



Ballina Local Environmental Plan 1987 (Amendment No 66)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Infrastructure and Planning, Minister for Natural Resources, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (G99/00153/PC)

CRAIG JOHN KNOWLES, M.P.,

Minister for Infrastructure and Planning
Minister for Natural Resources

2003 No 535

Clause 1 Ballina Local Environmental Plan 1987 (Amendment No 66)

Ballina Local Environmental Plan 1987 (Amendment No 66)

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Ballina Local Environmental Plan 1987 (Amendment No 66)*.

2 Aims of plan

This plan aims:

- (a) to provide environmental planning controls that will result in the management of any disturbance to acid sulfate soils in the Ballina local government area so as to minimise impacts on natural waterbodies and wetlands and on agricultural, fishing, aquaculture, urban and infrastructure activities, and
- (b) to require development consent for works, including some agricultural-related works, that would disturb soils or groundwater levels in localities identified as having acid sulfate soils, and
- (c) to require special assessment of certain development on land identified as being subject to risks associated with the disturbance of acid sulfate soils, and
- (d) to provide for a regime of self regulation by those organisations which have demonstrated to Ballina Shire Council their ability to manage acid sulfate soils.

3 Land to which plan applies

This plan applies to land within the Ballina local government area classified as class 1, 2, 3, 4 or 5 on the map marked “Ballina Local Environmental Plan 1987 (Amendment No 66)—Acid Sulfate Soils Planning Maps” deposited in the office of Ballina Shire Council.

4 Amendment of other environmental planning instruments

This plan amends:

- (a) *Ballina Local Environmental Plan 1987* as set out in Schedule 1, and
- (b) *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development* as set out in Schedule 2.

2003 No 535

Ballina Local Environmental Plan 1987 (Amendment No 66)

Schedule 1 Amendment of Ballina Local Environmental Plan 1987

Schedule 1 Amendment of Ballina Local Environmental Plan 1987

(Clause 4 (a))

[1] Clause 5 Interpretation

Insert in alphabetical order in clause 5 (1):

Acid Sulfate Soil Manual means the *Acid Sulfate Soil Manual* published from time to time by the NSW Acid Sulfate Soil Management Advisory Committee and adopted by the Director-General of the Department of Infrastructure, Planning and Natural Resources.

acid sulfate soils means actual or potential acid sulfate soils.

Acid Sulfate Soils Planning Maps means the series of maps marked “Ballina Local Environmental Plan 1987 (Amendment No 66)—Acid Sulfate Soils Planning Maps” kept in the office of the council.

actual acid sulfate soils means soils containing highly acidic soil horizons or layers resulting from the oxidation of soil materials that are rich in iron sulfides, primarily pyrite. This oxidation produces acidity in excess of the sediment’s capacity to neutralise the acidity resulting in soils of pH 4 or less.

potential acid sulfate soils means soils that contain iron sulfides or sulfidic material which have not been exposed to air and oxidised. The field pH of these soils in their unoxidised state is pH 4 or more and may be neutral or slightly alkaline.

[2] Clause 36

Insert after clause 35:

36 Development on land identified on Acid Sulfate Soils Planning Maps

(1) Consent usually required

A person must not, without the consent of the council, carry out works on land identified as being class 1, 2, 3, 4 or 5 land on the Acid Sulfate Soils Planning Maps, being the works specified for the class of land in the following table:

Class of land	Specified works
---------------	-----------------

1	Any works.
2	Works below the ground surface. Works by which the watertable is likely to be lowered.
3	Works beyond 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered beyond 1 metre below the natural ground surface.
4	Works beyond 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered beyond 2 metres below the natural ground surface.
5	Works within 500 metres of class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD in adjacent class 1, 2, 3 or 4 land.

(2) For the purposes of the table to subclause (1), **works** includes the following:

- (a) any disturbance of more than one tonne of soil (such as occurs in the carrying out of agriculture, the construction or maintenance of drains, extractive industries, dredging, the construction of artificial waterbodies (including canals, dams and detention basins) or foundations, or flood mitigation works),
- (b) any other works that are likely to lower the watertable, such as drainage works, ground water bores, wells, ground dewatering, or the like, which may lower the groundwater level in the general area.

(3) **Exception following preliminary assessment**

This clause does not require consent for the carrying out of works described in the table to subclause (1) if the land is above 10m Australian Height Datum (AHD) or if:

2003 No 535

Ballina Local Environmental Plan 1987 (Amendment No 66)

Schedule 1 Amendment of Ballina Local Environmental Plan 1987

- (a) a copy of a preliminary assessment of the proposed works undertaken in accordance with the *Acid Sulfate Soil Manual* has been given to the council, and
- (b) the council has provided written advice to the person proposing to carry out the works confirming that results of the preliminary assessment indicate the proposed works need not be carried out pursuant to an acid sulfate soils management plan prepared in accordance with the *Acid Sulfate Soil Manual*.

(4) **Considerations for consent authority**

The council must not grant a consent required by this clause unless it has considered:

- (a) the adequacy of an acid sulfate soils management plan prepared for the proposed development in accordance with the *Acid Sulfate Soil Manual*, and
- (b) the likelihood of the proposed development resulting in the discharge of acid water, and
- (c) any comments received from the Department of Land and Water Conservation within 21 days of the council having sent that Department a copy of the development application and of the related acid sulfate soils management plan.

(5) **Public authorities and private drainage boards not excepted**

This clause requires consent for development to be carried out by councils, county councils or drainage unions despite:

- (a) clause 35 and items 2 and 11 of Schedule 1 to the *Environmental Planning and Assessment Model Provisions 1980*, as adopted by this plan, and
- (b) clause 10 of *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development*.

(6) **Special provisions for council and county councils**

Despite subclause (5), the following types of development may be carried out by the council or a county council without consent of the council:

- (a) development consisting of emergency work,

-
- (b) development consisting of routine maintenance,
 - (c) development consisting of minor work,
- including development ancillary to that development, such as the carrying out of excavation work, the construction of accessways and the provision of power supplies.
- (7) If the council or a county council carries out development described in subclause (6) and encounters, or is reasonably likely to encounter, acid sulfate soils, the council or county council is to properly deal with those soils in accordance with the *Acid Sulfate Soil Manual* so as to minimise the actual or potential impact to the environment arising from the disturbance of the soils.
 - (8) **Exception for sugar cane land**

In the case of land used for the cultivation of sugar cane, this clause does not require consent for the carrying out of works if:

 - (a) an existing production area entitlement with the NSW Sugar Milling Cooperative Ltd applies to the land at the time of carrying out the works, and
 - (b) the works are carried out in accordance with a drainage management plan lodged with and endorsed by the NSW Sugar Milling Cooperative Ltd, and
 - (c) the drainage management plan has been prepared in accordance with the *NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils* (dated May 2000), or any subsequent revised version, a copy of which is available at the office of the council, and
 - (d) the *NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils* (dated May 2000), or any subsequent revised version, has been approved by the Director-General of the Department of Urban and Transport Planning in consultation with the NSW Acid Sulfate Soil Management Advisory Committee and the Department of Agriculture and has been adopted by the council, and
 - (e) the works are not carried out on any land zoned 7 (a)—Environmental Protection (Wetlands) Zone, 7 (f)—Environmental Protection (Coastal Lands) Zone or

2003 No 535

Ballina Local Environmental Plan 1987 (Amendment No 66)

Schedule 1 Amendment of Ballina Local Environmental Plan 1987

7 (1)—Environmental Protection (Habitat) Zone, unless it can be demonstrated that the land was used for cultivation before the appointed day, and

- (f) the council has not issued any notice to the person carrying out or using the works requiring that the works or use cease or that development consent be obtained prior to the carrying out or further use of the works.
- (9) An annual review of drainage management plans and works to which subclause (8) relates is to be carried out by NSW Sugar Milling Cooperative Ltd to a standard satisfactory to the council and the Cooperative is to provide the council with a copy of the results of the review immediately after it has been carried out. The council may issue a notice under subclause (8) (f) relating to any one or more of those works if either of those requirements is not complied with.
- (10) For the purposes of this clause, a reference to works of the council or county council is a reference to works that are owned or controlled by the council or a county council.
- (11) In this clause:

county council has the meaning given by the *Local Government Act 1993*.

drain means a depression, ditch or channel deeper than 300mm that is not naturally occurring and is used to convey water from one area to another.

emergency work means the repair or replacement of any part of the works of the council or county council because:

- (a) it has been (or is being) damaged by a natural disaster, an accident, an act of vandalism or a like occurrence, and
- (b) it has ceased to function adequately,

and includes work reasonably necessary to prevent or limit any further damage or malfunction.

flood mitigation works means structural measures intended to reduce flood damage by either reducing flood levels or the lateral extent of flooding and includes any of the following:

- (a) levees,
- (b) flood mitigation drains,

- (c) retarding or detention basins,
- (d) by-pass floodways,
- (e) flood gates on drains,
- (f) channel improvement.

minor work means new work carried out by the council or a county council, not being drainage work, which has a value of less than \$20,000.

routine maintenance means the periodic inspection, cleaning, repair and replacement of the works of the council or a county council, but does not include work that would result in an increase in the design capacity of any part of those works or result in an increase in the capacity of existing works.

2003 No 535

Ballina Local Environmental Plan 1987 (Amendment No 66)

Schedule 2 Amendment of State Environmental Planning Policy No 4—Development
Without Consent and Miscellaneous Exempt and Complying Development

**Schedule 2 Amendment of State Environmental
Planning Policy No 4—Development
Without Consent and Miscellaneous
Exempt and Complying Development**

(Clause 4 (b))

**Schedule 1 Ancillary or incidental development involving acid
sulfate soils excepted from clause 10**

Insert at the end of the Schedule:

Clause 36 of Ballina Local Environmental Plan 1987

BY AUTHORITY
