



Planning Proposal BSCPP 13/009

February 2014

Ballina Local Environmental Plan 2012

General Amendments (1)

14/6417 Final

PAGE INTENTIONALLY BLANK

14/6417 Final

TABLE OF CONTENTS

INTRODUCTION..... 2
Summary of Planning Proposal 2
Planning History 3
PART 1 – OBJECTIVES OR INTENDED OUTCOMES 6
PART 2 – EXPLANATION OF PROVISIONS 6
PART 3 – JUSTIFICATION 7
Section A - Need for the Planning Proposal 7
Section B - Relationship to the Strategic Planning Framework 7
Section C - Environmental, Social and Economic Impact 10
Section D - State and Commonwealth interests. 11
PART 4 – MAPPING 12
PART 5 – COMMUNITY CONSULTATION 12
PART 6 – PROJECT TIMELINE..... 12

APPENDIX A – Gateway Determination
APPENDIX B – Submission, Office of Environment and Heritage
APPENDIX C – Amended Standard Instrument LEP Maps

Planning Proposal – February 2014
Ballina Local Environmental Plan 2012 – General Amendments (1)

INTRODUCTION

Summary of Planning Proposal

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

The planning proposal seeks to amend the *Ballina Local Environmental Plan 2012* (BLEP 2012) as follows:

- To amend Clause 6.3 of the BLEP 2012 in relation 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 adopted 600m² minimum.
- To correct inconsistencies within Clause 3.1 Schedule 2 – Exempt Development – subclauses 9, 11, 12 in relation to specific wording to reflect the intent of these subclauses.
- To provide updated flood mapping in conjunction with Clause 7.3 Flood Planning in accordance with Council's current flood study outcomes.

This planning proposal was considered by the Council at its Ordinary Meeting Held on 26 September 2013 where it was resolved [Minute No. 260913/13]:

1. *That Council submit the planning proposal relating to the amendment of various clauses in Council's Standard Instrument Local Environmental Plan (as contained in Attachment One) 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 the matter be reported back for further consideration by the Council following the mandatory public exhibition period.*

The Department of Planning and Infrastructure (DP&I) 'planning proposal gateway' has determined under section 56(2) of the *Environmental Planning & Assessment Act 1979* (EP&A Act) that the subject planning proposal may proceed conditionally. The DP&I have issued Gateway determination on 1 November 2013 which authorises the Council to exercise delegation to finalise the LEP amendment, should the Council resolve to proceed with the planning proposal following public exhibition. A copy of the Gateway determination, including the authorisation to exercise delegation, is provided in Appendix A.

Planning History

This planning proposal seeks to amend the BLEP 2012 as follows:

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.*

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.

To resolve this it is proposed to reword part (b) of subclause (4) such that it relates to subdivisions that are only for open space purposes, rather than those subdivisions containing a mix of lots for multiple land uses that may also include open space lots.

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. Amended copies of the two affected map tiles are included in Appendix C.

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

Council's endorsed version of the LEP included provisions in Schedule 2 relating to Clause 3.1 Exempt Development. These provisions exempt certain signage from the development application process. The exhibited draft Ballina LEP 2011, following its review by the Department of Planning and Infrastructure and Parliamentary Counsel, did not include subclause 12 which relates to certain exempt signage. Council subsequently requested that the clause be reinserted prior to the making of the plan which resulted in the addition of subclause 12 as detailed below. This planning proposal seeks to amend subclause 12 to better reflect Council's intention in relation to the exemption of certain signage. Subclauses 9 and 11 are also not consistent with the exhibited draft LEP 2011 version. It is also proposed to amend these subclauses to better reflect Council's intention. The proposed variations are detailed as follows:

- 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)

- (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 proposed 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 minimise 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. This mapping was carried forward into Council's Ballina Shire Development Control Plan 2012 which commenced operation in February 2013.

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. Copies of the amended Flood Planning Map sheets are included in Appendix C.

PART 1 – OBJECTIVES OR INTENDED OUTCOMES

The objectives of this planning proposal are:

- To undertake minor adjustments to improve the clarity of the BLEP 2012 'as made'.
- To undertake mapping corrections to address errors 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 Council's adopted policy.

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.

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 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 and/or existing Council policy.

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 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 or existing Council policy.

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 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?

9.4 Planning Proposal 13/009 - General Amendments.DOC

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 clauses as exhibited by Council and existing Council policy.

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

State Environmental Planning Policy Checklist Planning Proposal – General Amendments (1)	
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
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.

Planning Proposal – September 2013
Ballina Local Environmental Plan 2012 – General Amendments (1)

8

9.4 Planning Proposal 13/009 - General Amendments.DOC

SEPP Title	Compliance of Planning Proposal
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 – General Amendments (1)	
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.
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.

Planning Proposal – September 2013
Ballina Local Environmental Plan 2012 – General Amendments (1)

9

Section 117 Direction Checklist Planning Proposal – General Amendments (1)	
DIRECTION NO.	Compliance of 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 and adopted DCP provisions in relation to flooding.
4.4 Planning for Bushfire Protection	Does not apply to planning proposal.
5. Regional Planning	
5.1 Implementation of Regional Strategies	While the Far North Coast Regional Strategy applies to Ballina Shire, the planning proposal does not directly relate to its policy content.
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 clauses 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 they involve corrections to minimum lot size standards 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.

It is evident that Council's flood study data and the associated identification of properties as being nominated as flood prone raises a variety of issues for property owners including property values and the availability and costs of insurance. Whilst these are significant and issues for consideration, they are matters for consideration in the formulation of Council's floodplain management policy and associated modelling. With respect to flooding, Council's planning instruments reflect, rather than create, the outcomes of the technical flood studies Council undertakes.

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?**

Consultation was undertaken with the Office of Environment and Heritage in accordance with the Gateway determination prior to the finalisation of this planning proposal. A copy of the response from the Office of Environment and Heritage in relation to this proposal is included in Appendix B.

PART 4 – MAPPING

This planning proposal will result in amendments to the LEP map sheets listed below. Copies of the amended maps are included in Appendix C.

- Flood Planning Map – Sheet FLD_002
- Flood Planning Map – Sheet FLD_003
- Flood Planning Map – Sheet FLD_005
- Flood Planning Map – Sheet FLD_006
- Flood Planning Map – Sheet FLD_007
- Lot Size Map – Sheet LSZ_006A
- Lot Size Map – Sheet LSZ_006C

PART 5 – COMMUNITY CONSULTATION

This planning proposal was placed on public exhibition from 13 November 2013 to 13 December 2013 in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. A copy of the Gateway determination is provided in Appendix B.

PART 6 – 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	November 2013
Public Exhibition Period	November – December 2013
Public Hearing (if required)	N/A
Submissions Assessment	January 2014
RPA Assessment of Planning Proposal and Exhibition Outcomes	January 2014
Submission of Endorsed LEP to DP&I for Finalisation	N/A (delegated)
RPA Decision to Make the LEP Amendment (if delegated)	February 2014
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	February 2014

Planning Proposal – September 2013
 Ballina Local Environmental Plan 2012 – General Amendments (1)

12

APPENDIX A – GATEWAY DETERMINATION



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

Our ref: PP_2013_BALLI_009_00 (13/17877)
Your ref: 13/64288

Dear Mr Hickey

Planning proposal to amend Ballina Local Environmental Plan 2012

I am writing in response to your Council's letter dated 23 October 2013 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 facilitate various administrative amendments and corrections.

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.

I have also agreed the planning proposal's inconsistencies with S117 Directions 3.1 Residential Zones, 3.4 Integrating Land Use and Transport and 4.1 Acid Sulfate Soils are of minor significance. No further approval is required in relation to these Directions.

The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

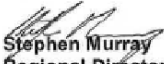
The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the department for administrative purposes.

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 section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Northern Region 49 Victoria St Grafton NSW 2460 Locked Bag 9022 Grafton NSW 2460
Telephone: (02) 6641 6600 Facsimile (02) 6641 6601 Website planning.nsw.gov.au

Should you have any queries in regard to this matter, please contact Denise Wright of the regional office of the department on 02 6641 6603.

Yours sincerely

 1 November 2013
Stephen Murray
Regional Director
Northern Region
Planning Operations and Regional Delivery




Gateway Determination

Planning proposal (Department Ref: PP_2013_BALLI_009_00): to facilitate various administrative amendments and corrections.

I, the Regional Director, Northern Region at the 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 the Ballina Local Environmental Plan (LEP) 2012 to facilitate various administrative amendments and corrections including amendment to Clause 6.3 to clarify the intent of the development control provisions in subclause (4)(b); correct an error in the minimum lot size mapping for land at West Ballina to correctly apply a 600 square metre minimum lot size; alter certain signage provisions of Clause 3.1 Schedule 2 – Exempt Development, to reflect Council intent; and amend the Flood Planning Map to apply revised flood planning levels identified in the update of the 2010 Ballina Flood Study, should proceed subject to the following conditions:

1. 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 must be made publicly available for a minimum of **28 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 & Infrastructure 2013)*.
2. Consultation is required with the Office of Environment and Heritage under section 56(2)(d) of the EP&A Act. The Office of Environment and Heritage is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
3. 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).
4. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

Dated *1st* day of *November* 2013.


 Stephen Murray
 Regional Director
 Northern Region
 Planning Operations and Regional Delivery
 Department of Planning and Infrastructure

Delegate of the Minister for Planning and
 Infrastructure




WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Ballina Shire Council is authorised to exercise the functions of the Minister for Planning and Infrastructure under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2013_BALLI_009_00	Planning proposal to facilitate various administrative amendments and corrections including amendment to Clause 6.3 to clarify the intent of the development control provisions in subclause (4)(b); correct an error in the minimum lot size mapping for land at West Ballina to correctly apply a 600 square metre minimum lot size; alter certain signage provisions of Clause 3.1 Schedule 2 – Exempt Development, to reflect Council intent; and amend the Flood Planning Map to apply revised flood planning levels identified in the update of the 2010 Ballina Flood Study

In exercising the Minister's functions under section 59, the Council must comply with the Department's "A guide to preparing local environmental plans" and "A guide to preparing planning proposals".

Dated 1st November 2013


Stephen Murray
 Regional Director
 Northern Region
 Planning Operations and Regional Delivery
 Department of Planning and Infrastructure

Ballina PP_2013_BALLI_009_00 (13/17877)

Attachment 5 – Delegated plan making reporting template**Reporting template for delegated LEP amendments****Notes:**

- Planning proposal number will be provided by the department following receipt of the planning proposal
- The department will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the department's publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the department with the RPA's request to have the LEP notified

Table 1 – To be completed by the department

Stage	Date/Details
Planning Proposal Number	PP 2013 BALLI_009_00
Date Sent to Department under s56	23/10/2013
Date considered at LEP Review Panel (if applicable)	
Gateway determination date	01/11/2013

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Date LEP made by GM (or other) under delegation		
Date sent to DP&I requesting notification		

Table 3 – To be completed by the department

Stage	Date/Details
Notification Date and details	

Additional relevant information:

Ballina PP_2013_BALLI_009_00 (13/17877)

APPENDIX B – OFFICE OF ENVIRONMENT & HERITAGE SUBMISSION



Your reference: ESCPP 13/009
Our reference: DOC13/86540
Contact: John Martindale 02 6659 8222

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

RECORDS
SCANNED
12 DEC 2013
Doc No.
Batch No.

Att: Mr Lachlan Sims, Strategic Facilities Group

Dear Mr Hickey

Re: Planning Proposal - General Amendments (1) to Ballina Local Environment Plan 2012

Thank you for Council's letter, dated 20 November 2013, requesting comment from the Office of Environment and Heritage (OEH) on the above amendments in accordance with the Gateway Determination issued by the Department of Planning and Infrastructure (DP&I). I appreciate the opportunity to provide input.

OEH has statutory responsibilities relating to the protection of biodiversity, Aboriginal cultural heritage, historic heritage, flooding, coastal processes and estuary management. A review of the amendments proposed confirms that those pertaining to minimum lot size and signage under exempt development are of no relevance to OEH in this case.

OEH is supportive of Council's desire to revise the clauses such that DCPs remain of relevance where associated lands are proposed for environmental protection or other public purpose. OEH notes that DP&I has acknowledged the matter and advised Council that a planning proposal would be an appropriate and timely means of addressing this matter.

The proposed amendments to the LEP relating to floodplain mapping are consistent with those recommended in Council's draft Flood Response Management Plan developed in consultation with OEH. Accordingly OEH supports the proposed mapping revisions and notes the Plan is due to be publicly exhibited in early 2014. OEH also notes the revised mapping arises from predicted increases in sea level that may already be impacting on the local coastline.

If you require further information or clarification, or should Council be in possession of information that suggests that OEH's statutory interests may be affected, please contact Conservation Planning Officer, Mr John Martindale, on telephone 02 6659 8222.

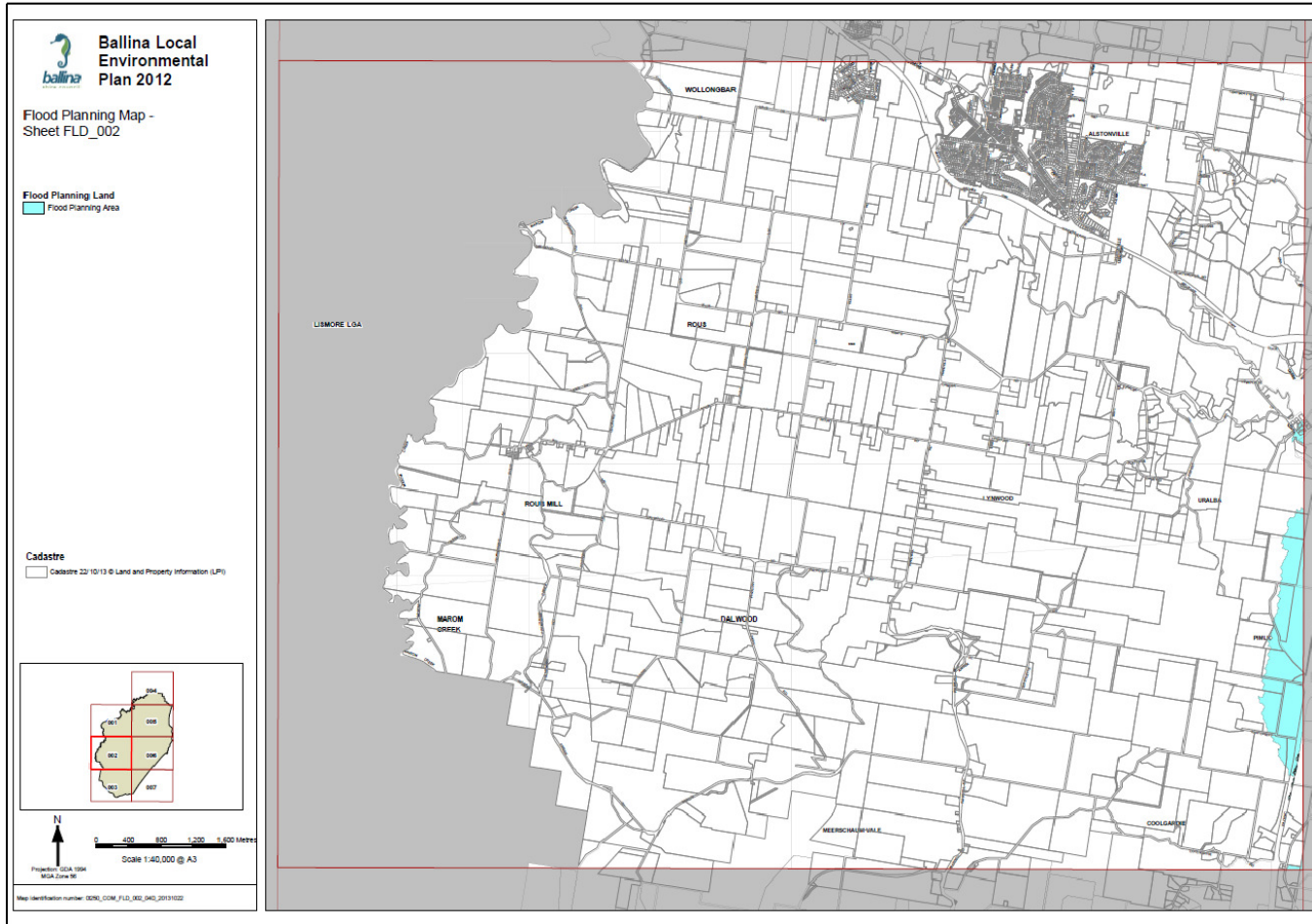
Yours sincerely

Dimitri Young 10 December 2013

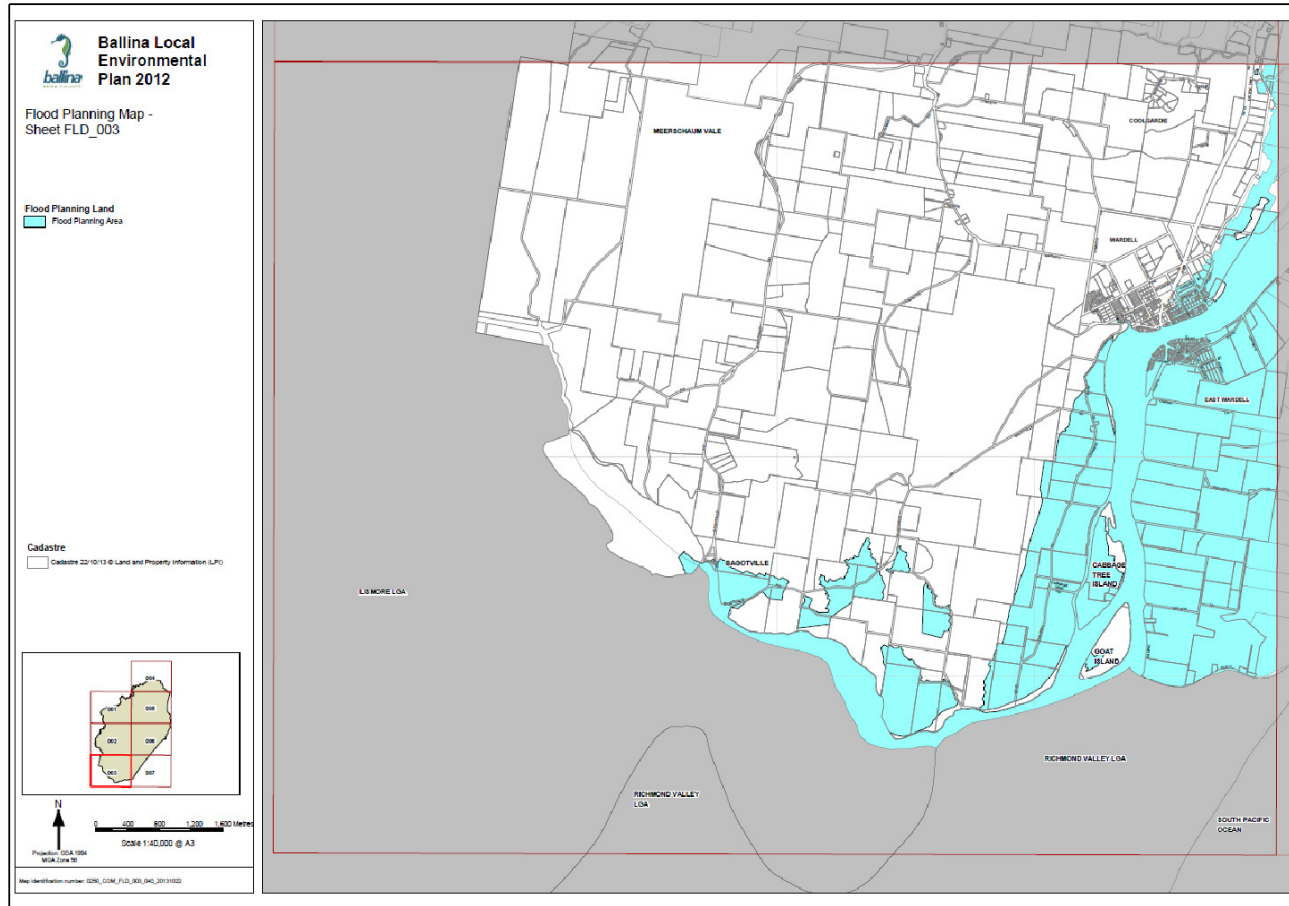
DIMITRI YOUNG
Senior Team Leader Planning, North East Region
Regional Operations

Locked Bag 914, Coffs Harbour NSW 2450
Federation House Level 7, 24 Moonee Street,
Coffs Harbour NSW 2450
Tel: (02) 8651 5945 Fax: (02) 8651 8187
ABN: 30 641 387 271
www.environment.nsw.gov.au

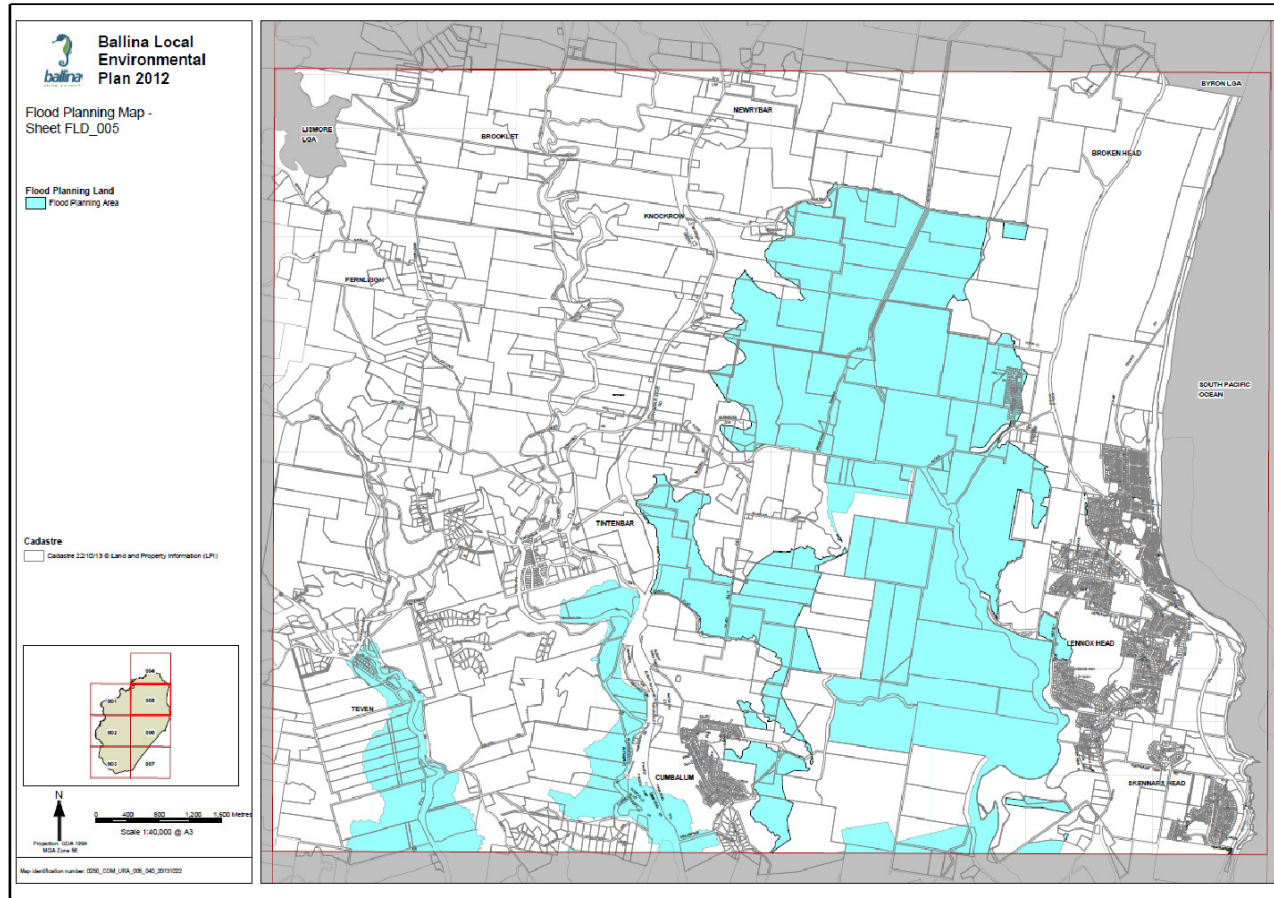
APPENDIX C – AMENDED STANDARD INSTRUMENT LEP MAPS



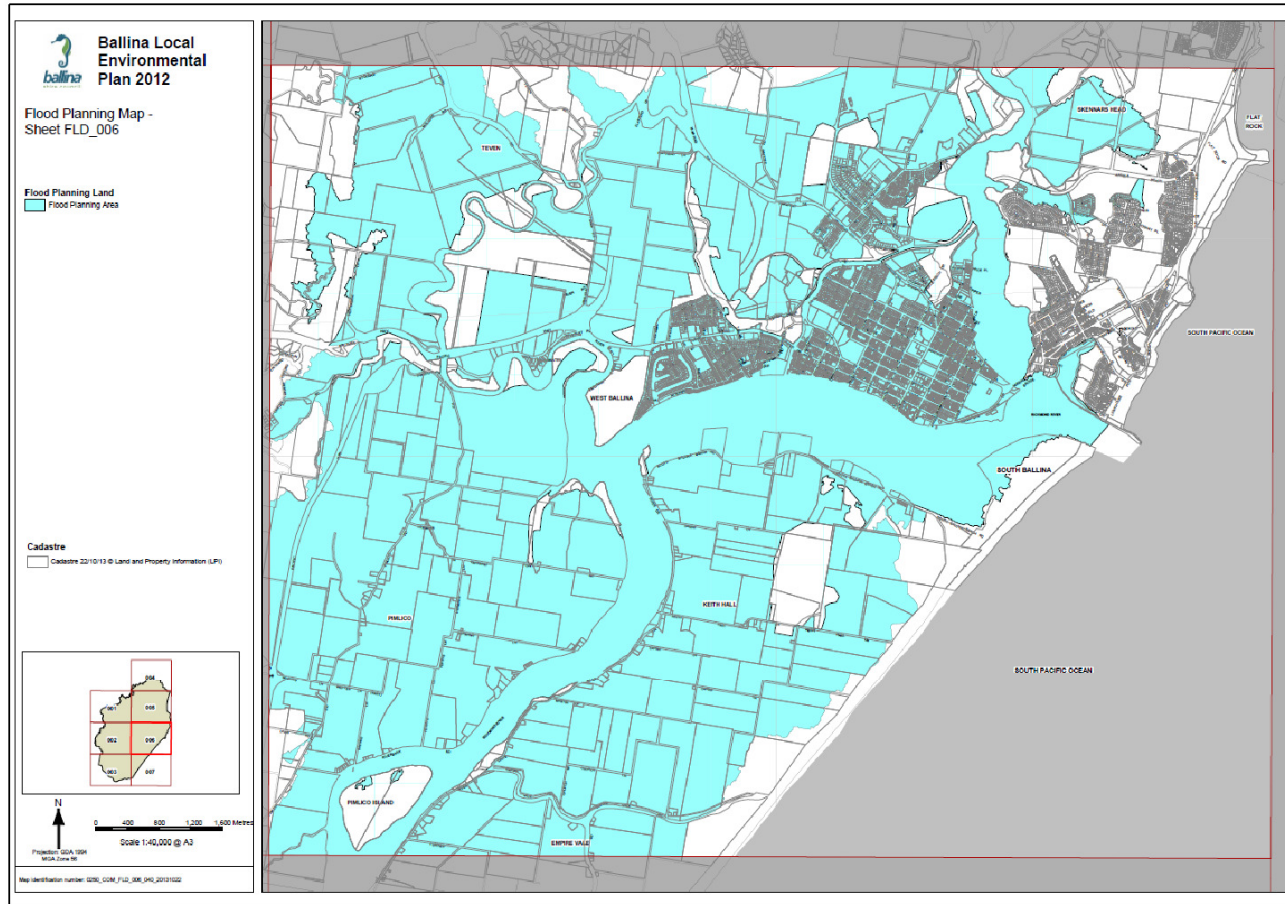
9.4 Planning Proposal 13/009 - General Amendments.DOC



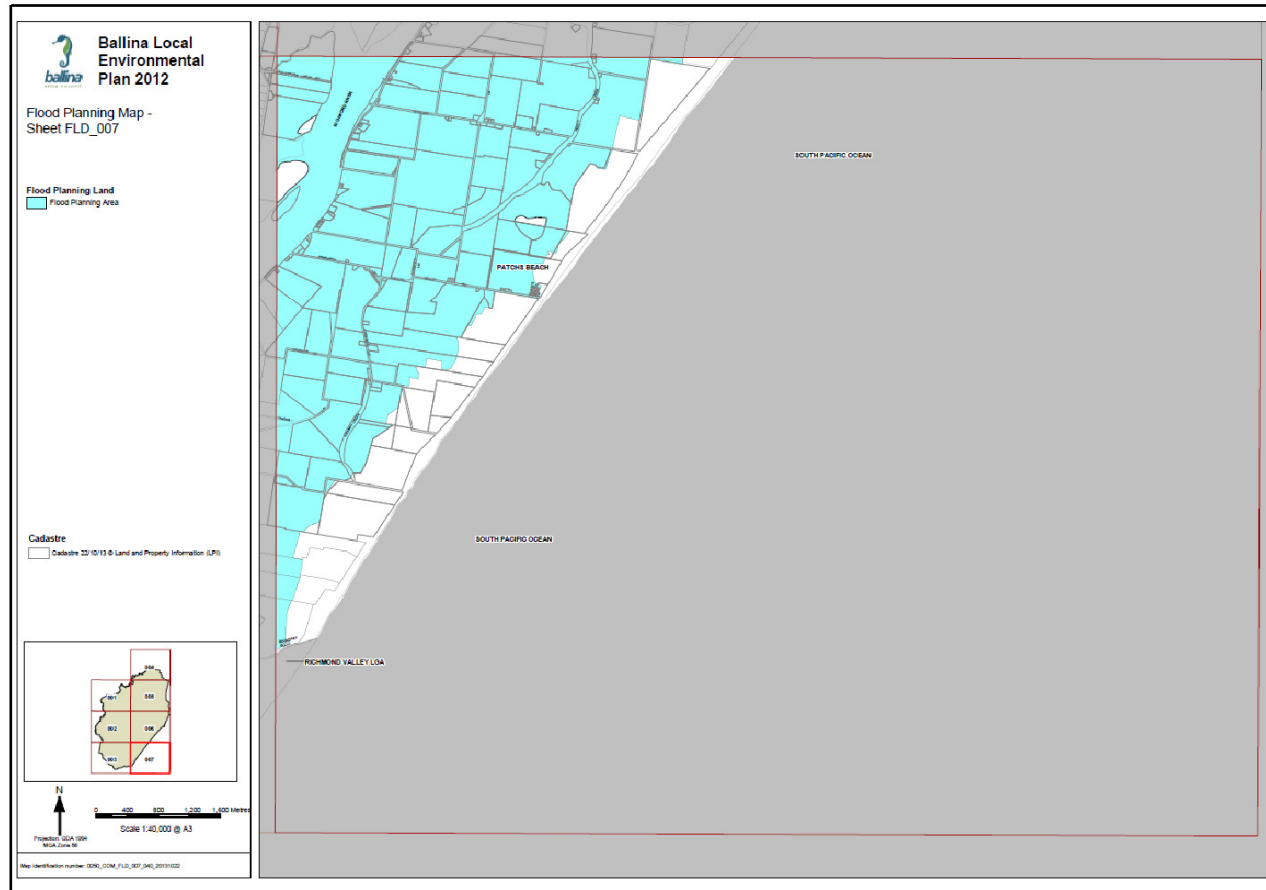
9.4 Planning Proposal 13/009 - General Amendments.DOC



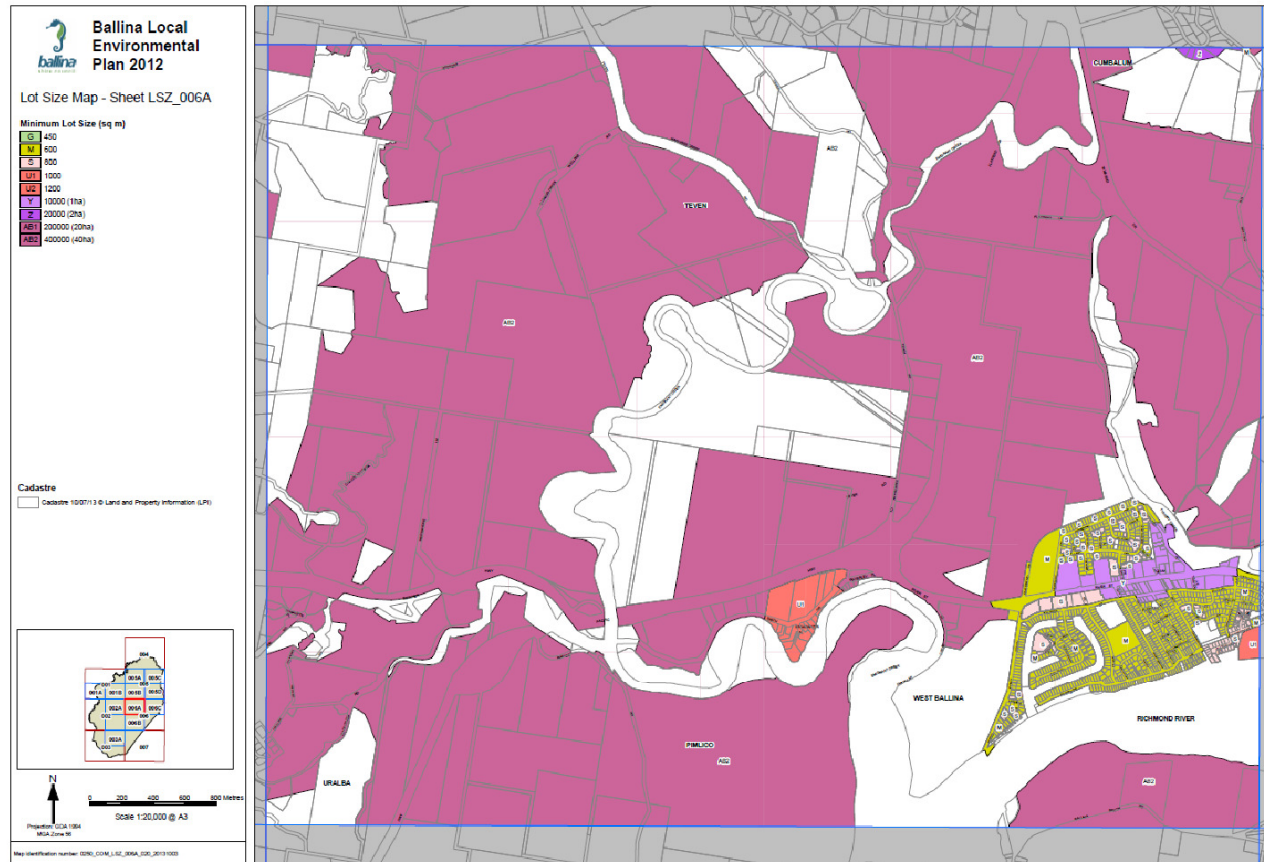
9.4 Planning Proposal 13/009 - General Amendments.DOC



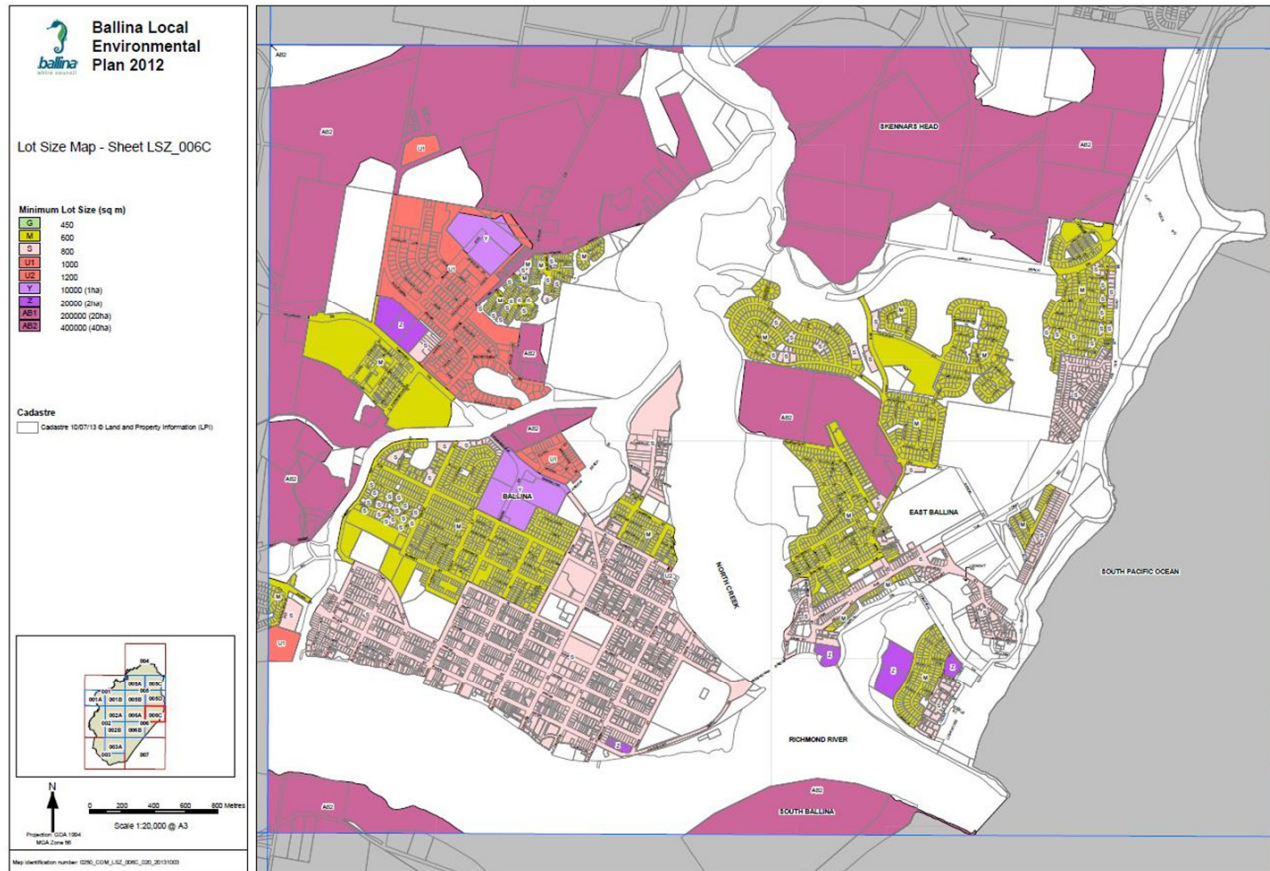
9.4 Planning Proposal 13/009 - General Amendments.DOC



9.4 Planning Proposal 13/009 - General Amendments.DOC



9.4 Planning Proposal 13/009 - General Amendments.DOC

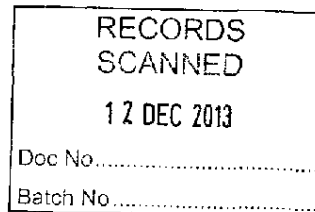




Office of
Environment
& Heritage

Your reference: BSCPP 13/009
Our reference: DOC13/86540
Contact: John Martindale 02 6659 8222

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478



Att: Mr Lachlan Sims, Strategic Facilities Group

Dear Mr Hickey

Re: Planning Proposal - General Amendments (1) to Ballina Local Environment Plan 2012

Thank you for Council's letter, dated 20 November 2013, requesting comment from the Office of Environment and Heritage (OEH) on the above amendments in accordance with the Gateway Determination issued by the Department of Planning and Infrastructure (DP&I). I appreciate the opportunity to provide input.

OEH has statutory responsibilities relating to the protection of biodiversity, Aboriginal cultural heritage, historic heritage, flooding, coastal processes and estuary management. A review of the amendments proposed confirms that those pertaining to minimum lot size and signage under exempt development are of no relevance to OEH in this case.

OEH is supportive of Council's desire to revise the clauses such that DCPs remain of relevance where associated lands are proposed for environmental protection or other public purpose. OEH notes that DP&I has acknowledged the matter and advised Council that a planning proposal would be an appropriate and timely means of addressing this matter.

The proposed amendments to the LEP relating to floodplain mapping are consistent with those recommended in Council's draft Flood Response Management Plan developed in consultation with OEH. Accordingly OEH supports the proposed mapping revisions and notes the Plan is due to be publicly exhibited in early 2014. OEH also notes the revised mapping arises from predicted increases in sea level that may already be impacting on the local coastline.

If you require further information or clarification, or should Council be in possession of information that suggests that OEH's statutory interests may be affected, please contact Conservation Planning Officer, Mr John Martindale, on telephone 02 6659 8222.

Yours sincerely

10 December 2013

DIMITRI YOUNG
Senior Team Leader Planning, North East Region
Regional Operations

Locked Bag 914, Coffs Harbour NSW 2450
Federation House Level 7, 24 Moonee Street,
Coffs Harbour NSW 2450
Tel: (02) 6651 5946 Fax: (02) 6651 6187
ABN 30 841 387 271
www.environment.nsw.gov.au

Helen Carpenter and Patrick Dwyer
10 Pandanus Place
EAST BALLINA NSW 2478

13 December 2013

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

Dear Sir / Madam

**Re Planning Proposal BSCPP 13/009, November 2013
Ballina LEP 2012 General Amendments 1 submission**

This submission is made to highlight several issues for consideration and resolution prior to finalisation of the abovementioned planning proposal, in particular, matters relating to Clause 7.3 Flood Planning Mapping.

The Planning Proposal BSCPP 13/009 includes a version of Flood Planning Map Sheet FLD_006 which identifies several additional areas not presently identified as land at or below the flood planning level in Council's current LEP.

The area of specific personal interest in this submission is Chickiba Drive adjacent to Council's Chickiba soccer fields. Some of the remarks below are however, likely to be relevant to other areas within East Ballina and in some instances the Shire more broadly.

Resolution of mapping for consultation

The resolution of the mapping provided for consideration of the planning proposal, because it is at a coarse resolution, does not enable investigation at the property level (Figure 1a). Yet the consequence of the planning proposal is at the property level. If the amendments outlined in the planning proposal are realised the updated LEP mapping will also permit investigations to the property scale, so too 117 Notices will occur at the property scale (Figure 1b).

I am concerned that this consultation process with regard additional areas in the flood planning map sheet has been undertaken at a coarse scale creating confusion and limiting community engagement.

In addition the areas identified in the planning proposal are not consistent with areas mapped in *Ballina Floodplain Risk Management Study Volume 1: Main Report Exhibition Version Volume 2 January 2012*. This anomaly itself suggests further investigations of this East Ballina area are required prior to finalising flood planning mapping in the LEP. I have highlighted this in Figure 2.

East Ballina community not engaged with previous flood modelling

Lack of community engagement is compounded by the East Ballina community typically have not been involved in previous flood investigations. Lack of involvement by local residents within East Ballina has limited the opportunity for ground truthing via flood event photographs in so reducing robustness of the model used to justify the proposed changes to the mapping. Furthermore the East Ballina area is only a small component of the study area and appears to have considerably less specific investigation in the Floodplain Risk Management Study than other areas.

Alternatives

Ponding of water on Council's Chickiba soccer fields during substantial rain events is well known, as is poor drainage on the soccer field corner of Chickiba Drive. These nuisance problems could be addressed by working with the natural flow path and improving the conveyance of water to land north of Angels Beach Drive. The land north of Angels Beach Drive is of substantial lower elevation, yet a choke point has been created with only one culvert structure connecting the catchment. This one culvert is the only connection north of the bridge between Prospect Lake and Chickiba Creek (see attached annotated aerial photo, figure 3).

An additional culvert would very likely improve drainage at Chickiba Drive and the soccer field improving functionality of the sporting field and providing a net community benefit.

Inconsistent with objects or intended outcomes

The planning proposal indicates that one of the objectives of the proposal is: "To undertake mapping corrections that have inadvertently occurred between drafting and exhibition and the final 'as made' mapping."

The draft LEP when exhibited did not include the areas that are presently proposed for inclusion in the flood planning mapping. Including the flood planning mapping changes within this general amendment planning proposal appears to extend beyond mere correction of mapping errors placing it beyond the scope of the objectives of the planning proposal.

Addressing social and economic effects

The planning proposal asserts that minimal social and economic effects are expected from the proposed LEP amendments. There is no justification of this statement. The proposed changes will result in individual property owner costs such as insurance premiums increasing. To adequately address social and economic costs, at a minimum the planning proposal should have identified the number of additional houses listed on the flood planning mapping.

Conclusion

This submission highlights inconsistencies with the planning proposed Ballina LEP 2012 General Amendment Flood Planning Map Sheet FLD_006 and the mapping in the *Ballina Floodplain Risk Management Study Volume 1: Main Report Exhibition Version Volume 2 January 2012*.

Accuracy of mapping in *Ballina Floodplain Risk Management Study Volume 1: Main Report Exhibition Version Volume 2 January 2012* is questioned due to minimal focus in the East Ballina area and limited engagement for ground truthing with East Ballina residence.

The submission also notes that alternatives for better stormwater and surface water management exist, and should be more deeply investigated. Lastly the submission asserts that the present planning proposal extends beyond its own objectives and intended outcome.

For these reasons individually and collectively we recommend that the Flood Planning Mapping component of the Planning Proposal be removed from the present planning proposal subject to further investigation and consultation.

We are happy to meet with Council staff to discuss the matter further and can be contacted on 6686 0074.

Yours sincerely

A rectangular box containing two handwritten signatures in black ink. The first signature is 'H. L. Carpenter' and the second is 'Patrick Dwyer'.

Helen Carpenter and Patrick Dwyer

Figure 1

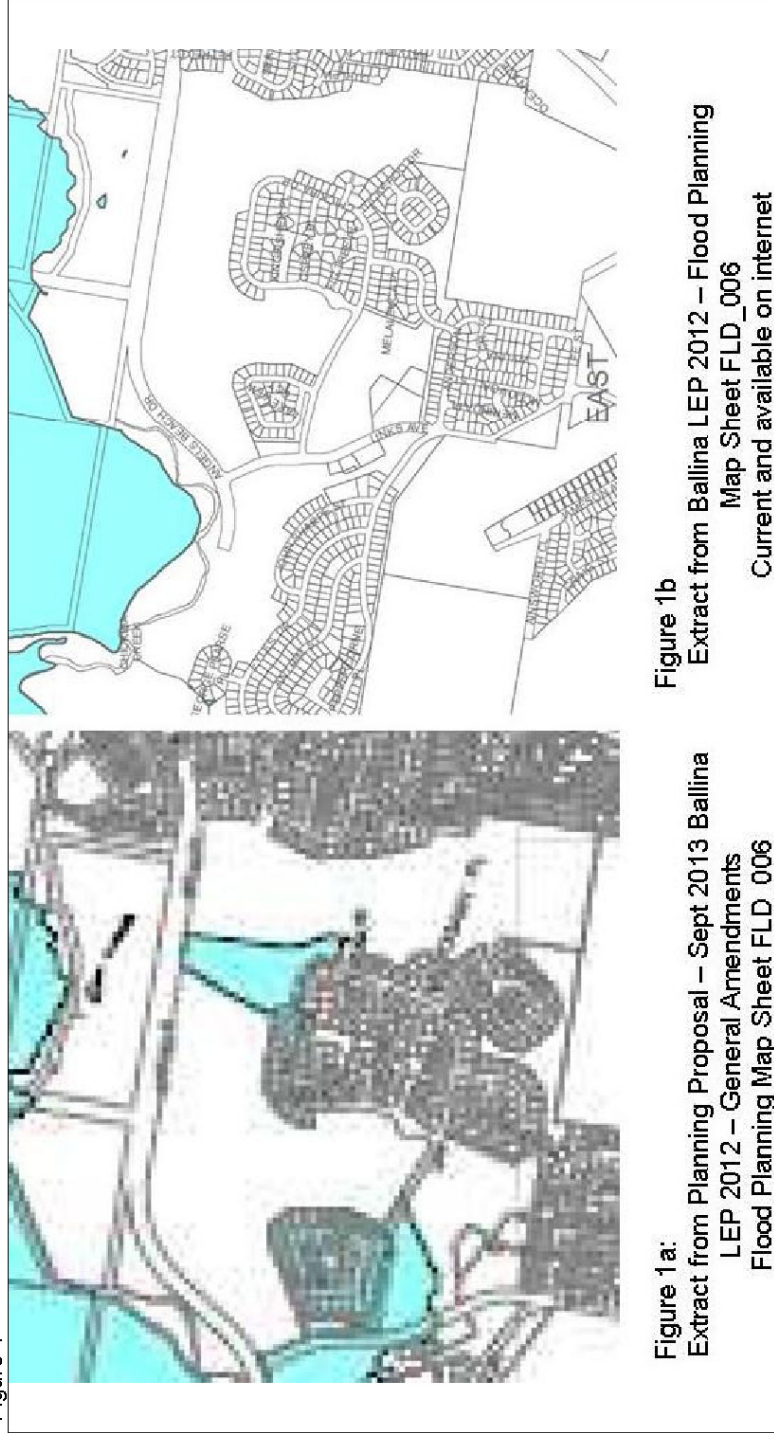


Figure 1a:

Extract from Planning Proposal – Sept 2013 Ballina
LEP 2012 – General Amendments
Flood Planning Map Sheet FLD_006

Figure 1b

Extract from Ballina LEP 2012 – Flood Planning
Map Sheet FLD_006
Current and available on internet

Figure 2

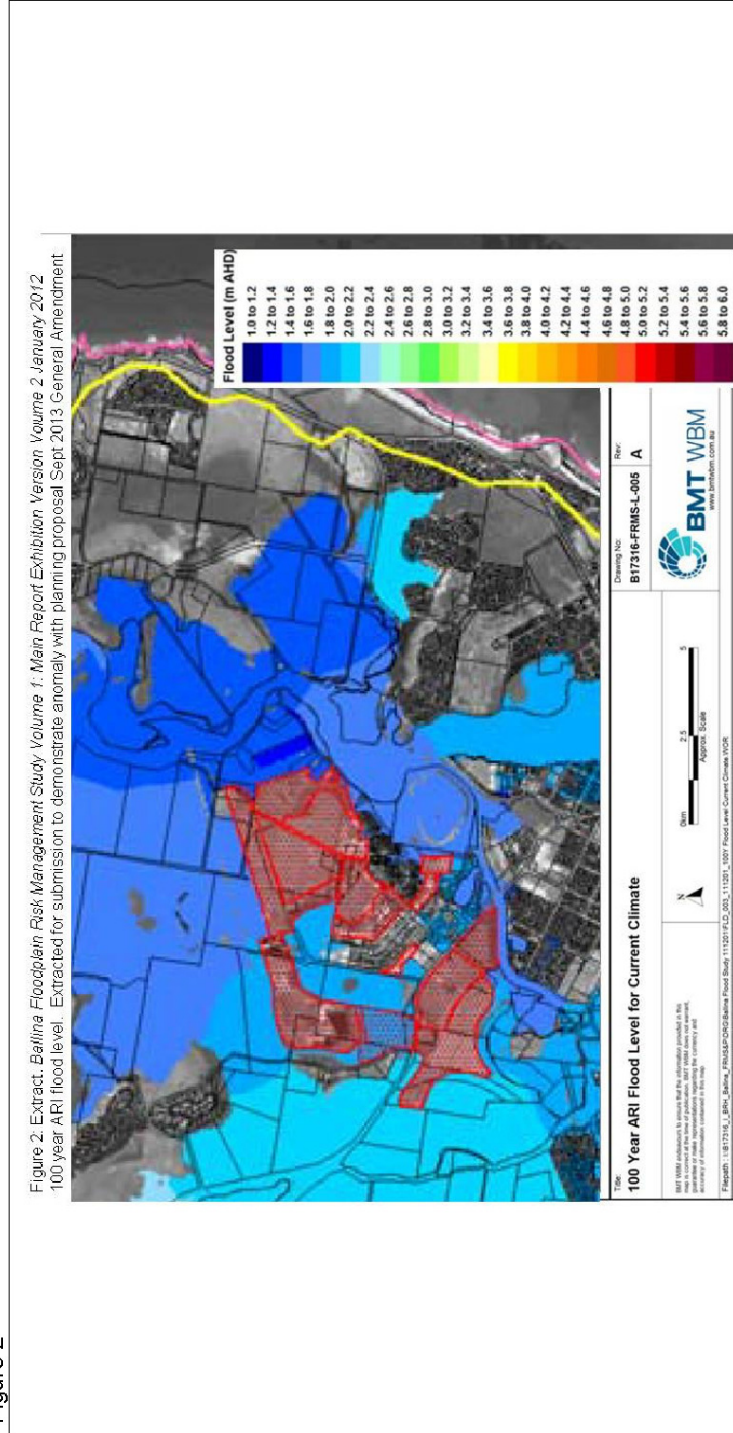


Figure 3. Annotated aerial photograph illustrating the approximate catchment serviced by one culvert

