

8.5 LEP Amendment Request - 34 Racecourse Road, Ballina

Section	Strategic Planning
Objective	To seek direction from Council in relation to a planning proposal (PP-2024-1016) for an amendment to Schedule 1 of the Ballina Local Environmental Plan 2012 to facilitate a gymnasium on land at 34 Racecourse Road, Ballina.

Background

This report considers a proponent-initiated planning proposal for the construction of a gymnastics focused recreational facility on the property known as 34 Racecourse Road, Ballina (Lot 1 DP 812651).

This planning proposal provides for the same outcome as the planning proposal previously considered by Council, at the Ordinary meeting held 23 February 2023.

The previous report to Council (Item 8.6) may be accessed from the following link [Agenda of meeting on 23 February 2023](#).

At that meeting Council resolved to '*cease further action in relation to the Planning Proposal*'. In such circumstances the proponent may request the Department of Planning, Housing, and Infrastructure to undertake a rezoning review.

The request must be submitted within 42 days from the date of written advice of the decision.

The review application is then considered by the Regional Planning Panel.

No review application was lodged within the required time. Therefore, a new planning proposal is required should the proponent seek to have the matter further considered.

If Council again rejects the planning proposal, this will again trigger the rezoning review process.

The proponent initially proposed to undertake pre-lodgment consultation with Council but was advised to lodge the proposal formally on the NSW Planning Portal, given Council's 2023 decision.

Consistent with Council's 2023 resolution this report recommends that the planning proposal not be supported. The recommendation is made due to the potential for land use conflicts between the proposal and existing uses.

Key Issues

- Reconsideration of planning proposal
- Land use conflicts

Discussion

Location, Zoning and Land Use

34 Racecourse Road (the subject site) is located on the northern side of Racecourse Road, Ballina, approximately 200 metres from the intersection of Ascot Road.

The subject site was at one time utilised as an equine veterinary clinic, in accordance with a development consent granted in 2002.

The site contains three buildings. The building facing Racecourse Road is currently used as a dwelling and contains four stables. The rear buildings and yard, stable ten horses.

The subject site has an area of 3,604m² and is burdened by a 5-metre wide Right of Carriageway (ROC). The ROC is located adjoining the rear northern boundary and part of the eastern boundary.

The ROC facilitates horse access from the stables located on the northern side of Racecourse Road, to the stables located on the Ballina Racecourse site.

A recent inspection of the site has confirmed that the ROC is still being used.

The subject site is zoned RU2 Rural Landscape zone (RU2) under the provisions of Ballina LEP 2012 (BLEP 2012).

Figure 1 shows the site location, outlined in red, and the zoning of adjoining and nearby properties.

The proposed gymnasium is not permitted within the RU2 zone and would require an amendment of BLEP 2012 to permit such use.

Figure 1 – Location and Extract from Ballina LEP 2012



Adjoining and Nearby Land Uses

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The subject site is one of four properties located on the northern side of Racecourse Road, east of Ascot Road. The three properties to the west are utilised in connection with horse racing activities and contain stables. Stables are also located adjoining the site along its eastern boundary, on the Ballina Racecourse site. The majority of lots containing stables also contain dwellings.

The land at the rear, and to the northwest of the subject site, contain agistment yards for horses and cattle. This land is in the same ownership as a large stable complex located on the corner of Ascot and Racecourse Roads.

Figure 2 shows the land uses located in the vicinity of 34 Racecourse Road.

Figure 2 – Land Use Diagram



Current Planning Proposal (PP-2024-1016)

The planning proposal submission has been lodged by Planners North on behalf of the proponent, Mr John Reynolds of JR Commercial Property Holdings Pty Ltd (property owner). Attachment 1 to this report contains a copy of the submission.

The planning proposal is substantially the same as the proposal considered by Council in February 2023. It seeks to permit, with development consent, a *recreation facility (indoor)* as an additional permitted use on the site. Specifically, the proponent is seeking to permit a gymnasium that would operate to teach and practice gymnastics. The submission states that *'the proposed usage will be for junior gymnastics with a maximum of 150 pupils and the operation will align more closely to a dance studio than a traditional gym'*.

Figure 3 shows the internal layout of a 27m x 42.5m building proposed for the rear of the site. The existing building, at the front of the site, is proposed to be retained. Preliminary plans also make provision for 60 off-street car parking spaces.

Figure 3 – Extract from Planning Proposal – Proposed Building Layout



Evaluation of Planning Proposal

The planning proposal contains the following statements that warrant further discussion:

'Since the previous application Council has completed a strategic review of land in the Local Government Area suitable for rezoning for commercial and light industrial purposes. The subject site is a SUGA area and has recently been re-confirmed by Ballina Shire Council as strategically important for future industrial use.

Racing NSW has acquired the land immediately westward of the subject site and made an uncommercial offer to JR Commercial Property Holdings Pty Ltd to acquire the subject land. Given the reinforcement of Council's strategic urban growth initiatives for the locality and the lack of a commercial purchase offer from Racing NSW this matter is now resubmitted for Council's consideration'.

The subject site, together with adjoining land, as outlined in yellow in Figure 4, has been retained as a Strategic Urban Growth Area (SUGA) following the Council's review of SUGAs at the 25 May 2023 Ordinary meeting.

Figure 4 – Racecourse Road Ballina SUGA (outlined in yellow)



In retaining the land as a SUGA, Council did not specifically confirm the land as strategically important for future industrial use.

Council's decision to retain the land as a SUGA recognised the complex nature of the site, the multiple adjacent land use types, as well as the need for more detailed assessments through the planning proposal process.

That said the North Coast Regional Plan 2041 does designate the land as an Investigation Area for Employment Land.

Flooding related impacts are one of the more significant site constraints that impact this SUGA.

Having regard to the concentration of horse racing related activities within this SUGA, and elsewhere in Racecourse Road, it could also be argued that the land's current RU2 zone is a good zoning fit. The current zone permits, with consent, *recreation facility (major)* which includes racecourse uses. It also permits with consent, *animal boarding and training establishments*.

If the SUGA were to be zoned E4 General Industrial (same as the Southern Cross Industrial Estate) then *recreation facilities (major)* would not be permitted with consent.

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The E4 zone would, however, permit with consent, a *recreation facility (indoor)* which is the subject of the planning proposal.

In terms of the viability of horse racing within this SUGA area, Racing NSW purchased 22-32 Racecourse Road in June 2023. This land has an area of 1.4ha and adjoins the western boundary of the subject site.

The Ballina Jockey Club has also advised in May 2024 (email contained in Attachment 2) that it has received \$1.3m in funding from Racing NSW for infrastructure upgrades.

It has also advised that it has now significantly commenced a previously approved DA for various site upgrades.

Figure 2 shows the location of 22-32 Racecourse Road labelled Racing NSW in relation to the subject site.

The subject site is located between two significant properties, which provide stable facilities associated with the Ballina racecourse.

Having regard for the current land use pattern and ownership continued use of the land for horseracing related activities, provides for a land use outcome compatible with the character of the area.

The property owner is, however, entitled to pursue other land use opportunities, consistent with the current zoning or strategic planning framework.

The report previously considered by the Council in respect to the 2022 planning proposal (Item 8.6 to 23 February 2023 Ordinary meeting) concluded that:

‘Development of the gymnasium as proposed will not prejudice future investigations of this wider investigation area and is consistent with the likely longer-term land uses of the area.

Preliminary assessment of the issues associated with such a development indicates that it is possible to carry out the development in a way that does not result in significant environmental, social, or economic impacts’.

Having regard to the recent purchase of 22-32 Racecourse Road by Racing NSW, and the potential for land use conflicts between the proposed use and the existing equine land uses, the above conclusions are no longer supported.

Further assessment of the planning proposal has also confirmed the consolidation of horse racing related land uses within a generally 200 metre radius of the subject site (Figure 2).

This consolidation has been recently reinforced by the Ballina Jockey Club commencing significant infrastructure upgrade works.

Rezoning Review Process

If Council notifies the proponent that it does not support the proposal, the proponent may seek a rezoning review by the Department of Planning, Housing and Infrastructure (DPHI) within 42 days of the notification, or 90 days from the date of lodgment if a decision has not been made.

To facilitate the review the DPHI schedules a meeting of the Regional Planning Panel (RPP), which then reviews the planning proposal. The review process includes a meeting between the panel, the proponent and Council staff.

The RPP will make a recommendation relating to whether the planning proposal should, or should not, proceed to a Gateway determination, and the nature of any Gateway requirements.

In making such a recommendation, the RPP will consider whether the planning proposal has strategic and site-specific merit. Site specific merit includes consideration of existing approved and likely future uses of land in the vicinity of the land to which the proposal relates.

If the RPP recommends that the planning proposal proceed to Gateway, it will also identify the Principal Planning Authority (PPA) for the proposal.

In cases where the Council has refused the planning proposal, the planning panel may appoint itself as the PPA.

Delivery Program Strategy / Operational Plan Activity

Processing of LEP amendments and planning proposals is identified in Council's 2023/24 – 2026/27 Delivery Program and Operational Plan (DPOP) as follows:

- *HE3.1 – Implement plans that balance the built environment with the natural environment*
- *HE3.1g – Maintain Local Environmental Plan (LEP)*

Community Engagement Strategy

At this stage community engagement (including government agency referrals) for this planning proposal has not been undertaken. Community engagement processes are triggered once a positive Gateway determination has been made.

Attachment 2 to this report contains the submissions previously made by the General Manager of the Ballina Jockey Club, as well as a more recent email received on 30 May 2024.

Financial / Risk Considerations

This is a landowner-initiated proposal, and the proponent has previously paid the commencement fee, as well as an additional initial scoping fee for the process to date, in accordance with Council's adopted Fees and Charges.

Further processing fees will be payable at subsequent stages, should Council resolve to proceed with the Planning Proposal.

Options

Option 1 – Not support the planning proposal

This is the recommended option.

The planning proposal will give rise to potential land use conflicts due to the proposed location of a people intensive use in an area containing significant equine related uses.

More specifically the proposed gymnasium is located between two existing stable complexes, and at the rear of stables located on the subject site.

This approach is consistent with the previous decision of Council.

Option 2 – Proceed with the Planning Proposal

If Council considers that the planning proposal has sufficient merit to warrant its progression for a Gateway determination, it could resolve generally in accordance with the recommendations contained in the report to 23 February 2023 Ordinary meeting.

Attachment 3 contains a copy of that recommendation, with minor amendment for context to this report.

Proceeding with the planning proposal will result in a submission to the DPHI for a Gateway determination.

Subject to an affirmative Gateway determination the planning proposal would then proceed to public exhibition.

Public exhibition will enable the views of all relevant parties to be sought including Racing NSW, the Ballina Jockey Club and nearby property owners.




Council would also be afforded an opportunity to reconsider the desirability of completing the planning proposal, following public exhibition.

Due to the potential for land use conflicts, between the proposed use and the existing equine land uses, this option is not supported.

RECOMMENDATION

That Council does not support Planning Proposal PP-2024-1016, as detailed in this report, as the proposal may give rise to land use conflicts between existing adjoining equine land uses and the proposed use.

Attachment(s)

1. Planning Proposal PP-2024-1016 - Submission 
2. Ballina Jockey Club - Submissions 
3. Ordinary meeting - 23 January, 2023 - Recommendation (amended) 

Email from Matthew Bertram, General Manager, Ballina Jockey Club and Function Centre, 30 May 2024

From: Matthew Bertram

Sent: Thursday, May 30, 2024 9:40 AM

To: Klaus Kerzinger

Subject: RE: Planning Proposal 34 Racecourse Road Ballina

Hi Klaus

As discussed, please feel free to use all previous communication between myself (on behalf of the Ballina Jockey Club) and the Ballina Shire Council.

Please note that our position as an organisation has not changed. However, there has been some changes that I feel is relevant to any report you may prepare, and they are.

- That the property known as 22-32 Racecourse Road, Ballina NSW 2478, which shares a boundary with 34 Racecourse Road, Ballina NSW 2478 was recently purchased by Racing NSW.
- The Ballina Jockey Club recently received significant funding (\$1.3m) from Racing NSW for infrastructure upgrades.
- The Ballina Jockey Club recently made a significant commencement of a DA that we had in the system (BSC reference: DA 2016/378)

Therefore, these changes strengthen the commitment that Racing NSW and the Ballina Jockey Club has towards the local racing industry, and the future developments and economic growth relating to the racing industry locally.

The property at 34 Racecourse Road Ballina NSW 2478 is not a random property on racecourse road, it is a property that shares a border with the Ballina racecourse, it also shares a border with a property that is owned by Racing NSW. And it is just one of 4 lots in a row adjacent to the racecourse (all with a common easement) for horse movements. For all intents and purposes, the property in question is designed to be a part of the local equine industry. Any other use (especially something that creates noise and movement) isn't suited to the location.

Sincerely,

Matthew Bertram
General Manager
Ballina Jockey Club and Function Centre



Email from Matthew Bertram, General Manager, Ballina Jockey Club and Function Centre, 22 February 2023

From: Matthew Bertram - Ballina Jockey club
Sent: Wednesday, February 22, 2023 12:05 PM
To: Councillors
Subject: Agenda, ordinary meeting 23 Feb 2023.

Dear Ballina Shire Councillors,

If I could turn your attention to tomorrow's agenda 8.5 item 22/001 pages 56-62.

LEP Amendment request of 34 Racecourse Road Ballina NSW 2478.

I have previously written to the Ballina Shire Council on this matter (8/8/2022 p265 of the attachments) outlining some concerns around safety, car parking, economic downturn, and flood impacts, all of which remain a major concern. However, what I would also like to do is to provide a short response to the report itself, which I have found to have some inaccuracies, which I expect are due to a lack of understanding of the day-to-day operations of the racing industry.

- The Thoroughbred racing industry in Australia supports hundreds of thousands of people and is worth billions in economic activity.
- The racing industry is self-sufficient, and it provides significant government revenue.
- Locally the Ballina Jockey Club is a community-based organisation that has been operating in one form or another since 1895.

The Report describes the property currently as having a residential dwelling with a number of outbuildings. A more detailed description would be that the out-buildings are stables and day yards, and the main building is a small office which sits in the front section of a larger stable. The property is currently tenanted by a local horse trainer and the current use of the property is for horse stabling, training, and racing.

The report states that the Ballina racecourse adjoins the property to the east, with the wider Southern Cross Industrial Estate located to the west. What I

would advise is that the eastern boundary is in fact a stable complex and tie-up stalls, the western boundary is also a stable complex, the properties adjacent that property are also stable complexes, and the northern boundary is being used as an agistment property. The southern boundary is Racecourse Road, directly across from number 34 is the racecourse road vet, which sits in between 2 working stable properties, plus there are more working stables behind the racecourse road vet.

The point I would like you to understand is that 34 Racecourse Road is in the absolute centre of the Ballina racecourse precinct, and there are horses currently living and working on all sides of this property.

I would also challenge some of the assumptions made in relation to conflict, noise, and operations.

- The report states that changing the LEP will “unlikely” result in significant conflicts.
- That there is “unlikely” to be significant noise.
- That the new users had to only be concerned with the 17 race meetings held at Ballina annually.
- That it would be relatively easy for a gym to arrange start & finish times to avoid a clash.
- That the proposal will be for Jnr gymnastics (for up to 150 kids & 50 cars) then it states that the proponent suggests it might be more ‘dance studio’ then gym.

With all due respect, I think this is where it is obvious to me the report misses pertinent information relating to the operations of both the local and wider racing industry.

Please note that Ballina is a regional training centre and horses train 7 days per week. There are horse movements 365 days a year, up and down Racecourse Road and they move multiple times per day. I would conclude that conflict between existing & new users, will certainly occur.

The reference that noise will not be an issue is also a concern, given the reference above indicates that this in fact is more like a Dance Studio then gym. Please note that Noise and horses simply don’t mix and to be blunt, this is a dangerous combination.

Just to add to that point, please note that the horse industry is highly regulated, including the need to license and train staff who handle horses.

There are also rules and regulations around how a horse can be exercised, even walked and what must be worn by the rider or handler and all those steps take into account a safety element as priority. Adding children, music, cars and loud unexpected noise and movement is highly compromising to safety.

Furthermore, the image of a dance studio big enough to accommodate 150 kids + 50 car spaces simply doesn't make any sense to me. I can't understand how there is enough space available on the site to accommodate such a design. Especially when you have to factor in the easement at the north end of the site. Car parking would be essential given the dangers associated with moving horses (back and forth) past this property, multiple times per day and parking on racecourse road is already a major issue.

During the 2022 floods, the Eastern end of Racecourse Road was inundated with flood waters, including the area in and around the property in question. Having just number 34 Racecourse Road raised over and above all other properties may have an insignificant negative impact on all other users, given the land size we're dealing with is only 3604 sqm.

However, it should be noted that the collective area of the 5 adjoining lots (seen in green in the diagram provided in the report page 60 agenda) is in fact 79,305 sqm, therefore in theory if all these properties are eventually raised to a specific height requirement, surely then that size area will have a significant negative impact on all other properties on Racecourse Road, most notably the racecourse itself, as well as the surrounding wetlands and properties that run along the Southern side of Racecourse road.

It is also apparent to me that this flood modelling by BMT does not include data from the 2022 flood, nor is it site specific. I find that this modelling offers no clear picture of what impact a favourable decision on this submission might look like in the future.

I note the reference to the Rural Zoning and the term Strategic urban growth that covers the 5 lots (as seen in green on the photo enclosed page 60 of the agenda) of which this property in question is part thereof. As advised collectively the 5 lots which make up an area of 79,305 sqm, which are now and have always been (post-colonial) used as part of the local racing industry. Given our 128-year history, I would argue the best strategic direction of these lands should be to remain part of the thoroughbred racing industry. I would

point out that any jobs created by the new business will be at the expense of existing jobs held within an established long-term industry.

This strategic direction would be counterproductive to the existing equine industry (due to the loss of stables) and it would result in the loss of potential future investment locally from Racing NSW, the NSW State Government and Crown Lands.

I would seek more discussion around strategic planning in respect to this decision. If there is a need to improve leisure activities and improve health for youth as referenced in this report, surely there is a far better strategic location then slotted in the middle of an established 128-year-old racecourse precinct.

Finally, in my opinion there is no reasonable argument to be made for granting this proposal. But opening this gateway would have significant economic and social impacts on the Ballina Jockey Club and our participants.

The change would alter the course of a major portion of our revenue and ultimately result in job losses and business closures, along with the health and wellbeing of those users. The site itself would be dangerous to current and future users and it would have a major negative impact on the balance of the property owners and users within the racecourse precinct, along with the local environment, eco systems and wetlands.

I would respectfully request you find against the recommendations.

Kind regards,

Matthew Bertram
General Manager
Ballina Jockey Club and Function Centre





Ballina Jockey Club and Function Centre

8th August 2022

Mr Paul Hickey
General Manager, Ballina Shire Council
40 Cherry Street, Ballina NSW 2478

Dear Paul,


Re : Ballina Shire Council Ordinary Meeting, LEP Amendments and Planning Proposals, Item 22/001, 34 Racecourse Road Ballina NSW 2478.

On behalf of the Ballina Jockey Club Board of Directors, our members, and our participants can I please draw your attention to an item that was tabled within the Council papers dated 23 June 2022; that being a proposal to amend the BLEP 2012 to permit a gymnastics focused facility at 34 Racecourse Road Ballina NSW 2478.

The Ballina Jockey Club (BJC) has concerns regarding this proposal, notably that this proposed change will compromise the safety of the existing users, the proposed new users and of course the horses themselves. The BJC places as its highest priority the safety of our participants and horses in our precinct.

- (a) A change to the existing use will create added noise, as well as added people and traffic movement and activities, given the existing use of the racecourse precinct, this proposal would be highly unusual for the street, and it is a major safety concern.
- (b) Our property (36 Racecourse Road, Ballina NSW 2478) currently has a horse stable which directly borders the property in question. A change such as this proposal, would therefore create safety concerns for our existing users/tenants, their staff and especially the horses that are housed within our accommodation, just metres away.
- (c) There is a shared access via an easement that runs directly behind all properties on the northern side of Racecourse Road (including 34 Racecourse Road property) any change to the existing use could have a detrimental impact on the other users of this easement.
- (d) Parking along Racecourse Road is limited and an increase in demand for space will also compromise safety to horse, rider and or handler, as well as the public who are unlikely to be horse conscious.
- (e) We are very concerned that any change to the levels of other properties along Racecourse Road will have further detrimental impacts on our flood vulnerability.
- (f) Any loss of traditional equine properties will have a major economic impact on our operations.

The Ballina Racecourse has been operating in one form or another well before it was formerly recognised as a Dedicated Racecourse on 9 July 1895. In our official 127 years, the Club and our participants have provided the Ballina district with a form of economic growth and prosperity, as well as a valued community asset. Put simply, this proposal presents a very real risk of that continuing.


Matthew Bertram
General Manager, Ballina Jockey Club