

SECTION 3.36 PLANNING REPORT

Planning proposal details:

PP_2014_BALLI_007_00 (Ballina LEP 2012 Amendment No 40)

Land to which planning proposal applies (the site)

Lot 4 DP 537419 (now known as Lot 1 DP 124173), Burns Point Ferry Road, West Ballina.

Planning proposal summary:

Planning proposal 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.

Date of Gateway determination:

Original – 25 September 2014

1.0 SUMMARY

1.0 Summary

[INSTRUCTION] Council to provide summary of the key issues associated with the planning proposal including:

- any relevant background issues related to council policy/rationale for proceeding with the proposal
- an overview of the zones/development standards to be amended
- summary of key exhibition dates and main points raised in submissions
- a summary of any key amendments made to the planning proposal as a consequence of public exhibition or agency consultation
- other relevant background

Real Property Lot Description

Council records show that the site is known as Lot 4 DP 537419 (Lot 4). This lot was created on 6 June 1969. Lot 4 has an area of 56.6ha.

On 10 May 2019 a new title (Edition 1) was issued for Lot 1 DP 124173 (Lot 1). DP 124173 indicates that it was registered on 1 August 1991 for Departmental Purpose. Lot 1 is referenced as being a plan of part of Lot 4 DP 537419.

Lot 1 has an area of 56.36ha. A residue remains, being road.

An altered Gateway determination issued on 31 May 2019 identified the site as Lot 1 DP 124173.

Background and zoning / development standard overview

In November 1995 the Council resolved to prepare an LEP amendment to facilitate the urban development of the land bounded by the Pacific Highway, Emigrant Creek, the Richmond River and Burns Point Ferry Road.

Since 1995 there have been numerous attempts to resolve the various technical issues associated with the development of the site. The more significant issues relate to ecological and flood impact matters.

A detailed Chronology relating to the site from 1995 to December 2018 is contained in CM 18/98844.

The site is partly zoned RU2 Rural Landscape zone under the provisions of Ballina LEP 2012 and partly 1(d) Rural (Urban Investigation) under the provisions of Ballina LEP 1987. The proposed LEP amendment will zone the whole of the site under the provisions of Ballina LEP 2012 and apply a part RU2 and part R2 zone to the site.

The current LEP amendment had its genesis in a concept rezoning submission submitted by Planners North, on behalf of land owners Ballina Waterways Pty Ltd, in July 2012. This proposal, when considered by the Council in June 2013, was deferred for six months to allow the proponent more time to undertake further ecological assessment to clarify the site's environmental attributes and its biobanking potential.

To date there have been eight ecological assessments of the site undertaken which includes two independent assessments undertaken on behalf of Council.

The site, which has an area of 56.36 ha, has been assessed as having significant ecological value. This has been recognised by the Council and land owners entering into a planning agreement which provides in part for a biobanking site being established over approximately 40ha of the site. This part of the site will be zoned RU2 Rural Landscape zone by the proposed LEP amendment.

The remaining 16 ha of the site will be zoned R2 Low Density Residential zone. This part of the site may yield approximately 250 residential lots based on the minimum 450m² lot size provided by this LEP amendment.

Approximately a third of the proposed R2 zoned area is proposed to be developed for conventional residential lots with the remainder having a live/work focus. The live / work focus is proposed to be achieved by permitting larger home

businesses (maximum 120m² instead of 50m²) within a designated part of the site.

The live / work focused part of the site, as identified on the Floor Space Ratio Map, is subject to a maximum FSR of 0.7:1 as specified within a new local LEP clause (7.2).

Clause 7.2 provides for a maximum FSR of 0.5:1 for the dwelling component (consistent with current maximum permitted in R2 zone) and an additional maximum FSR of 0.2:1 for the home business part of the dwelling. This means that on a 450m² lot it would be possible to have a home business with a floor area of 90m² increasing to 120m² on a lot with an area of 600m² or larger.

Amendments to Ballina Shire DCP 2012, *Chapter 3 Urban Subdivision* and *Chapter 4 Residential and Tourist Development*, will come into effect upon the LEP amendment being made. The DCP amendments provide more detailed specific controls relating to the proposed live/work development.

Exhibition and Submission Issues

The planning proposal and draft DCP provisions were exhibited for community feedback from 8 August until 7 September 2018. Consultation with the Government agencies as required by the Gateway determination was also undertaken.

Council considered the planning proposal and submissions received at its Ordinary Meeting on 13 December 2018. Responses to submissions, as reported to the Council, were peer reviewed by GeoLINK.

Three public submissions raised concerns / objections to the planning proposal. The matters raised related to a diversity of issues including traffic, flooding and stormwater runoff, appropriateness of 120m² size for home businesses, flood isolation and land locking, inappropriate location for interpretive centre, land contamination, amenity and property value, as well as limited time in which to make submissions.

Partly in response to the public submissions the interpretive centre was deleted from the planning proposal (which then became the trigger for a further altered Gateway determination obtained in January 2019). Council also required that access to three properties fronting Emigrant Creek Lane was required to be provided through further amendments to DCP *Chapter 3 Urban Subdivision*.

In respect to Government agency submissions the OEH raised a number of concerns one of which suggested that the area proposed to be zoned R2 had

increased between when the planning proposal was publically exhibited in 2016 and when it was re-exhibited in 2018.

The OEH suggested that the rezoning area (R2) be reduced so as to limit biodiversity impacts. Council raised issue with the OEH's contention regarding increase in extent of the R2 zone. This then resulted in a second submission from the OEH wherein they agreed that no increase to the area proposed to be zoned R2 had occurred. What had in fact occurred was a significant reduction in the area available for development because of buffers (bushfire, mosquitoes) and drainage easements being required to be relocated from the proposed RU2 zone to the R2 zone.

The OEH also raised the incompatibility of the then proposed interpretive centre being located within the proposed biobanking site. Subsequently the interpretive centre was deleted and now does not form a part of the LEP amendment.

It is considered that the substantive concerns raised by the OEH have been able to be adequately resolved either through the amendment of the planning proposal (deletion of interpretive centre) or the DCP provisions, which require environmental impacts to be mitigated within the area proposed to be zoned R2.

Comments provided by DPI Fisheries and the Natural Resources Regulator relating to riparian zone and stormwater quality criteria have been referenced with the DCP amendments.

Authorisation to Finalise and Implement Planning Proposal

The proponent on 15 May 2019 submitted documentary evidence that the planning agreement has been registered on the title of Lot 1.

Legal advice was obtained from Pikes Verekers Lawyers as to the consequences of the planning agreement referencing Lot 4 and then being registered on the title of Lot 1. That advice indicates that the VPA is effective on Lot 1 given it is a part of the old Lot 4.

Refer CM 19/38048 for the email containing the abovementioned legal advice.

The registration of the planning agreement authorises the GM to proceed to finalise the planning proposal as provided for in Recommendation 3 of the Council's resolution dated 13 December 2018:

3. That Council authorises the General Manager to proceed to finalise and implement Planning Proposal BSCPP14/008 – Burns Point Ferry Road, as amended by Recommendation 1 and subject to Recommendation 2 above, under

delegated authority once the executed planning agreement is registered on the title of Lot 4 DP 537419.

2.0 GATEWAY DETERMINATION

2.0 Gateway Determination

[INSTRUCTION] Council to provide details about the Gateway determination including:

- date Determination issued
- timeframe for completion of proposal
- whether the Gateway determination was subject to a review request and the outcomes of that request
- whether the conditions included in the Gateway determination have been complied with and if not, the justification for the non-compliance and the impacts non-compliance may/will have on the LEP

Original Gateway Determination

The Department of Planning and Environment issued the original Gateway determination on 25 September 2014 *to rezone Lot 4 DP 537419, Burns Point Ferry Rd, West Ballina for residential and employment uses and RU2 Rural Landscape.*

The original Gateway determination permitted the planning proposal to proceed subject to conditions. Subsequent Gateway alterations related to this determination.

Matters of relevance contained within the original Gateway determination, and the enclosed letter from the Department of Planning and Environment, are summarised below:

- The planning proposal's inconsistencies with S117 Directions 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 were determined to be of minor significance and require no further approvals.
- Plan making powers are delegated to Council. An authorization for Council to exercise delegation accompanied the Gateway determination.
- The amending Local Environmental Plan (LEP) was required to be finalized within 18 months from the week following the date of the Gateway determination.
- The following further assessments to support the proposal were required to 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

- The planning proposal must be publically exhibited for a minimum period of 28 days.
- Consultation was required with the following public authorities under section 56(2)(d) of the Act:
 - Department of Primary Industries – Agriculture
 - Roads and Maritime Services in relation to road access and maritime issues
 - Department of Primary Industries – Fisheries and Aquaculture
 - NSW Office of Environment and Heritage
- The following maps were required to be prepared and placed on public exhibition:
 - Land Zoning
 - Lot Size
 - Height of Buildings
 - Land Application
 - Building Height Allowance
 - Acid Sulfate Soils
 - Flood Planning Strategic Urban Growth Area

Comments

The planning proposal lodged for Gateway determination in 2016 did not specify zones proposed to be applied to the site. It sought to apply a regime of land use zoning and planning provisions to enable employment related, residential and environmental land uses as well as associated open space and infrastructure. At the south-eastern corner of the site, near the northern Burns Point Ferry loading ramp, it was proposed to create a special lot subject to provisions that would permit a restaurant.

This Gateway determination was required to be altered (see comments below re First Altered Gateway) prior to the planning proposal, as it existed in 2016, progressing to public exhibition from 8 June to 8 July 2016.

First Altered Gateway Determination

The original Gateway determination was altered by the Department of Planning and Environment on 8 April 2016. This alteration extended the time for completion to 1 April 2017 and changed the description of the planning proposal to the following:

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.

The change in description reflected Council's desire to zone the land for residential purposes incorporating a "work" component instead of the previous focus on light industrial with a residential component. The proposal at that time also incorporated the *restaurant or café incorporating information and education facilities and a dwelling in the RU2 Zone*.

The following additional requirements were also inserted within the Gateway determination:

- Prior to community consultation the planning proposal is to be amended to remove reference to including controls for live/work developments in clause 5.4 of the LEP, and the potential application of an environmental zone to the land. A plain English explanation without reference to clause 5.4 is to be included within Part 2 – Explanation of the Proposal; and
- Consultation with the Local Aboriginal Land Council, who are to be provided with a copy of the Aboriginal Cultural heritage Assessment and the Archaeological Survey. A period of at least 21 days in which to make comments is to be provided.

Comments

The planning proposal subject to the altered Gateway determination was placed on public exhibition from 8 June to 8 July 2016. Also concurrently exhibited was a draft planning agreement.

In addition to the maps specified in the original Gateway determination above, a Strategic Urban Growth Area and an Additional Permitted Use Map were also placed on public exhibition.

The planning proposal was amended to delete reference to clause 5.4 and a Plain English explanation of proposed LEP provisions was incorporated within the document.

The Government agencies specified in the original Gateway determination were consulted as were the DPI Water and DPI Aquaculture. The JALI LALC was also notified and provided with the documents specified within the Second Gateway determination.

All assessments specified in the original Gateway determination were submitted. They were then peer reviewed by GeoLINK who prepared a *Peer Review and Gap Analysis Report*. That report as well as the additional assessments, which were recommended by GeoLINK, formed a part of the 2016 public exhibition process.

The Council considered the planning proposal, as it existed in 2016 and the associated planning agreement, at its Ordinary Meeting on 15 December 2016.

The planning proposal was unable to be finalised by the specified date (1 April 2017) as the proponent had not taken steps to register the planning agreement on the title of the land. The registration of the planning agreement on title was a requirement of Council's resolution prior to the GM being authorised to finalise the proposal.

Second Altered Gateway Determination

On 24 March 2017 the Gateway determination was again altered. The alteration required completion of the LEP by 1 January 2018.

Comment

The planning proposal was not able to be finalised within the time provided.

Third Altered Gateway Determination

On 27 February 2018 the Gateway determination was again altered. The alteration required completion of the LEP by 1 October 2018.

Comment

The planning proposal was not able to be finalised within the time provided.

Fourth Altered Gateway Determination

On 24 July 2018 the Gateway determination was again altered. The alteration required completion of the LEP by 1 January 2019. Additionally the alteration provided for the following matters:

- Referenced section 3.34(2) within the determination (instead of previous section 56(2));
- Inserted a further requirement for the public exhibition of the planning proposal;
- inserted further requirements for consultation with the public authorities previously consulted; and
- authorised the local plan making authority to exercise the functions under section 3.36(2) of the Act subject to:
 - a. the planning proposal authority has satisfied all of the conditions of the Gateway determination;
 - b. the planning proposal is consistent with section 9.1 Directions of the Secretary has agreed that the inconsistencies are justified; and
 - c. there are no outstanding written objections from public authorities.

Comment

The planning proposal was publically exhibited from 8 August until 7 September 2018.

All conditions of the Gateway determination relating to public exhibition were complied with.

The planning proposal was not able to be finalised within the time provided.

Fifth Altered Gateway Determination

On 26 November 2018 the Gateway determination was altered so as to extend the period of time to complete the LEP until 1 June 2019.

Comment

The planning proposal was not able to be finalised within the time provided.

Sixth Altered Gateway Determination

Following the Council's consideration of the planning proposal and submissions received following public exhibition it became necessary to again seek an altered Gateway determination. This determination was prompted by the necessity to delete the interpretive centre additional permitted use from a site located within the proposed RU2 zone and the biodiversity site.

On 25 January 2019 the Gateway Determination was again altered. This alteration changed the description of the planning proposal by deleting reference to the restaurant or café incorporating information and education facilities and a dwelling (interpretive centre) in the RU2 Zone as additional permitted uses.

Gateway determinations 1 to 6 as referenced above are contained within Annexure G to the Altered Gateway / Final Planning Proposal dated January 2019 (CM 18/98823).

Seventh Altered Gateway Determination

On 31 May 2019 the Gateway determination was again altered to change the description of the site from Lot 4 to Lot 1. In addition, the period of time in which it is required to complete the LEP amendment was extended from 1 June 2019 to 1 September 2019.

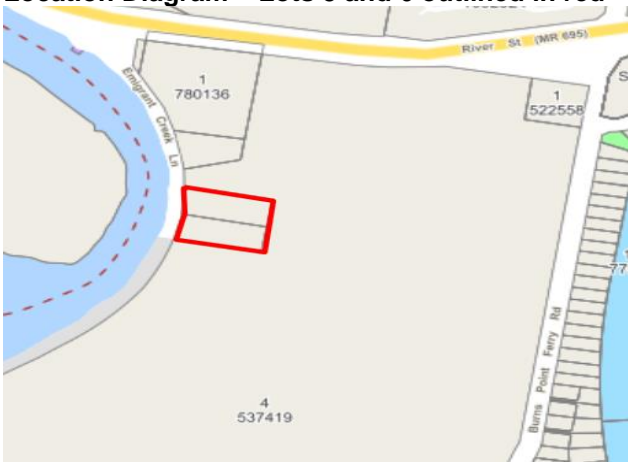
Refer CM 19/41193 for the email containing the altered Gateway determination.


3.0 COMMUNITY CONSULTATION


The planning proposal was publicly exhibited from 8 August until 7 September 2018. Council considered submissions received at its Ordinary Meeting on 13 December 2018.

The public exhibition process included 400 letters being forwarded to nearby property owners. In response four submissions were received which included two relating to the same properties.


The following table, which summarises the public submissions, has been extracted from the December 2018 Council report. It is also noted that the submissions received and the comments provided were peer reviewed by GeoLINK.

Submission Details	Comment
<p>Submission 1 and 2</p> <p>1. Background Somerville Laundry Lomax Solicitors have lodged two submissions (dated 7 and 21 September 2018) on behalf of Mr F Bienke and Mr G Suffolk owners of Lots 5 and 6, DP 537419, Emigrant Creek Lane, West Ballina. The submissions raise the following grounds of objection:</p> <p>2. Public Exhibition Period</p> <p>1. Object to the short period of public exhibition this proposal has had in the past and to date. Health and travel issues have impacted on ability to make submissions including previously in 2016. Requests longer exhibition period in the future.</p> <p>3. Amenity, Enjoyment and Value of Property</p> <p>Properties were purchased due to peaceful, quiet and serene environment, spacious rural aspects and limited neighbours. Location and zoning of properties was significant when properties purchased. Believe that amenity and enjoyment of property will be destroyed along with value due to proposal and DCP amendment.</p> <p>4. Flood Risk</p> <p>Flood risk assessments previously undertaken are considered to be out of date and not representative of the current circumstances. Since the 2008 Flood Assessment and 2014 letter, amendments have been made to the planning proposal</p>	<p>Background</p> <p>The location of Lots 5 and 6 DP 537419 (Lots 5 and 6) are shown outlined in red on the map extracts below.</p> <p>Location Diagram – Lots 5 and 6 outlined in red</p>  <p>2018 Aerial Photo Extract – Lots 5 and 6 outlined in red</p>


Submission Details	Comment
<p>including filling height of 2.7metres which is higher than originally assessed. The Ballina By-pass has also been completed.</p> <p>The proposal is claimed to heighten flood risk and stormwater runoff will be generated, concentrated and diverted onto their properties. Currently their properties are higher than the rural land. The 2.7m fill height will mean their properties will be lower and have stormwater funnelled towards their properties.</p> <p>Concerns that stormwater drains will not be able to cope particularly with high tide and flooding.</p> <p>Proposed development should not be allowed to adversely affect adjoining properties.</p>	 <p>Lots 5 and 6 each have an area of 4,047m² (1 acre) and a depth exceeding 150 metres and a frontage exceeding 60 metres to Emigrant Creek Lane. Each lot has erected upon it a dwelling house and a variety of outbuildings.</p> <p>Lots 5 and 6 are zoned RU2 Rural Landscape zone under the provisions of Ballina LEP 2012.</p> <p>Lots 5 and 6 (and the caravan park site to the north) were designated as Proposed <i>Future Urban Release Areas</i> or as <i>Investigation Areas - Urban Land</i>, respectively, within the 2006 Far North Coast Regional Strategy and the 2017 North Coast Regional Plan 2036.</p> <p>The Ballina Shire Growth Management Strategy, and the associated Strategic Urban Growth Areas (SUGA) as defined in Ballina LEP 2012, do not designate Lots 5 and 6 as SUGA areas. They are designated as areas adjoining a SUGA. The map extract below shows lots 5 and 6 outlined in red and coloured dark green on an extract from the Ballina LEP 2012 SUGA map.</p>
<p>5. Land Locked</p> <p>Concerned that the planned development will land lock lots 5 and 6. Claim that these properties will be surrounded by properties and structures at greater heights and create a sense of being surrounded.</p> <p>6. Zoning, Proposed Live – Work Concept, Traffic and Location of Café Restaurant</p> <p>Proposal is inconsistent with the Ballina Shire Growth Management Strategy.</p> <p>Oppose the proposed live – work concept permitting home business with floor area up to 120m². Likely to have significant traffic impacts on Burns Point Ferry Road and River Street.</p> <p>No evidence related to live – work development as to how positive or otherwise the outcomes of these have been elsewhere, effects on surrounding neighbours and environment, how they relate to the current proposal.</p> <p>Question why live – work adjacent to three residential properties whilst the single dwelling component is located adjacent to the caravan park. Land use conflict concerns.</p> <p>Oppose the café/ restaurant proposal due loss of amenity concerns. Object to</p>	

Submission Details	Comment
<p>increase in size of this proposal.</p> <p>Object to the traffic impacts of the proposal; unreasonable increase in traffic in River Street and Burns Point Ferry Road roundabout, more difficult to turn out of Emigrant Creek Lane into River Street and further traffic build up into and out of Ballina.</p> <p>7. Environment and Contamination Concerns</p> <p>Biobanking claimed to benefit other areas away from the immediate area of the proposal.</p> <p>Concerned that a bio-banking statement will be allowed to be completed after the proposal is finalised. Find this objectionable as it would not be able to be tested and considered by all stakeholders prior to consent.</p> <p>Proposal does not adequately consider increased stormwater and increased concentrations of contaminants from increased density, infrastructure and commercial activity.</p> <p>Contamination report has not adequately considered the area proposed for the commercial café and restaurant.</p> <p>Potential erosion of Emigrant Creek embankment due to increased drainage effects and further boating activity does not appear to have been considered.</p> <p>8. Further Issues</p> <p>Concerned that in a flood there is a real risk of being marooned on their properties with no exit point. The planning proposal is considered to materially affect the 1:100 year flood assessment undertaken when their properties were developed.</p> <p>Additional Issues Contained in Submission Dated 7 September 2018</p> <p>9. Environmental Concerns</p> <p>Differences in professional opinions relating to the Freshwater Wetland EEC and Grass Owl habitat, as well as offsetting ability through bio-banking should be definitely addressed by a further ecological study beyond the peer review and gap analysis.</p> <p>10. Flooding and Stormwater Concerns</p>	 <p>The light green area in the above map is the SUGA area as it affects the proposed rezoning site under the provisions of Ballina LEP 2012. It is noted that the planning proposal extends beyond the SUGA designated area. This is due to historical factors relating to the length of time that the site has been subject to rezoning proposals and the fact that State based strategies cover a broader area for investigation as to the land's urban suitability. Extension of the planning proposal beyond the SUGA designated area is however consistent with the Rural 1(d) Urban Investigation zone applicable to the residue of the site under the provisions of Ballina LEP 1987.</p> <p>Council has, since 2014, endorsed rezoning proposals that exceeded the SUGA limits on this site due to factors related to potential delivery of environmental outcomes for the balance of the site (proposed Biobanking site), the proposal's consistency with State based strategies as well as consistency with part of the sites zoning under the provisions of Ballina LEP 1987.</p> <p>2. Public Exhibition Period</p> <p>The planning proposal and draft DCP provisions were publically exhibited from 8 August until 7 September 2018. Letters to approximately 400 property owners were dated 1 August 2018 and posted prior to the exhibition period. Messrs Bienne and Suffolk were both provided with an additional 14 day period, until 21 September 2018, in which to make their submissions in response to their request for additional time.</p> <p>The exhibition period exceeded the minimum 28 day period nominated in the Gateway determination and required for the public exhibition of a draft development control plans.</p> <p>Previously in 2016 the planning proposal and draft voluntary planning agreement were exhibited from 8 June 2016 until 8 July 2016.</p>

Submission Details	Comment
<p>Proposed bio-retention areas adjacent to their properties will be totally inadequate to cater for additional water and stormwater flows. Road at the back of their properties will result in over flow onto their properties.</p> <p>11. Noise Pollution</p> <p>Significant increase in noise will result above current rural level. Boat noise will increase as a result of increased use of Emigrant Creek boat ramp.</p>	<p>Whilst it was the case that both exhibition periods exceeded the statutory minimum 28 day period it is also noted that when a request for an extension of time was received, from the owners of Lots 5 and 6, an additional 2 week period in which to make submissions was afforded to them.</p> <p>3. Amenity, Enjoyment and Value of Property Development of the land adjoining lots 5 and 6 for urban purposes will change the current easterly rural outlook enjoyed by the property owners to an urban outlook. Land to the north and south of lots 5 and 6 is proposed to be utilised for drainage purposes.</p> <p>Property value impacts are unable to be quantified at this time and are not normally a planning consideration. To some degree values are already impacted by the flood prone nature of lots 5 and 6, the floor levels of the existing dwelling houses, and whether as a consequence of the proposed rezoning (if supported by the Council) there is any increased likelihood of these lots also being considered for urban zoning purposes at some future time.</p> <p>4. Flooding Risk Council's flood consultants BMT have reviewed their 2014 flooding impact advice for the rezoning site. The November 2018 advice, contained within Attachment Seven to this report, states that:</p> <ul style="list-style-type: none"> - The Flood Impact Assessment for the Ballina Waterways Development was completed by BMT in May 2008. - A letter update to this assessment was completed in 2014 to assess a revised layout. - Since these assessments, various developments have occurred in the floodplain. - As such, it is appropriate to review the impacts in this area in the latest version of Council's Integrated Flood Model. - The integrated model shows cumulative flood impacts less than 10 mm (negligible) across the properties adjacent to the Ballina Waterways development site in a 100 year ARI event. - The low impacts are due to the 100 year ARI flood level generally being less than 0.5m above the existing ridge line across the site. - Flow velocities across the site are low and the total flow across the site is minimal in existing conditions. - There is a reduction in flood storage due to the development, although this forms a negligible volume in comparison to the overall storage of the Richmond River floodplain.

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	<ul style="list-style-type: none"> - The currently proposed development was discussed in the 2014 letter. - It has a smaller footprint than that assessed in 2008, meaning the development will have a smaller impact on flood storage than previously assumed. <p>Currently the 2100, 1 in 100 year flood level is estimated to be RL 2.7m AHD over the majority of the proposed R2 zoned area. This level also corresponds with the proposed minimum fill level applicable to new residential lots. The finished surface level of proposed residential land at the rear of the Emigrant Lane properties is indicated to be RL 3.2m.</p> <p>Land located towards the north of Lot 5 and south of Lot 6 has been designated for drainage purposes within concept designs prepared to support the planning proposal. An extract from the May 2016 concept plan is reproduced in the diagram below:</p>  <p>It is considered that it would be reasonable for the draft DCP amendments to incorporate a provision that ensures that access is available from Lots 5 and 6 (as well as Lot 3 DP 529094 No 21 Emigrant Creek Lane which immediately adjoins the caravan park) to the proposed road at the rear of these lots. This issue has been discussed with the proponent's planner who concurs that such a provision would be supported. Therefore the proposed subdivision work at the rear of lots 5 and 6 will result in a situation where the occupiers of such lots have access to higher ground in time of flood as well as at other times. This issue is addressed in the recommendations to this report.</p> <p>5. Land Locked</p> <p>The site subject to the proposed DCP has been identified for future development for over 20 years. The site's landform is required to be filled to meet floodplain planning requirements. It is considered that the development of the subject site has been</p>

Submission Details	Comment
	<p>anticipated for some time.</p> <p>6. Zoning, Proposed Live – Work Concept, Traffic and Location of Café Restaurant</p> <p><i>Live – work development concept concerns</i></p> <p>The live – work concept proposed in the 2016 planning proposal was based on light industrial, business premises and office premises being permitted in association with a dwelling house on the same land and subject to size limitations.</p> <p>Following further evaluation of the live work concept, as part of the draft DCP preparation process, the proponent agreed to amend the concept to delete light industrial land uses and base live work on the home business definition as contained within Ballina LEP 2012. That is subject to an increase in the permitted floor area from the 50m² currently applicable to home businesses to a maximum floor area which ranged from 90m² to 120m² depending on the size of the proposed residential lot.</p> <p>Home businesses are permitted with development consent throughout the R2 and R3 zones under the provisions of Ballina LEP 2012 with a maximum size limit of 50m². The definition of a home business is as follows:</p> <p>home business 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>Home businesses are different to home industries with the later relating to industrial activities. Home businesses typically could include businesses such as accountants, building designers, town planners, hair dressers, artists etc. Home business uses are considered to have a low likelihood of generating adverse amenity impacts.</p> <p>The increase in floor area (above the 50m² applicable in existing R2 and R3 zones) is considered</p>

Submission Details	Comment
	<p>acceptable given that the proposed residential subdivision will be required to be purposely designed to accommodate such uses. Issues such as additional car parking within the street network are addressed in the draft DCP provisions (minimum 1 space per two lots).</p> <p><i>Location of Live Work Precinct - Land use conflict concerns.</i></p> <p>The proposed residential intensity plan submitted by the proponent shows that the proposed R2 zoned portions of Lot 4 are divided into two precincts. Precinct 1 outlined in blue on the map extract below is proposed to have a single dwelling focus whereas the area to the south will have a live work focus. The division of the site into two separate development precincts was a matter determined by the proponent.</p> <p>The provisions of the draft DCP and the associated statutory controls proposed to be contained within Ballina LEP 2012 relating to floor area limitations are designed to limit adverse amenity impacts between proposed live work development and adjoining development.</p> <p>Extract from Proponent's Residential Intensity Plan</p>  <p><i>Amenity and size increase concerns related to the proposed café/ restaurant</i></p> <p>The interpretive centre proposal has now been agreed to be deleted from the planning proposal by the proponent. The reason for its deletion relates to the fact that it has been found to be incompatible with the requirements applicable to establishing a Biobanking Site. In discussion with the proponent's consultant it has been advised that the interpretive centre proposal may be pursued at some future time on a site to be located within the proposed R2 zone. This would then be the subject of a separate planning proposal.</p>

Submission Details	Comment
	<p>The Interpretive Centre site was proposed to be located approximately 150 metres to the south of Lot 6. It was proposed to function in ways similar to interpretive centres at other locations such as Port Macquarie, Bellingen and Dorrigo. The Dorrigo Rainforest Centre is located within the Dorrigo National Park and contains a café / restaurant as well as interpretative and educational facilities.</p> <p>It was not envisaged that the proposed facility, with an estimated floor area of approximately 200m² and designed to showcase the proposed coastal wetlands biodiversity site, would likely give rise to adverse amenity impacts for Lots 5 and 6.</p> <p>The interpretive centre site size was increased from 1,300m² in the 2014 and 2016 planning proposals, to 3,300m² in the current proposal. This size increase resulted from Council requirements which stipulated that all buffers (bushfire and mosquito) associated with the then proposed facility be contained within the area designated for this use and not within the adjoining biobanking site. Should the interpretive centre be proposed to be sited within the R2 zone at some future time then the size of the site could be expected to be reduced if there is no associated need for buffers.</p> <p>7. Environment and Contamination Concerns</p> <p>Biobanking</p> <p><i>Biobanking</i></p> <p>A planning agreement has been entered into between the owners of the proposed rezoning site and the Council on 13 June 2017.</p> <p>The planning agreement will become operative from the date on which the LEP is amended, generally as provided by the planning proposal. In relation to biobanking the agreement requires that prior to the granting of development consent apart from a subdivision to establish the biobanking site. The whole of the land proposed to be zoned RU2 Rural Landscape zone will be subject to a Biobanking Agreement which will establish a Biobanking Site.</p> <p>The Biobanking Site, once established, may be used to offset biodiversity impacts arising from the development of the proposed R2 zoned area and / or impacts arising from the development of other sites. In either scenario approximately 40ha of the subject site will remain as a Biobanking Site in perpetuity as a consequence of the planning agreement already entered into.</p> <p>It is considered both reasonable and proper that at the rezoning stage a legal mechanism be devised (planning agreement) which requires a Biobanking Agreement to be entered into and a Biobanking Site to be established before the granting of development</p>

Submission Details	Comment
	<p>consent.</p> <p><i>Land Contamination</i> A Contaminated Site Investigation Report for the rezoning site was prepared in 2005 by EAS Systems. This report was considered by GeoLINK in their 2016 Stage 1 Peer Review and Gap Analysis Report of documentation used to support the planning proposal at that time.</p> <p>GeoLINK found that the EAS Systems report contained sufficient information to assess the impacts of land contamination, and no additional information was required to progress the Planning Proposal. These statements were made partly to reflect the fact that the site was considered unlikely to have undergone any contamination activities during the period since 2005 apart from any illegal dumping of waste.</p> <p>The draft DCP amendments proposed to Chapter 3 - Urban Subdivision, of Ballina Shire DCP 2012, require that a detailed contamination assessment be submitted as part of the residential subdivision / and Interpretative Centre development proposals.</p> <p>It was previously the case (In the 2014 and 2016 Planning Proposals) that the Interpretative Centre (café / restaurant and dwelling) were proposed to be located at the southern end of the site near the Burns Point Ferry. This part of the site had not been specifically assessed in terms of the 2005 Contaminated Site Investigation report as it was in an area designated for open space at that time.</p> <p>The Interpretative Centre site was subsequently relocated to the south – western end of the currently proposed residential development in an area previously designated for residential development in 2005, prior to now being proposed to be deleted from the proposal.</p> <p>Having regard for land contamination investigations already undertaken, and more detailed investigations required to be undertaken as part of the DA process following rezoning, no further land contamination assessment work is considered to be required at this stage of the process.</p> <p><i>Erosion of Emigrant Creek Bank</i> The development site, following rezoning, is separated from Emigrant Creek by a proposed Linear Park. The development process will consider in detail the design of stormwater structures that may impact bank stability.</p> <p>8. Further Issues</p> <p>Flood isolation In terms of the potential for Lots 5 and 6 to be</p>

Submission Details	Comment
	<p>“marooned” with no exit point, it is considered that should the land at the rear be developed then it may potentially provide access to higher ground which currently is not available to the occupants of such lots. Information currently available indicates that the proposed road at the rear is to have a level of RL 2.3 as compared to levels at the rear of Lots 5 and 6 which range from RL 1.62 to RL 1.72. The draft DCP requires a maximum grade batter of 1 in 6 to be provided within the proposed development site as a transition between the filled area and existing adjoining lots.</p> <p>Additional Issues Contained in Submission Dated 7 September 2018</p> <p>9. Environmental Concerns - Differences in professional opinions This issue has previously been considered in great detail by the Council in the report to Council's Ordinary Meeting on 25 May 2017. Since 2005 there have been 8 ecological investigations undertaken in respect to Lot 4 plus additional investigations undertaken by Council's Environmental Scientist and the OEH. Council commissioned two of these investigations (Blackwood 2014 and GeoLINK 2016). The main ecological issues where there are differences in professional opinions may be summarised as:</p> <ul style="list-style-type: none"> • The occurrence, distribution, extent and quality of Freshwater Wetland EEC; • Impacts to Grass Owl habitat; and • The extent to which the above issues may be offset through Biobanking on the site. <p>GeoLINK, who undertook the peer review of technical studies on Council's behalf prior to the 2016 public exhibition of the planning proposal, and the assessment of the proposal post exhibition, concluded that the northern part of the site is generally suitable for urban development as proposed. This is subject to appropriate biobanking offsets or compensatory habitat being established, notwithstanding any issues related to differences of professional opinion.</p> <p>It is considered that there is no need for any further ecological evaluation relating to the amended planning proposal.</p> <p>10. Flooding and Stormwater concerns Refer discussions under point 4 above.</p> <p>11. Noise Increase Concern It is not known if noise levels within the vicinity of the objector's properties will increase as a consequence of future urban development of the adjoining land. Whilst it could be assumed that this would be the case, it may also be the case that the proposed development may act as a partial buffer to road noise from River Street reaching the subject properties. In</p>

Submission Details	Comment
	<p>any case, if noise levels were to increase, then it is considered that it would be no different than what would be expected to be the case with any site that is transitioning from adjoining a rural environment to an urban environment.</p>
<p>Submission 3</p> <p>Mr G Faulks – West Ballina objects to the proposed live work component of the development on the following grounds:</p> <ol style="list-style-type: none"> 1. Potential for conflicts and loss of amenity, photo below illustrates concern; 2. Considers that home offices are OK until expansion of the business results in staff being engaged and clients start to create parking problems; 3. Businesses should be restricted to the right zones; 4. Proposed Residential Intensity Plan shows laneways which are certain to add to congestion; 5. Housing estates with below standard width roads create problems for waste collection, removalists etc; 6. Floor areas of home businesses up to 120m² is not desirable or reasonable, no mention within proposal to require off street car parking; 7. Submitted a photo (below) of what is alleged to be a home business 	<p>Land use conflict</p> <p>There are various provisions within the draft DCP that will seek to restrict land use conflict.</p> <p>2. Expansion of businesses and car parking</p> <p>The draft DCP has provisions relating to restriction of business expansion and intensity. The draft DCP amendments require an additional space per two lots within the road reserve above the requirements specified in DCP Chapter 2. The car parking requirements specified for a home business are contained within Ballina Shire DCP 2012 Chapter 2 - General and Environmental Considerations. Home businesses are required to provide a minimum of 2 spaces for the dwelling (one covered), plus 1 space for visitors and 1 space per 2 non-resident employees. If no non-resident employees are proposed, then a minimum of 3 spaces would be required.</p> <p>The proposed car parking requirements are considered to meet the car parking needs of the home businesses proposed to be permitted on part of Lot 4 by the planning proposal.</p> <p>3. Businesses should be restricted to the right zones.</p> <p>There are various examples where mixed-use development work. The draft DCP contains provisions to reduce conflict between residential and commercial land uses.</p> <p>4. Laneways will create congestion</p> <p>Draft amendments to DCP Chapter 3 – Urban Subdivision require the design and hierarchy of internal roads to be in accordance with the requirements set out in the <i>Northern Rivers Local Government Development and Design Manual</i>. These standards are also applicable to other residential release projects within Ballina Shire. It is therefore considered that the proposed road system will be adequate. In addition to this, any future development application will be required to demonstrate the internal roadwork network can function to an acceptable level.</p> <p>5. Road with and conflict with waste removal and larger vehicles</p> <p>Any future development application will be required to demonstrate the internal roadwork network can cater for larger vehicles. The DCP also requires that a waste management plan will be required at development application stage to demonstrate how waste will be managed.</p> <p>6. Floor areas for home businesses too high</p> <p>It is not considered that the specified maximum floor area is too high. The draft DCP contains provisions to reduce conflict between residential and</p>

Submission Details	Comment
	<p>commercial land uses.</p> <p>7. Submitted a photo (below) of what is alleged to be a home business</p> <p>It is considered that the submitted photo has no relevance to home businesses for the reasons previously discussed.</p>
<p>Submission 4</p> <p>Tracy Burke, Ballina Waterfront Village & Tourist Park, raises the following concerns about impacts on the existing properties adjacent to the subject site including:</p> <p>1. Stormwater runoff and drainage;</p> <p>2. Flooding;</p> <p>3. Road access via River Street and impact on mobility scooter using residents of the caravan park.</p>	<p>1. Stormwater runoff and drainage</p> <p>Ballina Shire Development Control Plan 2012 – <i>Chapter 2 – General and Environmental Considerations</i> contains the stormwater requirements that will be applied to any proposed residential subdivision following rezoning.</p> <p>Council's standard stormwater requirements contain provisions relating to Stormwater Conveyance and Discharge, Water Sensitive Design including reductions in pollutant loads required for stormwater prior to discharge into natural systems, Stormwater Runoff Management, Lifecycle requirements including maintenance, and applicable Standards. It is considered that Council has adequate standards and requirements against which to assess any subdivision development application following rezoning.</p> <p>2. Flooding</p> <p>Council's flood consultants BMT have reviewed their 2014 flooding impact advice for the rezoning site. The advice states that:</p> <ul style="list-style-type: none"> - the Flood Impact Assessment for the Ballina Waterways Development was completed by BMT in May 2008. - A letter update to this assessment was completed in 2014 to assess a revised layout. - Since these assessments various developments have occurred in the floodplain. - As such, it is appropriate to review the impacts in this area in the latest version of Council's Integrated flood model. - The integrated model shows cumulative flood impacts less than 10 mm (negligible) across the properties adjacent to the Ballina Waterways development site in a 100 year ARI event. - The low impacts are due to the 100 year ARI flood level generally being less than 0.5m above the existing ridge line across the site. - Flow velocities across the site are low and the total flow across the site is minimal in existing conditions. - There is a reduction in flood storage due to the development, although this forms a negligible volume in comparison of the overall storage of the Richmond River floodplain. - The currently proposed development was

Submission Details	Comment
	<p>discussed in the 2014 letter.</p> <ul style="list-style-type: none"> - It has a smaller footprint than that assessed in 2008, meaning the development will have a smaller impact on flood storage than previously assumed. <p>3. Traffic Issues</p> <p>A Traffic Report prepared in support of the 2016 planning proposal and based on the then proposed 250 dwellings plus 250 work studios and the café / dwelling (Interpretive Centre) development. The report concluded that in the AM peak hour the development was likely to generate 274 vehicle trips.</p> <p>The reduction in area designated for live – work purposes (assume 90 less live work studios) is estimated to result in a reduction in peak hour vehicle trips in the order of 60 vehicles.</p> <p>Previous traffic modelling was based on a temporary access point to Burns Point Ferry Road pending the completion of a new round about onto River Street to service the proposed subdivision. Council's engineering requirements resulted in a permanent road link now being proposed to Burns Point Ferry Road and a left in left out road access onto River Street.</p> <p>Therefore, in terms of scooter and other users of the shared pathway, that runs parallel to Lot 4 along River Street, they will be confronted with additional traffic as a consequence of the proposed development. This situation is considered to be no different than is the case that confronts numerous shared path users within Ballina Shire as a consequence of additional traffic being generated by more recent development.</p>

4.0 VIEWS OF PUBLIC AUTHORITIES

4.0 Views of Public Authorities

[INSTRUCTION] Council is to provide details of consultation with relevant agencies, including:

- which agencies were consulted
- which agencies provided a response
- what were the views of those agencies
- how were any objections or issues resolved
- did agency consultation occur in accordance with the requirements of the Gateway determination
- what amendments were made to the planning proposal to respond to the issues raised by agencies

The following agencies were consulted in accordance with the requirements of the Gateway determination dated 24 July 2018, and also to reflect the range of agencies consulted in 2016:

- NSW Roads and Maritime Services (RMS)

- NSW Office of Environment and Heritage (OEH)
- Department of Primary Industries – Fisheries and Aquaculture
- Department of Primary Industries – Agriculture
- Natural Resources Access Regulator (Previously DPI Water)

Consultation also occurred with the JALI LALC and it is noted that no response was received.

The table below summarises the Government agency submissions. The table has been extracted from the December 2018 Council report. It is noted that GeoLINK has reviewed the submissions received by Council, in response to the agency consultation process. GeoLINK has also peer reviewed the comments contained in the table below.

Copies of submissions are contained within Attachment 4 to the report to the Council dated 13 December 2018.

Submission Details	Comment
Submission 5 DPI Agriculture Raise no objection to the proposal.	Noted
Submission 6 and 7 Office of Environment and Heritage The OEH recommends that Council: <ol style="list-style-type: none"> 1. Considers reducing the rezoning area to limit the biodiversity impacts associated with subsequent development to be enabled by the planning proposal. 2. Ensure that the proposed rezoning area is suitable and able to contain all impacts associated with future development scenarios. 3. The OEH have also provided supplementary advice to their initial submission which raises concern relating to the location of the interpretive centre within the Biobanking Site and agreeing that the extent of the proposed R2 zone has not changed between the 2016 and 2018 exhibited planning proposals. 	<ol style="list-style-type: none"> 1. Consider reducing the rezoning area to limit the biodiversity impacts associated with subsequent development to be enabled by the planning proposal. Since the time of the last submission by OEH, the footprint of the development has been reduced significantly. This reduction has occurred as a result of the deletion from the residual lot of easements for drainage, mosquito management and bushfire asset protection. These buffers are now contained within the land proposed to be zoned for urban development. 2. Ensure that the proposed rezoning area is suitable and able to contain all impacts associated with future development scenarios. The draft DCP provisions will require any future development application to demonstrate that the proposed development of the site can be designed to mitigate all environmental impacts to an acceptable level. 3. The OEH have also provided supplementary advice to their initial submission which raises concern relating to the location of the interpretive centre within the Biobanking Site and agreeing that the extent of the proposed R2 zone has not changed between the 2016 and 2018 exhibited planning proposals. The land owners have requested that the interpretive centre component be removed from the Planning

Submission Details	Comment
	Proposal. This matter has been addressed in recommendations to this report.
<p>Submission 8 DPI – Fisheries Fisheries has provided information relating to its Policies and Guidelines on issues such as buffer requirements, stormwater management, water quality and impacts on Priority Aquaculture Oyster Leases.</p>	<p>The information provided by DPI Fisheries is in the main not specific to this planning proposal but more generic in nature. The comments made will be useful when more detailed plans are developed by the proponent to support future development proposals. It is noted that the proponent has already prepared detailed reports in support of the planning proposal which address issues such as stormwater management include water quality issues.</p> <p>In respect to the recommended buffers it is noted that the 100 metre buffer from a Coastal Wetland referenced in the Coastal Management SEPP impacts the proposed R2 zone. In this respect this will trigger additional assessment requirements applicable to the DA stage following rezoning.</p> <p>Fisheries comments regarding stormwater quality criteria applicable to Priority Oyster Aquaculture Areas have been noted and discussed with the proponent's planning consultant. It has been agreed that a reference to Fisheries stormwater quality criteria would be appropriate for inclusion within the draft DCP. This matter has been addressed in recommendations to this report.</p>
<p>Submission 9 Roads and Maritime Services The following comments are provided to assist Council:</p> <ol style="list-style-type: none"> 1. The proposed future access to Burns Point Ferry Road is supported, however the timing for construction of this connection has not been identified; 2. The proposed interim measures include a left in left out arrangement for the connection to River Street. No concept design has been provided to enable consideration of the safe operation of this facility. Consideration of Austroads Guidelines and Australian standards should be demonstrated. 3. Consideration should be given to connectivity for active transport nodes including public and school bus facilities and pedestrian and cycleway links. 4. The subject land will require remedial filling work. Access for vehicles associated with this component of the proposal has not been nominated and should be considered. 	<p>Comments</p> <p>Draft DCP amendments to Chapter 3 – Urban Subdivision requires that a street and pedestrian/cycleway network be provided which integrates the subdivision with public open spaces and the mixed-use development within Precinct 2 and the shared pathway located in River Street.</p> <p>Draft DCP amendments to Chapter 3 – Urban Subdivision also require that the street network design is to incorporate designated bus routes and bus stop locations to service a walkability catchment of 400 metres. Bus stops are to be provided with “hail and ride” J poles and constructed bus shelters.</p> <p>Access timing and design issues will be required to be considered in greater detail at the development application stage once the rezoning process has been finalised. This will include access for heavy vehicles and associated haulage routes proposed.</p> <p>Council's engineers have recommended that the River Street access could be provided as a left in/left out configuration as either an interim or permanent arrangement. At this stage it is envisaged that it will be provided as a permanent arrangement as required by Draft DCP Chapter 3 - Urban Subdivision, section 5.8.4. Depending on the nature of future development proposed on land located opposite Lot 4, a roundabout may again be proposed at some future time.</p>

Submission Details	Comment
<p>Submission 10</p> <p>Natural Resources Access Regulator (NRAR)</p> <p>NRAR has reviewed the Burns Point Ferry Road Planning proposal (August 2018), draft indicative layout plan, development control plan and relevant technical studies and provides the following comments:</p> <ol style="list-style-type: none"> 1. Need for Controlled Activity Approval 2. Compliance with NRAR's Guidelines for Controlled Activities 3. Watercourses traverse the site and these should be retained. 4. Protection of riparian corridors and Vegetated Riparian Zone (VRZ) should be maintained. 5. Impacts on Groundwater Dependent Ecosystems (GDEs) should be addressed as part of the precinct planning. 6. APZs should be located wholly within the urban development land rather than within the riparian corridors. 7. Impacts of the proposed future development on surface and groundwater, watercourses on or adjacent to the site and water quality should be considered. 	<p>1. Need for Controlled Activity Approval Noted. Any required approval would need to be obtained as part of the future development of the site.</p> <p>2. Compliance with NRAR's Guidelines for Controlled Activities Noted. This would need to be addressed as part of any future Development Application and controlled activity approval.</p> <p>3. Watercourses traversing the site should be retained. All water courses will be maintained and enhanced within the Biobanking Site established as a consequence of the Biobanking Agreement. It is unlikely that watercourses within Precincts 1 and 2 would be retained due to the need to fill the site to ensure flood immunity. The loss of these sections of watercourses would be offset by the creation of the Biobanking Site. The approval of the NRAR would be required at the DA stage should any water courses not be proposed to be retained.</p> <p>4. Protection of riparian corridors and Vegetated Riparian Zone (VRZ) should be maintained. There are specific provisions in draft DCP 3 that require riparian corridors within the site to be established in accordance with NRAR Guidelines (Office of Water) for Riparian Corridors on Waterfront Land. The proponent is also required to consult with NRAR to ensure rehabilitation requirements for riparian corridors are considered as part of the subdivision design process and prior to the submission of the development application.</p> <p>5. Impacts on Groundwater Dependent Ecosystems (GDEs) should be addressed as part of the precinct planning Chapter 3 of the draft DCP contains various provisions that require the design and development of the precinct to consider and implement measures that protect and enhance ground water, surface water quality and hydrology.</p> <p>6. APZs should be located wholly within the urban development land rather than within the riparian corridors. Chapter 3 of the draft DCP requires that <i>APZs for all live/work and residential development shall be located within Precinct 1. Any required APZ for the mixed-use development within Precinct 2 must be contained within the area nominated for this use on the Burns Point Ferry Road Area Structure Plan The APZs must be determined in accordance with the NSW RFS publication Planning for Bush Fire Protection. The APZs must have regard to any required future revegetation within Precinct 2.</i></p>

Submission Details	Comment
	<p>7. Impacts of the proposed future development on surface and groundwater, watercourses on or adjacent to the site and water quality should be considered.</p> <p>Appropriate stormwater management will need to be considered and implemented in the design, assessment and development of the precinct. Chapter 3 of the draft DCP requires various measures to be undertaken to minimise impacts on downstream environments such as riparian areas, groundwater and adjoining land. The controls in the draft DCP will ensure that:</p> <ul style="list-style-type: none"> • Stormwater treatment measures would be consistent with Water Sensitive Urban Design objectives • Measures are in place to ensure the protection of the receiving water source quality • Stormwater runoff is appropriately treated at its source and/ or diverted through a stormwater treatment process prior to discharge from the site.

The planning proposal was amended to delete the interpretive centre from within the biobanking site (and within the RU2 zone) in response to the submission from the OEH.

A number of amendments were made to the draft DCP chapters to reflect issues raised by the OEH, Department of Primary Industry – Fisheries and Aquaculture as well as the Natural Resources Access Regulator.

Significantly, no Government agency objected to the planning proposal.

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

5.0 Consistency with Section 9.1 Directions and other Strategic Planning Documents

[INSTRUCTION] Council is to provide information to demonstrate how the proposal is consistent, justifiably inconsistent or inconsistent with all relevant s9.1 Directions, SEPPs and other strategic planning documents.

Where consultation with an agency is a requirement of a s9.1 Direction to demonstrate consistency, details of that consultation should be provided and evidence that the agency supports the planning proposal should be provided.

Consistency with section 9.1 Directions

The Gateway determination dated 25 September 2014 noted the planning proposal's inconsistencies with S117 Directions 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. These were determined to be of minor significance and required no further approvals.

The inconsistency with Direction 2.2 Coastal Management is the subject of a Secretary's agreement that the inconsistency is justified. This agreement is contained in a letter from the Department of Planning and Environment dated 24 June 2019 (CM 19/46691).

The Section 9.1 Checklist which formed a part of the January 2019 (Altered Gateway / Final) Planning Proposal is reproduced below with approved inconsistencies (Secretary approval) highlighted in yellow.

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
1. Employment and Resources	
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.

2. Environment and Heritage	
2.1 Environmental Protection Zones	<p>Inconsistent - Inconsistency agreed to be minor in the Department of Planning and Environment's September 2014 Gateway determination which requires no further approval.</p> <p>The planning proposal seeks to facilitate the protection of the environment through the mechanism of a Voluntary Planning Agreement which requires a biobanking offset solution to be developed and approximately 40ha of Lot 4 rehabilitated and maintained in perpetuity as a biobanking site.</p>
2.2 Coastal Management	<p>The Secretary has agreed that this inconsistency is justified in accordance with the terms of the Direction. Refer letter from DPE dated 24 June 2019.</p> <p>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.</p> <p>The subject land is located within the NSW Coastal Zone.</p> <p>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).</p> <p>The site is also identified as an Investigation Area – Urban Land in the North Coast Regional Plan 2037.</p>
2.3 Heritage Conservation	<p>Consistent.</p> <p>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).</p>
2.4 Recreation Vehicle Areas	<p>Consistent.</p> <p>Recreational vehicle areas are not proposed.</p>
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	<p>Consistent</p> <p>An E zone or an environmental overlay is not proposed to be introduced by this planning proposal.</p>
3. Housing, Environment and Urban Development	
3.1 Residential Zones	<p>Consistent.</p> <p>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 450m² which will facilitate greater housing choice on small lots. Part of the proposed residential area will enable live-work options to be developed.</p>
3.2 Caravan Parks and Manufactured Home Estates	<p>Consistent.</p> <p>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.</p>
3.3 Home Occupations	<p>Consistent.</p> <p>The planning proposal does not alter the permissibility of home occupations in dwelling houses under the Ballina LEP 2012.</p>

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.
4. Hazard and Risk	
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.
5. Regional Planning	
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
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The 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.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.

6.0 PARLIAMENTARY COUNSEL OPINION

6.0 Parliamentary Counsel Opinion

[INSTRUCTION] Council is to provide details of when an Opinion was sought and given by Parliamentary Counsel.

A PCO opinion was sought on 4 March 2019.

The PCO opinion was received on 16 May 2019. It was the opinion of PCO that the draft plan may legally be made. This opinion referenced Lot 4.

Following the altered Gateway determination dated 31 May 2019, which changed the lot description of the site from Lot 4 to Lot 1, a revised PC opinion was sought on 3 May 2019.

The revised PC opinion was received on 4 June 2019 and referenced Lot 1 instead of Lot 4 (refer CM 19/43938). The opinion of PCO is that the draft plan may legally be made.

A copy of the PCO opinion is attached.

7.0 OTHER RELEVANT MATTERS

7.0 Other Relevant Matters

[INSTRUCTION] Council is to include any additional matters that are relevant considerations for the making of the plan. This may include:

- whether representations have been received on the planning proposal from State or Federal members of Parliament
- whether council has met with the Minister in relation to the planning proposal

Planning Agreement

A planning agreement was made on 13 June 2017 between Ballina Shire Council and the property owner Ballina Waterways Pty Limited. The agreement provides for:

- A Biobanking Agreement being established over the whole of that part of the land zoned RU2 Rural Landscape;
- The Biobanking Agreement being in place prior to the grant of development consent for any development permitted within the R2 or RU2 zone except for a subdivision of the land for the purpose of creating a Biobanking site.
- Detailed geotechnical investigations to be undertaken prior to the lodgement of a development application, other than a DA for a trial fill embankment and settlement monitoring plates, for any development permitted within the R2 or RU2 zone except for a subdivision of the land for the purpose of creating a Biobanking site.

The planning agreement was registered on the title of Lot 1 DP 124173 on 10 May 2019. Registration was required by clause 6 of the planning agreement.

The Council at its Ordinary Meeting on 13 December 2018 resolved [Minute No 131218/4 resolved as follows:

1. *That Council endorses the amendment of Ballina LEP 2012 as detailed in the exhibited Planning Proposal BSCPP14/008 – Burns Point Ferry Road subject to the deletion of the proposed additional permitted use area for the interpretive centre site.*
2. *That Council seek an altered Gateway determination from the Department of Planning and Environment relating to the deletion of the additional permitted use area for the interpretive centre site prior to finalisation of the planning proposal.*
3. *That Council authorises the General Manager to proceed to finalise and implement Planning Proposal BSCPP14/008 – Burns Point Ferry Road, as amended by Recommendation 1 and subject to Recommendation 2 above, under delegated authority once the executed planning agreement is registered on the title of Lot 4 DP 537419.*
4. *That Council adopts draft amendments to Ballina Shire DCP 2012 Chapters 3 and 4 as exhibited for public comment inclusive of the following changes:*
 - *Chapter 3 - Incorporation of a provision within Section 5.8.4 Development Controls, Access and Road Network (Precinct 1) which requires access to be provided to Lot 3 DP 529094 and each of Lots 5 and 6 DP 537419 from the proposed public roads at the rear of these lots. Access to include gutter and footpath crossings the location of which shall be negotiated with the subject property owners.*
 - *Chapter 3 - Incorporation of minimum stormwater quality requirements as specified for Priority Oyster Aquaculture Areas by the Department of Primary Industries Fisheries.*
 - *Chapter 3 – Change the reference to Office of Water as it relates to Guidelines for Riparian Corridors on Waterfront Land to the Natural Resources Access Regulator.*

- *Chapters 3 and 4 - The incorporation of buffers to Emigrant Creek in accordance with DPI Fisheries requirements and the amendment of the DCP Structure Plan and related plans to incorporate such buffers.*
 - *Chapters 3 and 4 - Deletion of references and provisions relating to the Interpretive Centre where they occur within these chapters.*
5. *That Council provides public notice of the adoption of amendments to Ballina Shire Development Control Plan 2012 with the amendment to take effect from the date of finalisation of the LEP amendment.*
 6. *That upon the planning proposal being finalised, Council seek an amendment to the North Coast Regional Plan 2036 so as to remove the site's Investigation Area – Urban Land designation, and amend the Ballina Shire Growth Management Strategy to reflect the extent of the planned urban area.*
 7. *That Council gives further consideration to replacing the proposed RU2 Rural Landscape Zone with an environmental protection zone as part of its future deferred matters integration program.*

In accordance with item 3 of the above resolution, the General Manager is authorised to finalise and implement Planning Proposal BSCPP14/008 upon it being registered on the title of Lot 4 DP 537419.

Lot 4 no longer exists and has been replaced by Lot 1 DP 124173. Legal advice has confirmed that Lot 1 is a part of the former Lot 4 and that the planning agreement remains effective on lot 1 DP 124173.

Ballina Shire Development Control Plan 2012

Amendments to Ballina Shire Development Control Plan Chapters 3 and 4 were exhibited concurrently with the planning proposal in 2018. Council resolved to adopt the DCP amendments, together with certain additional amendments arising from Government agency submissions, at its Ordinary Meeting on 13 December 2018.

A notice was published in the Ballina Shire Advocate on 2 January 2019 which related to Council's adoption of the DCP amendments. The amendments will take effect from the date of finalisation of the LEP amendment. Once finalised arrangements will then be made to update the relevant DCP Chapters.

It is likely that the adopted DCP amendments will be incorporated within Chapters 3 and 4 at the same time as when such chapters are required to be updated to reflect the Housekeeping Amendments on exhibition during May / June 2019.

8.0 MAPPING

8.0 Mapping

[INSTRUCTION] Council is to include copies of all relevant maps related to the planning proposal including zoning maps, maps related to development standards where they are being amended etc. Maps are to be

provided in a format compliant with the Standard Instrument LEP Mapping Guidelines and all relevant GIS data is also to be provided.

The Map Cover Sheet (0250_COM_MCS_20190415) and Maps as detailed in the table below relate to this planning proposal:

Map Sheet	Map Identification Number
Acid Sulfate Soils Map ASS_006	0250_COM_ASS_006_040_20190304
Building Height Allowance Map BHA_006A	0250_COM_BHA_006A_020_20190304
Flood Planning Map FLD_006	0250_COM_FLD_006_040_20190304
Floor Space Ratio Map FSR_006A	0250_COM_FSR_006A_020_20190415
Height of Buildings Map HOB_006	0250_COM_HOB_006_040_20190304
Land Application Map LAP_001	0250_COM_LAP_001_130_20190304
Lot Size Map LSZ_006A	0250_COM_LSZ_006A_020_20190304
Land Zoning Map LZN_006A	0250_COM_LZN_006A_020_20190304
Strategic Urban Growth Area Map SGA_006A	0250_COM_SGA_006A_020_20190304

Following mapping being checked by the Department of Planning's GIS team email advice was received from Paul Garnett on 8 May 2019.

The advice indicated that the MCS, and the maps attached to his email, had been sent to PCO. It was stated that Council can now make the LEP using the attached Map Cover Sheet when it has a PC opinion. The email is contained within CM 19/34558 and has been reproduced below.

Paul Garnett <Paul.Garnett@planning.nsw.gov.au> Leah Toole; Klaus Kerzinger - Wed 8/05

Ballina LEP Am #40 - Burns Point Ferry Road

0250_COM_SGA_006A_020_20190304.pdf 184 KB	0250_COM_ASS_006_040_20190304.PDF 814 KB	0250_COM_BHA_006A_020_20190304.pdf 294 KB	0250_COM_FLD_006_040_20190304.pdf 595 KB	0250_COM_FSR_006A_020_20190415.PDF 177 KB
0250_COM_HOB_006_040_20190304.pdf 603 KB	0250_COM_LAP_001_130_20190304.pdf 1 MB	0250_COM_LSZ_006A_020_20190304.pdf 282 KB	0250_COM_LZN_006A_020_20190304.PDF 785 KB	0250_COM_MCS_20190415.PDF 18 KB

G'day Leah,
Attached are the final maps and map cover sheet for Ballina LEP Am #40.

These maps have been sent to Parliamentary Counsel's Office. So Council can now make the LEP using the attached Map Cover Sheet when it has a PC Opinion.

Regards

Paul

Paul Garnett
Senior Planner
Department of Planning & Environment
Northern Region
Locked Bag 9022
Grafton NSW 2460
T 02 6643 6407
E paul.garnett@planning.nsw.gov.au

The MCS and Maps are attached to the file in the plastic sleeve.

9.0 RECOMMENDATION

9.0 Recommendation

[INSTRUCTION] Council is to include a recommendation which clearly states whether the plan is to be made, made subject to amendments, or whether the matter (or a component of the plan) will be deferred.

Note

Council is to include copies of all relevant documents referred to in the summary report properly tagged and clearly identified.

Delegation

Condition 11 of the altered Gateway determination dated 24 July 2018 provides as follows:

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*

It is considered that Condition 11 has been fully complied with.

The conditions contained within the original Gateway determination dated 25 September 2014 and the additional conditions contained within the altered Gateway determination dated 24 July 2018 have all been complied with as indicated in this report.

The planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified as indicated within this report.

There were no objections from public authorities and the matters raised by the OEH have been suitably and substantially addressed.

Therefore having regard to the attached PCO Opinion which relates to Ballina LEP Amendment No.40, it is now recommended that the delegate sign the LEP and the attached MCS (0250_COM_MCS_20190415) and make the LEP amendment.

A handwritten signature in black ink, appearing to read 'K. Kerzinger', written in a cursive style.

Klaus Kerzinger
Strategic Planner