

Ballina LEP 2012 – Rezoning of Ballina Heights Estate.

Proposal Title : **Ballina LEP 2012 – Rezoning of Ballina Heights Estate.**

Proposal Summary : **The planning proposal seeks to amend Ballina LEP 2012 by rezoning various lots in Ballina Heights Estate from R3 Medium Density Residential and B2 Local Centre to R2 Low Density Residential, and RE1 Public Recreation. The LEP amendment also proposes to amend the other planning controls applying to the land to reflect the development outcomes of approved development applications over the land.**

PP Number : **PP_2014_BALLI_008_00**

Dop File No :

14/18384

Proposal Details

Date Planning
Proposal Received : **11-Nov-2014**

LGA covered : **Ballina**

Region : **Northern**

RPA : **Ballina Shire Council**

State Electorate : **BALLINA**

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

LEP Type : **Spot Rezoning**

Location Details

Street : **Various lots on Deadmans Creek Road, The Ridgeway, Chilcott Circuit, Unara Parkway, Ballina Heights Drive, Highfield Terrace, Bannockburn Court, Liffey Ave, Perkins Close, Lindsay Ave and Cummings Crescent**
 Suburb : **City :**
 Land Parcel : **Various land parcels in Ballina Heights Estate Lot 116 DP 1058129, Lot 114 DP 1058129, Lot 136 DP 1066838, Lot 153 DP 1066838, Lot 360 DP 1189176, Lot 389 DP 1199596, Lot 360-385 DP 1199596, Lot 388 DP 1199596, Lot 303 DP 1147087, Lot 317 DP 1148856, Lot 318 DP 1148856, Lot 387 DP 1199596.**

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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) :		Type of Release (eg Residential / Employment land) :	Residential
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 :

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. The proposal seeks to amend the Ballina LEP 2012 by rezoning the subject land to achieve consistency with existing development consents for subdivision of the land, and to reflect the proponent's preferred use of the land.

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

Is an explanation of provisions provided? Yes

Comment : The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The proposal seeks to amend the LEP by;

- rezoning land which has been dedicated to Council and is being used or has been identified as public open space as RE1 Public Recreation;
- rezoning 98 lots which have been approved for low density residential purposes from R3 Medium Density Residential to R2 Low Density Residential to reflect the development consents and the proponent's preferred use of the land;
- rezoning a 6000 metre square area of land containing a road reserve for future road infrastructure from B2 Local Centre to R2 Low Density Residential;
- altering the, maximum building height, minimum lot size and floor space ratio development standards for the land being rezoned to R2 on the relevant maps; and

- rezoning a small piece of deferred land RE1 Public Recreation which will therefore require an amendment to the Land Application Map, Acid Sulfate Soils Map, Building Height Allowance Map, Flood Planning Map and Strategic Urban Growth Area Map.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 1.1 Business and Industrial Zones
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 2.4 Recreation Vehicle Areas
- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 4.1 Acid Sulfate Soils
- 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
- 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?

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

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

If No, explain : **See the assessment section of this report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The planning proposal contains maps which adequately show the site, and the proposed map changes for the LEP amendment.

Maps which comply with the Standard Technical Requirements for LEP Maps have also been provided.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The planning proposal does not nominate a community consultation strategy. In accordance with "A Guide to Preparing Local Environmental Plans" (the 'Guide'), it is considered that the planning proposal is a low impact planning proposal as it is consistent with surrounding land use zones, existing development consents, and the strategic planning framework. The proposal does not reclassify land or present infrastructure servicing issues. The Guide also suggests written notification to the affected and adjoining land owners. It is therefore recommended that a community consultation period of 14 days is appropriate and affected and adjoining properties should be notified in writing.

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 :

Time Line

The planning proposal includes a project timeline which estimates the completion of the planning proposal in March 2015. To ensure the RPA has adequate time to complete exhibition over the Christmas period, and then finalise reporting, map preparation and legal drafting it is recommended that a time frame of 9 months is appropriate.

Delegation.

Council has indicated it is not seeking an Authorisation to exercise delegation for this proposal because the proposal includes Council owned land. Council is seeking to avoid the perception of a conflict of interest in this instance. An Evaluation Criteria For the Delegation of Plan Making Functions has been provided. The proposal is considered to be consistent with the strategic planning framework and of local planning significance. It is recommended that an Authorisation for the execution of delegation be issued in this instance.

Overall Adequacy

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. Outlining a proposed community consultation program.
5. Providing a project time line
6. Completing the evaluation criteria for the delegation of plan making functions.

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Ballina LEP 2012 commenced in February 2013. This planning proposal seeks an amendment to the Ballina LEP 2012.

Assessment Criteria

Need for planning
proposal :

The proposal is not a result of a strategic study or report. The amendments to the LEP are proposed to reflect the end use of the land resulting from either approved or proposed subdivision layouts.

Land to be zoned RE1 Public Recreation.

Lots 114 and 116 DP 1058129, Lot 136 DP 1066838, Lot 153 DP 1066838, are owned by Ballina Council and were dedicated to Council as public reserves as a requirement of previous subdivision consents. It is proposed to rezone these lots from R2 Low Density Residential to RE1 Public Recreation and remove the lot size provisions, consistent with other RE1 zoned land in the LGA. This is considered to be appropriate.

Lot 388 DP 1199596 and Lot 317 DP 1148856 are also owned by Council and have been identified as public open space. These lots will also be rezoned from R3 Medium Density to RE1 Public Recreation, and will have the minimum lot size provisions removed. This is considered to be appropriate.

Lot 303 DP 1147087 and Lot 318 DP 1148856 contain small areas of land currently zoned R3 Medium Density Residential while the majority of the lots is currently deferred from the Ballina LEP 2012. The planning proposal intends to rezone the R3 land to RE1 and apply an RE1 zone to the cleared area of the lot which is currently deferred from the LEP. The proposed RE1 zoned land is identified for future public open space. Part of the lot was deferred from the LEP as Council had proposed an E zone over that part of the lot. An E zone could not be applied until the Review of E Zones in Far North Coast LEPs (the Review) had been completed. The Review has not yet been completed however it does not prevent an RE1 zone being applied to the land. The application of the RE1 zone to the currently deferred areas of Lot 303 will alter the area of land to which the Ballina LEP 2012 applies and consequently changes to the mapping for acid sulfate soils, building height allowance and flood planning will be required. This is considered to be appropriate.

Lot 360 DP 1189176. Part of Lot 360 is identified as public open space in a development consent and is soon to be dedicated to Council. This land is proposed to be rezoned from R3 to RE1 to be consistent with the development consent for the land. This is considered to be appropriate.

Changes to the B2 Local Centre zone.

Part of Lot 389 DP 1199596 is zoned B2 Local Centre. As a result of recent subdivision consent an area of this B2 zone along the eastern edge will be rezoned to R2 Low Density Residential to accommodate a road reserve. It is considered appropriate that the road reserve is zoned to match the low density residential zone of the adjoining residential land. The rezoning will not result in an unreasonable loss of commercially zoned land as the road infrastructure being rezoned is essential to service the B2 zoned land.

The changes to the B2 zone will also require corresponding changes to the minimum lot size, height of buildings and floor space ratio maps to ensure consistency with Council's approach to planning controls for B2 zoned land in the local government area. This is considered to be appropriate.

Changes to Residential Zones.

The planning proposal seeks to rezone 98 lots from R3 to R2 to reflect current subdivision consents and future land use intent. As an undeveloped urban release area the wider Ballina Heights Estate was zoned R3 Medium Density in the Ballina LEP 2012. The R3 zone was used as it provided flexibility for future urban development of new release areas.

Much of the land has since been the subject of development consents which proposed low density residential subdivisions with interspersed medium density allotments. The R3 medium density zone is not consistent with the majority of the approved low density subdivision layout as the R3 zone requires larger lot sizes and permits the development of all forms of residential accommodation with consent. The R3 zone also does not reflect the developer's preferred land use.

The proposal to zone the land identified for low density residential subdivision as R2 is appropriate and is consistent with the approach used elsewhere in the Ballina Heights Estate. While the current R3 zone would still permit the development of the land for low density residential development, the rationalisation of the zones across the site will give prospective purchasers and neighbouring properties certainty in the development potential of the land.

The proposed rezoning and rationalisation of development controls is the best means of achieving the intent of the planning proposal.

Consistency with strategic planning framework :

Far North Coast Regional Strategy (FNCRS).

The proposal to rezone the subject lands either R2 Low Density Residential or RE1 Public Recreation is not inconsistent with the FNCRS. The subject land is located within the town and village growth boundary. The subdivisions have been finalised and no significant additional infrastructure is necessary. The land is not adversely affected by natural hazards, does not contain significant native vegetation and its location within the Cumbalum village would utilise the existing traffic and pedestrian infrastructure.

The FNCRS sets dwelling targets for each local government area (LGA). For the Ballina LGA an additional 8400 dwellings are estimated to be required by 2031. The proposal will rezone 98 lots approved for low density residential development, from R3 Medium Density Residential to R2 Low Density Residential and consequently will reduce the potential residential density of the subject land. Under the provisions of the Ballina LEP 2012 all forms of residential accommodation are permissible with consent in the R3 zone. In the R2 zone, only boarding houses, dwelling houses, secondary dwellings and seniors housing are permissible with consent. In the vicinity of these 98 lots, 20 approved lots will be retained for medium density development, enabling an appropriate mix of housing types.

There is a significant area of undeveloped R3 Medium Density zoned land adjacent to the subject land (approximately 60ha) which has the potential to provide for higher density residential development housing options. The rezoning of the nearby Cumbalum Precincts A and B has been finalised and will create approximately 135ha of R3 zoned land which will contribute to the estimated 3000 residential lot yield for this area. It is considered that the proposal to rezone 98 lots of the subject land to R2 Low Density Residential will not have a significant adverse impact on the ability to achieve the housing targets for the Ballina LGA.

Consistency with Council's Local Strategies.

The subject land is identified for urban purposes in the Ballina Shire Growth Management Strategy 2012. The Strategy includes the need to provide a diversity of residential opportunities within the various urban settlements and distinct housing markets. It is considered that the rezoning of the land to R2 Low Density Residential is not inconsistent with this Strategy.

SEPPs

The planning proposal states that the proposal is not inconsistent with any State environmental planning policies (SEPPs). While many SEPPs apply to the subject the proposal to rezone the land is not inconsistent with these SEPPs.

S117 Directions.

The following S117 directions are applicable to the proposal, 1.1 Business and Industrial Zones, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.4 Recreational Vehicle Areas, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 3.5 Development Near Licensed Aerodromes, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 5.3 Farmland of State or Regional Significance on the NSW far North Coast, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, and 6.3 Site Specific Provisions.

Of the above s117 Directions the proposal is considered to be inconsistent with Directions 1.1, 2.1, 3.1 and 5.3.

Direction 1.1 Business and Industrial Zones is relevant to the proposal. The direction provides that a planning proposal must protect employment land in business and industrial zones and retain areas of existing business zones.

The planning proposal seeks to rezone an area of land zoned B2 Local Centre to R2 Low Density Residential. The direction provides that the planning proposal may be inconsistent with the terms of the direction if it is justified by a strategy or study or is of minor significance.

The area of B2 zoned land on Lot 389 that is proposed to be rezoned to R2 is only 6000

square metres in size, and contains a road reserve resulting from an approved subdivision of Lot 389. The road reserve will also service the B2 zoned land. The land east of the road reserve is zoned for residential and public recreation purposes. It is appropriate that the road reserve be zoned consistent with the adjoining land to minimise potential land use conflict. The B2 zone is therefore inappropriate for the subject land. A large area of undeveloped B2 zoned land (approximately 7ha) remains available for commercial development to service Ballina Heights. The loss of the small area of B2 zoned land is considered to be of minor significance in the context of the Cumbalum urban area. It is therefore considered that the inconsistency is justified in accordance with the terms of the direction.

Direction 2.1 Environmental Protection Zones is relevant to the proposal. The direction requires that a planning proposal must include provisions which facilitate the protection and conservation of environmentally sensitive areas.

The proposal is inconsistent with this direction as it applies to lots which contain areas of land that have been deferred from the Ballina LEP 2012 pending the Review of E Zones in Far North Coast LEPs (the Review). The Review has not yet been completed and consistent with the approach to other LEPs E zones will not be applied until the review is complete. Once the review is complete Council will be able to commence a planning proposal which implements the outcome of the review across the local government area in a consistent manner. It is therefore considered that the inconsistency of the proposal with the direction is of minor significance and is justified in accordance with the terms of the direction.

The proposal does however zone an area of deferred land RE1. Aerial photographs indicate this land is largely cleared land and will therefore be retained for public open space.

Direction 3.1 Residential Zones is relevant to the proposal. The direction provides that a planning proposal must not reduce the permissible residential density of land.

The proposal seeks to rezone parts of the subject land from part B2 Local Centre and part R3 Medium Density Residential to R2 Low Density Residential and RE1 Public Recreation. The R2 and RE1 zones do not permit as wide a range of residential accommodation as the R3 zone. However as previously discussed there is a significant area of undeveloped R3 zoned land adjoining the subject site which will provide adequate medium density housing opportunities. The R2 zone also permits the development of secondary dwellings which can provide a low cost low density residential option. The lots to be zoned RE1 have already been dedicated to Council as open space or have been identified as future open space as part of a subdivision approval.

The Direction provides that the proposal may be inconsistent with the terms of the direction if the inconsistency is justified by a strategy or study or is of minor significance. The rezoning of 98 lots from R3 to R2 is considered to be of minor significance in the context of the housing supply for Ballina Shire, and therefore the inconsistency is justified in accordance with the terms of the direction.

Direction 3.5 Development Near Licensed Aerodromes is relevant to the proposal. The direction provides that where a proposal will permit development to encroach on the Obstacle Limitation Surface (OLS) permission from the Department of the Commonwealth responsible for aerodromes must be obtained. The proposal applies to land which is above the 46.5m AHD inner horizontal surface contour for the OLS for Ballina Airport.

Council has indicated it will consult with the relevant Commonwealth department. The proposal is therefore inconsistent with the direction until this consultation has occurred.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. Part of the subject land 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.

Direction 5.3 Farmland of State and Regional Significance on the NSW Far North Coast is relevant to the proposal. The direction provides that a planning proposal must not rezone regionally significant farmland for urban purposes.

The planning proposal is inconsistent with this direction as very small area of land of approximately 4000 square metres in Lot 318, which is currently deferred from the Ballina LEP 2012, is proposed to be zoned RE1 Public Recreation. This land is identified as regionally significant farmland.

The direction provides that a planning proposal may be inconsistent with the direction if it is consistent with the Far North Coast Regional Strategy (FNCRS) or the Northern Rivers Farmland Protection Project – Final Recommendations, February 2005. The subject land is located within the town and village growth boundary identified by the FNCRS.

It is also considered to be consistent with the planning principles of the Northern Rivers Farmland Protection Project. The land is on the edge of the identified regionally significant farmland, and its rezoning to RE1 would not adversely affect the ability of other regionally significant farmland to be used for agriculture. The land is adjacent to existing residential development and is owned by Council. The application of an RE1 zone to this land would provide a buffer between the residential land and future agricultural activities which may reduce the possibility of land use conflict. This area of land is disconnected from other cleared, privately owned farmland by significant native vegetation. It is considered that a RE1 zone is appropriate in this instance and that the inconsistency of the proposal with the direction is justified in accordance with the terms of the direction.

Direction 6.2 Reserving land for public purposes is relevant to the planning proposal. The Direction states that a planning proposal should not create alter or reduce zonings of land for public purposes without the approval of the relevant public authority and the Secretary of the Department.

The proposal seeks to rezone several areas of land from R2 and R3 to RE1 Public Recreation. This is proposed since the subject areas are either owner by Council and used as open space or will be dedicated to Council as open space as part of a subdivision consent. The Council's approval to the rezoning is implicit in the planning proposal which proposes the RE1 zone. It is considered that the Secretary's delegate can agree to the proposed rezoning of the land to RE1 Public Recreation.

The proposal is otherwise consistent with S117 Directions.

Environmental social
economic impacts :

The subject land is urban zoned land which is cleared of significant native vegetation and has been developed, or approved for residential uses or public open space. There is no likelihood that the proposal will adversely affect critical habitat or threatened species, populations or ecological communities or their habitats.

The subject land has already been developed or identified for low density residential uses or public open space and no adverse environmental impacts are expected from the proposed rezoning of the land. The continuation of urban land uses will not result in significant social or economic impacts from the proposed rezoning.

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Assessment Process

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

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **NSW Rural Fire Service**

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
Ballina Council Cover Letter Ballina Heights Estate planning proposal.pdf	Proposal Covering Letter	Yes
Planning Proposal BSCPP 14 009 - Ballina HeightsEstate.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.2 Caravan Parks and Manufactured Home Estates**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 3.5 Development Near Licensed Aerodromes**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**

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5.1 Implementation of Regional Strategies

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

Additional Information :

It is recommended that;

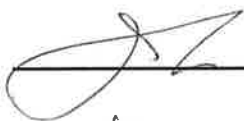
1. The planning proposal should proceed as a 'routine' planning proposal.
2. A community consultation period of 14 days is necessary.
3. The planning proposal is to be completed within 9 months.
4. A written authorisation to exercise delegation be issued to Ballina Shire Council for this planning proposal.
5. A delegate of the Secretary agree that the inconsistency of the proposal with S117 Directions 1.1, 2.1, 3.1 and 5.3 are justified in accordance with the terms of the direction.
6. A delegate of the Secretary agree to rezoning areas of the subject land RE1 Public Recreation as required by S117 Direction 6.2 Reserving Land for Public Purposes
7. The RPA consult with the Department of the Commonwealth responsible for aerodromes in accordance with S117 Direction 3.5 Development Near Licensed Aerodromes.
8. The RPA consult with the Commissioner of the NSW Rural Fire Services in accordance with S117 Direction 4.4 Planning for Bush Fire Protection.

Supporting Reasons :

The reasons for the recommendation are as follows;

1. The proposal to rezone the subject land from part B2 Local Centre and R3 Medium Density Residential to R2 Low Density Residential and RE1 Public Recreation is not inconsistent with the Far North Coast Regional Strategy, and the inconsistencies with the S117 directions are of minor significance or are justified in accordance with the terms of the directions.
2. The proposal will ensure the zoning of the land is consistent with the development consents for low density residential subdivision and the preferred use of the land.

Signature:



Printed Name:

JIM CLARK

Date:

17 November 2014