

9.3 Ballina LEP Amendment Request - Stoville, Alstonville

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Delivery Program Strategic Planning

Objective To seek direction from Council with respect to the submission of a planning proposal to the Department of Planning and Infrastructure for determination through the gateway process relating to Lot 1 DP 817406 adjacent to the Russellton Industrial Estate, Alstonville.

Background

Council resolved at its Ordinary Meeting held on 28 July 2011 to prepare a planning proposal for part of Lot 1 DP 817406 to enable the application of an industrial land use zone in response to a request from Geolink on behalf of the landowner. A copy of the request and submitted planning proposal can be viewed in **Attachment 1**.

The subject land is identified on the locality plan in **Attachment 2**. Lot 1 DP 817406 is owned by Stoville Pty. Ltd. and is currently used for agricultural purposes with the exception of a portion of the land in the northwest corner adjacent to the existing industrial zone. This portion contains a rural dwelling which is currently occupied by the operators of the adjoining tank manufacturing industry (Duraplas) as a short-term interim solution to a land use conflict issue. The land is also utilised for tank storage by Duraplas at present.

It is proposed that, pending the success of the rezoning, the rezoned portion of the site will be consolidated with the adjoining property owned by JC & RM Fleming (proprietors of Duraplas) and will be used in conjunction with Duraplas tank manufacturing activities.

At its Ordinary Meeting held on 28 July 2011, Council also resolved:

That prior to the preparation of a planning proposal:

- a) *The proponent is to provide Council with suitable documentation outlining the proponent's proposed approach to the following matters in the event that an industrial zone is applied to part of Lot 1 DP 817406:*
 - *the removal, relocation or permanent decommissioning of the dwelling house on Lot 1 DP 817406;*
 - *the mechanism for subdivision of the land; and*
 - *the provision of a formal buffer between industrial and agricultural land uses on Lot 1 DP 817406.*
- b) *Council is to receive a further report regarding the proposed LEP amendment where there is uncertainty in relation to the removal, relocation or decommissioning of the dwelling on Lot 1 DP 817406, a suitable mechanism for the subdivision of the land and/or provision of a suitable buffer area between industrial and agricultural land uses.*

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The proponent has submitted documentation which addresses the matters detailed. A draft planning agreement has been prepared which provides a commitment from the current landowner (Stoville Pty Ltd) and the owner of the adjoining industrial land parcel (JC & RM Fleming) to the following:

- that following the rezoning of the land, subdivision will only proceed by way of a boundary adjustment that adds the rezoned portion of Lot 1 DP 817406 to Lot 2 DP 707837;
- that prior to the issue of a Subdivision Certificate for the boundary adjustment subdivision, the existing dwelling on the land will be removed from the site or rendered uninhabitable; and
- that prior to the issue of a Subdivision Certificate for the boundary adjustment subdivision of the land, a 10 metre wide landscape buffer will be planted within the dedicated buffer along the southern and eastern boundaries of the land.

Having regard for the above commitments by the affected landowners, it is considered that the requirements of Council's resolution at its 28 July 2011 Ordinary Meeting have been addressed satisfactorily to enable the processing of the planning proposal to proceed.

A draft planning proposal for the rezoning has been prepared should Council resolve to proceed with the request and seek a determination from the Department of Planning and Infrastructure (see **Attachment 3**). In preparing the draft planning proposal, Council officers have undertaken an assessment of the proposed rezoning in accordance with the requirements of the Department, including the provisions of relevant statutory planning instruments. During this assessment, a number of issues have come to the attention of Council officers in relation to the Department's guidelines for planning proposals. These issues are further detailed in this report.

This report has been compiled having regard for the legislative requirements for amending the *Ballina Local Environmental Plan 1987* (BLEP) as well as having consideration for the importance of the ongoing viability of industrial land use activities in the Shire.

Key Issues

- Good planning practice
- Compliance with Far North Coast Regional Strategy
- Consistency with Ministerial directions

Information

Good planning practice

Section 55 of the *Environmental Planning and Assessment Act 1979* requires Council, as the relevant planning authority, to prepare a planning proposal in relation to amending the zoning provisions of the *Ballina Local Environmental Plan 1987*. The planning proposal must then be submitted to the Department of Planning and Infrastructure for a determination by the Minister (or delegate) in accordance with the gateway determination provisions in section 56 of the Act.

The Department's publication "*A guide to preparing planning proposals*" provides guidance with regard to the content of a planning proposal. It recommends particular attention be given to the justification of the need for the planning proposal and consideration of whether or not the planning proposal is the best means of achieving its objectives or intended outcomes.

The subject planning proposal seeks to rezone a small section of land currently within the 7(i) – Environmental Protection (Urban Buffer) Zone adjacent to the Russellton Industrial Estate at Alstonville. The subject site has been a source of land use conflict for some years due to the presence of a rural dwelling in close proximity to an intensive industrial activity. To date, interim short-term measures have been undertaken to ameliorate the conflict which has resulted in the operator of the adjoining industrial activity occupying the rural dwelling through a lease agreement with the landowner. Unfortunately, the land use conflict issue has remained unresolved in the long-term. In addition, the tank storage activity involves the occupation of part of the site for industrial storage purposes without the relevant regulatory approval or authority.

As a consequence of the above, and in an attempt to achieve a permanent resolution to the land use conflict, Council has previously resolved to consider the rezoning of that portion of the subject site containing the rural dwelling and unauthorised land use.

The subject site has not been considered by Council as part of any strategic planning with regard to the expansion of industrial zoned land in the Russellton Industrial Estate and Council previously resolved in its Ordinary Meeting held on 28 February 2002, as part of a similar earlier rezoning request for the subject site that:

- a. There are sufficient stocks of industrial land in the vicinity for the foreseeable future.*
- b. No study or decision has been taken by Council on whether the existing Industrial Estate should be expanded or how it will be expanded.*
- c. The proposal will alienate high quality agricultural land by consuming the said land for industrial use by the provision of appropriate buffers.*
- d. The proposal will compromise the 7(i) – Environmental Protection (Urban Buffer) zone.*
- e. The proposal is not part of an integrated plan for the industrial estate with the accompanying planning of services.*

Although it has been 10 years since the above resolution, these matters are considered to be still applicable to the locality. It should also be noted that the above matters are now further supported by the adoption of the Far North Coast Regional Strategy (see further discussion below). Council's 2008 Industrial and Commercial Land Audit concluded that there is adequate zoned and planned industrial land in the shire to meet projected demand until approximately 2028.

It is acknowledged that Duraplas is a substantial local employer and there are substantial economic benefits associated with the ongoing operation of this enterprise. However, the rezoning of part of Lot 1 DP 817406 involves several significant planning considerations, including:

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- There is no Council-endorsed planning strategy for the expansion of the Russellton Industrial Estate. To the contrary, Council has maintained the application of the Alstonville/Wollongbar urban buffer to the east of the estate since the late 1980s.
- There is existing undeveloped zoned industrial land within the Russellton Industrial Estate for which Council has subdivision approval.
- Council may establish an undesirable precedent through a spot rezoning to solve a land use conflict issue.
- There are alternative means of resolving the land use conflict (such as expansion/relocation of the intensive industry within the existing industrial zone, relocation of the rural dwelling, etc., or undertaking compliance action).
- The proposal is inconsistent with a number of planning instruments applicable to the land.

In consideration of the above, it should also be noted that the 7(i) – Environmental Protection (Urban Buffer) Zone has been applied to the land surrounding Alstonville and Wollongbar since the *Ballina Local Environmental Plan 1987* was first gazetted. This land provides a highly valued green belt and agricultural buffer around the two villages and, to date, Council has not undertaken any LEP amendments that have altered the originally gazetted 7(i) – Environmental Protection (Urban Buffer) Zone. This means the buffer zoning has been maintained for almost 25 years.

Far North Coast Regional Strategy

The proposed rezoning is inconsistent with the provisions of the Far North Coast Regional Strategy (FNCRS) which provides the regional framework for consideration of rezoning land for urban purposes in Ballina Shire. The subject site is located outside the identified Town and Village Growth Boundary and is not part of an identified Proposed Future Urban Release area.

The FNCRS provides that any development proposed for greenfield sites in the non-coastal area that is located outside of the Town and Village Growth Boundary will be subject to satisfying the Sustainability Criteria as specified in Appendix 1 of the Strategy and as detailed in the table below.

Threshold Sustainability Criteria for any proposed development site outside designated areas in regional strategies	Planning Proposal
1. Infrastructure Provision Mechanisms in place to ensure utilities, transport, open space and communication are provided in a timely and efficient way.	Complies. Satisfactory infrastructure services exist to service the subject site.
2. Access Accessible transport options for efficient and sustainable travel between homes, jobs, services and recreation to be existing or provided.	Complies. Satisfactory access is available to the subject site.
3. Housing Diversity Provide a range of housing choices to ensure a broad population can be housed.	Not applicable.

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Threshold Sustainability Criteria for any proposed development site outside designated areas in regional strategies	Planning Proposal
4. Employment Lands Provide regional/local employment opportunities to support the Far North Coast's expanding role in the wider regional and NSW economies.	Complies. The planning proposal will seek to allow for the continued permanent use of the site for an existing industrial activity and employer in the locality.
5. Avoidance of Risk Land use conflicts, and risk to human health and life, avoided.	Complies. The proposal will result in the resolution of an existing land use conflict and provision is made for the incorporation of a landscaped buffer that will be established between the proposed industrial land and residual agricultural land.
6. Natural Resources Natural resource limits not exceeded/ environmental footprint minimised.	Does not comply. The subject land is identified as State Significant Farmland and as such the proposal is not considered the most efficient/suitable use of the land. The existing environmental buffer may also be considered a natural resource, the impacts on which should be minimised.
7. Environmental Protection Protect and enhance biodiversity, air quality, heritage, and waterway health.	Generally complies. The planning proposal will not result in unreasonable environmental impacts. It could be considered, however, that in its current status as an environmental zone for urban buffer purposes, the land contributes to the natural environment of the plateau in that it provides a highly valued natural/agricultural buffer between the urban areas of the villages of Alstonville and Wollongbar.
8. Quality and Equity in Services Quality health, education, legal, recreational, cultural and community development and other government services are accessible.	Not applicable.

Should Council resolve to proceed with the planning proposal it is important to note that the planning proposal is considered to be inconsistent with the Far North Coast Regional Strategy and its Sustainability Criteria, and as such may not be supported by the Department of Planning and Infrastructure.

Ministerial Directions

The Department's publication "*A guide to preparing planning proposals*" states that the justification for a planning proposal should demonstrate consistency with any applicable Ministerial directions (made under section 117 of the *Environmental Planning and Assessment Act 1979*).

A number of Ministerial directions apply to the subject planning proposal. The compliance of the planning proposal with these directions is detailed in the table below.

Ministerial Direction & Details	Planning Proposal
1. Employment and Resources 1.1 Business and Industrial Zones Applies when planning proposal affects land within an existing or proposed industrial zone (including the alteration of an industrial zone boundary). Requires that a planning proposal must: a) <i>give effect to the objectives of this direction,</i> b) <i>retain the areas and locations of existing business and industrial zones,</i> c) <i>not reduce the total potential floor space area for employment uses and related public services in business zones,</i> d) <i>not reduce the total potential floor space area for industrial uses in industrial zones, and</i> e) <i>ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.</i>	The planning proposal is generally consistent with the objectives of this direction. The proposal, however, seeks to expand the existing Russellton Industrial Estate precinct into an area designated as urban buffer. The expansion of the Russellton Industrial Estate is not currently foreshadowed as part of any growth or expansion strategy for urban land.
1. Employment and Resources 1.5 Rural Lands In summary, this Direction provides that a Planning Proposal must be consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008. This Direction applies to both rural and environmental protection zones.	The planning proposal seeks to rezone an area currently zoned for environmental protection and as such the provisions of this Direction apply to the proposal. The Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008 are as follows: a) <i>the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,</i> b) <i>recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,</i> c) <i>recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,</i> d) <i>in planning for rural lands, to balance the social, economic and environmental interests of the community,</i> e) <i>the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,</i> f) <i>the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,</i> g) <i>the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,</i> h) <i>ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.</i> The planning proposal is not consistent with the above Rural Planning Principles, particularly due to its inconsistency with the Far North Coast Regional Strategy. The

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Ministerial Direction & Details	Planning Proposal
	Direction allows for a planning proposal to be inconsistent with the above only where it can be justified by a strategy which has been approved by the Department of Planning or is of minor significance. The planning proposal is not justified by a strategy endorsed by the Department and it is not considered to be of minor significance.
2. Environment and Heritage 2.1 Environmental Protection Zones A Planning Proposal shall include provisions that facilitate the protection and conservation of environmentally sensitive areas and shall not reduce the environmental protection standards that apply to the land.	The planning proposal seeks to rezone a portion of land zoned 7(i) – Environmental Protection (Urban Buffer) Zone under the provisions of the <i>Ballina Local Environmental Plan 1987</i>. The primary objective of the 7(i) – Environmental Protection (Urban Buffer) Zone is: <i>to create a rural buffer in the locality of Alstonville and Wollongbar and to prevent development of an urban character within any part of the zone which is likely to be seen by existing or likely future residents of the villages of Alstonville and Wollongbar or from a major road in the locality.</i> Although The planning proposal seeks to rezone land within the buffer for industrial purposes which will not be seen by existing or likely future residents of the villages of Alstonville and Wollongbar or from a major road in the locality, it does not satisfy consistency provisions contained in section 6 of this Direction.
5. Regional Planning 5.1 Implementation of Regional Strategies This Direction provides that when a Council prepares a Draft LEP the Plan shall be consistent with a Regional Strategy released by the Minister for Planning.	The subject site is not identified in the Far North Coast Regional Strategy as a future urban release area and is not located within the identified Town and Village Growth Boundaries specified in the Strategy. The site is also identified in the Far North Coast Regional Strategy as State Significant Farmland and requires that: <i>Local environmental plans will not zone land within the Environmental Assets and Rural Land area to permit urban purposes, other than rural residential development.</i> In this regard The planning proposal is inconsistent with the requirements of this Direction. The planning proposal does not satisfy the requirements of section 5 of this Direction in that it is not considered to be of minor significance, is not considered to achieve the overall intent of the regional strategy and it is considered that it would undermine the achievement of the Strategy's vision, land use strategy, policies, outcomes and actions.
5. Regional Planning 5.3 Farmland of State and Regional Significance on the NSW Far North Coast In summary, this Direction provides that a Draft LEP shall not rezone land identified as State Significant Farmland or Regionally Significant Farmland for urban or rural residential purposes, unless the Draft LEP is consistent with Section 4 of the Report titled "Northern Rivers Farmland Protection	The subject land is identified as being State Significant Farmland. This Direction requires that a planning proposal must not rezone land identified as State Significant Farmland for urban or residential purposes. A planning proposal may be inconsistent with the terms of this Direction only if it can be satisfied that The planning proposal is consistent with: a) the Far North Coast Regional Strategy, and

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Ministerial Direction & Details	Planning Proposal
Project – Final Recommendations, February 2005".	b) Section 4 of the report titled <i>Northern Rivers Farmland Protection Project – Final Recommendations, February 2005</i>, held by the Department of Planning. Section 4 of <i>Northern Rivers Farmland Protection Project – Final Recommendations, February 2005</i> provides as follows: <i>State significant farmland cannot be considered for urban (including housing, retailing and other uses normally located within towns) or rural residential rezoning. The only exception is where the land is identified in a council settlement strategy which has been agreed to between December 1994 and December 2004 under clauses 20 or 38 of the North Coast Regional Environmental Plan (or placed on public exhibition by the end of 2004 and subsequently approved). Councils when preparing new settlement strategies cannot consider state significant farmland for inclusion.</i> Having regard for the above, The planning proposal is not consistent with the requirements of this Direction.

Should Council resolve to proceed with the planning proposal it is important to note that the planning proposal is considered to be inconsistent with several Ministerial directions as detailed above and as such may not be supported by the Department of Planning and Infrastructure.

Notwithstanding these issues, should Council resolve to proceed with this rezoning proposal, **Attachment 3** contains a planning proposal for submission to the Department to allow its determination in accordance with the Department's gateway planning process.

Sustainability Considerations

- **Environment**

The rezoning of the subject land is not expected to result in significant ecological impacts. It will, however, encroach into land set aside as urban buffer and that is identified as State Significant Farmland in a non-strategic ad hoc manner.

- **Social**

Some social benefits can be expected through the making of the subject land available for the operations of a valued local industry and employer.

- **Economic**

The rezoning will have the effect of allowing the continuation of the existing industrial activity both on and adjacent to the site which will likely result in positive economic benefits for both the proprietor of the industry and the owner of the subject land. The rezoning needs to be considered in the context of the overall supply of industrial land in the locality, including the nearby Council-owned industrial land that is yet to be developed and whether or not the rezoning of additional

industrial land in the locality at this time is a sustainable economic proposition.

Legal / Resource / Financial Implications

Should the planning proposal be supported by the Department of Planning and Infrastructure, the community consultation and implementation of the rezoning would have (minor) resource implications for Council's Strategic and Community Services Group.

Consultation

The presentation of this matter to the Council has involved consultation with the subject private parties and with the Department of Planning and Infrastructure.

Options

1. That Council continues to support the rezoning of part of Lot 1 DP 817406 for industrial purposes and that the attached planning proposal be submitted to the Department of Planning and Infrastructure for determination via the gateway planning system, notwithstanding the inconsistencies of the planning proposal with local planning policy and applicable planning instruments as detailed in this report; or
2. That with regard to the proposal to rezone Lot 1 DP 817406 for industrial purposes Council takes the following actions:
 - a. Discontinue its support for the rezoning of Lot 1 DP 817406 for the reasons outlined in this report; and
 - b. Advise the landowner (Stoville Pty Ltd) and the operator of the adjoining industry (JC & RM Fleming) that Council declines the request for the rezoning and will take no further action in relation to the rezoning of the land.

Option two is the recommended course of action due to the numerous inconsistencies with the Minister's directions.

It should be noted that should Council proceed with option two, it will likely result in a requirement for Council (and possibly other government agencies) to take action to enforce relevant environmental standards and conditions of development consent in relation to the operations of Duraplas (and other industrial activities in the Russellton Industrial Estate) and the unauthorized use of Lot 1 DP 817406 for storage purposes. In this regard, Duraplas has indicated that its business is not viable if it cannot operate 24 hours a day, seven days a week. Ensuring the compliance of industrial activity with environmental standards and conditions of development consent is an alternate means of addressing the existing land use conflict issues in the subject circumstances. Consequently, should option two be pursued, further options with regard to this matter, including possible compliance actions, may form the basis of further reporting to the elected Council by Council's Regulatory Services Group, in due course.

RECOMMENDATIONS

That Council ceases further action in relation to the planning proposal for the rezoning of part of Lot 1 DP 817406 on the basis that the proposal is inconsistent with local and state planning policies and statutory requirements.

Attachment(s)

1. Copy of Planning Proposal submitted by applicant (Geolink)
2. Locality Plan
3. Planning Proposal for submission to the Department of Planning and Infrastructure

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
CNR CHERRY & TAMAR STREETS, BALLINA,
ON 26/04/12 AT 9.00 AM**

-
- **Ian Duncan** - spoke in to Item 14.1 - Finance Committee Minutes 23 April 2012 and in particular Item 4.6 - Budget Requests - Item c) - Newrybar - Village Upgrade.

Cr Phillip Silver declared an interest in Item 9.3 and left the meeting at 9.52 am. Cr David Wright, Deputy Mayor assumed the Chair.

- **Tim Riley** - spoke in opposition to Item 9.3 - Ballina LEP Amendment Request - Stoville, Alstonville.

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260412/2 RESOLVED

(Cr Keith Johnson/Cr Sharon Cadwallader)

That Council support the rezoning of part of Lot 1 DP 817406 for industrial purposes and the attached planning proposal be submitted to the Department of Planning and Infrastructure for determination, with the submission also expressing Council's strong recommendation for approval.

FOR VOTE - Cr Sharon Cadwallader, Cr Ben Smith, Cr Keith Johnson, Cr Peter Moore, Cr Robyn Hordern, Cr David Wright and Cr Alan Brown

AGAINST VOTE - Cr Jeff Johnson and Cr Susan Meehan

ABSENT. DID NOT VOTE - Cr Phillip Silver

Cr Phillip Silver returned to the meeting at 10:18 am and resumed the Chair.

7. Mayoral Minutes

Nil items.

8. Regulatory Services Group Report

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

260412/3 RESOLVED

(Cr David Wright/Cr Ben Smith)

That DA 1996/29 and 1996/30 be deferred until the following items are addressed:

1. That the matters raised in the EDO's original letter and that of 24 April be assessed individually by Council's Sydney Solicitors to ensure that all aspects are answered.
2. That a mechanism for a monetary penalty be formulated if there are breaches in the DA consent conditions for starting times, speed and traffic movements.