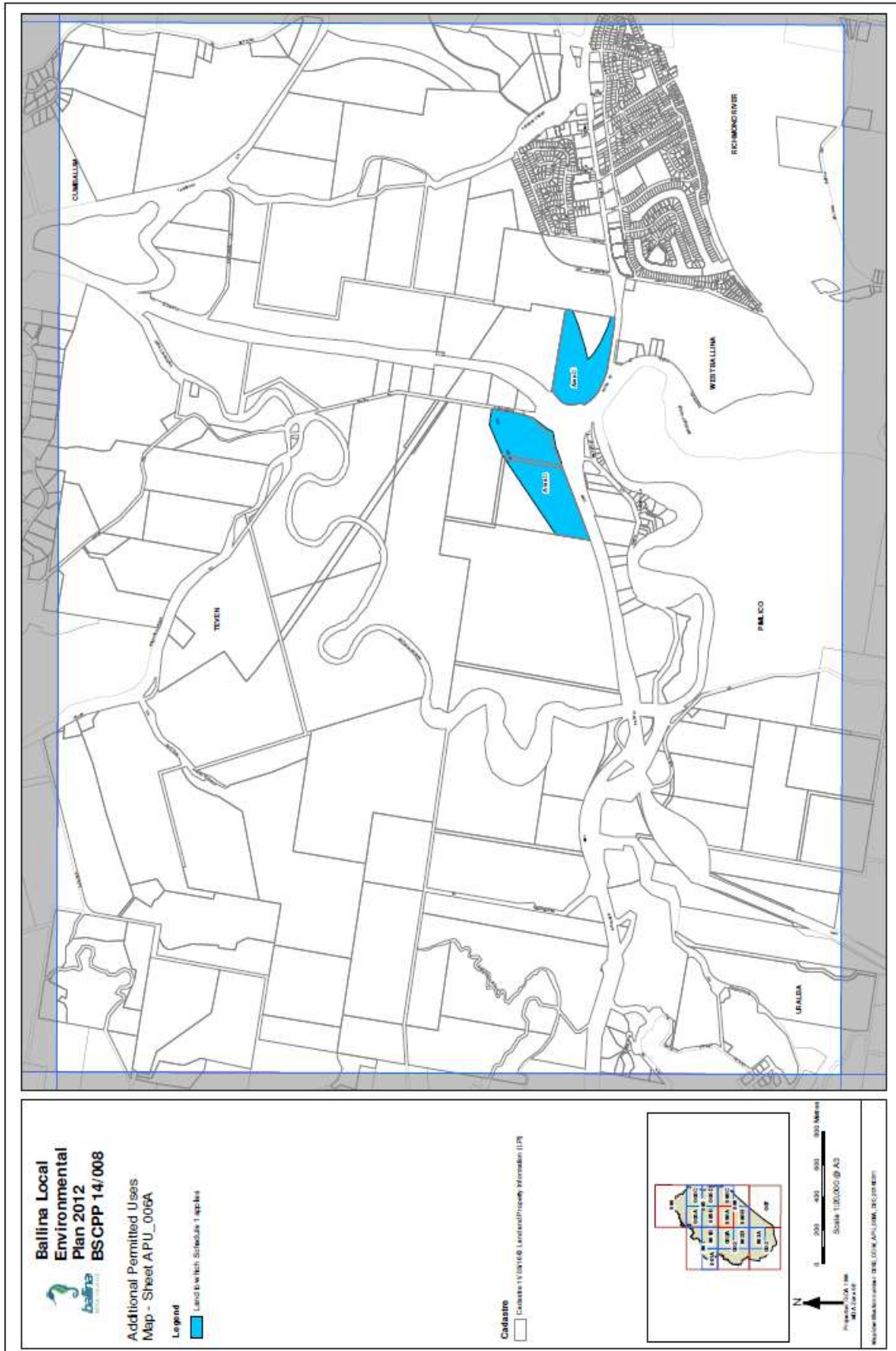
# Proposed Building Height Allowance Map



# Proposed Building Height Allowance Map – Zoomed



# Existing Additional Permitted Use Map





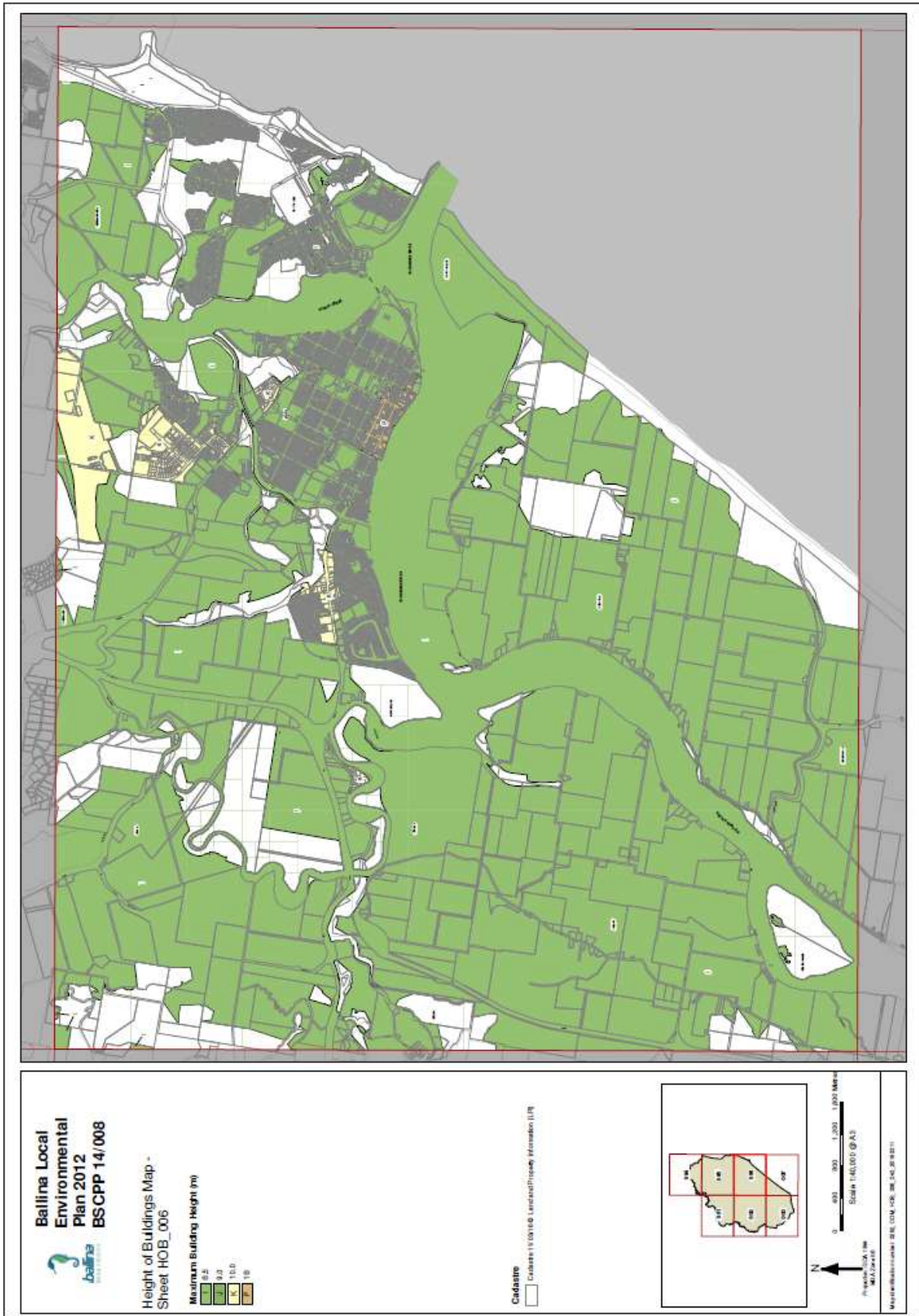
# Proposed Additional Permitted Use Map



# Proposed Additional Permitted Use Map – Zoomed

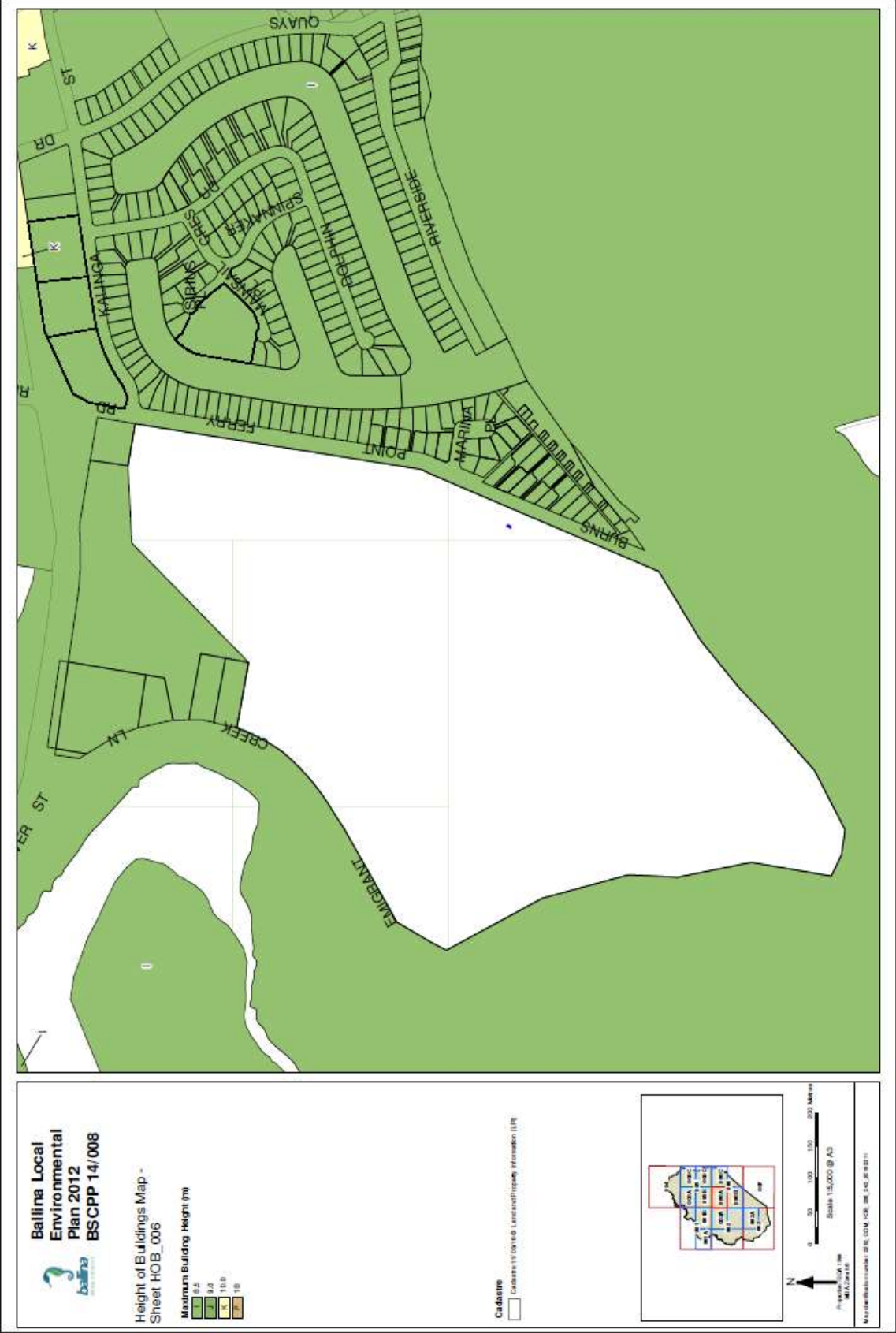


# Existing Height of Buildings Map



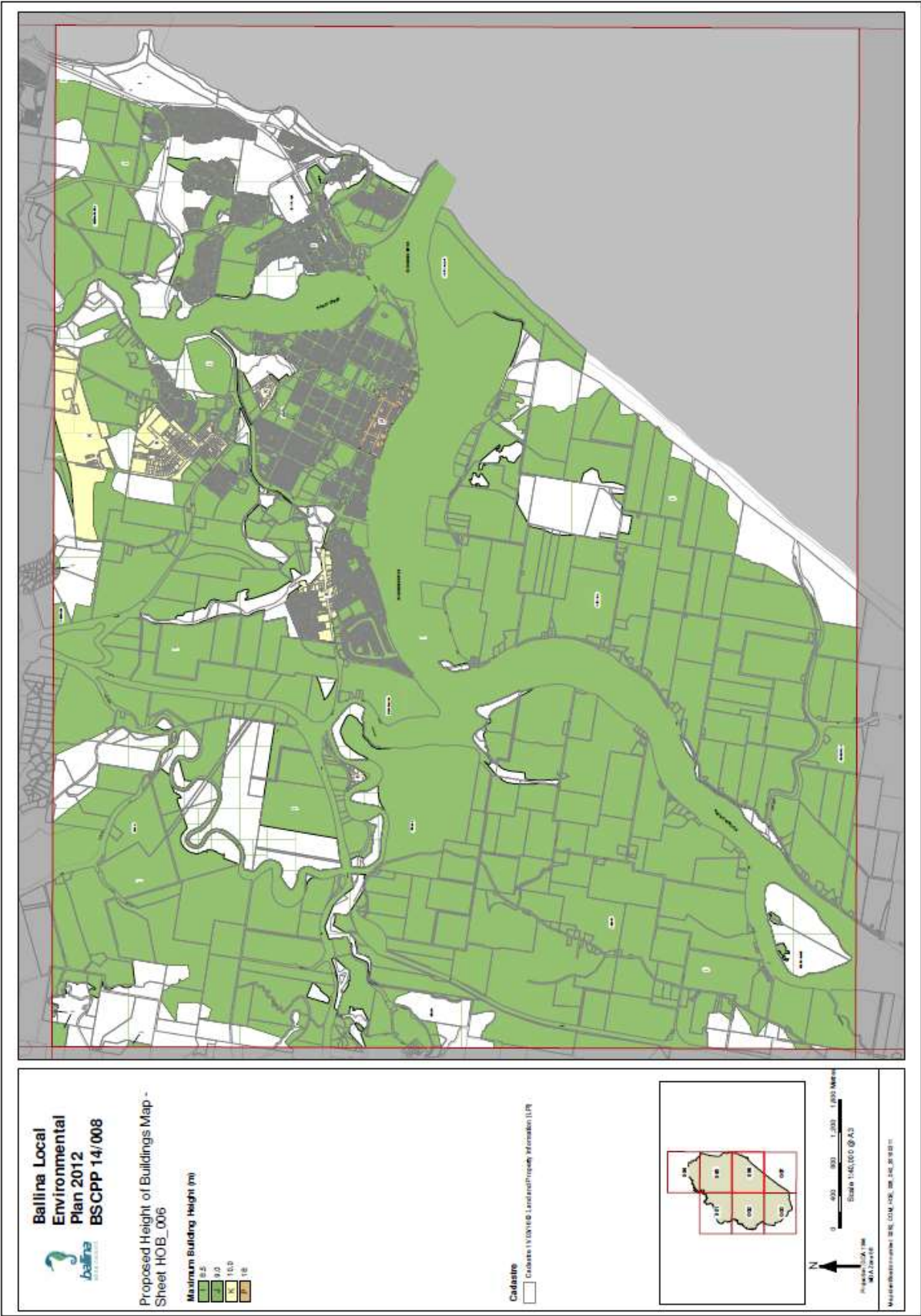


**Existing Height of Buildings Map – Zoomed**

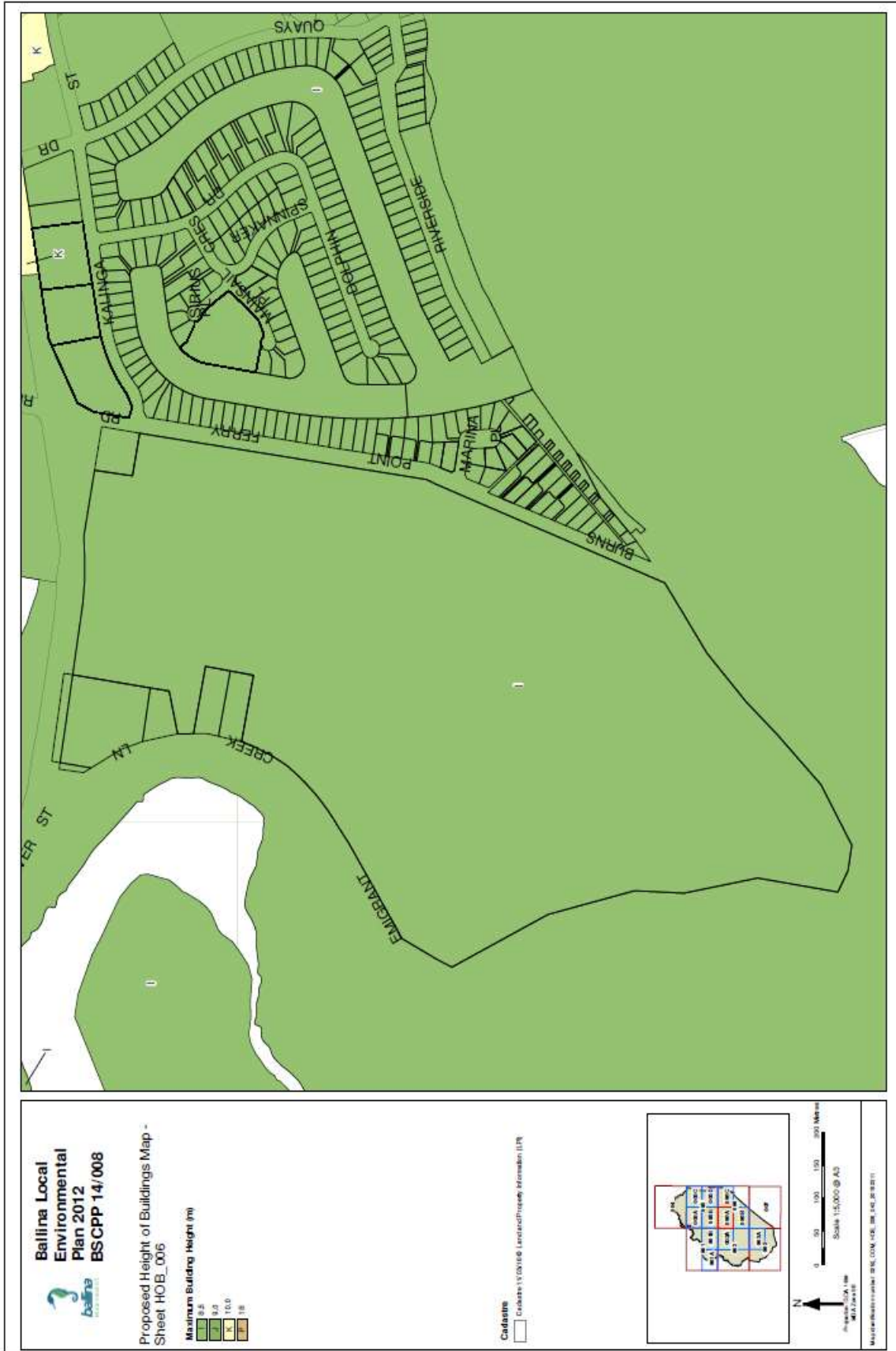




# Proposed Height of Buildings Map



# Proposed Height of Buildings Map – Zoomed



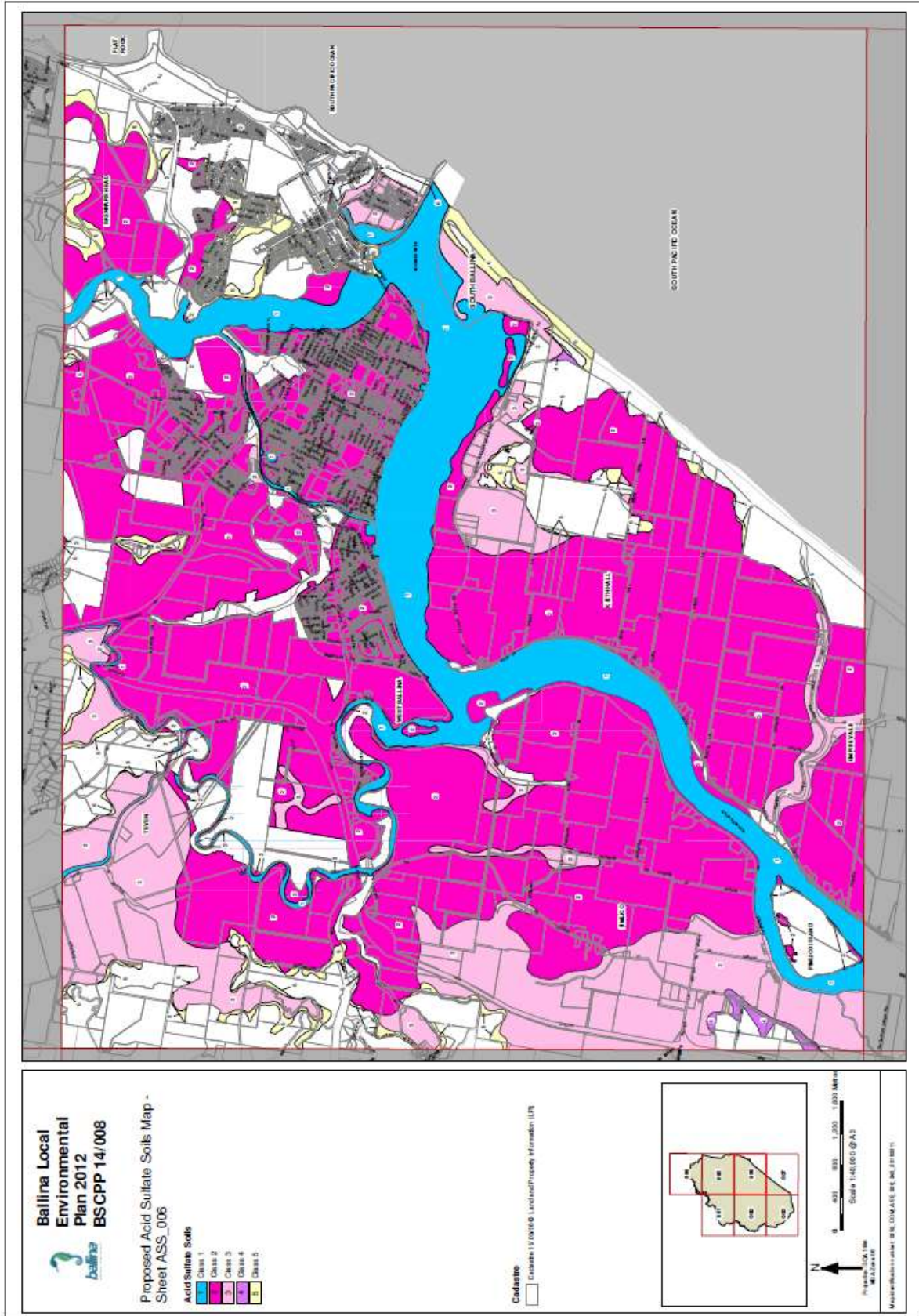








# Proposed Acid Sulfate Soil Map

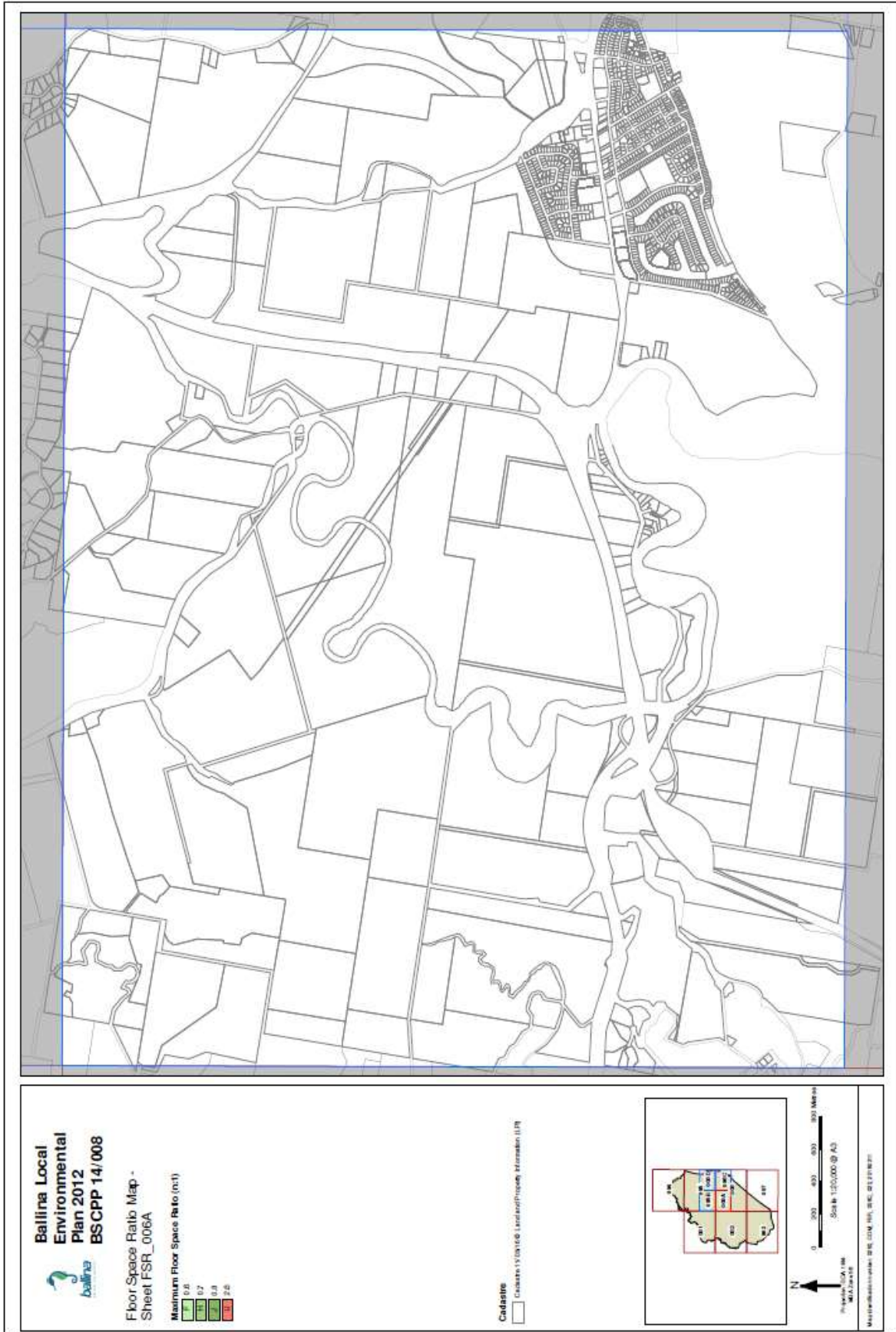


# Proposed Acid Sulfate Soil Map – Zoomed





## Existing Floor Space Ratio Map

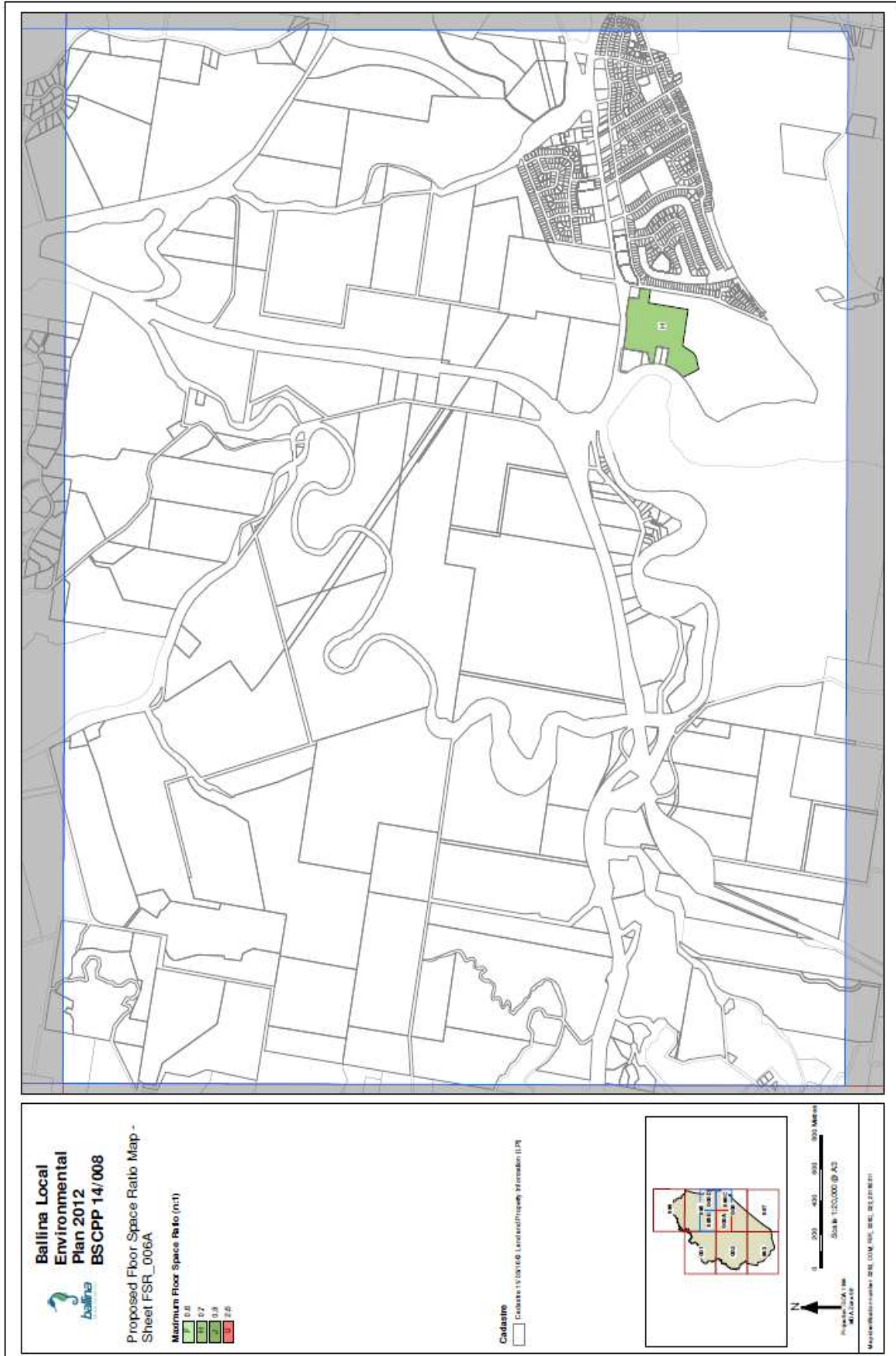


## Existing Floor Space Ratio Map – Zoomed





# Proposed Floor Space Ratio Map



# Proposed Floor Space Ratio Map – Zoomed





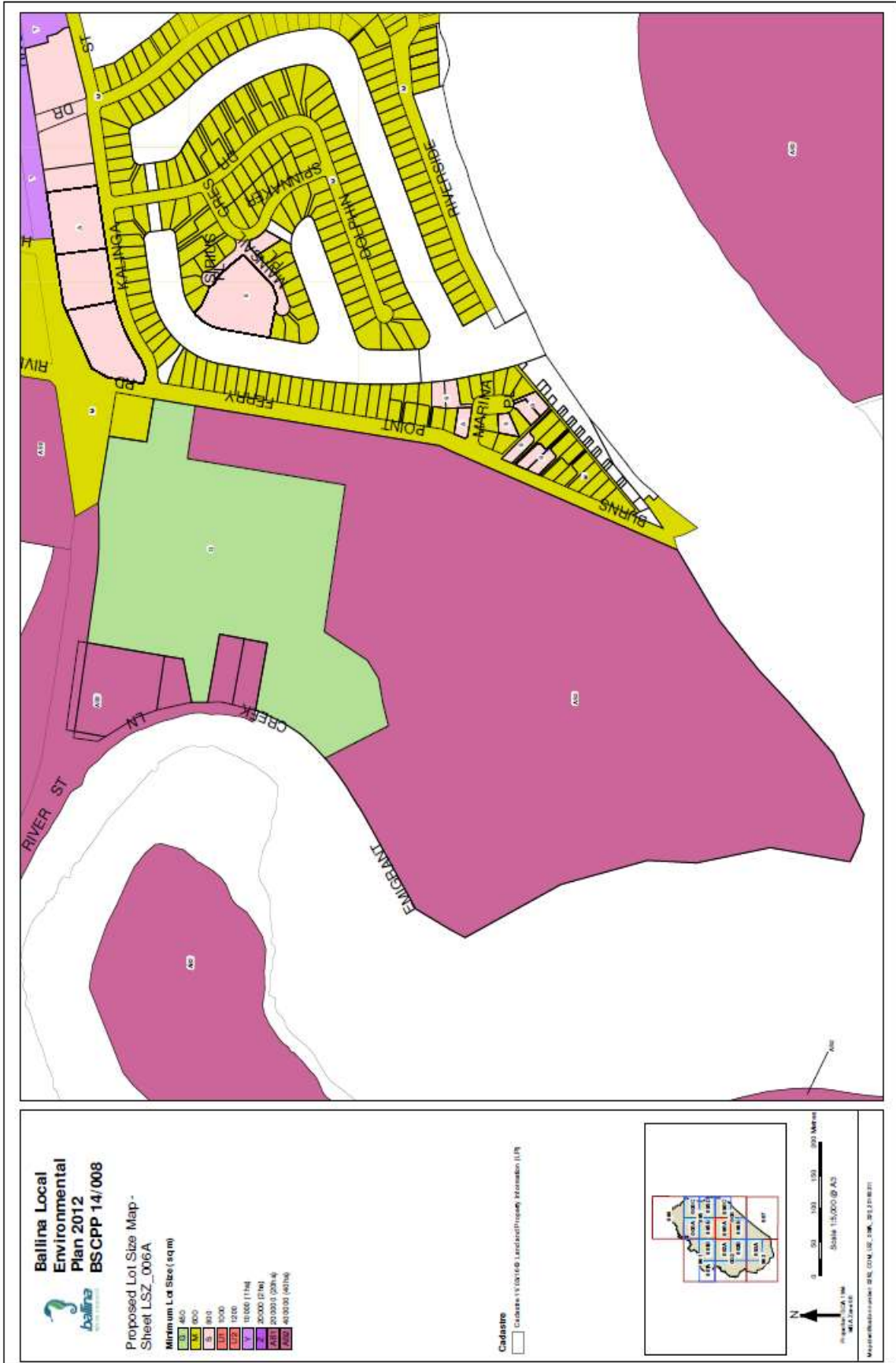






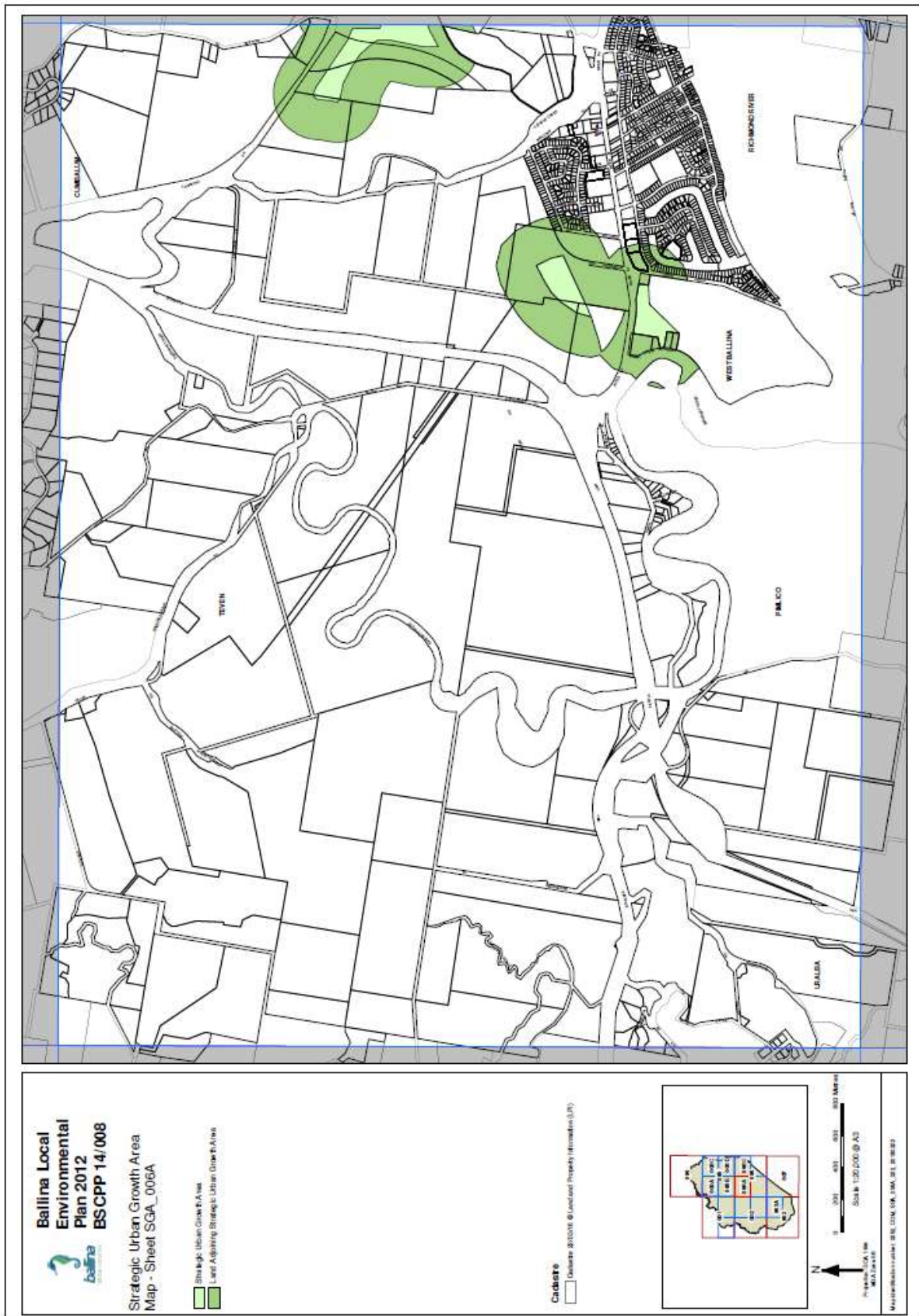


# Proposed Lot Size Map – Zoomed





# Existing Strategic Urban Growth Area Map



# Existing Strategic Urban Growth Area Map – Zoomed





# Proposed Strategic Urban Growth Area Map



# Proposed Strategic Urban Growth Area Map – Zoomed



## Appendix V – Voluntary Planning Agreement and Explanatory Note

THIS Deed of Agreement is made the 13 day of June 2017 between the following Parties:

### PARTIES

1. **Ballina Shire Council** of 40 Cherry Street BALLINA NSW 2478 ("Council")
2. **Ballina Waterways Pty Limited** of 46 Evan Street SOUTH PENRITH NSW 2750 (owner of Lot 4 DP 537419) ("Developer")

### Background

- A. In 2012 the Developer requested the Council to initiate a Planning Proposal to amend Ballina Local Environmental Plan 2012 ("LEP"). The original request was amended to provide for an amendment to the LEP to zone the Land part R2 Low Density Residential and part RU2 Rural Landscape and to apply appropriate planning controls to enable as additional permitted uses "work" related uses in the R2 zone and a restaurant or café incorporating information and education facilities and a dwelling in the RU2 zone.
- B. In order to develop the Land for those uses it is necessary:
  - a. to reserve part of the Land as a Biobank Site for the purpose of a Biobanking Agreement; and
  - b. for detailed geotechnical investigations to be carried out on that part of the Land proposed to be developed for purposes other than environmental protection.
- C. The Developer is willing to have this Planning Agreement registered on the title of the Land.
- D. In entering into this Agreement the Council does not intend to fetter its discretion with respect to any future development application relating to the Land.

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## THIS DEED WITNESSES

### 1. Planning Agreement Under the Act

The Parties agree this Deed is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

### 2. Application of this Deed

The Planning Agreement constituted by this Deed applies to the Land.

### 3. Operation of this Deed

3.1 Until this Deed operates, this document constitutes the Developer's irrevocable offer to enter into the Deed if the LEP is amended generally in accordance with the Planning Proposal.

3.2 This Deed becomes operative from the date on which the LEP is amended generally in accordance with the Planning Proposal.

### 4. Definitions and Interpretations

4.1 In this Deed the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979*.

**Biobanking Agreement** means an agreement under Division 2 of Part 7A of the *Threatened Species Conservation Act 1995*.

**Biobank Site** has the same meaning as in the *Threatened Species Conservation Act 1995*.

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering, or otherwise dealing with the Land but does not include the registration of a plan of subdivision relating to the Land.

**Developer** means Ballina Waterways Pty Limited or its servants, successors, agents or assigns.



**Development** has the same meaning as in the Act.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Environmental Planning Instrument** has the same meaning as in the Act.

**Land** means:

Lot 4 DP 537419 being land at Burns Ferry Point Road West Ballina

**LEP** means Ballina Local Environmental Plan 2012.

**Material Public Benefit** means the material public benefit described in Schedule 1 to this Deed.

**Complying Development Certificate** has the same meaning as in the Act.

**Construction Certificate** has the same meaning as in the Act.

**Party** means a Party to this Deed including its successors and assigns.

**Planning Proposal** means planning proposal PP\_2014\_BALLI\_007\_00 as registered with the New South Wales Department of Planning & Environment in relation to the Land.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

4.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires.

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.

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- (b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- (e) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment, or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or government agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

- (k) References to the word "include" or "including" are to be construed without limitation.
- (l) A reference to this Deed includes the agreement recorded in this Deed.
- (m) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (n) Any Schedules and attachments form part of this Deed.

4.3 In the interpretation of this Deed terms defined in the Act or the LEP have the same meaning as in these instruments unless elsewhere defined in this Deed.

#### **5. Material Public Benefit to be Provided under this Deed**

The Parties agree that:

- 5.1 Prior to the grant of any 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 Developer will provide the Material Public Benefit set out in Clause 1 of Schedule 1 of this Deed.
- 5.2 Prior to the lodgement of any 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 relating to the Land (other than a Development Application for the construction of a trial fill embankment with settlement monitoring plates), the Developer will provide the Material Public Benefit set out in Clause 2 of Schedule 1 of this Deed.

## **6. Registration of this Deed**

This Deed is required to be registered.

## **7. Assignment and Dealings**

The Developer shall not sell, transfer, assign or novate or similarly deal with ("Dealing") its right, title or interest in the Land or any of its rights or obligations under this Deed, or allow any interest in them to arise or be varied unless the Developer:

7.1 Gives the Council no less than 28 days' notice in writing of the proposed

Dealing; and

7.2 Procures that the transferee, assignee or novatee executes and delivers to the Council prior to any such Dealing taking effect a deed in favour of the Council in form and substance acceptable to the Council, acting reasonably whereby the transferee, assignee or novatee becomes contractually bound with the Council to perform all of the Developer's obligations and have the benefit of the Developer's rights under this Deed.

## **8. Review of this Deed**

Any amendment or revocation of this Deed shall be by agreement in writing and in compliance with section 93G of the Act.

## **9. Dispute Resolution**

9.1 Notice of dispute

If a Party claims that a dispute has arisen under this Deed ("Claimant"), it must give written notice to the other Party ("Respondent") stating the matters in dispute and designating as its representative a person to negotiate the dispute ("Claim Notice").



No Party may start Court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause.

#### 9.2 Response to notice

Within ten business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

#### 9.3 The nominated representatives must:

- (i) Meet to discuss the matter in good faith within 5 business days after services by the Respondent of notice of its representative;
- (ii) Use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

#### 9.4 Further notice if not settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute ("Dispute Notice") by mediation under clause 9.5 or by expert determination under clause 9.6.

#### 9.5 Mediation

If a Party gives a Dispute Notice calling for the dispute to be mediated:

- (i) The Parties must agree to the terms of reference of the mediation within five business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules and the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (ii) The mediator will be agreed between the Parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either Party may request the President of the Institute of

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

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

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



Address: 2 Castlereagh Street, PENRITH NSW 2750

Email address: [matthew@freeburnsurveyors.com](mailto: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.

**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

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.

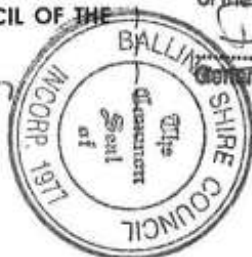


EXECUTED by the Parties as a Deed.

The Common Seal of the Ballina Shire Council was hereunto affixed pursuant to a resolution of the Council.

EXECUTED BY THE COUNCIL OF THE SHIRE OF BALLINA

Date 13 June 2017



General Manager

Mayor

EXECUTED BY BALLINA WATERWAYS PTY LIMITED

Date 1/6/17

M. French  
Director / Secretary

**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.

*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.
- 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 450m<sup>2</sup> 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 1300m<sup>2</sup> 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**

##### **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.



**Appendix W – Supplementary Reports relating to Stormwater Management and Traffic Impact**

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