

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET, BALLINA,
ON 27/06/13 AT 9.00 AM**

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

270613/15 RESOLVED

(Cr Paul Worth/Cr Sharon Cadwallader)

1. That Council defer for up to six months its further consideration of the LEP amendment request relating to Lot 4 DP 537419, Burns Point Ferry Road, West Ballina as submitted by SJ Connelly CPP Pty Ltd on 18 July 2012.
2. That Council awaits confirmation from the NSW Office of Environment and Heritage of the nature and suitability of the proposed Biobanking scheme over part of Lot 4 DP 537419, Burns Point Ferry Road, West Ballina.
3. 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 537419, Burns Point Ferry Road, West Ballina, with the cost of such engagement to be borne by the proponent.
4. That Council awaits advice from the NSW Department of Planning and Infrastructure in relation to the availability and potential for use of environmental protection zones in the BLEP 2012.
5. That the applicant be informed, that in the event of the planning proposal being approved by the Minister for Planning, that today's resolution should not be interpreted as endorsement of any submitted development proposal.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Jeff Johnson

9.4 LEP Amendment Request - Southern Cross Precinct Expansion

270613/16 RESOLVED

(Cr Susan Meehan/Cr Keith Williams)

1. That the Council endorses the application of a B6 Enterprise Corridor zone and B7 Business Park zone as the basis for a planning proposal for Gateway determination, applying to Part of Lots 3-6 DP 123781; Lots 3-4 DP 872303; Lot 2 DP 833513; Lot 8 DP 793980; Part of Lot 7 DP 1043261 and adjoining Council road reserve (Corks Lane) in Ballina, as shown in Map 3 of the planning proposal contained in Attachment 1.

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET, BALLINA,
ON 27/06/13 AT 9.00 AM**

2. That the Council submit the planning proposal contained in Attachment 1 to the NSW Department of Planning & Infrastructure for review and Gateway determination.
3. That upon an affirmative Gateway determination being received from the Department of Planning & Infrastructure, the procedural steps associated with progression of the planning proposal be undertaken.
4. That the Council engage a suitably qualified independent planning consultant (at the proponent's cost) to review the site assessment information submitted, and to provide Council with an associated report and recommendations.
5. That a further report be presented to the Council in relation to this matter prior to the commencement of community engagement for the planning proposal.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Jeff Johnson

9.5 Ballina LEP 2012 - Rural Tourism and Eco-tourist Facilities

270613/17 RESOLVED

(Cr Keith Johnson/Cr Sharon Cadwallader)

1. That Council notes the contents of this report relating to the operation of the Ballina Local Environmental Plan 2012 insofar as it applies to tourist oriented development.
2. That Council maintains the existing approach to rural, nature based and eco tourism under the Ballina Local Environmental Plan 2012 as it is considered satisfactory to address the issue of eco-tourism and rural tourism.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Jeff Johnson

9.4 LEP Amendment Request - Southern Cross Precinct Expansion

9.4 LEP Amendment Request - Southern Cross Precinct Expansion

Delivery Program Strategic Planning

Objective To invite the Council to consider the progress of a planning proposal with respect to the Southern Cross Industrial Precinct.

Background

The Council, at its Ordinary Meeting held on 26 July 2012, received and considered a report regarding a request from Ardill Payne & Partners, acting on behalf of the Commercial Services Section of this Council, seeking the commencement of a rezoning process to provide for the expansion of the Southern Cross Industrial Estate in Ballina. In relation to this matter, the Council resolved as follows [Minute No. 260712/22]:

1. *That Council proceed to prepare a planning proposal to enable urban land uses focused on employment based activities on land between the existing extent of the Southern Cross Industrial Estate, Corks Lane and the Ballina Byron Gateway Airport.*
2. *That the type and extent of land use zoning under the planning proposal be determined having regard for both employment and environmental outcomes and following the provision and consideration of further information from the applicant in relation to the land uses proposed and the characteristics of the site.*
3. *That the planning proposal be reported to Council for consideration prior to referral to the Department of Planning & Infrastructure for Gateway determination.*

The applicant (Council's Commercial Services Section) has now provided additional information, as requested, to support the rezoning request.

The purpose of this report is to present information relating to the proposed zoning to the Council, and to invite it to endorse a planning proposal for referral to the Department of Planning & Infrastructure for 'Gateway' determination.

Key Issues

- Strategic urban growth
- Employment land
- Progress of planning proposal

9.4 LEP Amendment Request - Southern Cross Precinct Expansion

Information

This planning proposal relates to land located to the north of the existing Southern Cross Industrial Estate, comprising a number of lots and part lots as described below:

- Part of Lots 3-6 DP 123781 (owned by Ballina Shire Council)
- Lot 3 DP 872303 (owned by Mr B.R. Field)
- Lot 4 DP 872303 (owned by Mr D.M. King)
- Lot 2 DP 833513 (owned by Mr B.R. Field)
- Lot 8 DP 793980 (owned by Ballina Shire Council)
- Part of Lot 7 DP 1043261 (owned by Ballina Shire Council) and
- adjoining Council road reserve (Corks Lane).

The location of the subject land is shown in Figure 1 in Attachment 1.

The subject land is identified in Council's Ballina Shire Growth Management Strategy (endorsed by the Council in 2012) and Southern Cross Precinct Master Plan (endorsed by the Council in 2008) as having potential to accommodate commercial and industrial development.

The planning proposal has arisen in response to a request from Council's Commercial Services Section to rezone land to accommodate demand for employment land in a manner consistent with the Ballina Shire Growth Management Strategy.

A planning proposal has been prepared in accordance with the Council's resolution of July 2012, following the provision and review of additional information from the applicant. A copy of the planning proposal is provided as Attachment 1 to this report. The additional information provided by the applicant included the following:

- Information regarding the range of permissible land uses being sought by the planning proposal
- Identification of key environmental constraints and an outline of additional information to be provided to support the planning proposal prior to the community engagement phase and
- Justification for the land use planning outcomes sought by the planning proposal.

It is noted that a separate planning proposal (BSCPP 12/003 Southern Cross Industrial Estate Bulky Goods Precinct) relates to a proposal to rezone industrial zoned land within the existing Southern Cross Industrial Estate to permit development for bulky goods purposes. That amendment to the Local Environmental Plan is currently pending finalisation by the Department of Planning and Infrastructure. Importantly, Ballina Shire Council is the majority owner of the subject land, with the Council holding designated as "operational land" under the provisions of the Local Government Act 1993. This aspect of the planning proposal is discussed further below.

9.4 LEP Amendment Request - Southern Cross Precinct Expansion

Ballina Shire Growth Management Strategy 2012

The Ballina Shire Growth Management Strategy (GMS) provides the strategic planning context for urban development in Ballina Shire. An excerpt of the Ballina Shire Growth Management Strategy, comprising the local strategy table for the North Ballina locality and the North Ballina strategy map, is provided in Appendix 1 of the planning proposal.

The GMS includes the following 'Strategic Actions' in relation to the North Ballina locality:

- *Investigate, through the rezoning process, land development opportunities and the provision of public infrastructure identified in the Southern Cross Precinct Master Plan and the West Ballina Structure Plan*
- *Enhance entry treatment including associated with the Ballina/Byron Gateway Airport*
- *Establish a clustered bulky goods retailing precinct.*

The rezoning of the land as proposed is generally consistent with Council's local planning framework under the Ballina Shire Growth Management Strategy.

The Ballina Shire Growth Management Strategy was approved by the Director General of the Department of Planning & Infrastructure in correspondence dated 7 May 2013.

Southern Cross Precinct Master Plan

The Southern Cross Precinct Master Plan, which informed Council's GMS, (excerpt provided in Appendix 2 of the planning proposal) identifies the following possible land use components with respect to the subject land:

- Future industrial area with conventional 50m x 25m lots
- New airport link road
- Realigned road to facilitate the design of the North Creek Road intersection
- Live/work precinct
- Existing and expanded environmental protection areas and open space corridors
- Existing and expanded bicycle track network and
- Existing and expanded drainage network.

The planning proposal (which provides for employment-based land use outcomes) is generally consistent with the strategic planning for the locality, as provided for by the Ballina Shire Growth Management Strategy and the Southern Cross Precinct Master Plan.

However, it is important to note that the employment outcomes proposed are not limited to conventional industrial land uses.

9.4 LEP Amendment Request - Southern Cross Precinct Expansion

Nevertheless, the provision for employment based outcomes is considered to be generally consistent with the local planning framework.

The composition of land use outcomes is subject to further investigation associated with more detailed site analysis. This work will be required post Gateway determination, but before community engagement commences.

Additional assessments

In broad terms, the environmental characteristics (opportunities and constraints) of the majority of the subject land have been previously assessed in the preparation of the Southern Cross Precinct Master Plan. The master plan identified that the land was generally cleared grazing land that has been subject to considerable disturbance associated with previous activities.

As a consequence the land, as a whole, is not considered to have significant environmental values.

Despite this broad conclusion, a number of more detailed environmental assessments will be required to support the planning proposal, should it receive an affirmative Gateway determination. These environmental assessments 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 previously been assessed as part of Council's floodplain management planning process, undertaken in accordance with the NSW Government's floodplain management manual. This broader assessment will support the planning proposal, should the rezoning receive affirmative Gateway determination. Further flood assessment may be required, depending on the outcomes of more detailed consideration of the land.

Further to the above, additional information will be required to support the planning proposal to enable consideration to be given to the potential impact of providing additional commercial development opportunities on the subject land on the viability of the Ballina CBD, particularly with respect to proposed office and retail land uses. Consequently, it is proposed that further consideration of issues regarding the range of proposed permissible uses within the proposed B7 zone be the subject of further assessment by the Council following the completion of the above studies and prior to the community engagement phase of the planning proposal.

9.4 LEP Amendment Request - Southern Cross Precinct Expansion

Managing conflict of interest

As noted above, Ballina Shire Council is the majority owner of the subject land. In order to manage any potential or perceived conflicts of interest in relation to the Council's dealing with the matter, it is proposed that the following process be implemented, should the planning proposal receive affirmative Gateway determination:

- The applicant (Council's Commercial Services Section) will be invited to provide additional information, outlined above, to support the planning proposal
- Council's Strategic and Community Facilities Group will engage, at the applicant's cost, the services of an independent planning consultant to review the additional information submitted by or on behalf of the applicant, and provide recommendations regarding the appropriate range of permissible uses on the land and allocation of land use zones
- The independent consultant report will form the basis of a report to the elected Council for further deliberation, prior to the community engagement phase of the planning proposal.

Further, where Council proceeds to submit a planning proposal for Gateway determination, Council has the option of requesting delegation of certain plan-making functions from the Department of Planning and Infrastructure. Under these delegations, Council would perform some of the plan making functions that are otherwise completed by the Department.

Due to the financial interests of the Council in the subject land (being the major owner), it is recommended that Council not submit a request to the Department to allow the Council to exercise delegations in this instance.

Sustainability Considerations

- **Environment**
Broad-based environmental assessments previously undertaken for the Council-owned land, prepared in relation to the Southern Cross Precinct Master Plan, concluded that the land is not so environmentally constrained as to render it unsuitable for the type of future development envisaged. However, the potential environmental impacts associated with the rezoning need to be better understood, and mitigation methods clarified, prior to further consideration by the Council, and the community engagement phase of the planning proposal.
- **Social**
It is anticipated that the provision of additional employment lands will deliver positive social benefits to the community through opportunities for employment growth.

9.4 LEP Amendment Request - Southern Cross Precinct Expansion

- **Economic**

The planning proposal seeks to provide additional employment lands to facilitate ongoing economic development opportunities in Ballina Shire. The implications of the proposal for Ballina Shire's established commercial hierarchy will be subject to further consideration by the Council, prior to the community engagement phase of the planning proposal.

Legal / Resource / Financial Implications

The approach recommended in this report is consistent with Council's legal responsibilities as a local planning authority. The matters arising from this report can be attended to within existing resources.

The proponent will be required to meet various processing costs in accordance with Council's adopted schedule of fees and charges, as well as providing the necessary additional technical information, as outlined above.

Consultation

No community or agency engagement has occurred to date in relation to this planning proposal. However, the previous preparation of the Southern Cross Precinct Master Plan and the Ballina Shire Growth Management Strategy were each founded on community consultation and input from relevant public authorities.

It is envisaged that, following referral to the Department of Planning and Infrastructure's Gateway Panel, the planning proposal (if allowed to advance) will be subject to community and agency engagement in accordance with the Gateway determination.

Options

1. That Council advance the proposed rezoning and submit the planning proposal to the Department of Planning and Infrastructure for Gateway determination
2. That Council not commence the rezoning process or
3. That Council defer its decision on the progress of the rezoning.

Option one is the preferred course of action on the basis that it is consistent with the State and local strategic planning framework for this locality, and there is sufficient information to indicate that the proposal warrants further consideration through the LEP amendment process. This approach will progress the planning proposal to the next step in the rezoning process which is to enable a review 'in principle' by the NSW Department of Planning and Infrastructure and Gateway determination to proceed. The Gateway Panel would then determine whether the planning proposal may continue.

9.4 LEP Amendment Request - Southern Cross Precinct Expansion

Importantly, if this approach is pursued and the planning proposal is allowed to proceed by the Gateway Panel, it is recommended that the proposal not proceed to community engagement until detailed site analysis has been undertaken and reviewed by a suitably qualified independent third party. It is also recommended that Council not submit a request to the Department to allow the Council to exercise delegations, in this instance, for the reasons outlined in the body of this report.

The primary disadvantage of the planning proposal not proceeding is that additional commercial and industrial development opportunities would not be provided for in the Southern Cross Industrial Estate area at this time. Therefore, discontinuation of the proposal is not recommended.

The deferral of the proposal is not recommended on the basis that the proposal is generally consistent with the strategic planning framework for the area and the proponent has provided sufficient information to enable an initial review of the matter through the Gateway determination process. Council will have further opportunities to examine the proposal in greater depth before it progresses to public exhibition.

RECOMMENDATIONS

1. That the Council endorses the application of a B6 Enterprise Corridor zone and B7 Business Park zone as the basis for a planning proposal for Gateway determination, applying to Part of Lots 3-6 DP 123781; Lots 3-4 DP 872303; Lot 2 DP 833513; Lot 8 DP 793980; Part of Lot 7 DP 1043261 and adjoining Council road reserve (Corks Lane) in Ballina, as shown in Map 3 of the planning proposal contained in Attachment 1.
2. That the Council submit the planning proposal contained in Attachment 1 to the NSW Department of Planning & Infrastructure for review and Gateway determination.
3. That upon an affirmative Gateway determination being received from the Department of Planning & Infrastructure, the procedural steps associated with progression of the planning proposal be undertaken.
4. That the Council engage a suitably qualified independent planning consultant (at the proponent's cost) to review the site assessment information submitted, and to provide Council with an associated report and recommendations.
5. That a further report be presented to the Council in relation to this matter prior to the commencement of community engagement for the planning proposal.

Attachment(s)

1. Planning Proposal - Southern Cross Precinct Expansion - Gateway