



Ballina Shire Council

Planning Proposal – December 2012

Subdivision Provisions

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Gateway



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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 (once made) 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 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.
- 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.

Planning Context

Council Resolution

Council considered the proposed amendment to the Ballina LEP 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).

Ballina LEP 2012

During the preparation of Council's Standard Instrument LEP (presently known as the draft Ballina Local Environmental Plan 2012), Council identified several concerns relating to subdivision of land zoned for rural or environmental protection purposes arising from State-prepared LEP provisions.

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 rural or 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 Department of Planning and Infrastructure (DP&I) informally advised Council, following submission of its draft LEP to the DP&I for finalisation, that Council may proceed to propose provisions to address subdivision concerns identified. The purpose of this planning proposal is to establish a more flexible framework for the consideration of subdivision proposals.

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 has 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 application 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 created is associated with subdivision for urban purposes within a Potential urban Growth Area shown on the Strategic Urban Growth Area Map and the lot created 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 within a Potential Urban Growth Area shown on the Strategic Urban Growth Area Map.
- 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 within a Potential Urban Growth Area shown on the Strategic Urban Growth Area Map 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.

More specifically, it is proposed that the Ballina Local Environmental Plan 2012 (once made) be amended as follows (or in a similar manner to enable the intended outcome of this planning proposal):

Insert the following in part four (4) of the Ballina LEP 2012:

Clause XX Exception to minimum lot size standard - boundary adjustment subdivision

- (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

- (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 within a Potential Urban Growth Area shown on the Strategic Urban Growth Area Map, 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

- (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 within a Potential Urban Growth Area shown on the Strategic Urban Growth Area Map.*

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

- (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 supports the improvement and management of environmental attributes on the land; and*
 - (iv) *the lots created are located within or partly within a Potential Urban Growth Area shown on the Strategic Urban Growth Area Map.*

It should be noted that at the time of preparing this planning proposal it is understood that Council's Standard Instrument LEP will be finalised by the DP&I and the Minister for Planning and Infrastructure without inclusion of the E2 Environmental Conservation or E3 Environmental Management zones. 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.

Part 3 - Justification

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 Ballina Local Environmental Plan 1987 and the associated historic assessment of development applications within the shire. It is also consistent with Council's intended outcomes associated with the preparation of Council's Standard Instrument LEP.

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

Amending the Ballina Local Environmental Plan 2012 (once made) 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 LEP taking into consideration the repeal of State Environmental Planning Policy No.1 (SEPP 1), there will be 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 existing provisions of Ballina LEP 1987. The planning proposal will also continue to facilitate practical planning outcomes in relation to rural subdivision after 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 1.

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 will be undertaken with relevant agencies following the gateway determination stage of the LEP amendment.

Part 4 - Mapping

The proposed amendment relates only to the written component of Council's local planning instrument (Ballina Local Environmental Plan 2012). As such, no mapping is proposed as part of the amendment.

Part 5 – Community Consultation

Council has not undertaken any community consultation concerning this specific planning proposal to date. It is anticipated that this will occur as part of the formal exhibition of the planning proposal and as directed through the gateway determination process.



Part 6 – Project Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination (Anticipated)	January 2013
Completion of Technical Assessment	March 2013
Government Agency Consultation	March 2013
Public Exhibition Period	April 2013
Public Hearing (if required)	April 2013
Submissions Assessment	May 2013
RPA Assessment of Planning Proposal and Exhibition Outcomes	May 2013
Submission of Endorsed LEP to DP&I for Finalisation	June 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

** The above timeline is contingent of the implementation of Council's Draft Standard Instrument LEP which is currently with the Department of Planning and Infrastructure for finalisation.*

Appendices

Appendix 1 - 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, therefore the proposal is consistent with this direction.
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 from urban land release areas 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.
4.4 Planning for Bushfire Protection	Does not apply to planning proposal.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent. The proposal is consistent with the FNCRS as the proposed provisions support agricultural, environmental and urban growth outcomes and actions.

5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
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	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.

