



## **Planning Proposal – August 2013**

### **Reclassification of Land**

**Lot 5 DP 843369, Old Bagotville Road, Wardell**

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Planning Proposal - August 2013

Resolution of Land

13/43681 Council/Gateway

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## INTRODUCTION

### Summary of Planning Proposal

This planning proposal relates to land identified as Lot 5 DP 843369 located on Old Bagotville Road, Wardell as shown on the locality map below (Figure 1).



Figure 1 – Site Location

Lot 5 DP 843369 has an area of 50.53 hectares and is in the ownership of Ballina Shire Council. The land is classified as “community land” for the purposes of the *Local Government Act 1993* (LG Act). The purpose of this planning proposal is to enable the reclassification of the land to “operational land” in accordance with the requirements of the LG Act.

Part of Lot 5 DP 843369 is zoned RU2 Rural Landscape under the provisions of the *Ballina Local Environmental Plan 2012* (BLEP 2012) with the remainder of the site being “deferred matter”. This land is identified as deferred matter under the BLEP 2012 due to the proposed application of the E2 Environmental Protection Zone to the land under this plan. The *Ballina Local Environmental Plan 1987* (BLEP 1987) applies to the area identified as “deferred matter”. This area is zoned part 1(b) – Rural (Secondary Agricultural Land) and part 7(l) – Environmental Protection (Habitat) under the provisions of the BLEP 1987. No amendments to the current zoning arrangements under either the BLEP 2012 or BLEP 1987 are proposed as part of this planning proposal.

This planning proposal seeks to reclassify the entire area of Lot 5 DP 843369 from community land to operational land under the provisions of the LG Act. This will involve the amendment of Schedule 4 of the BLEP 2012 and Schedule 7 of the BLEP 1987 to incorporate reference to the reclassification of Lot 5 DP 843369.

## Planning Context

Lot 5 DP 843369 was acquired by Council in 1996 for its potential as an extractive resource and future landfill site. Due to the land being acquired at auction, Council was unable to comply with the legislative requirements applicable at the time in relation to the classification of the land as operational land. As such, the land has been classified as community land in accordance with the provisions of the LG Act.

Due to the physical and geographic constraints of Lot 5 DP 843369, it has limited use for future community land uses. As such, to enable Council to consider its options with regard to the sale, lease and/or use of the land, it is considered that the operational land classification is more appropriate for the land. Commercial uses of the land could include quarrying operations.

In addition to the above, the preferred route of the Pacific Highway Upgrade (Woodburn-Ballina Section) traverses Lot 5 DP 843369. The reclassification of the land to operational land will provide support liaison with Roads and Maritime Services with regard to the acquisition of the land required for the highway upgrade.

The reclassification of Lot 5 DP 843369 was considered by Council's Commercial Services Committee on 18 December 2012 where it was recommended that Council prepare a planning proposal for the reclassification of the land in accordance with the requirements of the LG Act. The minutes of the Commercial Services Committee meeting on 18 December 2012 were tabled and confirmed at Council's Ordinary Meeting on 20 December 2012. These resolutions and the accompanying report are contained in Appendix A.

Given that the land is Council owned and Council's associated commercial interest in the site, this planning proposal has been prepared having regard for the Department of Planning and Infrastructure's Practice Note PN 09-003 - Classification and reclassification of public land through a local environmental plan and Best Practice Guideline: LEPs and Council Land. Information addressing the requirements of the practice note and guideline are contained in Table 1 below.

**Table 1 – Site Assessment**

<b>Site</b>	Lot 5 DP 843369, Old Bagotville Road, Wardell
<b>Land Register ID</b>	L12034_01
<b>Current Classification</b>	Community Land
<b>Proposed Classification</b>	Operational Land
<b>Reason for classification/ reclassification</b>	To enable Council to exercise its options with regard to the sale, lease or other dealings with the land and to facilitate the acquisition of all or part of the land by Roads and Maritime Services for the purposes of the Pacific Highway upgrade project.
<b>Reason for the Draft LEP</b>	To insert reference to Lot 5 DP 843369 in Schedule 4 of the BLEP 2012 and Schedule 7 of the BLEP 1987 to enable the reclassification of the subject land from community land to operational land.
<b>Ownership of the land</b>	Ballina Shire Council
<b>Nature of Council's Interest</b>	Council acquired the subject land on 17 April 1996 with the intention of seeking a commercial return based on the potential of the land for extractive resources (quarrying). The subject land has not been actively used for quarrying since Council's acquisition. However,

	Council wishes to examine other uses and outcomes relating to deriving an economic return from the land.
<b>Other parties with interests</b>	There are no other parties with an interest in this land.
<b>Change of interests resulting from classification/ reclassification</b>	Not applicable – there are no other parties with an interest in this land.
<b>Special agreements applicable to the land</b>	No special agreements apply to the land.
<b>Financial issues</b>	The reclassification of the land will enable Council to utilise or dispose of the subject land for financial gain consistent with the initial reasons for the land's acquisition.
<b>Asset issues</b>	Aside from previously established quarry pits, the land is currently vacant and there are no assets or substantial physical improvements present.

## PART 1 – OBJECTIVES OR INTENDED OUTCOMES

The objectives or intended outcomes of this planning proposal are:

- to reclassify Lot 5 DP 843369 to operational land to provide greater flexibility for Council in its future considerations for the use of the subject land, including the facilitation of acquisition for the proposed Pacific Highway upgrade.

## PART 2 – EXPLANATION OF THE PROPOSAL

This planning proposal will result in the amendment of Schedule 4 of the BLEP 2012 and Schedule 7 of the BLEP 1987 to incorporate reference to the reclassification of Lot 5 DP 843369 from community land to operational land for the purposes of the *Local Government Act 1993*.

## PART 3 – JUSTIFICATION

### Section A - Need for the Planning Proposal

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

The planning proposal is the result of an internal review of Council's landholdings.

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

The planning proposal to reclassify Lot 5 DP 843369 as operational is the best means for achieving the objectives as outlined in the assessment contained in Table 1.

### 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 to reclassify the subject land is consistent with the objectives and actions in the applicable regional and sub-regional strategies.

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

The proposed reclassification will enhance Council's options for the future use and/or disposal of the subject land and will enable the land to be used based on the purposes for which it was acquired. This is consistent with the principles of managing Council's finances and assets as specified in Council's adopted Community Strategic Plan 2013-2023.

**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 applicable Ministerial Directions (s.117 directions)?**

The proposal is consistent with the relevant Section 117 Directions as detailed in the Section 117 Direction Checklist contained in Appendix B.

## **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?**

The proposed reclassification will not result in direct impacts on critical habitat or threatened species, populations or ecological communities or their habitats.

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

No other likely environmental effects are expected.

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

The proposed reclassification is not expected to result in any adverse social or economic effects. The social and economic effects are likely to be positive through providing Council with greater control and flexibility in the management and ongoing use of the land. The land has no underlying public recreational use.

## **Section D - State and Commonwealth interests.**

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

The planning proposal will not create any need for public infrastructure.

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

No engagement with State or Commonwealth public authorities has been undertaken as part of this planning proposal to date.



## PART 4 – MAPPING

The planning proposal relates to the reclassification of Lot 5 DP 843369 from community land to operational land as detailed in the locality plan below. The proposal will not result in amendments to any of the maps associated with either the BLEP 2012 or the BLEP 1987.



## PART 5 – COMMUNITY CONSULTATION

Council has not undertaken any community consultation concerning this specific planning proposal. It is anticipated that this will occur as part of the formal exhibition of the planning proposal or as directed through the Gateway determination process. This is expected to comprise the standard 28 day public exhibition process followed by a public hearing into the reclassification of community land in accordance with legislative requirements.

## PART 6 – TIMELINE

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination (Anticipated)	September 2013
Government Agency Consultation	October 2013
Public Exhibition Period	October 2013
Public Hearing (if required)	November 2013
Submissions Assessment	December 2013
RPA Assessment of Planning Proposal and Exhibition Outcomes	January 2014
Submission of Endorsed LEP to DP&I for Finalisation	January 2014
RPA Decision to Make the LEP Amendment (if delegated)	N/A – proposal not subject to delegation
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	N/A – proposal not subject to delegation

Note: Council is not seeking delegation of plan making functions in relation to this proposal due to Council's commercial interest in the subject property.

## Appendix A – Council Reports and Resolutions

### 4.2 Reclassification of Land - Old Bagotville Road, Wardell

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### 4.2 Reclassification of Land - Old Bagotville Road, Wardell

**Delivery Program** Commercial Services

**Objective** To reconsider the proposal to reclassify Lot 5 DP 843369, Old Bagotville Road, Wardell from Community Land to Operational Land for the purpose of the Local Government Act 1993.

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#### **Background**

A report was submitted to Council at its Ordinary Meeting held on 24 March 2011 in relation to the reclassification of Lot 5 DP 843369, Old Bagotville Road, Wardell from community land to operational land pursuant to the provisions of the Local Government Act 1993 (site plan attached). Council, at that time, did not support the reclassification due to concerns expressed by Wardell residents.

A number of these concerns related to the expansion of private quarries in the Bagotville area and the increased traffic flows that may result.

The purpose of this report is to ask Council to reconsider this matter due to the private quarry expansions not proceeding and the further progression of the Woolgoolga to Ballina highway realignment.

#### **Key Issues**

- Whether Lot 5 DP 843369 is best classified as operational or community land

#### **Information**

The Local Government Act (LGA) requires that all land in Council ownership be classified as either operational land or community land. Council may deal with operational land without any restrictions under the LGA. Such land is generally held and used in connection with Council's administrative operations, utilities (water, waste, wastewater) and/or commercial activities.

Community land consists typically of open space owned by Council for which there is a range of management requirements under the LGA to ensure that these community assets are retained and managed for the benefit of the community. The LGA prohibits the sale of community land and imposes restrictions on its development and use.

The reclassification of community land to operational land can only be undertaken through an amendment to the Ballina Local Environmental Plan 1987 (BLEP). This will require a planning proposal to be prepared by Council and submitted to the NSW Department of Planning.

## 4.2 **Reclassification of Land - Old Bagotville Road, Wardell**

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The Department will then issue a gateway determination indicating whether the matter should proceed. Where the Department determines that the matter should proceed, it will indicate whether any further studies or information is required, as well as the requirements for community and agency consultation.

In accordance with the requirements of the LGA, Council is also required to arrange a public hearing in respect of any planning proposal to reclassify community land as operational land.

The Department of Planning's reclassification site assessment sheet has been completed for Lot 5 and is **attached** for Council's information. The assessment outlines the rationale for the proposed reclassification. A locality plan is also **attached**.

Lot 5 was purchased by Council in 1996 to realise a commercial return on its extractive resource or alternatively to use the land as a possible landfill site. The land had several developed quarry pits at the time of purchase. Council was actively involved in quarrying at the time, but has since changed its corporate focus with the lease of its approved quarries to contractors in exchange for royalty payments.

In respect to landfill options the preferred regional approach is for sites near Coraki and / or Kyogle. If these did not proceed the reclassification to operational land would be more suitable for use of this land as a landfill site.

The reason the land was initially classified as community land was that at the time of purchase Council did not provide the required notice to classify the land as operational land. This was because the land was being sold at auction and there was a commercial imperative for Council to be an anonymous bidder. Legislation has since been amended to allow post-purchase notification (within three months) to recognise such situations.

### **Legal / Resource / Financial Implications**

The reclassification of the land can be undertaken within the available resources of Council. The reclassification of Lot 5 will enable Council to realise the value of the land through its sale or development should it choose to examine these options in the future. Moreover, and in general terms, the operational classification would more aptly reflect the environmental and other characteristics of the land.

The proposed Woodburn-Ballina section of the Pacific Highway upgrade affects part of Lot 5 and the acquisition of all or part of the land by RMS is expected. The reclassification of the land would make it easier to deal with RMS on a compensation basis and possibly provide an opportunity to sell material to RMS.

## **4.2 Reclassification of Land - Old Bagotville Road, Wardell**

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### **Consultation**

There have previously been objections to this proposal from residents at Wardell as there are concerns that the site could be used as a quarry and result in increased truck movements through Wardell. This was a particularly sensitive matter when Council was considering two applications for extensions to existing private quarries in the Bagotville area. Those two applications did not eventually proceed, however it is fair to say that the Wardell residents do not want to see any increased traffic flows from an expansion of any quarry operations.

Whether or not Council will use the site as a quarry is uncertain, particularly with the future bypass likely to traverse this area. Importantly, having the land classified as operational allows Council to then assess the best option for the land.

The reclassification process is subject to public consultation with the outcomes reported to Council.

### **Options**

The options are to commence the process for reclassification to operational land or not.

Due to the nature of the land, the future possible uses, plus the likelihood of part or all of the land being acquired by the RMS, the most appropriate classification for this land is operational and the recommendation is to commence the reclassification process.

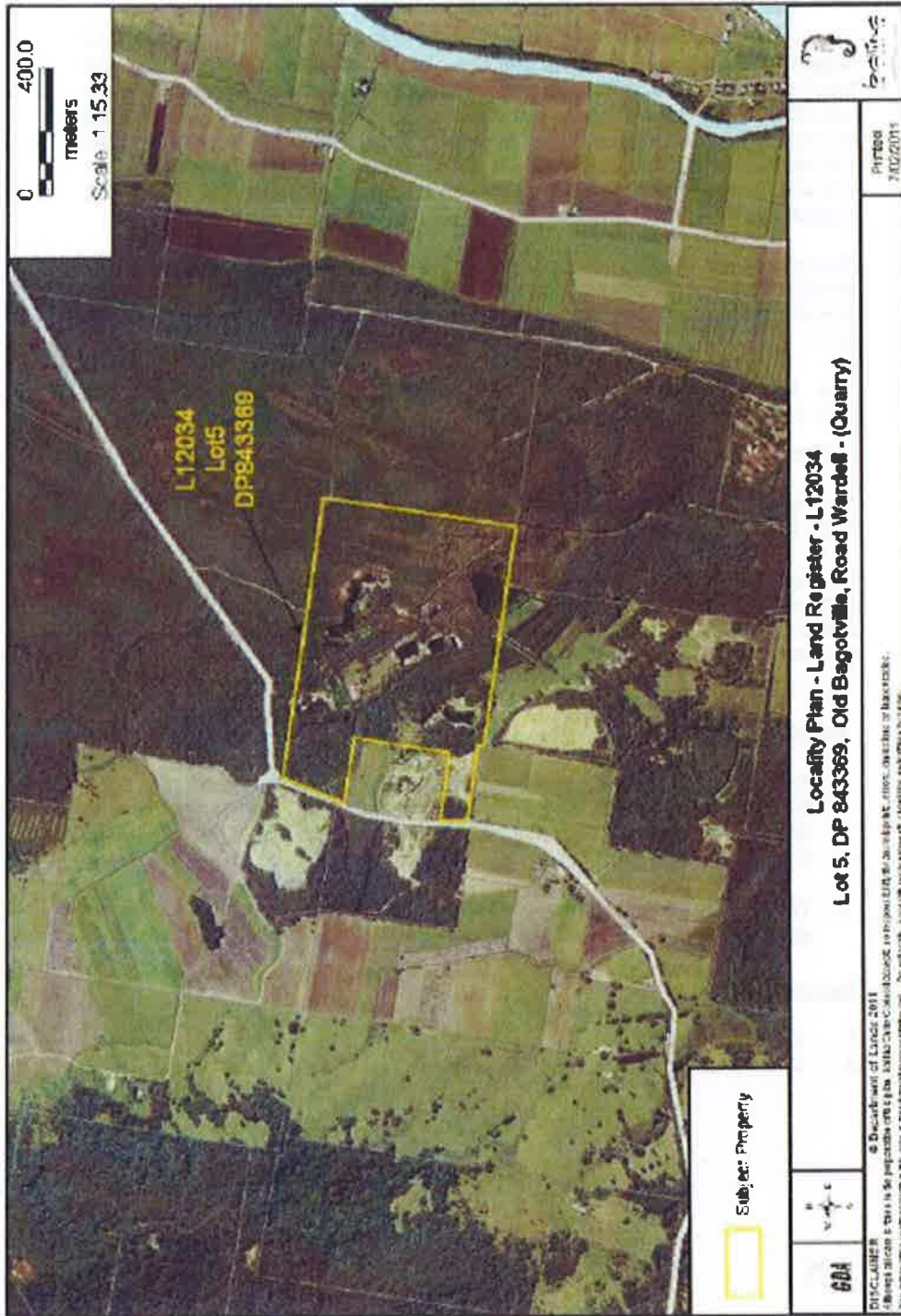
### **RECOMMENDATIONS**

1. That Council prepare a planning proposal for the reclassification of Lot 5 DP 843369, Old Bagotville Road, Wardell from community land to operational land in accordance with the requirements of the Local Government Act 1993.
2. That the matter be reported to Council for determination at the conclusion of the community consultation phases.

### **Attachment(s)**

1. Locality Plan
2. Site Assessment Sheet

4.2 Reclassification of Land - Old Bagotville Road, Wardell



## 4.2 Reclassification of Land - Old Bagotville Road, Wardell

### Proposed Classification or Reclassification of Land - Site Assessment February 2011

<b>Site</b>	Lot 5 DP 843369, Old Bagotville Road, Wardell
<b>Land Register ID</b>	L12034_01
<b>Current Classification</b>	Community Land
<b>Proposed Classification</b>	Operational Land
<b>Reason for classification/ reclassification</b>	<p>To recognise that Council purchased this land to realise a commercial return on its extractive resource. The land had several developed quarry pits at the time of purchase.</p> <p>Note: Council was unable to give the required pre-purchase notice of its intention to classify this land as Operational because of the commercial imperative of remaining an anonymous bidder at the auction for the land. Legislation has since been amended to allow post-purchase notification to recognise such situations.</p>
<b>Reason for the Draft LEP</b>	The classification/ reclassification forms part of the Shire Wide LEP renewal process. This process is a requirement of the NSW Department of Planning.
<b>Ownership of the land</b>	Ballina Shire Council
<b>Nature of Council's Interest</b>	The property was purchased at auction on 17 April 1996 with funds generated by Council's land development activities.
<b>Other parties with interests</b>	There are no other parties with an interest in the land.
<b>Change of interests resulting from classification/ reclassification</b>	Not applicable because there are no other parties with interests in the land.
<b>Special agreements applicable to the land</b>	There are no special agreements applicable to this land.
<b>Financial issues</b>	The reclassification of the land has significant financial implications because Council is presently constrained by the <i>Local Government Act 1993</i> from developing or realising the market value for the land.

**MINUTES OF THE COMMERCIAL SERVICES COMMITTEE MEETING  
OF THE BALLINA SHIRE COUNCIL  
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS  
40 CHERRY STREET BALLINA,  
ON 18/12/12 AT 5.00 PM**

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**4.2 Reclassification of Land - Old Bagotville Road, Wardell**

**RECOMMENDATION**

(Cr Keith Johnson/Cr Ben Smith)

1. That Council prepare a planning proposal for the reclassification of Lot 5 DP 843369, Old Bagotville Road, Wardell from community land to operational land in accordance with the requirements of the Local Government Act 1993.
2. That the matter be reported to Council for determination at the conclusion of the community consultation phases.

FOR VOTE - All Councillors voted unanimously.

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL  
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS  
40 CHERRY STREET, BALLINA,  
ON 20/12/12 AT 9.00 AM**

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**14.3 Commercial Services Committee Minutes - 18 December 2012**

**201212/36      RESOLVED**

(Cr Ben Smith/Cr Sharon Cadwallader)

That Council confirms the minutes of the Commercial Services Committee meeting held 18 December 2012 and that the recommendations contained within the minutes be adopted, with an amendment to the voting on the item "Adoption of Recommendations from Confidential Session" – Cr Jeff Johnson voted against.

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

AGAINST VOTE - Cr Jeff Johnson



## Appendix B – Section 117 Direction Checklist

Section 117 Direction Checklist	
Planning Proposal – Lot 5 DP 843369, Old Bagotville Road, Wardell	
Direction No.	Compliance of Planning Proposal
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Consistent. While the subject site is zoned part RU2 Rural Landscape (BLEP 2012) and part 1(b) Rural (Secondary Agricultural Land) (BLEP 1987), the proposal does not seek to amend these current zonings.
1.3 Mining, Petroleum Production and Extractive Industries	Consistent. This planning proposal relates to the reclassification of land only and will not result in the prohibition or restriction of mining, petroleum production and extractive industries.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Consistent. The subject site is zoned part RU2 Rural Landscape (BLEP 2012) and part 1(b) Rural (Secondary Agricultural Land) (BLEP 1987). The planning proposal is for reclassification of the land and is generally consistent with the Rural Planning Principles contained in State Environmental Planning Policy (Rural Lands) 2008.
<b>2. Environment and Heritage</b>	
2.1 Environmental Protection Zones	Consistent. Part of the subject site is zoned 7(l) Environmental Protection (Habitat) (BLEP 1987). The reclassification of land included in this planning proposal will not reduce the environmental protection standards that currently apply to the land
2.2 Coastal Protection	Does not apply to planning proposal.
2.3 Heritage Conservation	Consistent. The planning proposal is for the reclassification of land and will not directly impact any known items, areas, objects or places of environmental heritage significance and indigenous heritage significance.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal will not enable the land to be developed for a recreational vehicle area.
<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to planning proposal.
3.3 Home Occupations	Does not apply to planning proposal.
3.4 Integrated Land Use and Transport	Does not apply to planning proposal.
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	Consistent. Although the site contains potential acid sulfate soils (at a depth beyond 2m), the planning proposal relates to the reclassification of land only. The planning proposal will not amend the applicable regulatory requirements of the BLEP 2012 and BLEP 1987 that address development on land having the potential for acid sulfate soils.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Does not apply to planning proposal.

4.4 Planning for Bushfire Protection	Consistent. While the subject site is identified as being bush fire prone land, the planning proposal relates only to the reclassification of the land and will not result in any inconsistencies with this planning direction.
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies	The Far North Coast Regional Strategy applies to Ballina Shire. The planning proposal is consistent with the Far North Coast Regional Strategy.
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. The subject land is not identified under the Northern Rivers Farmland Protection Project as being either State or Regionally Significant Farmland.
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 is not zoned or reserved as land for a public purpose.
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.