



Ballina Shire Council

Planning Proposal – July 2013

Subdivision Provisions

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Final



Introduction

Summary of Planning Proposal

This planning proposal relates to all land within Ballina Shire.

The planning proposal intends to amend the Ballina Local Environmental Plan 2012 (BLEP 2012) in the following ways:

- To add a clause to enable boundary adjustments in rural areas (in relation to lots that are less than the minimum lot size shown on the Lot Size Map) that do not adversely impact on agricultural or environmental attributes of land and do not create additional opportunities for the establishment of dwelling houses.
- To add a clause to enable the creation of residual allotments that are less than the minimum lot size shown on the Lot Size Map, where their creation is associated with planned urban growth.
- To add clauses to enable the creation of lots that are less than the minimum lot size shown on the Lot Size Map that promote environmental protection and management outcomes in association with urban development in planned urban growth areas.

Planning Context

Council Resolution and DP&I Gateway Determination

Council considered the proposed amendment to the BLEP 2012 relating to subdivision at its December 2012 Ordinary Meeting and resolved as follows [Minute No. 201212/14]:

1. *That Council submit the planning proposal relating to new subdivision provisions in Council's Standard Instrument Local Environmental Plan to the NSW Department of Planning & Infrastructure for review and Gateway determination.*
2. *That upon an affirmative Gateway determination being received from the Department of Planning & Infrastructure, Council staff will carry out the procedural steps associated with the progress of the planning proposal, including public exhibition.*
3. *That a further report be submitted to Council in relation to this matter following mandatory community consultation."*

Council's resolution in December 2012 follows consideration of subdivision matters as part of the preparation of the Standard Instrument LEP for Ballina Shire (see below).

Following Council's resolution to proceed with the proposed LEP amendment, the matter was forwarded to the Department of Planning and Infrastructure (DP&I) for Gateway determination under section 56 of the *Environmental Planning & Assessment Act*. As outlined in the Gateway determination contained in Appendix 1, Council has been advised that the proposal may proceed subject to the specified conditions.

Ballina Local Environmental Plan (BLEP) 2012

During the preparation of Council's Standard Instrument LEP, Council identified several concerns relating to subdivision of land zoned for rural or environmental protection purposes arising from provisions contained in the Standard Instrument LEP template.

Specifically, Council sought the inclusion of provisions to provide a greater degree of flexibility in relation to rural boundary adjustment subdivision, creation of residual rural or environmental zoned lots arising from urban subdivision, creation of lots for environmental protection purposes and creation of lots with part environmental protection and part urban zones. The present form of the Standard Instrument LEP establishes significant limitations for subdivision in relation to the matters listed above.

The key issues identified by Council are outlined below:

Boundary Adjustment Subdivision

Council engaged extensively with the DP&I throughout the preparation of the LEP in relation to boundary adjustment subdivision provisions for rural land. The Standard Instrument establishes substantial limitations on boundary adjustment subdivision in rural areas. Council is of the view that the structure of the Standard Instrument does not permit boundary adjustment subdivisions where one or more allotments involved is less than 90% of the minimum lot size specified for subdivision. Under the current Standard LEP provisions, it appears that adjustments between two lots that are already below the minimum lot standard are unable to be approved.

This is a significant issue in that the majority of rural lots within the shire are below the minimum subdivision lot standard and Council often receives applications for boundary adjustments based on the merits of particular situations. There can be a number of reasons why a boundary adjustment subdivision can be beneficial. For example, it may assist in achievement of larger agricultural production units, enable creation of more logical property boundaries, or provide opportunities for enhanced agricultural production or diminution of land use conflict.

The DP&I has previously suggested that in the absence of a specific provision enabling the desired boundary adjustment outcomes, a planning proposal to change the minimum lot size applicable to certain land could be undertaken. This is

considered to be an onerous and bureaucratic process, and unnecessarily time consuming and costly for proponents and the relevant planning authority.

Having regard for the above, Council is seeking flexibility in its Standard Instrument LEP to enable boundary adjustment subdivision to be considered on merit, without specified minimum lot size or adjustment area limitations. Council proposes to achieve this via a new provision.

Split Zone Lots, Residual Lots for Environmental Purposes

The Standard Instrument establishes minimum lot standards for subdivision of rural land and creation of allotments below the minimum standard (generally 40ha) is subject to specific criteria which limits the flexibility of the Standard Instrument LEP. Council is of the view that there are some defined circumstances where additional flexibility is warranted.

This issue is particularly relevant to subdivisions associated with new urban areas as the current Standard Instrument LEP does not enable the creation of residual lots, split zoned lots or lots for environmental purposes where the lot area is not at least 90% of the minimum standard. This means that routine practices such as excising the balance of a farm after a stage of an urban subdivision, inclusion of environmental protection zoned land in urban lots or separation of areas of environmental values in urban subdivision areas typically cannot be undertaken unless the lots are at least 36ha in area.

In considering the above, it should be noted that the DP&I has previously advised that the creation of residual lots that do not meet the relevant standard can be approved under the LEP as the residual land will not have been subdivided. Council is concerned that the legal basis for this position is unclear and may be open to challenge, particularly given that residual lots will have new dimension and area characteristics and a new property description, suggesting to Council that the residual lot is a new lot that has been the subject of a subdivision.

The DP&I have also previously discussed adjusting the applicable minimum lot size standards to enable the desired outcome. However, this is considered to be a cumbersome approach as it requires completion of a planning proposal which may unduly delay outcomes otherwise considered to be appropriate at the subdivision design stage of a project.

It is also impractical to identify minimum lot standards at the micro scale at the initial rezoning of land for urban purposes in many circumstances because the ultimate subdivision layout is not known (or required to be known) at the time. There is often considerable change between the initial proposals and final approved subdivision as concepts progress from rezoning of land to development.

Further, it is desirable to maintain the integrity of a general minimum lot size standard for rural zoned land in circumstances other than those specifically identified. That is, Council is not seeking widespread opportunity for variation of lot sizes in rural areas to limit the potential for fragmentation of agricultural land. One

way of achieving this is to maintain a consistent minimum lot size standard (except in the specific circumstances outlined above).

Council is of the view that the optimal way in which to address this issue is to include provisions in the LEP that clearly enable the creation of residual lots, split zoned lots and lots for environmental purposes in criteria-based circumstances to provide improved flexibility in the instrument and enhanced certainty about when such lot creation will be considered by the consent authority.

Part 1 - Objectives or Intended Outcomes

The objective of this planning proposal is to provide for greater flexibility and certainty in relation to subdivision of land for particular purposes through the following:

- Permitting boundary adjustment subdivisions, where one or more allotments involved is less than 90% of the minimum lot size specified for subdivision subject to the subdivision providing for improved agricultural or environmental outcomes without creating additional opportunities for the establishment of dwelling houses.
- Permitting subdivision which will result in the creation of a residual lot that has an area less than the minimum lot size shown on the Lot Size Map, where the lot is created in association with subdivision for urban purposes and is suitable for an environmental protection, environmental management or agricultural purpose.
- Permitting subdivision of lots for environmental protection purposes that have an area less than the minimum lot size shown on the Lot Size Map, where the lot is created in association with subdivision for urban purposes.
- Permitting creation of split zoned lots (part environmental protection and part urban zoned), where the lot is created in association with subdivision for urban purposes and is for an environmental purpose.

Part 2 - Explanation of the Proposal

As outlined above, this planning proposal seeks to provide for greater flexibility and certainty in relation to subdivision of land in specific circumstances.

The proposal involves the inclusion of new clauses in the BLEP 2012. The following draft provisions are examples to assist in demonstrating the intent of the amendments proposed. It should be noted that the draft clauses are indicative only and are subject to change during the drafting of the LEP amendment. Further, minor adjustments to the clauses (as exhibited) have been identified and are outlined below.

Insert the following in Part Four of the Ballina LEP 2012:

Clause XXX Exception to minimum lot size standard - boundary adjustment subdivision (boundary adjustments)

- (a) *The objective of this clause is to enable property boundary adjustments in rural areas to provide for improved agricultural or environmental outcomes without creating additional opportunities for the establishment of dwelling houses.*
- (b) *Where adjustment of property boundaries is proposed between existing lots where the area of one or more of the proposed lots is less than the minimum lot size shown on the Lot Size Map in relation to those lots, consent may be granted for a subdivision of the land where:*
 - (i) *the subdivision will not result in the creation of any additional lots or the opportunity for additional dwellings, and*
 - (ii) *the subdivision will not adversely impact on the long term agricultural production potential or environmental characteristics of the land and the surrounding locality.*

Clause XXX Exception to minimum lot size standard - residual lots associated with urban development (residual lots)

- (1) *The objective of this clause is to enable the creation of lots that support the provision of urban development outcomes in planned urban growth areas.*
- (2) *Consent may be granted for a subdivision resulting in the creation of a residual lot that has an area less than the minimum lot size shown on the Lot Size Map in relation to those lots where:*
 - (i) *the lot created is associated with subdivision for urban purposes, and*
 - (ii) *the lot created is suitable for an environmental protection, environmental management or agricultural purpose.*

Clause XXX Exception to minimum lot size standard - lots for environmental protection purposes associated with urban development (environmental protection)

- (1) *The objective of this clause is to enable the creation of lots that promote environmental protection and management outcomes in association with urban development in planned urban growth areas.*
- (2) *Consent may be granted for a subdivision resulting in the creation of lots for environmental protection purposes that have an area less than the minimum lot size shown on the Lot Size Map in relation to those lots where:*
 - (i) *the lot is zoned E2 Environmental Conservation or E3 Environmental Management; and*
 - (ii) *the lot is created in association with subdivision for urban purposes.*

Drafting Note: The intent with this provision is not to provide for any additional dwelling entitlement on the land parcels created. This may necessitate an adjustment to the dwelling opportunity provision to exclude this clause from having the effect of enabling an entitlement.

Clause XXX Exception to minimum lot size standard - lots comprising an environmental protection zone and at least one other urban zone (split lots)

- (1) *The objective of this clause is to enable the creation of split zoned lots that promote environmental protection and management outcomes in association with urban development in planned urban growth areas.*
- (2) *Consent may be granted for a subdivision resulting in lots that contain more than one zone and have an area less than the minimum lot size shown on the Lot Size Map for the portion of a lot zoned E2 Environmental Conservation or E3 Environmental Management where:*
 - (i) *land zoned for residential, business, industrial or open space purposes has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land; and*
 - (ii) *the creation of the lots relates to an environmental protection or environmental management purpose; and*
 - (iii) *the creation of the lots support the improvement and management of environmental attributes on the land.*

Note: Ballina LEP 2012 – E Zones

The BLEP 2012 has now commenced without inclusion of the E2 Environmental Conservation or E3 Environmental Management zones. Areas subject to a proposed E zone have been deferred from the LEP at this time. The DP&I has advised that future inclusion of these zones is pending a review.

Notwithstanding the above, the proposed clauses include reference to the “E” zones on the assumption that the planned review will be complete and the future “E” zones in Ballina Shire known before the planning proposal is complete. This approach provides for integrated consideration of the proposed subdivision provisions and limits the potential for delay in implementation in the event that the “E” zones are reinstated for application in the Ballina LEP.

Post Exhibition Adjustments

Following public exhibition of the planning proposal and consultation with Council's Development and Environmental Health Group, a number of adjustments to the exhibited clauses are proposed to better reflect the intent of each clause, remove any ambiguity from the clauses, limit the increase in dwelling opportunities and provide flexibility during the release of urban growth areas.

These changes are outlined below:

Boundary adjustments

- The insertion of the words 'or both' into the sub-clause (i) to remove any ambiguity from the clause in relation to this matter.

Residual Lot

- Insertion of a definition of residual lot. This definition should include recognition of the specific zones applicable to such lots (rural and environmental protection).
- Inclusion of a requirement that lots created for environmental purposes must be shown to be suitable for a dwelling house.
- Inclusion in the clause or above definition, a requirement that only one residual lot per parent lot may be created.

Environmental Protection

- Inclusion of a requirement for proponents to demonstrate how the environmental land is to be managed following completion of the subdivision works.

The final wording of the clauses will be determined by Parliamentary Counsel in association with Council staff. The current wording is indicative only and may be altered during the finalisation of the LEP amendment.

Section A - Need for the Planning Proposal

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

The proposal is consistent with Council's intended outcomes associated with the new BLEP 2012. The proposal is also consistent with Ballina Local Environmental Plan 1987 and the associated historic assessment of development applications within the shire.

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

Amending the BLEP 2012 to include provisions for exceptions to minimum lot sizes is the only way to achieve the objectives of the planning proposal. If the additional clauses are not added to the BLEP 2012 taking into consideration the repeal of State Environmental Planning Policy No.1 (SEPP 1) in relation to land the subject of the BLEP 2012, there will no avenue for Council to approve certain subdivisions that depart from the proposed minimum lot sizes despite the potentially positive merits of an application.

Section B - Relationship to the Strategic Planning Framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The proposal is consistent with the FNCRS, which provides the regional framework for the consideration of policy development and the overall vision of the future. The proposal supports agricultural, environmental and urban growth outcomes and actions identified in the strategy.

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

The planning proposal is consistent with the provisions of BLEP 2012 and the Ballina LEP 1987. The planning proposal will also continue to facilitate practical planning outcomes in relation to rural subdivision post the repeal of SEPP 1. Therefore, the proposal is consistent with the long standing practice in Ballina Shire.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Yes, the proposal is generally consistent with applicable State Environmental Planning Policies (SEPP), including the Rural Subdivision Principles listed in State Environmental Planning Policy (Rural Lands) 2008.

6. Is the planning proposal consistent with the applicable Ministerial Directions (S. 117 directions)?

Yes, the proposal is consistent with the relevant Section 117 Directions. A Section 117 Direction checklist for the planning proposal is contained in Appendix 2.

Section C - Environmental, Social and Economic Impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

The planning proposal is likely to result in positive impacts on flora and fauna as environmental protection zones will be able to be excised and protected from urban land release areas in planned urban growth areas. Additionally, practical boundary adjustments that provide for improved agricultural or environmental outcomes without creating additional opportunities for the establishment of dwelling houses will be able to be approved by Council.

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

No direct adverse environmental impacts are likely to arise as a result of the planning proposal.

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

The planning proposal will enable the creation of lots that promote environmental protection and management outcomes while supporting the provision of urban development outcomes in planned urban growth areas. It will also enable boundary adjustments in rural areas to provide for improved agricultural or environmental outcomes.

Overall, the planning proposal is considered likely to achieve positive social and economic effects, particularly through improved flexibility and clarity for subdivision in identified circumstances.

Section D – State and Commonwealth Interests

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

The planning proposal does not create the need for any additional public infrastructure.

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

Consultation was undertaken with the NSW RFS in accordance with the DP&I Gateway determination (Appendix 1) prior to public exhibition of the planning proposal. The RFS by return advice raised no objection to the proposal, subject to the provisions of Section 117 Direction 4.4 Planning for Bushfire Protection being addressed within this planning proposal (Appendix 3). Further changes were made to the planning proposal in response to the RFS comments to address the requirements of the S117 Direction and this authority was advised of the planning proposal again in conjunction with the public exhibition period. The RFS by letter dated 15th May 2013 (Appendix 4) advised that the planning proposal as exhibited satisfies the S117 Direction 4.4 - Planning for Bushfire Protection.

The Office of Environment and Heritage (OEH) and the Department of Primary Industries (DPI) were advised of the planning proposal during the public exhibition period (although such was not a requirement of the Gateway determination). The OEH and the DPI both made a submission during the exhibition period.

The submissions received have been discussed within the report to Council's July Ordinary Meeting on this planning proposal and are summarised within Appendix 5.

The DP&I were also notified of the public exhibition period.

Part 4 - Mapping

The proposed amendment relates primarily to the written component of Council's local planning instrument (Ballina Local Environmental Plan 2012). No mapping amendments are presently proposed.

Part 5 – Community Consultation

The planning proposal was placed on public exhibition between 24 April and 13 May 2013.

During the exhibition, six submissions were received (Appendix 4). These submissions were from the general public, local planning consultants and public

authorities. The content of these submissions have been outlined and discussed within a report to Council's July 2013 Ordinary Meeting and are summarised within Appendix 5.

Part 6 – Project Timeline

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

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

Appendices

Appendix 1 – DP&I Gateway Determination



Planning & Infrastructure

Office of the Director General

Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

RECORDS SCANNED
31 JAN 2013
Doc No.....
Batch No.....

Contact: Paul Garnett
Phone: (02) 6641 6600
Fax: (02) 6641 6601
Email: Paul.Garnett@planning.nsw.gov.au
Postal: Locked Bag 9022, Grafton NSW 2460
Our ref: PP_2013_BALLI_001_00 (13/01037)
Your ref: 12/58618

Dear Mr Hickey,

Planning proposal to amend draft Ballina Local Environmental Plan 2012

I am writing in response to your Council's letter dated 24 December 2012 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to permit boundary adjustments and enable the creation of residual lots, lots for environmental purposes and split zoned lots where the resulting lots are less than the minimum lot size.

As delegate of the Minister for Planning and Infrastructure, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the department to draft and finalise the LEP should be made six (6) weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under s54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Paul Garnett of the regional office of the department on 02 6641 6600.

Yours sincerely,

Sam Haddad
Director General

25/1/2013

Bridge Street Office: 23-33 Bridge Street, Sydney NSW 2000 Telephone: (02) 9228 6111
GPO Box 39 Sydney NSW 2001 Facsimile: (02) 9228 6455
DX 22 Sydney Website: www.planning.nsw.gov.au



Gateway Determination

Planning proposal (Department Ref: PP_2013_BALLI_001_00): to amend the subdivision provisions in draft Ballina Local Environmental Plan 2012.

I, the Director General, Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to draft Ballina Local Environmental Plan (LEP) 2012 to permit boundary adjustments and enable the creation of residual lots, lots for environmental purposes and split zoned lots where the resulting lots are less than the minimum lot size should proceed subject to the following conditions:

1. Prior to undertaking public exhibition, Council is to amend the 'explanation of provisions' within the planning proposal to advise that the proposed clauses are indicative only and are subject to change during the drafting of the LEP. Council is to ensure that the intended outcome of each clause is consistent with the draft clause in Part 2 'explanation of provisions' within the planning proposal.
2. Prior to undertaking public exhibition, Council is to amend the planning proposal to refer to 'potential urban growth areas' instead of 'strategic urban growth areas,' to maintain consistency with draft Ballina LEP 2012.
3. Council is to consult with the NSW Rural Fire Services as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection and amend the planning proposal, if necessary, to take into consideration any comments made prior to undertaking public exhibition.
4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Department of Planning and Infrastructure 2012)* and must be made publicly available for **14 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning and Infrastructure 2012)*.
5. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - NSW Rural Fire Services

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

BALLINA PP_2013_BALLI_001_00 (13/01037)



Planning &
Infrastructure

6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
7. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated *25th* day of *January* 2013.

A handwritten signature in black ink that reads 'Sam Haddad'.

Sam Haddad
Director General
Delegate of the Minister for Planning and
Infrastructure

BALLINA PP_2013_BALLI_001_00 (13/01037)

Appendix 2 - Section 117 Direction Checklist

Section 117 Direction Checklist	
Planning Proposal – Subdivision Provisions	
DIRECTION NO.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Does not apply to planning proposal.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Consistent. The planning proposal is consistent with the Rural Subdivision Principles listed in State Environmental Planning Policy (Rural Lands) 2008.
2. Environment and Heritage	
2.1 Environmental Protection Zones	Consistent. The planning proposal is consistent with this direction as environmental protection zones will be able to be excised and protected in planned urban growth areas.
2.2 Coastal Protection	Consistent.
2.3 Heritage Conservation	Consistent.
2.4 Recreation Vehicle Areas	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Consistent.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to planning proposal.
3.3 Home Occupations	Does not apply to planning proposal.
3.4 Integrated Land Use and Transport	Does not apply to planning proposal.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulphate Soils	Consistent.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Consistent.

Section 117 Direction Checklist Planning Proposal – Subdivision Provisions	
DIRECTION NO.	Compliance of Planning Proposal
4.4 Planning for Bushfire Protection	<p>Consistent.</p> <p>This Section 117(2) direction requires any planning proposal to have regard for the “<i>Planning for Bushfire Protection 2006</i>” provisions applicable to all bush fire prone land.</p> <p>This planning proposal aims to provide mechanisms within the Ballina LEP 2012 to permit subdivision of land in certain circumstances with development consent. These circumstances relate to boundary adjustments, residual lot creation and creation of lots associated with environmental protection and management outcomes.</p> <p>As these provisions are shire wide, it is likely that certain development applications may include bush fire prone land. Any development application for subdivision upon bushfire prone land, including boundary adjustments, is Integrated Development in accordance with Section 91 of the Environmental Planning & Assessment Act and Section 100B of the Rural Fires Act. Therefore, development applications relating to bushfire prone land that utilise the provisions proposed within this planning proposal must be referred to the RFS by the relevant determining authority and will require a bushfire safety authority from the RFS, prior to determination.</p> <p>This planning proposal will not exclude any development applications for subdivision of land from existing bushfire protection provisions as contained in the Environmental Planning & Assessment Act and Rural Fires Act.</p> <p>The RFS by letter dated 15th May 2013 (Appendix 4) advised that the planning proposal as exhibited satisfies the S117 Direction 4.4 - Planning for Bushfire Protection.</p>
5. Regional Planning	
5.1 Implementation of Regional Strategies	<p>Consistent.</p> <p>The proposal is consistent with the FNCRS as the proposed provisions support agricultural, environmental and urban growth outcomes and actions.</p>
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	<p>The proposal is consistent with the objectives of the direction as it will not put significant agricultural land at risk while providing greater flexibility and certainty in relation to the subdivision of rural land.</p> <p>The proposal will not prejudice the current status of significant agricultural land as Council is not seeking widespread opportunities for the variation of lot sizes in rural areas to limit the potential for fragmentation of agricultural land.</p> <p>The planning proposal does not involve the rezoning of any rural land.</p>
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

Section 117 Direction Checklist	
Planning Proposal – Subdivision Provisions	
DIRECTION NO.	Compliance of Planning Proposal
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent.
6.2 Reserving Land for Public Purposes	Consistent.
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.

Appendix 3 – Return Advice from NSW Rural Fire Service

All communications to be addressed to:

Headquarters
NSW Rural Fire Service
Locked Mail Bag 17
GRANVILLE NSW 2142

Telephone: (02) 8741 5555
e-mail: csc@rfs.nsw.gov.au

Headquarters
NSW Rural Fire Service
15 Carter Street
HOMEBUSH BAY NSW 2127

Facsimile: (02) 8741 5550



The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Ms Joanne Kay



Your Ref: BSCPP 13/001
Our Ref: L12/0003
DA13030786732 AB

27 March 2013

Dear Ms Kay,

Planning Proposal BSCPP 13/001: Amendment to Ballina Local Environment Plan 2012 - Various Subdivision Provisions, Ballina LGA

I refer to your letter dated 4 March 2013 seeking the NSW Rural Fire Service (RFS) comments as directed under the Gateway Determination issued by NSW Planning for this Planning Proposal.

The RFS has reviewed the referred documentation and understands the Planning Proposal relates to the following amendments to Ballina LEP 2012:

1. Permitting, with consent, boundary adjustments on rural zoned land, where the lots are currently below the minimum area size as depicted by the lot size map;
2. Permitting, with consent, residual lots in urban growth areas where the residual lots will be below the minimum area size as depicted by the lot size map;
3. Permitting, with consent, lots in urban growth areas that promote environmental protection where those lots will be below the minimum area size as depicted by the lot size map;

The RFS notes that the draft subdivisions provisions may be applicable to land mapped bush fire prone by Ballina Shire Council. Therefore Council is required to address the requirements of S117 Direction 4.4 Planning for Bush Fire Protection. A statement that addresses the criteria of S177 Direction 4.4 Planning for Bush Fire Protection is required to be included in the public exhibition documents and referred to the RFS under condition 5 of the Gateway Determination.

The RFS will then be able to provide comments on the appropriateness of the Planning Proposal.

1 of 2

For any enquiries regarding this correspondence please contact Alan Bawden on 6655 7002.

Yours faithfully,



John Ball
Manager – Customer Service Centre Coffs Harbour

The RFS has made getting additional information easier. For general information on *Planning for Bush Fire Protection 2006*, visit the RFS web page at www.rfs.nsw.gov.au and search under *Planning for Bush Fire Protection 2006*.

Appendix 4 – Public Exhibition Submissions

All communications to be addressed to:

Headquarters
NSW Rural Fire Service
Locked Mail Bag 17
GRANVILLE NSW 2142

Telephone: (02) 8741 5555
e-mail: csc@rfs.nsw.gov.au

Headquarters
NSW Rural Fire Service
15 Carter Street
HOMEBUSH BAY NSW 2127

Facsimile: (02) 8741 5550



The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Ms Joanne Kay



Your Ref: BSCPP 13/001
Our Ref: L12/0003
DA13030786732 AB

15 May 2013

Dear Ms Kay,

Planning Proposal BSCPP 13/001: Amendment to Ballina Local Environment Plan 2012 - Various Subdivision Provisions, Ballina LGA

I refer to your letter dated 16 April 2013 seeking the NSW Rural Fire Service (RFS) comments as directed under the Gateway Determination issued by NSW Planning for this Planning Proposal.

The RFS has reviewed the referred documentation and understands the Planning Proposal relates to the following amendments to Ballina LEP 2012:

1. Permitting, with consent, boundary adjustments on rural zoned land, where the lots are currently below the minimum area size as depicted by the lot size map;
2. Permitting, with consent, residual lots in urban growth areas where the residual lots will be below the minimum area size as depicted by the lot size map;
3. Permitting, with consent, lots in urban growth areas that promote environmental protection where those lots will be below the minimum area size as depicted by the lot size map;

The draft subdivisions provisions may be applicable to land mapped bush fire prone by Ballina Shire Council.

The RFS notes that Council has satisfied the S117(2) Direction - Planning for Bush Fire Protection and concludes the proposal is consistent with the Direction as no changes to the legislated requirements relating to Bush Fire Protection are proposed by the amendments.

1 of 2

Therefore the RFS has no objection to the Planning Proposal proceeding. Council is advised that the provisions of 79BA EP&A Act and S100B Rural Fires Act apply for development on all mapped bush Fire prone lands.

For any enquiries regarding this correspondence please contact Alan Bawden on 6655 7002.

Yours faithfully,



Alan Bawden
Acting Manager – Customer Service Centre Coffs Harbour

The RFS has made getting additional information easier. For general information on *Planning for Bush Fire Protection 2006*, visit the RFS web page at www.rfs.nsw.gov.au and search under *Planning for Bush Fire Protection 2006*.



Your reference: Planning Proposal (13/23146)
Our reference: DOC13/19040 FIL07/9244-05
Contact: Estelle Blair; 02 6659 8256

RECORDS
SCANNED
15 MAY 2013
Doc No
Batch No

Mr Paul Hickey
General Manager
Byron Shire Council
PO Box 450
BALLINA NSW 2478

Att: Ms Joanne Kay

Dear Mr Hickey

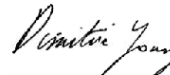
Re: Planning Proposal BSCPP 13/001 – Subdivision Provisions

Thank you for your letter dated 23 April 2013 advising the Office of Environment and Heritage (OEH) of a planning proposal to amend the *Ballina Local Environmental Plan 2012* (the LEP) to enable greater flexibility in relation to subdivision of land. OEH notes that the planning proposal is relevant to environmentally sensitive land and I appreciate the opportunity to provide input on this matter.

OEH has reviewed the planning proposal and notes that the intention is to provide greater flexibility for zoning environmentally sensitive land when the lot to be created is less than the minimum lot size in the LEP. Whilst OEH supports the concept that with these additional clauses, land can be zoned more accurately according to capability and environmental values, OEH agrees that such subdivisions should not inadvertently lead to additional dwelling entitlements on the lots so created. Provided that the clauses can deliver this intent, OEH is able to support the planning proposal.

If you require further information or clarification, please contact Ms Estelle Blair, Conservation Planning Officer, on telephone 02 6659 8256.

Yours sincerely

 10 May 2013
DIMITRI YOUNG
Regional Coordinator – North East
Office of Environment and Heritage



Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Matthew Wood

Contact Christie Jackson
Phone 02 6701 9652
Fax 02 6701 9682
Email christie.jackson@water.nsw.gov.au
Our ref ER22317
Your ref Planning Proposal – Subdivision Provisions (13/23164)

Dear Mr Wood,

Planning Proposal BSCPP 13/001 – Subdivision Provisions

I refer to your letter dated the 23 April 2013 seeking the NSW Office of Water's comments on the proposed amendments to the Ballina Local Environmental Plan (LEP) 2012. The Office of Water, a section of the Department of Primary Industries, has reviewed the proposed LEP amendment documents and the following comments are based on the Office of Water's legislative and policy responsibilities related to administration of the *Water Management Act 2000*, *Water Act 1912* and associated policies.

The Office of Water understands the proposed amendments relate to the inclusion of new provisions within the LEP with the objective of providing greater flexibility and certainty in relation to subdivision of land in particular circumstances.

The Office of Water understands the clauses to be included in the LEP will not create additional opportunities for the establishment of dwelling houses. Therefore, the Office of Water is not concerned with the proposed amendments, providing the amendments still allow for E2 (Environmental Conservation) and E3 (Environmental Management) zoning in appropriate locations.

If you require further information, please contact Christie Jackson on (02) 6701 9652 at the Tamworth office.

Yours sincerely,

Mitchell Isaacs
Manager Strategic Stakeholder Liaison Unit
8 May 2013



**PLANNERS
NORTH**

abn: 56 291 496 553
6 Byron Street, PO Box 538,
Lennox Head, NSW 2478
Telephone: 1300 66 00 87

Date: 13 May 2013
Our reference: 1394-404

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

council@ballina.nsw.gov.au

Attention: Mrs Joanne Kay
joannek@ballina.nsw.gov.au

Dear Joanne,

RE: PLANNING PROPOSAL BSC 13/001 - SUBDIVISION PROVISIONS

We refer to Council's Planning Proposal 13/001 in relation to additional subdivision provisions proposed for Ballina Local Environmental Plan 2012. PLANNERS NORTH support the provisions detailed in the Planning Proposal which are proposed by Council to address issues arising from the standard text contained in the Standard Instrument LEP.

The ability of land owners to adjust boundaries between properties is considered to be an essential element in achieving positive agricultural and environmental outcomes in the region. The restriction presented by the current wording of the relevant subdivision clauses, and the exceptions to development standards clause (Clause 4.6), is required to be addressed as a matter of priority.

Similarly, permitting subdivision resulting in residual lots and split zoned lots, which are less than the minimum allotment size requirements, is also important in the context of the efficient release of urban land.

In the case of the creation of lots for environment protection and management outcomes, it is considered that the drafting note regarding the issue of dwelling entitlements (page 7 of the Planning Proposal) has implications beyond the creation of undersized lots. That is, the proposed amendments to the subdivision provisions of Ballina Local Environmental Plan 2012 need to ensure that lots proposed to be created for environmental protection and management outcomes are not rejected or refused on the basis that they will result in the automatic creation of a dwelling entitlement.

As the drafting note suggests, it may be appropriate to amend the dwelling entitlement clause (Clause 4.2A) to exclude lots created in accordance with clauses enabling the creation of lots for environmental protection purposes. Consideration should also be given to the provisions for the creation of lots for environmental protection purposes being broadened to address lots that exceed the minimum lot size too.

As Council is aware, areas proposed to be zoned E2 Environmental Conservation and E3 Environmental Protection have been deferred from the BLEP 2012. However, the draft amendments to the subdivision provisions should be worded to ensure that allotments that exceed the minimum allotment size provisions are also excluded from obtaining a dwelling entitlement, where they are created specifically for environmental purposes. Consideration should also be given to including similar provisions in Ballina Local

Environmental Plan 1987, depending on the timeframe for the completion of the review of the environmental zones.

We congratulate Council's Strategic & Community Services Group for pursuing this issue with the Department of Infrastructure & Planning and urge Council to proceed with the proposed amendments to Ballina Local Environmental Plan 2012. We would be happy to discuss any aspect of the above submission should you wish.

Yours faithfully,

PLANNERS NORTH



Kate Singleton MPIA CPP

PARTNERSHIP PRINCIPAL

(m) 0438 803 021

(e) kate@plannersnorth.com.au



Date: 13 May 2013
Our Ref: 13/9000

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Sir,

Re: Exhibition of Planning Proposal BSC 13/001 – Subdivision Provisions.

Newton Denny Chapelle (NDC) is pleased to provide this letter of support for Ballina Shire Council Planning Proposal 13/001 – Subdivision Provisions. NDC is a local consultancy firm which provides town planning, civil engineering and surveying services on the Far North Coast of NSW.

We note that Planning Proposal 13/001 seeks to achieve the following planning outcomes:

- Permitting boundary adjustment subdivisions, where one or more allotments involved is less than 90% of the minimum lot size specified for subdivision subject to the subdivision providing for improved agricultural or environmental outcomes without creating additional opportunities for the establishment of dwelling houses;
- Permitting subdivision which will result in the creation of a residual lot that has an area less than the minimum lot size shown on the Lot Size Map, where the lot is created in association with subdivision for urban purposes and is suitable for an environmental protection, environmental management or agricultural purpose;
- Permitting subdivision of lots for environmental protection purposes that have an area less than the minimum lot size shown on the Lot Size Map, where the lot is created in association with subdivision for urban purposes; and
- Permitting creation of split zoned lots (part environmental protection and part urban zoned), where the lot is created in association with subdivision for urban purposes and is for an environmental purpose.

It is this firm's experience that the current subdivision provisions applying to rural and environmental zones within the Ballina Local Environmental Plan 2012 are overly restrictive and do not provide sufficient flexibility to achieve sound planning and land management outcomes within areas subject to such zoning.

In particular, with respect to boundary adjustments, we note that there are many circumstances where improved agricultural and environmental outcomes can be achieved by the adjustment of common property boundaries, particularly where smaller rural allotments are involved. In this regard, under the previous Ballina Local Environmental Plan 1987, Council routinely approved development applications involving boundary adjustment subdivision of undersized lots where the merit of the case had been clearly established to both Council and the Department of Planning.

JOHN NEWTON B.Sc. (M.S. Eng.), TONY DENNY B. Eng. (Mech. Eng.), DAMIAN CHAPELLE B.M. (Civ. Eng.)
Office: Suite 1, 31 Carrington Street, Lismore, Postal Address: PO Box 1138 Lismore NSW 2480
Phone (02) 6622 1011 Fax (02) 6622 4088 Email office@newtondennychapelle.com.au
Also at: Casino Court, 100 Barker Street, Casino NSW 2470 Phone/Fax (02) 6662 5000

Council is therefore urged to adopt the proposed amendments to BLEP 2012 to enable the subdivision of undersize lots (including boundary adjustments) in rural and environmental zones to proceed in clearly defined circumstances. We note that Council had endeavoured to incorporate such flexibility into draft BLEP 2012, but that drafting instructions at the time had not enabled this to occur.

We look forward to Council's favourable consideration of this matter.

Should you have any questions, please do not hesitate contacting Karina Vikstrom of this office.

Yours sincerely,

NEWTON DENNY CHAPELLE



DAMIAN CHAPELLE
Town Planner, ETP CPP.

9.3 Planning Proposal - BSCPP 13/001 - Subdivision Provisions.DOC

General Manager RE-Regarding Planning Proposal for subdivision provisions. Attention Joanne Kay.

In regard to the subdivision provisions dated April 2013. My land at 54 Duffcys lane lot10 DP612318 will be affected by this provision. Half my land is in the currently rezoned part of the Cumbalum b precinct and the other half is in the environmental zone. My wife and I have been planning to build a dwelling in the environmental zone on the open paddock area after we sell off the top section to developers. In part 1 on page 5 the paper seems to indicate that it will be permissible to do that. If that is the case we are happy with the paper. Although, if we are not allowed to build a dwelling on this land it would virtually render the land valueless to anyone except a neighbor who wants a boundary adjustment. In the later case we would have deep reservations about this paper.

Sincerely David Berntsen 70 Scanlan lane Lennox head 2478

Appendix 5- Summary of Submissions Received and Assessment

**BSC Planning Proposal 13/001 – Subdivision Provisions
Summary and Assessment of key matters raised by Government Agencies and Public Submissions**

Matter	Assessment
<p>The proposed amendments to subdivision provisions need to ensure that lots proposed to be created for environmental protection and management outcomes are not rejected or refused on the basis that they will result in the automatic creation of a dwelling entitlement. <i>(Submittor - Planners North)</i></p>	<p>In regards to the rejection or refusal of a proposed subdivision on the basis that such will result in an automatic creation of a dwelling opportunity, this is not the intent of the provisions.</p> <p>The determination of any proposal by the consent authority will be relative to the circumstances of the particular case and how the proposal meets the intended objectives and intent of the relevant clause.</p>
<p>Consistent with the drafting note detailed within the planning proposal, it may be appropriate to amend the current dwelling entitlement Clause 4.2A within the BLEP 2012 to include lots created in accordance with these provisions within “E” zones, following the inclusion of these zones into the current LEP. <i>(Submittor - Planners North)</i></p>	<p>The specific intent of the clause relating to the creation of environmental lots is to enable the creation of relatively small allotments within new urban subdivisions with environmental attributes that require excising from urban lots. It is proposed that these lots would not have a dwelling entitlement due to their specific creation for environmental purposes and the associated sensitive nature of the land.</p>
<p>It is known that the E2 Environmental Conservation and E3 Environmental Protection zones have been deferred from the BLEP 2012. However, the draft amendments to the subdivision provisions should be worded to ensure allotments that exceed the minimum allotment size provisions are also excluded from obtaining a dwelling entitlement, where they are created specifically for environmental purposes. <i>(Submittor - Planners North)</i></p>	<p>The removal of a dwelling opportunity from environmental lots that meet the minimum lot standard or that are created in as a result of the excision of a residual lot would be a significant departure from historical practices regarding subdivision approvals and contrary to the current BLEP 2012. This is not considered to be consistent with the intent of these proposed provisions.</p>
<p>Consideration should be given to including similar provisions regarding the creation of lots that do not meet the minimum standard in Ballina Local Environmental Plan 1987, depending on the timeframe for the completion of the review of the environmental zones. <i>(Submittor - Planners North)</i></p>	<p>The inclusion of these provisions into the BLEP 1987 is not considered a priority at this time as this instrument currently caters for boundary adjustment subdivisions and other outcomes as envisaged by the provisions.</p>

Matter	Assessment
<p>The Office of Environment and Heritage supports the proposed amendments subject to no additional dwelling entitlements being created and the intent of the clauses being achieved through appropriate drafting.</p>	<p>It is not the intent of the proposed clauses to provide an opportunity to create a multitude of additional dwelling opportunities within a rural or environmental zone. It is the intent of the provisions to provide positive outcomes for the ongoing management of non-urban land, which may include an additional dwelling opportunities in certain instances.</p> <p>Proponents would be required to give due consideration to the purpose of any lot proposed below the minimum lot size.</p>
<p>A submission from a property owner within the proposed Cumbalum release area provided support for the creation of lots for environmental purposes, subject to a dwelling opportunity being available for that lot, despite not meeting the minimum lot size standard. <i>(Submittor – Bernsten)</i></p>	<p>In this case, there are a number of potential outcomes from this scenario, utilising these provisions and assuming the “E” zones are eventually included within the BLEP 2012. It is anticipated that the clause associated with the creation of residual lots that do not meet the minimum lot size standard will permit dwelling opportunities upon the residual environmental and rural lots. However, any lot created for environmental protection as a residual lot would need to demonstrate positive environmental outcomes would result from the creation of this lot and a suitable location is available onsite for the erection of this dwelling. Overall, the proposed provisions provide a variety of avenues for subdivision subject to defined criteria and circumstances.</p>
<p>Advice was received from the RFS that the planning proposal satisfied the “S117 Direction 4.4 Planning for Bushfire Protection.”</p>	<p>No further comment regarding this issue is considered necessary.</p>
<p>The Department of Primary Industries (DPI) acknowledged the purpose of the proposed amendments. This department understands that the proposed amendments still allow for “E” zones in appropriate locations and will not create additional dwelling opportunities.</p>	<p>The provisions will allow for “E” zones in certain locations.</p> <p>As mentioned above, it is not the intent of the proposed clauses to provide an opportunity to create a multitude of additional dwelling opportunities within a rural or environmental zone. It is the intent of the provisions to provide positive outcomes for the ongoing management of non-urban land, which may include an additional dwelling opportunities in certain instances.</p>