



Planning Proposal

September 2013

Various Amendments to Ballina Local Environmental Plan 2012

13/46041 Initial Report

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INTRODUCTION

Summary of Planning Proposal

This planning proposal relates to all land within the Ballina Shire.

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

- To amend Clause 6.3 of the BLEP 2012 in regard to the exceptions to the requirements for the preparation of a development control plan (DCP) for urban release areas.
- To correct an error in the minimum lot size mapping for land at West Ballina subject to an 800m² minimum lot size standard, rather than the exhibited and resolved 600m² minimum.
- To correct inconsistencies within Clause 3.1 Schedule 2 – Exempt Development – subclauses 9, 11, 12 regarding specific wording to reflect the intent of these subclauses.
- To facilitate the provision of updated flood mapping in conjunction with Clause 7.3 Flood Planning in accordance with Council's current flood study outcomes.

Planning History

It is proposed to amend the BLEP 2012 in the following ways:

Clause 6.3 – Development Control Plan

Council has identified an issue with model Clause 6.3 within the BLEP 2012 in relation to the exceptions to the requirement for a DCP to be in place for urban release areas before development consent can be issued. The problem is identified within Clause 6.3(4)(b) which states:

6.3 Development control plan

(2) Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land

(4) Subclause (2) does not apply to development for any of the following purposes:

- (a) a subdivision for the purpose of a realignment of boundaries that does not create additional lots,*
- (b) a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,*
- (c) a subdivision of land in a zone in which the erection of structures is prohibited,*
- (d) proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.*

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Part (b) of subclause (4) may be interpreted that this exception extends to any subdivision that incorporates any lots for open space, roads or other public or environmental protection purposes. Lots for these types of uses would be expected in virtually all subdivisions associated with urban release areas due to the scale of such releases. Therefore, the benefit of Clause 6.3 in terms of establishing DCP-based requirements could be nullified as a result of the current wording. It is considered important that this issue is addressed promptly especially given that there are several large urban releases planned in the shire at present (i.e. Cumbalum).

Council did not prepare this provision. This issue has arisen from Council's adoption of a model clause provided by the DP&I.

Clause 4.1 Minimum Subdivision Lot Size – West Ballina Mapping

Council adopted the BLEP 2012 with the application of a minimum lot size standard for subdivision of 600m² for the majority of residential land at West Ballina. This standard was identified within the exhibited draft Ballina LEP 2011 and the data supplied to the Department of Planning and Infrastructure for finalisation of Council's mapping, in association with the removal of 'E' zones from the current instrument.

The published map on the NSW legislation website as prepared by the Department, is at variance to the Council's adopted standard, in that an 800m² minimum lot size has been applied to land at West Ballina, rather than the envisaged 600m² standard. The effect is that at least 14 lots have been adversely impacted in terms of their subdivision potential due to this variance.

It is proposed to correct this mapping error with updated mapping for the subject area.

Clause 3.1 Exempt Development - Schedule 2 - subclause 9, 11, 12

Council's endorsed version of the LEP included the following provisions in Schedule 2 relating to Clause 3.1 Exempt Development, excepting certain signage from the development application process. The draft version of the Ballina LEP 2011 following the Department of Planning and Infrastructure and Parliamentary Counsel review did not include subclause 12. Council subsequently requested that the clause be reinserted prior to the making of the plan, however, the following clause was included without further consultation. Subclauses 9 and 11 are also not consistent with the exhibited draft LEP 2011 version. The variations are listed below:

- Subclause 9 'as made' states:

(9) Window signs (being any advertising device painted or displayed on a shop window or glazed area of a building) in business and industrial zones (relating to uses other than sex services premises) must not occupy more than 25% of the area of the window.

This wording is inconsistent with the exhibited draft LEP 2011 wording as follows:

Advertisements – signs behind the glass line of a shop window in Business and Industrial Zones (other than brothels)

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- (1) *Must meet the general requirements for advertisements, and*
- (2) *Must not occupy more than 25% of the area of the window*

- Subclause 11 'as made' states:

- (11) *A change in the face content or message from that which was previously displayed on a lawful sign must not alter the sign type.*

However, this clause was exhibited as follows:

Advertisements –change in the face content or message from that which was displayed on a previously lawful advertisement

- (1) *Must meet the general requirements for advertisements, and*
- (2) *Must not alter the sign type (i.e. from a business identification sign" to a "general advertising sign").*

- Subclause 12 'as made' states:

- (12) *Identification, directional, community information or safety signs constructed and installed by or on behalf of a public authority must be located wholly on the footway or be attached, with the owner's consent, to a fence, but need not comply with subclause (1) (b) or (1) (c).*

However, this clause was exhibited as follows:

- (12) *Public identification, interpretive and directional signage must comply with the following, but need not comply with subclauses 1(b) or (c):*
 - (a) *must be constructed and installed by or on behalf of a public authority.*

It is considered that the final subclauses with the BLEP 2012 are not as clear to users of the instrument as those originally drafted. Subclauses 9 and 11 do not clearly describe the criteria applicable and the types of advertisements that are the subject of these exempt provisions. The wording is also inconsistent with the structure of the other provisions of the schedule. In regards to subclause 12, the limitation associated with erection of signage within a footway does not reflect Council's intent (e.g. this makes the erection of a sign of the type listed outside the footway subject to a development application). It is also requested that the amended subclause includes a reference to community signage, to permit the erection of certain signage in accordance with Council's community events signage policy.

The intent of each of these subclauses was to remove the need for development applications for certain types of signs in a variety of circumstances that are generally in the community's interests. Subclause 9, 11 and 12 as made are not considered to provide clear interpretations of exempt development in regards to this signage and do not minimize regulatory processes as envisaged or provide the flexibility intended.

The proposed amendment involves reinsertion of provisions that better reflect Council's original intent.

Clause 7.3 Flood Planning Mapping

The identified "Flood planning area" on the Flood Planning Map as referenced in Clause 7.3 of the BLEP 2012 is based on projected flood levels specified in the 2008 Ballina Flood Study Update, as exhibited with the draft Ballina Local Environmental Plan 2011. In January 2010, Council resolved to apply revised flood planning levels associated with the latest estimated sea level rise changes, in accordance with the NSW Government Sea Level Rise Policy. As a result, the floodplain risk management study was revised and detailed in the 2010 Ballina Flood Study Update. Council adopted revised flood planning mapping in August 2010 incorporating this information in Policy Statement No. 11 of the Ballina Combined Development Control Plan 2006.

It is proposed in this LEP amendment to update the Flood Planning Map as referenced in Clause 7.3 to reflect the affected areas identified in the 2010 Ballina Flood Study Update as adopted by Council in August 2010.

PART 1 – OBJECTIVES OR INTENDED OUTCOMES

The objectives or intended outcomes of this planning proposal are:

- To undertake minor adjustments to the BLEP 2012 as a result of issues identified within the 'as made' instrument.
- To undertake mapping corrections that have inadvertently occurred between drafting and exhibition and the final 'as made' mapping.
- To adjust the 'as made' text within the BLEP 2012 to ensure consistency with the draft and exhibited plan.
- To ensure mapping associated with the BLEP 2012 is updated and consistent with the latest information available to Council.

PART 2 – EXPLANATION OF PROVISIONS

As explained above, this planning proposal seeks to rectify a number of errors and anomalies that have been identified following the making of the BLEP 2012. The matters are specific to a number of clauses with the BLEP 2012, namely:

- Clause 6.3 Development Control Plans
- Clause 4.1 Minimum Subdivision Lot Size – (Associated Minimum Lot Size Mapping West Ballina)
- Clause 3.1 - Exempt Development - Schedule 2 - subclauses 9, 11, 12
- Clause 7.3 Flood Planning – (Associated mapping)

The minor amendments to wording and mapping will impact upon the entire Ballina Shire Council local government area subject to the provisions of the BLEP 2012.

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These matters have been raised with the Department of Planning and Infrastructure. While the Department recognises that the changes could be initiated by the agency, such cannot take place without the authorisation of the Minister. Council has been advised that any process initiated by the Minister would be a lengthy and protracted process and is therefore not a favoured option. As a consequence, it is considered that a planning proposal initiated by Council is the appropriate action to rectify these issues identified within the BLEP 2012.

PART 3 – JUSTIFICATION

Section A - Need for the Planning Proposal

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

The planning proposal is consistent with Council's intended outcomes associated with the new BLEP 2012. The proposed amendments are also consistent with the draft BLEP 2011 that was placed upon public exhibition and reported to Council in December 2011.

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 ensure consistency with the intent of the model clauses as drafted and correct anomalies that have occurred during the finalisation of the plan can only be achieved through a LEP amendment.

3. Is there a net community benefit?

The proposed amendments seek to provide consistency between the LEP instrument drafted and exhibited for public comment. The amendment will remove the mapping errors that have the potential to have a detrimental economic impact on several lots in West Ballina. The amendments also seek to enhance flexibility and clarity to support positive economic outcomes.

This flexibility and clarity will benefit the entire Ballina Shire community.

Section B - Relationship to the Strategic Planning Framework

4. 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

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the future. The proposal will not prejudice agricultural, environmental and urban growth outcomes and actions identified in the strategy.

5. 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 in that it will result in changes to this document to ensure consistency with the intent of the model clauses as exhibited. The planning proposal will also continue to facilitate practical planning outcomes in relation to the model clauses the subject of this LEP amendment.

6. Is the planning proposal consistent with applicable state environmental planning policies?

State Environmental Planning Policy Checklist Planning Proposal – Various LEP amendments	
SEPP Title	Compliance of Planning Proposal
SEPP No. 6 - Number of Storeys in a Building	Consistent
SEPP No. 14 - Coastal Wetlands	Consistent
SEPP No. 15 - Rural Land-Sharing Communities	Consistent
SEPP No. 21 - Caravan Parks	Consistent
SEPP No. 22 - Shops and Commercial Premises	Consistent
SEPP No. 26 - Littoral Rainforests	Consistent
SEPP No. 30 - Intensive Agriculture	Consistent
SEPP No. 32 - Urban Consolidation (Redevelopment of Urban Land)	Consistent
SEPP No. 33 - Hazardous and Offensive Development	Consistent
SEPP No. 36 - Manufactured Home Estates	Consistent
SEPP No. 44 - Koala Habitat Protection	Consistent
SEPP No. 50 - Canal Estates	Consistent
SEPP No. 55 - Remediation of Land	Consistent
SEPP No. 62 - Sustainable Aquaculture	Consistent
SEPP No. 64 - Advertising and Signage	Consistent. The proposed amendments to the wording of Model Clause 3.1 Exempt Development - Schedule 2 will not prejudice this SEPP.
SEPP No. 65 - Design Quality of Residential Flat Development	Consistent
SEPP No. 71 - Coastal Protection	Consistent
SEPP (Affordable Rental Housing) 2009	Consistent

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9.2 Planning Proposal - Various LEP Amendments.DOC

SEPP Title	Compliance of Planning Proposal
SEPP (Building Sustainability Index: BASIX) 2004	Consistent
SEPP (Exempt and Complying Development Codes) 2008	Consistent. The proposed amendments to Schedule 2 of Clause 3.1 are consistent with the provisions of Subdivision 36A (replacement of identification signs) of this SEPP.
SEPP (Housing for Seniors or People with a Disability) 2004	Consistent
SEPP (Infrastructure) 2007	Consistent
SEPP (Major Development) 2005	Consistent
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Consistent
SEPP (Rural Lands) 2008	Consistent
SEPP (State and Regional Development) 2011	Consistent
SEPP (Temporary Structures) 2007	Consistent

7. **Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?**

Section 117 Direction Checklist Planning Proposal – Various LEP Amendments	
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	Does not apply to planning proposal.
2. Environment and Heritage	
2.1 Environmental Protection Zones	Does not apply to planning proposal.
2.2 Coastal Protection	Does not apply to planning proposal.
2.3 Heritage Conservation	Does not apply to planning proposal.
2.4 Recreation Vehicle Areas	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to planning proposal.
3.3 Home Occupations	Does not apply to planning proposal.
3.4 Integrated Land Use and Transport	Does not apply to planning proposal.

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Section 117 Direction Checklist Planning Proposal – Various LEP Amendments	
DIRECTION NO.	Compliance of Planning Proposal
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	Does not apply to planning proposal.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	The amendment will include the updating of Council's flood planning maps in accordance with Council's 2010 Flood Study
4.4 Planning for Bushfire Protection	Does not apply to planning proposal.
5. Regional Planning	
5.1 Implementation of Regional Strategies	The Far North Coast Regional Strategy does not apply to BLEP 2012
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	Does not apply to planning proposal.
6.2 Reserving Land for Public Purposes	Does not apply to planning proposal.
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.

Section C - Environmental, Social and Economic Impact

8. 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 involves only minor amendments to the BLEP 2012 and will consequently have no negative impacts upon flora and fauna. The amendments to the instrument are very minor changes to existing model clauses

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that will not prejudice any existing protection measures within the instrument. The proposed mapping changes will not prejudice any existing threatened species, populations or ecological communities, as such are corrections to urban areas minimum lot size standard and flood planning for urban development.

9. 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.

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

Minimal social and economic effects are expected from the proposed LEP amendments. The changes to model clause 6.3 will ensure a DCP is required in conjunction with new land release areas to ensure a comprehensive planning framework for urban release areas. This will have a positive social impact upon existing and future residents within these release areas. The reinstatement of the 600m² lot size standard in West Ballina will ensure property owners in this locality are not economically disadvantaged as a result of this mapping error.

Section D - State and Commonwealth interests.

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

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

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

No engagement with State or Commonwealth public authorities has been undertaken as part of this planning proposal to date. Consultation will be undertaken with relevant agencies in association with the exhibition of the planning proposal in accordance with the Gateway determination.

PART 4 – COMMUNITY CONSULTATION

No community consultation has been undertaken to date with regard to this planning proposal. It is intended that this proposal will be exhibited in accordance with the requirements of any Gateway determination for the proposal.

PART 5 – PROJECT TIMELINE

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	October 2013
Government Agency Consultation	October 2013
Public Exhibition Period	November 2013
Public Hearing (if required)	November 2013
Submissions Assessment	December 2013
RPA Assessment of Planning Proposal and Exhibition Outcomes	January 2014
Submission of Endorsed LEP to DP&I for Finalisation	February 2014
RPA Decision to Make the LEP Amendment (if delegated)	January 2014
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	February 2014

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