

Ballina Standard LEP Draft Amendment – Subdivision provisions.

Proposal Title : **Ballina Standard LEP Draft Amendment – Subdivision provisions.**

Proposal Summary : **The planning proposal seeks to amend the draft Ballina LEP when it is made. The planning proposal seeks to introduce new provisions to provide greater flexibility to the subdivision provisions within the Standard LEP template. The proposed provisions intend to enable boundary adjustments, and the creation of residual lots, lots for environmental purposes and split zoned lots where the resulting lots are less than the mapped minimum lot size by greater than the 10% currently permitted by the LEP.**

PP Number : **PP_2013_BALLI_001_00**

Dop File No :

13/01037

Proposal Details

Date Planning
Proposal Received : **03-Jan-2013**

LGA covered : **Ballina**

Region : **Northern**

RPA : **Ballina Shire Council**

State Electorate : **BALLINA**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **The proposal applies to all rural zoned land in the LGA and all land mapped as a Potential Urban Growth Area in the draft Ballina LEP**

DoP Planning Officer Contact Details

Contact Name : **Paul Garnett**

Contact Number : **0266416607**

Contact Email : **paul.garnett@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Matthew Wood**

Contact Number : **0266861284**

Contact Email : **mattheww@ballina.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name : **Jim Clark**

Contact Number : **0266416604**

Contact Email : **jim.clark@planning.nsw.gov.au**

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Far North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with :	Yes		
If No, comment :			

Have there been
meetings or
communications with
registered lobbyists? :

No

If Yes, comment :

Supporting notes

Internal Supporting
Notes :

Ballina Council has not requested delegation to make the plan in this instance.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment :

The Statement of objectives adequately describes the intention of the planning proposal which is to introduce greater flexibility and certainty in relation to the subdivision of land under the draft Ballina LEP. The proposal intends to achieve this by;

1. Permitting boundary adjustments to create lots less than 90% of the minimum lot size (MLS) for the land where improved agricultural or environmental outcomes can be achieved without creating opportunities for additional dwelling houses.
2. Permitting subdivision to create residual lots less than the MLS when the lot is associated with subdivision of land in a Potential Urban Growth Area and it is suitable for environmental protection, environmental management or agriculture.
3. Permitting subdivision to create lots for environmental protection purposes that are less than the MLS and are associated with subdivision of land in a Potential Urban Growth Area.
4. Permitting the creation of split zoned lots where the lot contains land less than the MLS for the zone and is created in association with subdivision of land in a Potential Urban Growth Area and is suitable for an environmental purpose

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions addresses the intended method of achieving the objectives of the planning proposal. The planning proposal provides draft clauses that the RPA considers will achieve the objectives. It is recommended that the Gateway Determination require that the RPA should only exhibit a plain English document which explains the intent of the proposed clauses rather than exhibit clauses which may be changed by Parliamentary Counsel's Office when the plan is drafted.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

1.5 Rural Lands

* May need the Director General's agreement

2.1 Environment Protection Zones

2.2 Coastal Protection

2.3 Heritage Conservation

3.1 Residential Zones

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

Nil

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

See the assessment section of his report.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

The proposed amendments to the Draft Ballina Standard LEP are policy changes that do not require changes to any maps.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The RPA has not nominated a community consultation period however it states that community consultation will occur after a Gateway Determination is issued. It is considered that the proposed amendments constitute a low impact proposal and that a community consultation period of 14 days is adequate.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

The planning proposal satisfies the adequacy criteria by;

- 1. Providing appropriate objectives and intended outcomes.**
- 2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.**
- 3. Providing an adequate justification for the proposal.**
- 4. Providing a time line for completion of the proposal.**

Proposal Assessment

Principal LEP:

Due Date : February 2013

**Comments in relation
to Principal LEP :**

The draft Ballina LEP is currently with the Department to be made. This planning proposal seeks an amendment to the draft Ballina LEP.

Assessment Criteria

**Need for planning
proposal :**

The proposal to amend the LEP to introduce additional provisions for subdivision of land is not the subject of a specific strategic study or report. The need for these provisions has arisen due to the inability to subdivide land zoned rural or environmental protection, to create lots significantly less than the minimum lot sizes shown on the Lot Size Map using the current provisions of the LEP.

When Draft Ballina LEP is made, clause 4.6(6) will prevent the subdivision of rural land to less than 90% of the minimum lot size shown on the Lot Size Map. In order to create a lot in a rural or environmental protection zone less than the minimum lot size shown on the map, an amendment to the Lot Size Map of the LEP is required. This is a time consuming and an inefficient means of facilitating the development.

The proposed additional subdivision clauses aim to streamline the subdivision process and specifically intend to achieve the following;

- 1. Enable boundary adjustments in rural areas where one or more allotments will be less than 90% of the Minimum Lot Size (MLS) provided no adverse impact on agricultural production or environmental characteristics can be achieved and no additional opportunities for dwelling houses will occur.**
- 2. Enable a subdivision to create a residual lot that is less than the MLS where the lot to be created is associated with the subdivision of land in a mapped Potential Urban Growth Area for urban purposes and is suitable for an environmental protection, environmental management or agriculture.**
- 3. Enable a subdivision to create a lot for an environmental purpose that is less than the MLS where the lot is created in association with the subdivision of land in a mapped Potential Urban Growth Area for urban purposes, without providing a dwelling entitlement to that lot.**
- 4. Enable a subdivision to create a split zoned lot (part environmental protection and part urban zone) where the environmental protection zoned part of the land is less than the MLS applying to that part of the lot, and the lot has been created in association with a subdivision of land within a mapped Potential Urban Growth Area and the environmental protection zoned part of the lot is suitable for an environmental purpose.**

The planning proposal only seeks to enable subdivision to create undersized residual lots, environmental lots and split zoned lots in Potential Urban Release Areas (PUGAs). The reference to a PUGA reflects an early draft of the Ballina LEP. The final draft of the Ballina LEP identifies these areas as Strategic Urban Growth Areas (SUGAs) on the Strategic Urban Growth Area Map. SUGAs are areas of land identified for future urban growth in Council's and regional strategic planning framework. It will be necessary to revise the planning proposal to update the terminology used in the draft LEP.

Council has advised that it has intentionally limited the three proposed subdivision provisions to land within a SUGA so as to limit opportunities for the creation of undersized lots in areas which have not undergone a degree of strategic planning assessment.

The principles behind the proposed additional subdivision clauses are supported.

The planning proposal provides the intended outcomes of each proposed additional clause in Part 1 and a draft clause to achieve the objectives in Part 2. However, there are inconsistencies between the intended outcomes of each clause and the draft clause in Part 2. The inconsistencies are as follows;

Boundary Adjustment clause.

The intended outcome suggests that the provisions will allow boundary adjustments on all land in the local government area while the draft clause suggests the clause will apply to rural areas. The intended outcome requires the proposed boundary adjustment to "improve agricultural or environmental outcomes" while the draft clause requires that the subdivision "will not adversely impact" on agricultural production potential or environmental characteristics.

Environmental Protection Purpose Lot Clause.

The drafting note to the draft clause in Part 2 states that it is not the intention of the clause to enable additional dwelling entitlements on environmental protection lots, however this is not reflected in the intended outcome for the clause in Part 1.

Split Zoned Lot Clause.

The draft clause in Part 2 requires the lot to "support the improvement and management of environmental attributes on the land", however this is not reflected in the intended outcome for the clause in Part 1.

As a result of these anomalies it is suggested that the RPA amend the planning proposal to include only a plain English explanation of the intention of each clause for exhibition. The drafting of each clause can then be conducted by Parliamentary Counsel's Office to ensure it properly achieves the purposes outlined.

The proposed clauses will not result in a significant increase in development or density in the rural zones. The boundary adjustment clause does not allow for the creation of additional lots or dwelling entitlements. The Residual Lot clause, Environmental Protection Lot Clause and the Split Zoned Lot clause only apply to land mapped as a Strategic Urban Growth Area in the LEP.

The inclusion of additional clauses is the best means of achieving the objectives of the planning proposal as it results in the most efficient means of achieving the orderly and economic development of land while having regard to the constraints of the land and the impact of the proposed subdivision. The proposed clauses will facilitate;

1. The efficient subdivision of rural land without the need to amend the LEP to change a MLS to facilitate the subdivision.
2. The efficient subdivision of urban land for urban purposes.
3. Retention of appropriate zones and MLSs over constrained land without preventing the subdivision of land as necessary.

Consistency with strategic planning framework :

Far North Coast Regional Strategy (FNCRS)

The proposed amendment to the Ballina LEP to include additional subdivision provisions is not inconsistent with the FNCRS. The proposed provisions will facilitate the orderly development of urban zoned land and will not result in an unacceptable increase in the density of development in rural areas. The provisions require the consideration of agricultural and environmental outcomes associated with the proposed subdivisions and will reflect the historic approach to subdivision allowed throughout Ballina Shire by the Ballina LEP 1987. The provisions will still require development consent for subdivision.

The proposed provisions are not inconsistent with the RPA's strategies and structure plan.

SEPPS

The planning proposal identifies the SEPP (Rural Lands) 2008 as being relevant to the planning proposal as it contains principles for subdivision of rural land. The proposed provisions will not be inconsistent with the Rural Subdivision Principles or Rural Planning Principles of the SEPP (Rural Lands) 2008 as the provisions will;

1. not contribute to the unnecessary fragmentation of rural land since subdivision will only be permitted where the land is within a mapped Potential Urban Growth Area or in the case of rural boundary adjustments, no additional lots are to be created;
 2. require consideration of agricultural production potential of land or the environmental characteristics of the land prior to the subdivision being approved ;
 3. take account of the constraints of the land and ensure that the subdivision is appropriate to the natural and physical characteristics of the land and the existing land use;
 4. not create additional opportunities for dwellings in rural zones.
- The proposal is otherwise consistent with other SEPPs.

Standard Instrument LEP

The principles behind the proposed additional provisions are not inconsistent with the mandatory clauses of the Standard Instrument LEP.

S117 Directions.

The following S117 directions are applicable to the proposal 1.1 Business and Industrial Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.1 Residential Zones, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.2 Mine Subsidence and Unstable Land, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 5.3 farmland of State and Regional Significance on the NSW Far North Coast, 5.4 Commercial and Retail Development along the Pacific Highway North Coast, 6.1 Approval and Referral Requirements, and 6.2 Reserving Land for Public Purposes.

Of the above s117 Directions the proposal is inconsistent with Direction 4.4.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal to introduce additional subdivision provisions to the LEP which apply throughout the LGA. The proposed subdivision provisions will apply to the entire LGA and some of the land within Ballina LGA is bush fire prone. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a gateway determination has been issued. Until this consultation has occurred the consistency of the proposal with the direction remains unresolved.

The planning proposal is otherwise consistent with S117 directions.

Environmental social economic impacts :

The planning proposal will not have any direct adverse impact on critical habitat or threatened species, populations or ecological communities, or their habitats. Similarly the planning proposal will not have any direct adverse effect on the natural, built or socio-economic environment.

The planning proposal has the potential to have indirect effects on the natural and socioeconomic environments when subdivision of the land occurs however these impacts will vary considerably depending on the characteristics of the subject land and any indirect impact is most appropriately addressed by the development assessment process.

Ballina Standard LEP Draft Amendment – Subdivision provisions.

The planning proposal has given consideration to social and economic impacts of the proposed amendment to the draft Ballina LEP. The social and economic impacts will be largely positive as the introduction of the subdivision provisions will improve flexibility and clarity for subdivision in certain circumstances and therefore will facilitate the efficient and orderly development land.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **12 Month** Delegation : **DG**

Public Authority
Consultation - 56(2)(d)

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Covering Letter.pdf	Proposal Covering Letter	Yes
Planning Proposal.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 5.1 Implementation of Regional Strategies**

Ballina Standard LEP Draft Amendment – Subdivision provisions.

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

Additional Information : It is recommended that;

1. The planning proposal proceed as a 'routine' planning proposal.
2. The planning proposal is to be completed within 12 months.
3. That the RPA amends the planning proposal for exhibition so that it only contains a plain English explanation of the intent of the proposed clauses. It is noted that there are inconsistencies in the "Objectives or Intended Outcomes" of the planning proposal and the draft clauses provided in the "Explanation of the Proposal". The drafting of the clauses will be conducted by Parliamentary Counsel's Office based on the explanation of the intent of the provisions.
4. Prior to exhibition, the planning proposal is to be amended to reflect the updated terminology used in the draft Ballina LEP. Specifically, the reference to "Potential Urban Growth Areas" should be altered to refer to "Strategic Urban Growth Areas".
5. That a community consultation period of 14 days is necessary for the planning proposal.
6. That the RPA consult with the Commissioner of the NSW Rural Fire Services in accordance with the requirements of S117 Direction 4.4 Planning for Bushfire Protection.

Supporting Reasons : The reasons for the recommendation are as follows;

1. The proposed provisions will facilitate the efficient and orderly subdivision of land.
2. The principles of the proposed provisions are supported and are not considered to be inconsistent with the intent of the Standard LEP.

Signature:

Printed Name:



Date:

9 January 2013