

8.4 Planning Proposal - Ballina LEP 2012 General Amendments

Section Strategic Planning

Objective To inform the Council of the outcomes of the public exhibition of Planning Proposal 22/004 relating to general housekeeping amendments to the Ballina Local Environmental Plan 2012 and to seek direction on the finalisation of this LEP amendment.

Background

As part of a periodic review of the Ballina Local Environmental Plan 2012 (the LEP), staff have identified improvements to ensure the efficient operation of the LEP.

This matter was reported to the October 2022 Ordinary meeting and 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.*

The planning proposal has been publicly exhibited following the receipt of an affirmative Gateway determination.

The purpose of this report is to seek direction on the finalisation of the planning proposal following consultation and public exhibition.

Attachment 1 contains a copy of the exhibited planning proposal.

Key Issues

- Efficient functioning and operation of the Ballina LEP 2012
- Outcomes of the public exhibition and consultation process
- Finalisation of the LEP amendment

Discussion

Table 1 provides a summary of the proposed amendments to the LEP that are recommended. Further details regarding the amendments are contained in the planning proposal 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.
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.

The planning proposal was referred to the NSW Department of Planning and Environment (DPE) for Gateway determination on 2 November 2022.

A Gateway determination allowing the planning proposal to proceed to public exhibition was issued on 25 November 2022. A copy of the Gateway determination is included in Appendix 4 to the planning proposal provided, which is included as Attachment 1 to this report.

The DPE approved an alteration to the Gateway determination on 30 May 2023. The alteration extended the period in which the LEP is required to be completed from 6 to 9 months or by 25 August 2023. The Gateway determination required that Council amend the planning proposal prior to consultation to include a map of the land affected by Clause 7.5 Airspace operations of Ballina LEP 2012 and to refer to the draft North Coast Regional Plan 2041.

The Gateway determination also required consultation with the following authorities:

- Ballina-Byron Gateway Airport
- Civil Aviation Safety Authority (CASA)
- Air Services Australia (ASA) and
- NSW Rural Fire Service.

Further details are provided under the consultation section of this report.

In addition to this, the agreement of the Department's Secretary is required in respect to compliance with section 9.1 Ministerial Directions 4.3 Planning for Bushfire Protection and 5.3 Development Near Regulated Airports and Defence Airfields. The Secretary's agreement is required to be obtained prior to the LEP amendment being made.

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 Engagement Strategy

The planning proposal was publicly exhibited from 12 December 2022 to 27 January 2023. Notification included the planning proposal being displayed on Council's website and at the Customer Service Centre.

Seven landowners of the affected properties in Ascot Road, Ballina were advised of the planning proposal and public exhibition via letter.

In response to the public exhibition no written submissions were received.

Consultation was undertaken with the relevant airport authorities and the NSW Rural Fire Service (NSW RFS) as required by the Gateway determination. A summary of responses is provided in Table 2 below. Copies of consultation responses are provided in Attachment 2.

Table 2: Summary of government agency consultation

Government Agency	Comments
1. Ballina-Byron Gateway Airport	<p>Ascot Road Height Limit</p> <p>Raise no objection to the increased height limit from 8.5 to 10 metres.</p> <p>Clause 7.5 – Airspace operations clause amendments.</p> <p>Advise that this is a proposed amendment to the LEP removing the requirement for consultation with the airport authority in relation to proposed residential development that will potentially infringe the airport's Obstacle Limitation Surface.</p> <p>BBGA initially did not support this proposed amendment as it is felt this is not consistent with the requirements outlined in Part 139 of the Civil Aviation Safety Authority's Manual of Standards in that an aerodrome operator must report to CASA, in writing, any infringement, or potential infringement, of the Obstacle Limitation Surface. Refer Section 7.18 Part 139 of the Manual of Standards.</p> <p>Note it has subsequently been agreed that the</p>

Government Agency	Comments
	concerns raised by BBGA can be suitably managed.
2. Civil Aviation Safety Authority (CASA)	CASA advised that it has no objection to the amendments to the standard height limit from 8.5m to 10m for the area defined in the document or the amendments to clause 7.5 regarding consultation for developments in this area, as proposed.
3. Air Services Australia (ASA)	ASA advised they do not have any specific comments to make on any aspect of this proposal. All subsequent developments proposed to be built as part of this project, or cranes required, may require separate assessment. Noting the proximity to Ballina Airport, ASA recommends any future proposals be submitted to the airport in the first instance for them to conduct their own assessment. The airport will then refer the proposal to ASA if required.
4. NSW Rural Fire Service	Advises that is has considered the information submitted and subsequently raise no concerns or issues in relation to bush fire.

Discussion - Ballina-Byron Gateway Airport (BBGA) Concerns

Clause 7.5 of Ballina LEP 2012 is reproduced below with proposed amendments shown by the 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.

BBGA has a statutory responsibility under the Civil Aviation Safety Authority's Manual of Standards (clause 7.18) as follows:

7.18 Procedures for aerodrome operators to deal with obstacles in the OLS

(1) *An aerodrome operator must:*

- (a) *monitor the OLS for the aerodrome; and*
- (b) *report to CASA, in writing, any infringement, or potential infringement, of the OLS.*

It is understood that BBGA monitors the OLS through receiving consultation advice from Council regarding proposed development. The concern initially expressed is that should the advice no longer be received then it will become more difficult to monitor the OLS.

There are alternatives available to BBGA through which it may continue to monitor the OLS. One alternative is to regularly review the list of DAs submitted via DAs online.

Another alternative is for Council to continue to advise BBGA of DAs submitted within the OLS, but not seek a response.

Following further discussion between planning and BBGA staff, it has been agreed that the BBGA can meet its requirements if the LEP amendment proceeds.

The difficulty with not making a change to the requirements of the clause is that the consultation is an absolute under the current wording.

In most cases (e.g. dwelling houses in planned residential areas) this consultation typically adds no value to the planning assessment process and usually results in at least several weeks of additional assessment time for residential development, whilst assessment staff await a response from the BBGA.

It also creates a resource demand on the BBGA.

The aim of the clause is to make consultation discretionary based on the type of development (e.g. typical residential housing in new release areas would not usually be referred under this approach because it does not result in outcomes different to what is already occurring in areas such as Banyan Hill or Epiq).

However, atypical matters, such as tall infrastructure like reservoirs and buildings with variances to the height standard, are the types of things envisaged to be referred for comment under the proposed clause.

This approach can be implemented under the proposed alteration to the LEP provision as the intended clause requires consideration of any comments provided but does not obligate the assessment process to wait for a BBGA response.

Financial / Risk Considerations

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

In accordance with the Gateway determination, Council has been authorised to exercise local plan-making authority functions in relation to the planning proposal. A completion time of 25 August 2023 is applicable to the making of the LEP.

Given that the original completion date of 25 May 2023 was unable to be achieved any further delays may result in the LEP not being able to be made.

There are no significant risks identified with the finalisation of this planning proposal.

It is recommended that Council now progress the planning proposal to finalisation.

Options

Option 1 – Finalise the Planning Proposal

This is the recommended option.

Finalisation of the planning proposal would include the preparation of the Height of Building map with respect to lots within Ascot Road, Ballina to effect the change proposed in the planning proposal (Attachment 1).

The planning proposal would also be updated to incorporate the outcomes of the public exhibition and agency consultation undertaken.

The exhibition and consultation processes have not identified any substantial issue that would warrant further delays to, or discontinuation of the planning proposal. The concerns expressed by BBGA can be suitably managed.

As indicated previously, it is also recommended that Council exercise its local plan making authority functions granted by the Department of Planning and Environment and proceed to finalise the planning proposal.

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Option 2 – Discontinue the Planning Proposal

This option would involve the discontinuation of the subject amendments, with no further action to be taken.

The purpose of the subject planning proposal is to implement amendments to improve the function, content, and consistency of the Ballina LEP 2012. The amendments seek to ensure the Ballina LEP 2012 functions efficiently and that its provisions are up to date. Consequently, this option is not recommended.

RECOMMENDATIONS

1. That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 as outlined in the planning proposal (BSCPP 22/004 Ballina LEP 2012 General Amendments) contained in Attachment 1.
2. That Council authorises the General Manager to proceed to finalise and implement Planning Proposal BSCPP 22/004 under delegated plan making authority.

Attachment(s)

1. BSCPP 22/004 - General Amendments 2022 - Planning Proposal (V2 Exhibition)
2. Agency Submissions

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220623/1 RESOLVED

(Cr Kiri Dicker/Cr Eoin Johnston)

1. That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 as outlined in the planning proposal (BSCPP 22/004 Ballina LEP 2012 General Amendments) contained in Attachment 1.
2. That Council authorises the General Manager to proceed to finalise and implement Planning Proposal BSCPP 22/004 under delegated plan making authority.

FOR VOTE - All Councillors voted unanimously.