



Planning Proposal 22/004

» *General Amendments* *2022*

Ballina Local Environmental Plan 2012

December 2022 (V2 Exhibition) 22/84732

ballina
shire council



40 cherry street • po box 450 • ballina nsw 2478
t 1300 864 444 • e council@ballina.nsw.gov.au

ballina.nsw.gov.au

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1. Introduction

1.1 Summary of Planning Proposal

This planning proposal seeks to amend the Ballina Local Environmental Plan (LEP) 2012 to improve the interpretation and accuracy of the plan. The amendment relates to two separate issues as summarised in Table 1 below. Further discussion on each item is provided in Section 3 of this planning proposal.

Table 1: Summary of Proposed LEP Amendments

Item	Location	Affects	Details
1	Ascot Road, Ballina	Map: HOB_006	Amend Height of Building (HOB) standard from 8.5m to 10m for lots on northern and southern side of Ascot Road, Ballina to provide consistency with the 10m HOB standard that applies to the adjacent Southern Cross Industrial Estate.
2	Airspace operations (Shire wide provisions)	Clause 7.5	Amend wording of clause to remove the requirement for consultation with the relevant airport authority in relation to proposed residential development and make consultation discretionary for this form of development. The aim is to reduce the administrative requirement associated with dwellings and other forms of residential development in planned residential areas.

1.2 Council Resolutions

The planning proposal was presented to the Council at its Ordinary meeting held in October 2022 and the Council resolved as follows:

1. That Council endorses, for Gateway determination, the amendments to Ballina Local Environmental Plan 2012 outlined in the planning proposal contained in Attachment 1 (BSCPP 22/004).
2. That Council submits the planning proposal contained in Attachment 1 to the NSW Department of Planning and Environment for review and Gateway determination.
3. That upon an affirmative Gateway determination being received from the Department of Planning and Environment the procedural steps associated with progression of the planning proposal, including public exhibition, be undertaken.
4. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
5. That Council receive a further report on the proposal following the completion of the public exhibition of the planning proposal.

1.3 Gateway Determination

A Gateway determination was issued on 25 November 2022 allowing the planning proposal to proceed subject to conditions. Appendix 4 contains a copy of the Gateway determination.

2. Objectives & Intended Outcomes

The objective of this planning proposal is to amend the Ballina LEP 2012 to:

- Apply a 10 metre Height of Building standard for certain lots in Ascot Road, Ballina.
- Amend Clause 7.5 to remove the requirement for consultation in relation to proposed residential development in existing planned residential areas.

The intended outcomes are to ensure the BLEP 2012 functions efficiently and that its provisions are up to date and reflect the community's expectations.

3. Explanation of Provisions

The amendments contained in this planning proposal are detailed below.

The exact wording of the proposed amendments will be determined in conjunction with the NSW Parliamentary Counsels Office.

Item 1: Ascot Road, Ballina

Issue and Justification

At its Ordinary meeting held 25 February 2021, Council approved DA 2020/766 for the construction of an industrial complex containing two buildings to be used for light/general industrial and a gymnasium and take away food and drink premises on part of Lot 8 DP 1262723, Ascot Road, Ballina. Figure 1 below identifies the subject land (Lot 8), with the blue star indicating the portion of Lot 8 to which DA 2020/766 relates.



Figure 1: Lot 8 DP 1262723, Ascot Road, Ballina

The subject land is situated within a largely developed urban area that is characterised by industrial uses (Southern Cross Industrial Estate) to the south and west, residential uses to the north and cleared grassland to the east.

In its consideration of DA 2020/766, the Council approved a variation to Clause 4.3 Height of buildings (HOB) development standard of 8.5 metres to enable a building with a maximum height of 9.997m to be constructed on the site. The exceedance of the height controls was requested to facilitate future adaptable re-use for a range of other industrial and related uses that are permitted in the IN1 zone.

The underlying objective of the HOB development standard is to ensure that the proposed building height is compatible with the bulk, scale and character of the locality and to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality.

A review of the rationale associated with the introduction of the BLEP 2012 (and the current building height standard) has not identified a specific reason for the height for this particular land parcel and the surrounding (undeveloped) area, which is subject to the IN1 General Industrial zone under the terms of the BLEP 2012, being set at 8.5m as opposed to 10m for other parts of the Southern Cross Industrial Estate. Figures 2 and 3 shows the land within Ascot Road zoned IN1 (outlined in red) that is subject to the 8.5m HOB standard.

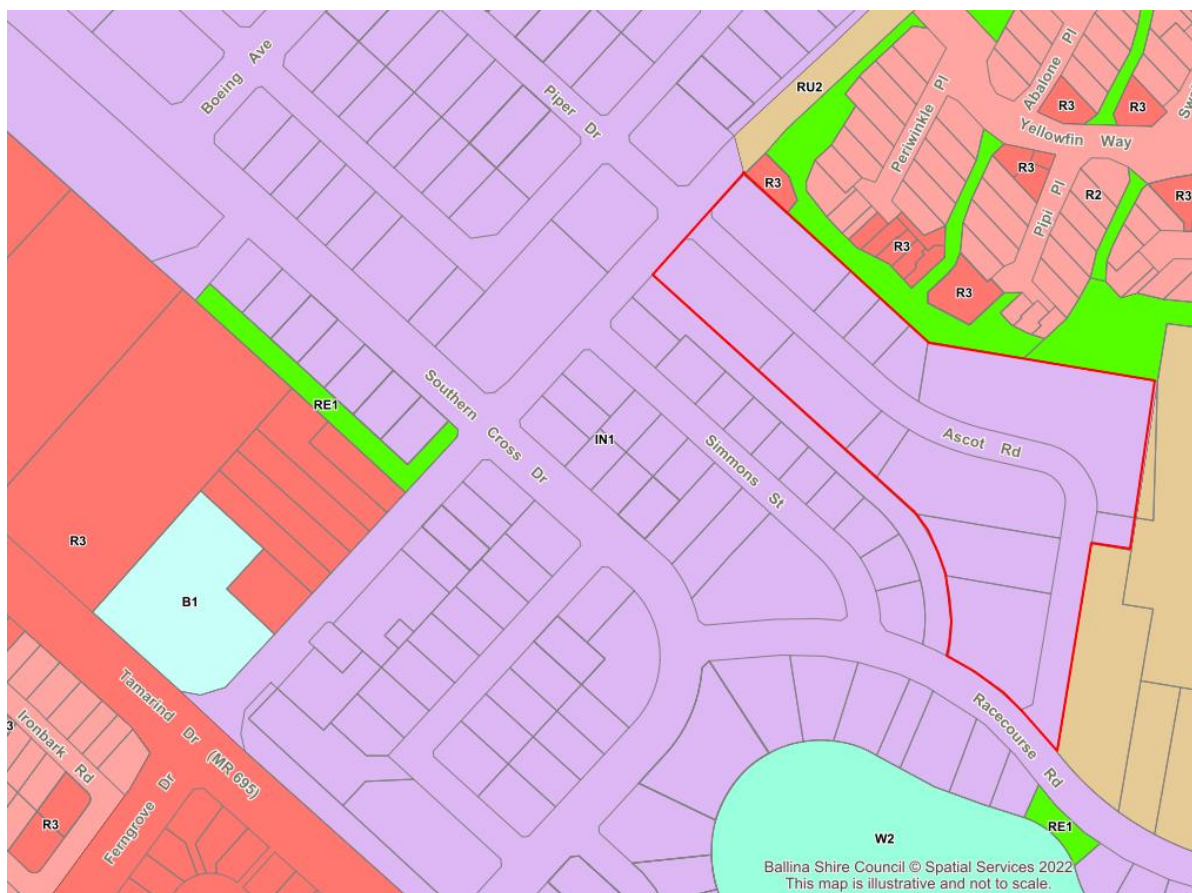


Figure 2: Land Use Zone (LZN) of the subject land and surrounding locality.



Figure3: Height of Building (HOB) controls within the immediate and surrounding locality

Proposed Amendment

It is recommended that BLEP 2012 Map Sheet HOB_006 be amended by applying a 10m HOB standard for the lots outlined in red in Figure 3 above.

Item 2: Clause 7.5 – Airspace operations

Issue and Justification

This clause requires that any development applications involving proposals that would encroach into the Obstacle Limitation Surface (OLS) of the Ballina Byron Gateway Airport must be referred to the relevant Commonwealth agencies for comment. This includes development applications for dwelling houses and other forms of residential development that are located in planned residential areas, such as Cumbalum and Lennox Head.

The requirement for consultation in respect to proposed residential development in these areas is onerous and unnecessary, particularly given that consultation is generally undertaken at rezoning stage. In the case of Cumbalum Precincts A and B, airport commitments were addressed within the planning proposal to rezone the land to residential zones, and consultation occurred with the relevant Commonwealth agencies, being the Ballina Byron Gateway Airport, the Civil Aviation Safety Authority (CASA) and Airservices Australia (ASA).

Both CASA and ASA indicated they had no issues with the rezoning proceeding, provided that airport management were also in agreement and that hazard lighting in the vicinity of Cumbalum Precinct A be installed. Airport management advised they did not object to the rezoning. The matter of hazard lighting remains the responsibility of airport management.

It is proposed to amend the wording of the clause to remove the requirement for consultation with the relevant airport authority in relation to proposed residential development and make consultation discretionary for this form of development. The aim is to reduce the administrative requirement associated with dwellings and other forms of residential development in planned residential areas.

In accordance with condition 1 of the Gateway determination, a map of the land affected by Clause 7.5 Airspace operations of Ballina LEP 2012 is provided in Appendix 1.

Proposed Amendment

Clause 7.5 is reproduced below, with proposed amendments to subclause 2 and new subclause 2A noted in red text:

7.5 Airspace operations

- (1) The objectives of this clause are as follows—
 - a) to provide for the effective and ongoing operation of the Ballina Byron Gateway Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,
 - b) to protect the community from undue risk from that operation.
- (2) If a development application is received and the consent authority is satisfied that the proposed development (**other than residential accommodation**) will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.
- (2A) If a development application is received for residential accommodation and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must consider any comments that have been provided in relation to the development by the relevant Commonwealth body.**

- (3) The consent authority may grant development consent for the development if the relevant Commonwealth body advises that—
 - (a) the development will penetrate the Limitation or Operations Surface but it has no objection to its construction, or
 - (b) the development will not penetrate the Limitation or Operations Surface.
- (4) The consent authority must not grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Limitation or Operations Surface and should not be constructed.
- (5) In this clause—

Limitation or Operations Surface means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the *Obstacle Limitation Surface Map* or the *Procedures for Air Navigation Services Operations Surface Map* for the Ballina Byron Gateway Airport.

relevant Commonwealth body means the body, under Commonwealth legislation, that is responsible for development approvals for development that penetrates the Limitation or Operations Surface for the Ballina Byron Gateway Airport.

4. Justification

4.1 Section A – Need for the planning proposal

Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No. The amendments are housekeeping changes as a result of a general review of the function and operation of the LEP.

Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. A planning proposal is the appropriate mechanism for achieving the proposed changes to the Ballina LEP 2012.

4.2 Section B – Relationship to strategic planning framework

Q3 Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The *North Coast Regional Plan 2036* is the current strategic planning document applicable to the Ballina Shire. It provides the regional framework for the consideration of policy development and the overall vision of the future.

The planning proposal is generally consistent with the objectives and actions set out in the Regional Plan as they seek to ensure the efficient operation of the Ballina LEP 2012.

A draft updated *North Coast Regional Plan 2041* was exhibited in July / August 2022. The planning proposal is generally consistent with the goals and objectives of the draft Plan.

Q4 Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

Ballina Shire Council Community Strategic Plan 2017-2027 (CSP)

The planning proposal is consistent with the elements and specified outcomes contained within Council's CSP as its objectives align with the principles of good governance and ensuring that planning instruments are operating optimally.

Ballina Shire Local Strategic Planning Statement 2020-2040 (LSPS)

The planning proposal is consistent with the themes and planning priorities contained within the LSPS as the proposed amendments will achieve a more functional local environmental plan that will better serve the community's needs.

Q5 Is the planning proposal consistent with any other applicable State and regional studies or strategies?

There are no other relevant state or regional studies or strategies relevant to the planning proposal.

Q6 Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The planning proposal is generally consistent with applicable State Environmental Planning Policies.

Q7 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 Directions)?

Yes. A number of section 9.1 Directions are relevant to the planning proposal. A section 9.1 Direction checklist is provided at Appendix 2.

4.3 Section C – Environmental, social and economic impact

Q8 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

There is no likelihood of any adverse impacts on critical habitat or threatened species.

Q9 Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

There are no environmental effects resulting from this planning proposal.

Q10 Has the planning proposal adequately addressed any social and economic effects?

The planning proposal is considered likely to achieve positive social and economic effects by increasing the height of building standard in respect to an existing industrial area and thereby allowing better design outcomes to satisfy the needs of industrial type development, and through the reduction of airport referral requirements in respect to proposed residential development located in planned residential areas.

4.4 Section D – Infrastructure (Local, State and Commonwealth)

Q11 Is there adequate public infrastructure for the planning proposal?

There is no demand for public infrastructure arising from this planning proposal.

4.5 Section E – State and Commonwealth Interests

Q12 What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

Consultation will be undertaken with relevant agencies as required by the Gateway determination.

5. Mapping

The following map will be prepared following public exhibition (Appendix 1):

- Map 1 – Height of Building Map Sheet HOB_006

In accordance with condition 1 of the Gateway determination, a map of the land affected by Clause 7.5 Airspace operations of Ballina LEP 2012 is provided in Appendix 1.

6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. The Gateway determination specifies that the planning proposal must be made publicly available for a minimum period of 20 days.

7. Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	December 2022
Government Agency Consultation	February 2023
Public Exhibition Period	February 2023
Public Hearing	N/A
Submissions Assessment	March 2023
PPA Assessment of Planning Proposal and Exhibition Outcomes	March 2023
Submission of Endorsed LEP to DPIE for Finalisation	N/A
PPA Decision to Make the LEP Amendment (if delegated) #	April 2023
Forwarding of LEP Amendment to DPIE for Notification (if delegated)	May 2023

Council has been issued with local plan-making authority functions for finalisation of this LEP amendment.

8. Appendices

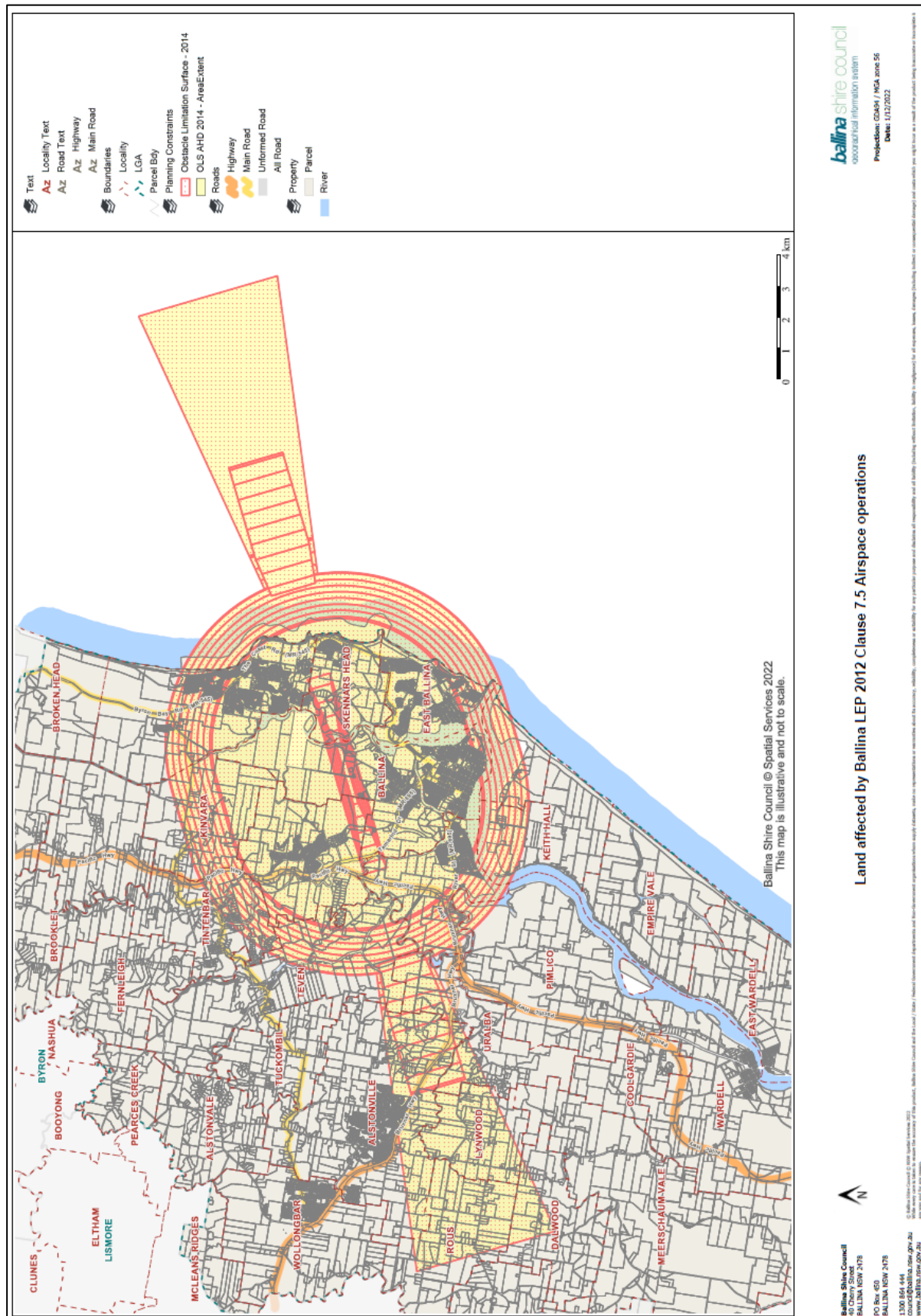
Appendix 1 – Maps

The following map will be prepared following public exhibition:

Map 1 – Height of Building Map Sheet HOB_006

In accordance with condition 1 of the Gateway determination, a map of the land affected by Clause 7.5 Airspace operations of Ballina LEP 2012 is provided on the following page.

Land affected by Ballina LEP 2012 Clause 7.5 Airspace Operations:



Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 Ministerial Direction Checklist Planning Proposal – BLEP 2012 – General Amendments 2022	
Direction No.	Compliance of Planning Proposal
Focus area 1: Planning Systems	
1.1 Implementation of Regional Plans	Consistent. This planning proposal is generally consistent with the North Coast Regional Plan 2036.
1.2 Development of Aboriginal Land Council land	Does not apply to planning proposal.
1.3 Approval and Referral Requirements	Consistent. This planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
1.4 Site Specific Provisions	Consistent. This planning proposal does not introduce any site specific provisions.
Focus area 1: Planning Systems – Place-based	
1.5 to 1.17	These Directions do not apply to Ballina Shire.
Focus area 2: Design and Place	
Focus area 3: Biodiversity and Conservation	
3.1 Conservation Zones	Consistent. This planning proposal does not seek to alter the protection and conservation of environmentally sensitive areas.
3.2 Heritage Conservation	Consistent. This planning proposal does not seek to alter the protection and conservation of any heritage items or conservation areas.
3.3 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Consistent. This planning proposal does not seek to alter any environment protection zone.
3.5 Recreation Vehicle Areas	Consistent. This planning proposal does not seek to enable land to be developed for the purpose of a recreation vehicle area.
Focus area 4: Resilience and Hazards	
4.1 Flooding	Consistent. This planning proposal does not seek to create, remove or alter a zone or provision that affects flood prone land.
4.2 Coastal Management	Consistent. This planning proposal does not seek to alter any zoning or provisions relating to land within the coastal zone.
4.3 Planning for Bushfire Protection	Inconsistent. Consultation will be undertaken with the NSW Rural Fire Service in accordance with this Direction and the terms outlined in the Gateway determination.
4.4 Remediation of Contaminated Land	Consistent. This planning proposal does not alter or affect any contaminated land.

Section 9.1 Ministerial Direction Checklist	
Planning Proposal – BLEP 2012 – General Amendments 2022	
Direction No.	Compliance of Planning Proposal
4.5 Acid Sulfate Soils	Consistent. This planning proposal does not alter any acid sulfate soils.
4.6 Mine Subsidence and Unstable Land	Consistent. This planning proposal does not alter/impact any mine subsidence or unstable land.
Focus area 5: Transport and Infrastructure	
5.1 Integrating Land Use and Transport	Consistent. This planning proposal will not result in any negative impacts on accessibility or transport movements.
5.2 Reserving Land for Public Purposes	Consistent. This planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
5.3 Development Near Regulated Airports and Defence Airfields	Inconsistent. This planning proposal alters Clause 7.5 Airspace operations of BLEP 2012 to remove the requirement for consultation with the relevant airport authority in relation to proposed residential development and make consultation discretionary for this form of development. The aim is to reduce the administrative requirement associated with dwellings and other forms of residential development in planned residential areas. Consultation with the relevant airport authorities will occur as specified in the Gateway determination.
5.4 Shooting Ranges	Does not apply to planning proposal.
Focus area 6: Housing	
6.1 Residential Zones	Consistent. This planning proposal does not alter any residential zoning or permissibility.
6.2 Caravan Parks and Manufactured Home Estates	Consistent. This planning proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.
Focus area 7: Industry and Employment	
7.1 Business and Industrial Zones	Consistent. This planning proposal does not alter any business zoning or permissibility.
7.2 Reduction in non-hosted short term rental accommodation period	Does not apply to planning proposal.
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Consistent. This planning proposal does not alter or impact commercial or retail development along the Pacific Highway.
Focus area 8: Resources and Energy	
8.1 Mining, Petroleum Production and Extractive Industries	Consistent. This planning proposal does not include provisions that would trigger the application of this direction.
Focus area 9: Primary Production	
9.1 Rural Zones	Consistent. This planning proposal does not seek to alter any rural zoning or permissibility.

Section 9.1 Ministerial Direction Checklist Planning Proposal – BLEP 2012 – General Amendments 2022	
Direction No.	Compliance of Planning Proposal
9.2 Rural Lands	<p>Consistent.</p> <p>This planning proposal does not seek to alter any rural or conservation zones or alter existing minimum lot size within a rural or conservation zone.</p>
9.3 Oyster Aquaculture	Does not apply to planning proposal.
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	<p>Consistent.</p> <p>This planning proposal does not propose the rezoning of identified significant farmland for urban, residential or rural residential purposes.</p>

Appendix 3 – Council Reports

8.3 Planning Proposal - Housekeeping Amendment - Ballina LEP 2012

8.3 Planning Proposal - Housekeeping Amendment - Ballina LEP 2012

Section	Strategic Planning
Objective	To seek direction from Council concerning the progress of a planning proposal relating to general housekeeping amendments to the Ballina Local Environmental Plan 2012.

Background

Council regularly undertakes housekeeping reviews of the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) to identify minor improvements that can be made and ensure that the plan is operating efficiently.

Past amendments have included minor updates to mapping as a result of improved cadastral information, however the NSW Department of Planning and Environment have recently advised these matters can now be resolved without the need for an amendment to the LEP. Accordingly, these minor updates to the mapping will no longer be included in housekeeping amendments to the LEP.

This housekeeping review seeks to make two low impact, but timely, amendments to the Ballina LEP 2012, as detailed within this report and the attached planning proposal (Attachment 1).

The purpose of this report is to seek direction from Council on the progression of a planning proposal to undertake the identified changes to the LEP.

Key Issues

- Function and operation of the Ballina LEP 2012
- Minor adjustments to the content of the Ballina LEP 2012

Discussion

Table 1 provides a summary of the proposed amendments to the LEP that are recommended as a result of a housekeeping review of the plan. These amendments are discussed in further detail below and are also outlined in the draft planning proposal contained in Attachment 1.

Table 1: Summary of Proposed LEP Amendments

Item	Location	Affects	Details
1	Ascot Road, Ballina	Map: HOB_006	Amend Height of Building (HOB) standard from 8.5m to 10m for lots on northern and southern side of Ascot Road, Ballina to provide consistency with the 10m HOB standard that applies to the adjacent Southern Cross Industrial Estate.

8.3 Planning Proposal - Housekeeping Amendment - Ballina LEP 2012

Item	Location	Affects	Details
2	Airspace operations (Shire wide provisions)	Clause 7.5	Amend wording of clause to remove the requirement for consultation with the relevant airport authority in relation to proposed residential development and make consultation discretionary for this form of development. The aim is to reduce the administrative requirement associated with dwellings and other forms of residential development in planned residential areas.

Item 1 – Height of building standard within existing industrial estate

The land to which this item relates is outlined in red in Figure 1 below ('the subject land').

It is situated within a largely developed urban area that is characterized by industrial uses (Southern Cross Industrial Estate) to the south and west, residential uses to the north and cleared grassland to the east.

The subject land is zoned IN1 General Industrial (Figure 2) under the terms of the Ballina LEP 2012 and is subject to a Height of Building (HOB) development standard of 8.5m (Figure 3).

The subject land is partly developed with existing industrial buildings, ranging in height from 5.8m to 10m (approximately).



Figure 1: Land to which the planning proposal relates, outlined in red

8.3 Planning Proposal - Housekeeping Amendment - Ballina LEP 2012



Figure 2: Land use zoning of the subject land and surrounding locality.



Figure 3: Height of Building (HOB) controls within the immediate and surrounding locality

At the 25 February 2021 Ordinary meeting, Council approved DA 2020/766 for the construction of an industrial complex containing two buildings to be used for light/general industrial and a gymnasium and take away food and drink premises on part of Lot 8 DP 1262723, Ascot Road, Ballina.

Figure 4 shows Lot 8 in DP 1262723, with the blue star indicating the portion of Lot 8 to which DA 2020/766 relates.

8.3 Planning Proposal - Housekeeping Amendment - Ballina LEP 2012

In consideration of DA 2020/766, Council approved a variation to Clause 4.3 Height of buildings (HOB) development standard of 8.5 metres to enable a building with a maximum height of 9.997m to be constructed on the site.

The exceedance of the height controls was requested to facilitate future adaptable re-use for a range of other industrial and related uses that are permitted in the IN1 zone.



Figure 4: Lot 8 DP 1262723, Ascot Road, Ballina

The underlying objective of the HOB development standard is to ensure that the proposed building height is compatible with the bulk, scale and character of the locality and to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality.

A review of the rationale associated with the introduction of the Ballina LEP 2012 (and the current building height standard) has not identified a specific reason for the height for this particular land parcel, and the surrounding (largely undeveloped) area, being set at 8.5m as opposed to 10m for other parts of the Southern Cross Industrial Estate.

As such, it would seem reasonable to amend the Ballina LEP 2012 by applying a 10m HOB standard to the subject land to match the HOB standard applied to adjoining land also zoned IN1 General Industrial.

The north-western portion of Lot 8 DP 1262723 is sited adjacent to a single storey dual occupancy building located at No. 47 North Creek Road, Ballina (Figure 5).

There is a small potential for the increase in building height to negatively impact the dual occupancy in terms of overshadowing, however the impact, if any, would be minimal due to the dual occupancy being located to the north of the subject land.

Any potential impacts can be assessed and mitigated at DA stage where overshadowing diagrams will be required to accompany any future development proposals.

8.3 Planning Proposal - Housekeeping Amendment - Ballina LEP 2012

The remaining subject lots on the northern side of Ascot Road are separated from the existing residential buildings within the North Lakes Estate by established vegetation. In addition, being located to the south of the estate, the increase in building height for these remaining lots is not expected to negatively impact on the existing dwellings or cause any further overshadowing issues to that of the existing vegetation.



Figure 5: 47 North Creek Road, Ballina (highlighted yellow)

Item 2 – Airspace operations

Clause 7.5 of the Ballina LEP 2012 requires that any development applications (DAs) involving proposals that would encroach into the Obstacle Limitation Surface (OLS) of the Ballina Byron Gateway Airport must be referred to the relevant Commonwealth agencies for comment.

This includes DAs for dwelling houses and other forms of residential development that are located in planned residential areas, such as Cumbalum and Lennox Head.

It is proposed to amend the wording of the clause to remove the requirement for consultation with the relevant airport authority in relation to proposed residential development and make consultation discretionary for this form of development.

The aim is to reduce the administrative requirement associated with dwellings and other forms of residential development in planned residential areas.

The requirement for consultation in respect to proposed residential development in these areas is onerous and unnecessary, particularly given that consultation is generally undertaken at rezoning stage.

8.3 Planning Proposal - Housekeeping Amendment - Ballina LEP 2012

In the case of Cumbalum Precincts A and B, airport commitments were addressed within the planning proposal to rezone the land to residential zones, and consultation occurred with the relevant Commonwealth agencies, being the Ballina Byron Gateway Airport, the Civil Aviation Safety Authority (CASA) and Airservices Australia (ASA).

Both CASA and ASA indicated they had no issues with the rezoning proceeding, provided that airport management were also in agreement and that hazard lighting in the vicinity of Cumbalum Precinct A be installed. Airport management advised they did not object to the rezoning.

The matter of hazard lighting remains the responsibility of airport management.

Given the above, and the State Government's focus on housing delivery, it would seem reasonable to exclude planned residential development from the consultation requirements.

Clause 7.5 is reproduced below, with proposed amendments to subclause 2 and a new subclause 2A noted in red text:

7.5 Airspace operations

- (1) The objectives of this clause are as follows—
 - a) to provide for the effective and ongoing operation of the Ballina Byron Gateway Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,
 - b) to protect the community from undue risk from that operation.
- (2) If a development application is received and the consent authority is satisfied that the proposed development (**other than residential accommodation**) will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.
- (2A) If a development application is received for residential accommodation and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must consider any comments that have been provided in relation to the development by the relevant Commonwealth body.**
- (3) The consent authority may grant development consent for the development if the relevant Commonwealth body advises that -
 - (a) the development will penetrate the Limitation or Operations Surface but it has no objection to its construction, or
 - (b) the development will not penetrate the Limitation or Operations Surface.
- (4) The consent authority must not grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Limitation or Operations Surface and should not be constructed.
- (5) In this clause -

8.3 Planning Proposal - Housekeeping Amendment - Ballina LEP 2012

Limitation or Operations Surface means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the *Obstacle Limitation Surface Map* or the *Procedures for Air Navigation Services Operations Surface Map* for the Ballina Byron Gateway Airport.

relevant Commonwealth body means the body, under Commonwealth legislation, that is responsible for development approvals for development that penetrates the Limitation or Operations Surface for the Ballina Byron Gateway Airport.

Delivery Program Strategy / Operational Plan Activity

Processing of LEP amendments and planning proposals is identified in Council's adopted Delivery Program and Operational Plan as follows:

- HE3.1 – Implement plans that balance the built environment with the natural environment.
- HE3.1j – Maintain Local Environmental Plan (LEP).

Community Consultation Policy

Community engagement (including government agency referrals) for this planning proposal will be undertaken in accordance with Council's Community Participation Plan and the conditions required under the Department of Planning and Environment's (DPE) Gateway Determination, when issued.

Financial / Risk Considerations

The work program associated with LEP amendment requests and planning proposals is being undertaken within existing resources.

Options

Option 1 – Proceed with the planning proposal

The planning proposal seeks to make relatively minor amendments to the Ballina LEP 2012 to improve the function and operation of the LEP.

This approach involves the submission of the planning proposal contained in Attachment 1 to the DPE for Gateway determination. If supported by DPE, the proposal will be subject to a public exhibition period prior to further consideration by Council.

Under this approach it is also proposed that Council would seek to exercise delegated plan making functions.

This is the recommended approach.

Option 2 – Amend the planning proposal

It is open to the Council to amend the planning proposal, particularly in relation to Item 1 which proposes to amend the height of building (HOB) development standard with respect to lots within Ascot Road, Ballina.

8.3 Planning Proposal - Housekeeping Amendment - Ballina LEP 2012

Instead of applying a HOB standard of 10m across all of the subject land identified by red outline in Figure 1, Council could resolve to exclude the north-western portion of Lot 8 DP 1262723, if it is considered that the increase in building height in this location could negatively impact on the existing dual occupancy building located at No. 47 North Creek Road, Ballina.

This option is not recommended as any potential overshadowing impacts would be minimal due to the location of the dual occupancy being north of the subject land and can be assessed and mitigated at DA stage.

Option 3 – Defer the planning proposal

This approach is not recommended given the relatively minor nature of the amendments, and the urgency surrounding the amendment to Clause 7.5 airspace operations. The making of this amendment will significantly reduce the administrative requirements for referral of DAs for dwelling houses and other forms of residential development located in planned residential areas.

Deferral of the planning proposal is not recommended.

Option 4 – Cease further action in relation to the planning proposal

For the same reasons outlined in relation to option 3, this approach is not recommended.

RECOMMENDATIONS

1. That Council endorses, for Gateway determination, the amendments to Ballina Local Environmental Plan 2012 outlined in the planning proposal contained in Attachment 1 (BSCPP 22/004).
2. That Council submits the planning proposal contained in Attachment 1 to the NSW Department of Planning and Environment for review and Gateway determination.
3. That upon an affirmative Gateway determination being received from the Department of Planning and Environment the procedural steps associated with progression of the planning proposal, including public exhibition, be undertaken.
4. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
5. That Council receive a further report on the proposal following the completion of the public exhibition of the planning proposal.

Attachment(s)

1. BSCPP 22/004 - General Amendments 2022 - Planning Proposal (V1 Initiation Gateway)

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET BALLINA,
ON 27/10/22 AT 9.00AM**

8.3 Planning Proposal - Housekeeping Amendment - Ballina LEP 2012

271022/8 RESOLVED

(Cr Phillip Meehan/Cr Simon Chate)

1. That Council endorses, for Gateway determination, the amendments to Ballina Local Environmental Plan 2012 outlined in the planning proposal contained in Attachment 1 (BSCPP 22/004).
2. That Council submits the planning proposal contained in Attachment 1 to the NSW Department of Planning and Environment for review and Gateway determination.
3. That upon an affirmative Gateway determination being received from the Department of Planning and Environment the procedural steps associated with progression of the planning proposal, including public exhibition, be undertaken.
4. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
5. That Council receive a further report on the proposal following the completion of the public exhibition of the planning proposal.

Cr Jeff Johnson left the meeting at 12:07 pm.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Jeff Johnson and Cr Eoin Johnston

Appendix 4 – Gateway Determination



Department of Planning and Environment

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

Our ref: IRF22/3990

Via email: council@ballina.nsw.gov.au
Leah.Toole@ballina.nsw.gov.au

Dear Mr Hickey

Planning proposal PP-2022-3879 to amend Ballina Local Environmental Plan 2012

I am writing in response to the planning proposal you have forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to undertake Ballina LEP 2012 General Housekeeping Amendments 2022.

As delegate of the Minister for Planning, I have determined that the planning proposal should proceed subject to the conditions in the enclosed gateway determination.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant applicable directions of the Minister under section 9.1 of the EP&A Act, including Directions 4.3 Planning for Bushfire Protection and 5.3 Development Near Regulated Airports and Defence Airfields. Council should ensure this occurs prior to the LEP being made.

Considering the nature of the planning proposal I have determined that Council may exercise local plan-making authority functions in relation to the planning proposal.

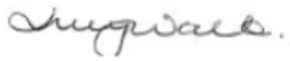
The proposed local environmental plan (LEP) is to be finalised within 6 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Should Council seek to make the proposed LEP, the request to draft the LEP should be made directly to Parliamentary Counsel's Office well in advance of the date the LEP is projected to be made. A copy of the request should be forwarded to the Department of Planning and Environment.

The NSW Government has committed to reduce the time taken to complete LEPs. To meet these commitments, the Minister may appoint an alternate planning proposal authority if Council does not meet the timeframes outlined in the gateway determination.

The Department's categorisation of planning proposals in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, 2021) is supported by category specific timeframes for satisfaction of conditions and authority and Government agency referrals, consultation, and responses. Compliance with milestones will be monitored by the Department to ensure planning proposals are progressing as required.

Should you have any enquiries about this matter, I have arranged for Carlie Boyd to assist you. Ms Boyd can be contacted on 6643 6404.

Yours sincerely



25/11/2022

Lucy Walker
Acting Director, Northern Region
Local and Regional Planning

Encl: Gateway determination



Department of Planning and Environment

Gateway Determination

Planning proposal (Department Ref: PP-2022-3879): Ballina LEP 2012 Housekeeping Amendments 2022

I, the Acting Director, Northern Region, at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ballina Local Environmental Plan 2012 to make general housekeeping amendments should proceed subject to the following conditions.

The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:

- (a) the planning proposal authority has satisfied all the conditions of the gateway determination;
- (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the EP&A Act or the Secretary has agreed that any inconsistencies are justified; and
- (c) there are no outstanding written objections from public authorities.

The LEP should be completed by or within 6 months from the date of the Gateway determination.

Gateway Conditions

1. Prior to consultation the proposal is to be amended to include:
 - a map of the land affected by Clause 7.5 Airspace operations of Ballina LEP 2012; and
 - reference to the draft North Coast Regional Plan 2041
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 20 days; and
 - (b) the planning proposal 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 *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021).

3. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:

- Ballina Byron Gateway Airport;
- Civil Aviation Safety Authority (CASA); and
- Airservices Australia (ASA)
- NSW Rural Fire Service

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(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).

Dated 25th day of November 2022.



Lucy Walker
Acting Director, Northern Region
Local and Regional Planning
Department of Planning and Environment

Delegate of the Minister for Planning