



*Planning Proposal – Ballina Local
Environmental Plan 2012*

» ***111 Friday Hut Road
Tintenbar***

May 2017 (V3. Exhibition) 17/30791

ballina
shire council

Mapping

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1. Introduction and Background

1.1 Summary of Planning Proposal

This planning proposal relates to Lot 339 DP 755684, 111 Friday Hut Road, Tintenbar (Lot 339). The property is owned by Mr F P and Mrs L M Knudson (property owners).

Lot 339 has an area of 3.951 hectares and is located on land zoned RU1 Primary Production (RU1) under the provisions of Ballina Local Environmental Plan 2012 (Ballina LEP 2012). Lot 339 is subject to a 40 hectare minimum lot size for subdivision under the provisions of Ballina LEP 2012.

This planning proposal primarily seeks to facilitate the subdivision of Lot 339 into 2 lots which reflect the separate uses undertaken on the land.

Part of Lot 339 (approx. 1 hectare) will continue to be used for rural residential purposes. This part contains a dwelling house (approved in 1979), a garage and small shed.

The residue of Lot 339 has an area of approximately 3 hectares and will continue to be used for primary production. This use consists of the propagation of organic seedlings and seeds. The use is characterised as intensive plant agriculture (horticulture) under the provisions of Ballina LEP 2012 and is permitted to be carried out without consent in accordance with the Land Use Table applicable to the RU1 zone.

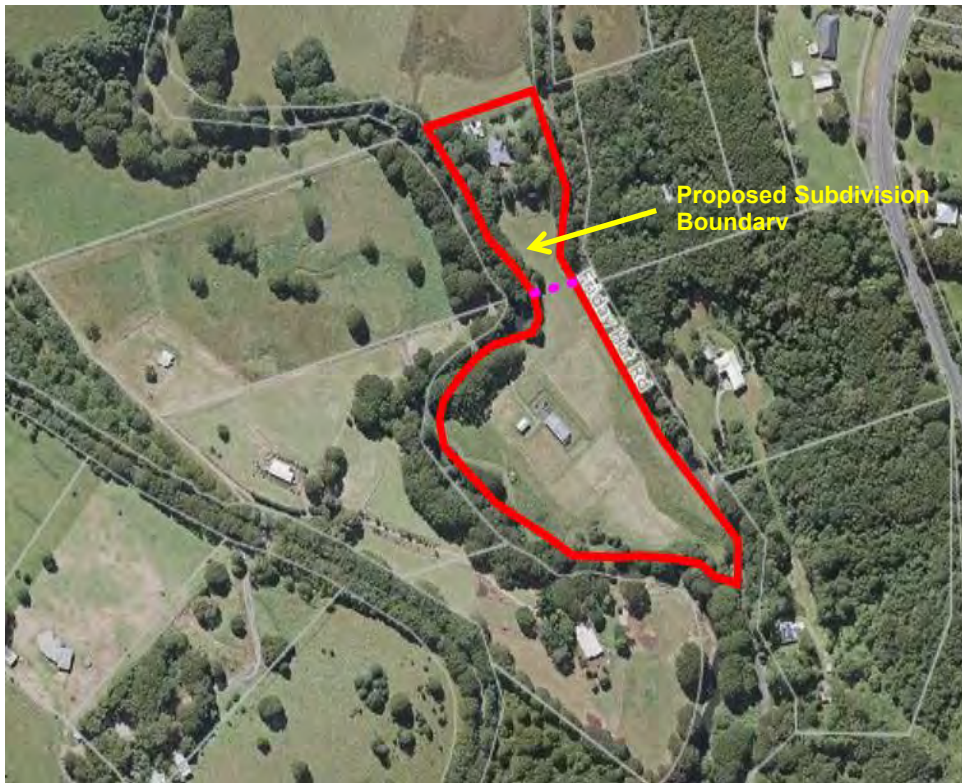
No dwelling entitlement is sought for the proposed primary production lot.

It is the landowners intention to sell the residue of Lot 339 used for primary production to the current tenant who has established a viable business on the land growing organically produced seedlings and producing seeds. The tenant seeks to purchase the land he currently occupies to enable further investment in the business to take place.


1.2 Land to Which the Planning Proposal Applies

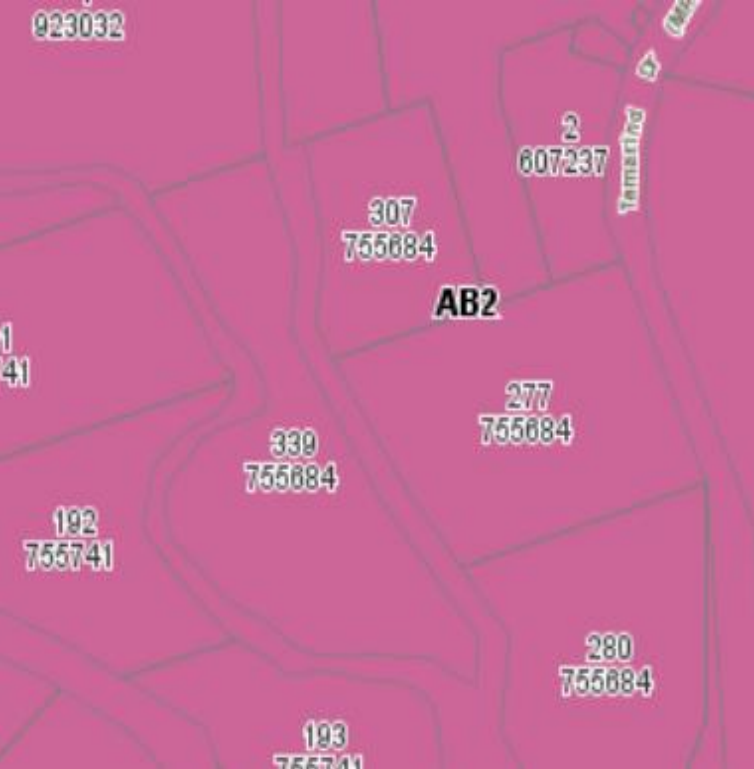

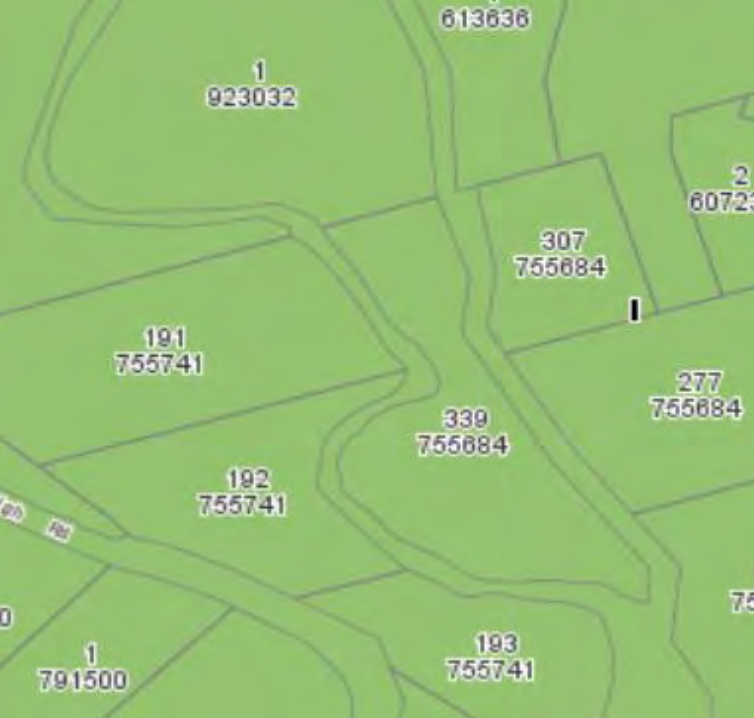

This planning proposal applies to Lot 339 DP 755684 known as 111 Friday Hut Road, Tintenbar, as shown by red outline on the locality diagram below. The approximate line of the proposed subdivision is indicated by the purple dots.

Locality Diagram

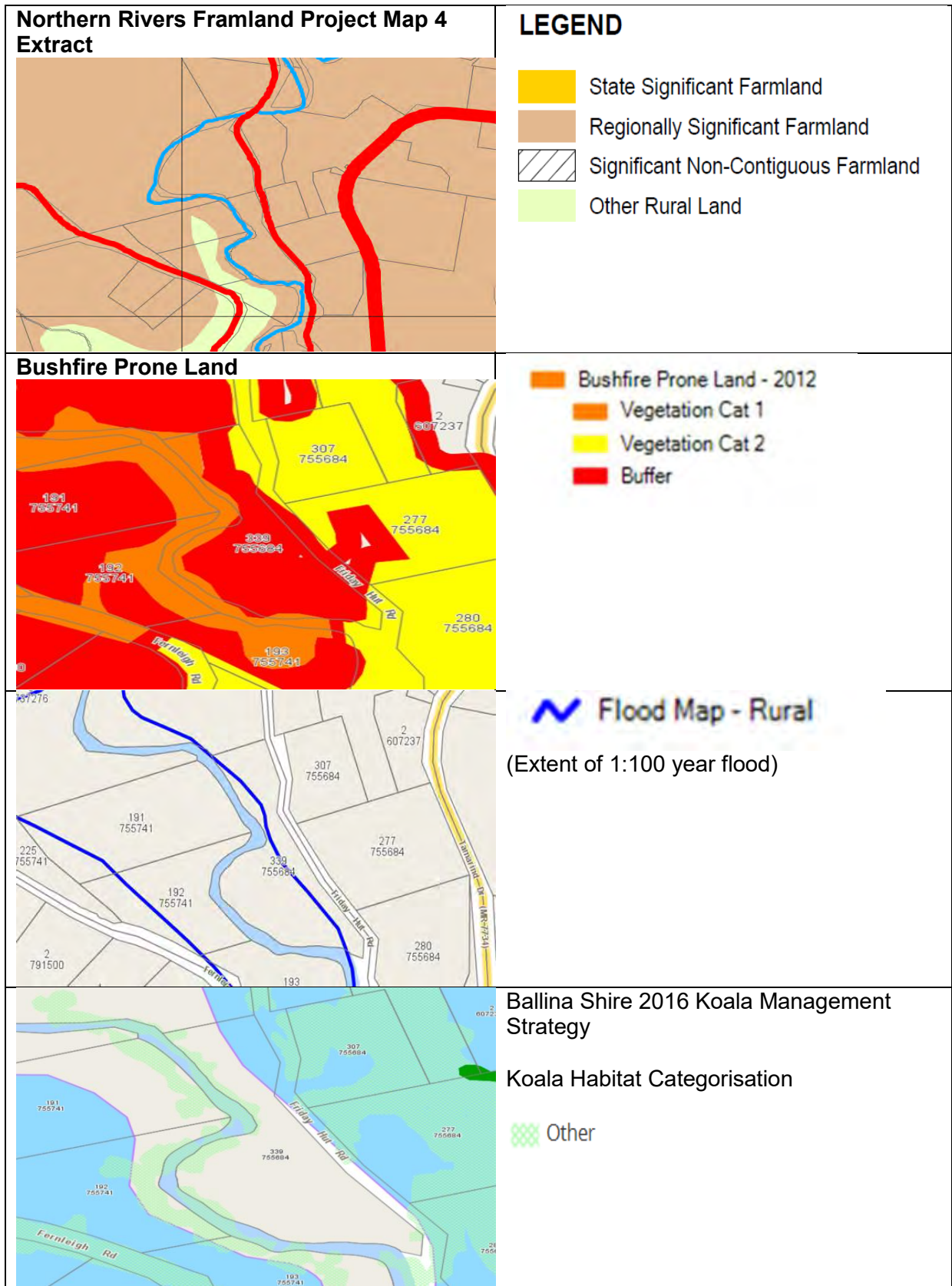


The diagrams below shows extracts from Ballina LEP 2012 Land Zoning, Lot Size and Building Height Maps.

Extracts from Ballina LEP 2012	Legend
<p>Land Zoning Map</p>	<p> RU1 - Primary Production</p>

Extracts from Ballina LEP 2012	Legend
<p>Lot Size Map</p>  <p>This map shows several lots with their respective numbers and zoning. Lot 1 (923032) is at the top left. Lot 2 (607237) is at the top right. Lot 307 (755884) is in the upper middle. Lot 277 (755884) is in the middle right. Lot 339 (755884) is in the middle left. Lot 192 (755741) is in the lower left. Lot 280 (755884) is in the lower right. Lot 193 (755741) is at the bottom. The central area is labeled 'AB2'.</p>	 <p>AB2 (40ha)</p>
<p>Building Height Map</p>  <p>This map shows the same lots as the Lot Size Map, but with their building height zoning. Lot 1 (923032) is at the top left. Lot 2 (607237) is at the top right. Lot 307 (755884) is in the upper middle. Lot 277 (755884) is in the middle right. Lot 339 (755884) is in the middle left. Lot 191 (755741) is in the lower left. Lot 192 (755741) is in the lower left. Lot 193 (755741) is at the bottom. Lot 791500 is at the bottom left. The central area is labeled 'I'.</p>	 <p>I (8.5m)</p>

Lot 339 is impacted by a number of planning constraints which are detailed in the map extracts below:



1.3 Council Decisions

On 27 October 2016 the Council at its Ordinary Meeting resolved as follows [Minute No 271016/1]:

1. *That Council endorses the preparation of a planning proposal which proposes to permit the subdivision of Lot 339 into two lots as outlined in this report, but which would preclude the erection of a dwelling on the proposed horticultural allotment.*
2. *That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.*
3. *That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition.*
4. *That Council give further consideration to the proposal following the conclusion of the public exhibition period.*

Annexure Two contains a copy of the report considered by the Council.

1.4 Gateway Determination

The Department of Planning and Environment issued a Gateway determination on 24 February 2017 which permitted the planning proposal to proceed subject to conditions. A copy of the Gateway determination is contained within Annexure Three.

Matters of relevance contained within the Gateway determination and the accompanying letter from the Department of Planning and Environment are summarised below:

- The planning proposals inconsistencies with S117 Directions 1.5 Rural Lands and 4.3 Flood Prone Land were determined to be of minor significance and require no further approvals.
- The agreement of the Secretary will be required to the requirements of S117 Direction 4.4 Planning for Bushfire Protection.
- Plan making powers are delegated to Council. An authorization for Council to exercise delegation accompanied the Gateway determination.
- The amending Local Environmental Plan (LEP) is to be finalized within 9 months of the week following the date of the Gateway determination.
- Prior to community consultation the planning proposal is to be updated to clarify the objectives in relation to existing use rights for the dwelling and that the proposal is not a LGA wide amendment.
- Council is to consider whether the primary production lot should be increased in size to include the greatest amount of regionally significant farmland possible.

- The planning proposal must be publically exhibited for a minimum period of 28 days.
- Consultation is required with the following public authorities under section 56(2)(d) of the Act
 - a) Department of Primary Industries – Agriculture
 - b) NSW Rural Fire Service

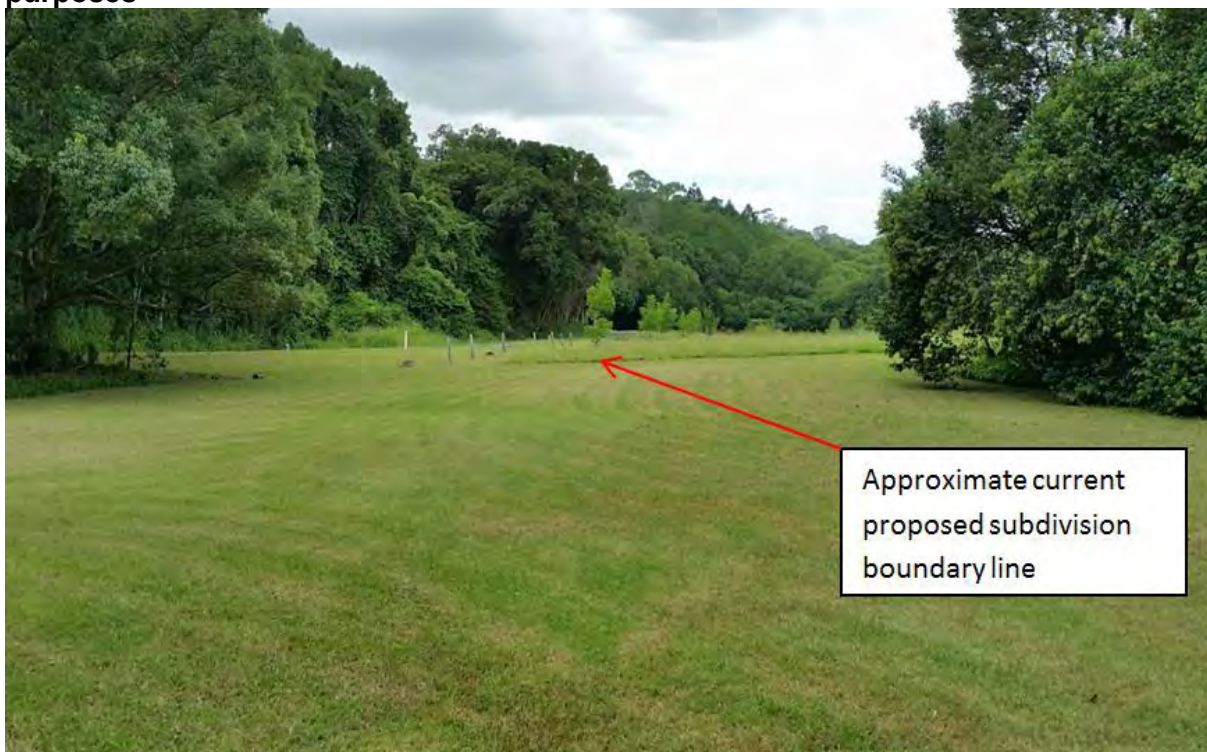
The issue of whether the primary production lot may be increased in size has been considered. The proponent's consultant has been requested to specifically address this issue.

Malcolm Scott, Consultant Town Planner, has advised Council in a letter dated 17 March 2017 (Refer Annexure Four 87) that moving the boundary further to the north does not provide land suitable for intensive farming (seed production) or additional nursery infrastructure for the following reasons:

- The section of land is narrow and contains a small overland flow path; and
- Moving the boundary reduces the width of a buffer between the existing dwelling and use of the rural lot.

The above reasons for retaining the proposed boundary as originally proposed are supported. In addition to the above reasons the proposed boundary is located at approximately the narrowest point of the lot between the creek and road. This assists to provide a visual separation between the land used for agricultural purposes and that part of the land used for rural residential purposes.

Photo – view looking south towards proposed boundary of land used for agricultural purposes



2. Objectives & Intended Outcomes

The objective of this planning proposal is to create a mechanism through which the subdivision of Lot 339 into two lots will be facilitated. In this respect anticipated outcomes of this planning proposal are as follows:

- The continued use of that part of the land containing an existing dwelling house for rural residential purposes and the maintenance of a dwelling entitlement for this land. It is considered that existing use rights will continue to apply to the dwelling house on the subdivided lot.
- The use of the residue lot for primary production purposes without a building entitlement;
- The limitation of the amendment to Lot 339 DP 755684 – 111 Friday Hut Road, Tintenbar, without further applicability to other rural lots within Ballina Shire; and
- The reinforcement of the prohibition related to the erection of a dwelling on the primary production lot.

3. Explanation of Provisions

Background

Ballina LEP 2012 contains the legislative requirements relating to subdivision of land within the RU1 Primary Production zone and the RU2 Rural Landscape zone.

Clause 4.1(3) of the LEP requires that the size of any lot resulting from the subdivision of land shall not be less than the minimum size shown on the Lot Size Map. The Lot Size Map in respect to Lot 339 indicates a minimum area of 40,000m² (40 hectares).

Clause 4.2 *Rural subdivision* of Ballina LEP 2012 provides flexibility in the application of standards for subdivision in rural zones. Clause 4.2 is reproduced below.

- (1) *The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.*
- (2) *This clause applies to the following rural zones:*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone RU2 Rural Landscape,*
 - (c) *Zone RU4 Primary Production Small Lots,*
 - (d) *Zone RU6 Transition.*
- (3) *Land in a zone to which this clause applies may, with development consent, be subdivided for the purpose of primary production to create **a lot** of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.*
- (4) *However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.*
- (5) *A dwelling cannot be erected on such a lot.*

Council has interpreted clause 4.2 (3) as permitting only the lot proposed for primary production ('**a lot**' emphasis added in clause 4.2 (3) above) to be below the minimum lot size specified on the Lot Size Map. In the subject case two lots are proposed to be below the specified minimum lot size which is considered not to be permitted.

The proposed subdivision does, however, meet all the other requirements contained within clause 4.2. In this regard the proposed primary production lot will not contain a dwelling, is already being used for primary production purposes and a dwelling is not proposed to be erected on the primary production lot.

Options for LEP Amendment

The planning proposal therefore seeks to provide a means through which the subdivision of Lot 339 may be permitted into 2 lots, neither of which meets the specified minimum lot size, and the prohibition related to the erection of a dwelling on the primary production lot is reinforced.

The use of Schedule 1 of the BLEP 2012 (and associated Clause 2.5) to introduce an additional permitted use is one mechanism through which the above objective may be realised.

A further alternative mechanism considered has been the use of the Lot Size Map to specify a minimum lot size (1 hectare) for that part of the land proposed to contain the dwelling, and for the primary production residue lot to retain its current 40 hectare lot size requirement.

The amendment of clause 1.9 of the Ballina LEP 2012 in relation to the Rural Lands SEPP clause 9 has also been considered. It is considered that that amendment of Clause 1.9 would have wider implications for the application of the Ballina LEP 2012, and therefore Council does not wish to incorporate amendment to clause 1.9 into the proposal at this time.

3.5 Table of Map Sets Affected

The following map is proposed to be incorporated within the planning proposal following exhibition:

- Map 1 - Additional Permitted Use Map

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of any strategic study or report?

No the planning proposal is not the result of any specific strategic study or report. Council when giving consideration to this matter has had regard to the changing demographic characteristics of the Cumbalum Newrybar Corridor which indicates that the local population is experiencing significant ageing (Refer report to Council at Annexure Two).

The issue of an ageing farm workforce and the associated decline of the number of farmers in Australia is well documented¹. Australian farmers tend to be significantly older compared to other occupations and tend to work beyond the age when other workers retire. The number of farmers in Australia has been declining for many decades as small farmers sell up to large-scale farming operations and fewer young people take over family farms².

This planning proposal seeks to provide a means through which the existing older owners of Lot 339 may be able to reduce the amount of land under their ownership so as to facilitate the continued use of part of the property for rural production. Additional benefits relate to improved land care outcomes, through better weed and pest management practices, being applied to the primary production proposed residue lot.

Ballina Shire contains significant farmland areas located on rich volcanic soil and assessed as being of State and Regional Farmland Significance. Many rural properties located on Significant Farmland are utilised for rural residential non-agricultural purposes.

This planning proposal seeks to provide the means through which the rural residential component of Lot 339 may be reduced and the primary production potential of a significant portion of the land, which is farmland of Regional significance, reinstated.

The NSW Government's Right to Farm Policy (Department of Primary Industries, December 2015) recognises that innovative land use mechanisms will be required to deliver planning policy that supports the management of current and future farming practice. This planning proposal is considered to be a suitable means through which the continued use of Significant Farmland for agricultural purposes may be supported.

¹ Refer ABS publication Australian Social Trends 4102.0 December 2012 *Australian farming and farmers*

² ABS publication Australian Social Trends 4102.0 December 2012 *Australian farming and farmers p3*

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

This planning proposal is necessary due to Ballina Council’s interpretation of Clause 4.2 *Rural subdivision* of Ballina LEP 2012 as permitting only a single lot to be created with an area below the minimum specified lot size. An alternative way to achieve Council’s objective would be for the Department of Planning and Environment to clarify its interpretation of Standard Instrument clause 4.2, and if required amend this Standard Instrument clause, so as to permit both the lot containing the dwelling and the primary production lot to be below the prescribed minimum lot size.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

Yes, the planning proposal is considered to be generally consistent with relevant regional and sub-regional strategies as indicated in the table below:

Planning Policy	Relevance	Compliance
<p>North Coast Regional Plan 2036, March 2017, (NCRP)</p>	<p><i>Direction 11: Protect and enhance productive agricultural lands</i> is considered to be of relevance. It indicates that minimum subdivision standards for rural zones will be used to enhance the viability of agricultural sector and to limit rural land fragmentation. Provisions to limit dwellings in rural zones will assist to avoid land use conflicts.</p> <p>Recognises that agricultural activities such as horticulture are rapidly growing on the North Coast. Indicates that local planning controls can help to support these industries by identifying suitable locations</p>	<p>There is no obvious inconsistency with what is proposed and the Directions contained within the NCRP.</p> <p>Importantly, the proposal does not seek a dwelling entitlement for the lot proposed for agricultural use. The proposal also facilitates the agricultural use of land designated as Regionally Significant Farmland.</p> <p>The proposal will facilitate the ongoing use of part of the land for a niche agricultural purpose (horticulture). An LEP amendment is considered to be a suitable mechanism to support this use while at the same time continuing to prevent land fragmentation in Ballina Shire’s rural zones.</p> <p>Ballina LEP 2012 sets a minimum 40 hectare subdivision standard for the RU1 zone. Provisions exist within the LEP for smaller lots to be created for primary production purposes although this proposal does not meet the requirements of the existing provisions to enable a subdivision of the land.</p>
<p>Northern Rivers Farmland Project Final Recommendations Report, February 2005.</p>	<p>Assigns a Regionally Significant Farmland classification to the land. No direct relevance to LEP amendment proposal given proposed continuation of the primary production use.</p>	<p>The proposal is considered to be consistent with the land’s Regionally Significant Farmland classification.</p>

Q4 Is the planning proposal consistent with a council’s local strategy or other local strategic plan?

Council does not have a Rural Land Use Strategy. Council’s strategy in respect to rural land is reflected in its local growth management strategy, Ballina LEP 2012 land zones and the associated minimum lot size requirements and the Ballina Shire DCP 2012. In this respect Council has had ongoing concerns relating to potential land fragmentation pressures associated with the rural residential use of land.

This planning proposal, whilst it results in the creation of one additional lot below the minimum prescribed lot size, also secures the continued use of land for primary production purposes. It is on this basis that the Council has endorsed the planning proposal.

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

Yes the planning proposal is considered to be generally consistent with applicable State Environmental Planning Policies as detailed in the table below:

SEPP Title	Compliance of Planning Proposal
SEPP (Rural Lands) 2008	<p>Rural Planning Principles</p> <p>This planning proposal is considered to be generally consistent with the Rural Planning Principles contained in the SEPP as indicated in the comments below:</p> <p>(a) <i>the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,</i></p> <p>Comment:</p> <p>The objective of this planning proposal is to provide a means through which the primary production activities undertaken on the proposed residue lot are able to be continued. The raising of organic seedlings and seed production on this land are an example of a sustainable economic activity undertaken on rural land.</p> <p>(b) <i>recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,</i></p> <p>Comment:</p> <p>Organic vegetable production is an expanding industry within the Far North Coast of NSW. The business undertaken on the proposed residue lot has a current annual production of 900,000 seedlings which are supplied to 50 to 60 Northern Rivers based growers.</p>

SEPP Title	Compliance of Planning Proposal
	<p><i>(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,</i></p> <p>Comment: The business undertaken on the proposed primary production residue lot results in economic benefits being derived from the land through a sustainable agricultural pursuit.</p> <p>Social benefits resulting from the planning proposal relates to the ability of the current land owners to remain on part of their property without the land management responsibilities associated with a larger site and for rural based employment opportunities to be created.</p> <p><i>(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,</i></p> <p>Comment: It is considered that this planning proposal achieves an appropriate balance between the social, economic and environmental interests of the community. Through the agricultural use of the proposed residue lot the land has been managed in such way that weeds have been removed and work is underway through various planting programs to improve soil health.</p> <p><i>(e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,</i></p> <p>Comment: Active weed management has been undertaken on the proposed residue lot.</p> <p><i>(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,</i></p> <p>Comment: The planning proposal seeks to facilitate the current land owners remaining on their property for a longer period whilst endeavouring to ensure a viable agricultural use is also retained.</p> <p><i>(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,</i></p> <p>Comment: No servicing or infrastructure upgrades are required. Water is drawn from Emigrant Creek via an existing water licence.</p> <p><i>(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.</i></p> <p>Comment: The proposal is considered to be consistent with relevant Directions contained within the North Coast Regional Plan as the proposal will</p>

SEPP Title	Compliance of Planning Proposal
	<p>facilitate the ongoing use of the land for a niche agricultural purposes and no additional dwelling entitlement is proposed to be created.</p> <p>Rural Subdivision Principles</p> <p>This planning proposals consistency with the Rural Subdivision Principles contained in the SEPP is detailed below:</p> <p>(a) the minimisation of rural land fragmentation,</p> <p>The proposed subdivision will further fragment rural land in the short term and to this extent the planning proposal is considered to be justifiably inconsistent with this principle. This is an unavoidable consequence as a result of a proposal designed to provide a means through which the ongoing primary production use of part of the land is able to be maintained. In the longer term opportunities may arise to consolidate the primary production residue lot with adjoining land so as to create a larger primary production lot.</p> <p>(b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,</p> <p>The proponent's LEP Amendment Application incorporated a Land Use Conflict Risk Assessment (LUCRA) which has examined the adequacy of buffer distances between the horticultural use and adjoining land containing dwellings. The LUCRA assessment concluded that the potential for land use conflict between the proposal and existing and potential use of adjoining land is low and acceptable.</p> <p>It is noted that the primary production use of the land is already well established and has been in operation for approximately 4 years without giving rise to complaints. The use of the land for the growing of organic seedlings and for seed production does not require development consent under the provisions of Ballina LEP 2012. The use is considered to be categorised as Intensive Plant Agriculture which by definition includes Horticulture.</p> <p>(c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,</p> <p>Land in the immediate vicinity of Lot 339 is primarily used for rural residential purposes. Similar sized lots, to those proposed to be created, are not uncommon within the broader locality.</p> <p>(d) the consideration of the natural and physical constraints and opportunities of land,</p> <p>The land utilised for primary production purposes is substantially impacted by the 1:100 year flood due to its low lying nature. This constraint makes it suitable for agricultural purposes and less suitable for rural residential purposes. The dwelling located on Lot 339 is located on the higher part of the site and is substantially flood free.</p> <p>The low-lying nature of the land also makes it susceptible to occasional winter frosts which assist the propagation of winter vegetable seedlings.</p>

SEPP Title	Compliance of Planning Proposal
	<p>(e) ensuring that planning for dwelling opportunities takes account of those constraints.</p> <p>No additional dwelling opportunity is proposed to be created as a consequence of this planning proposal.</p>
SEPP 44 – Koala Habitat Protection	<p>The land does not contain Core Koala Habitat as identified in the Ballina Shire Koala Management Strategy 2016. Riparian areas on the site contain vegetation communities which may still play an important role for koalas and as such it has been designated as an ‘other’ habitat category.</p> <p>The primary production use carried out on the proposed residue lot is not considered to adversely impact riparian vegetation or potential koala habitat areas.</p>

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

This planning proposal is considered to be justifiably inconsistent with the following Section 117 Directions:

- 1.5 Rural Lands
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection

The Section 117 Direction Checklist contained within Annexure One contains full details of the planning proposals consistency with Section 117 Directions.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No the proposal will facilitate the subdivision of Lot 339. The use of the land will not be affected by this planning proposal.

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no adverse environmental effects associated with this planning proposal.

The use of the land over the past 4 years for primary production purposes has resulted in a comprehensive weed and pest management strategy being applied to the land. The strategy is organically based and includes the growing of crops (field peas) to improve the soil profile and the use of guinea fowls to manage ticks.

Q9 Has the planning proposal adequately addressed any social and economic effects?

Yes – The planning proposal will facilitate a rural economic activity on agricultural land as opposed to the lands previous use for rural residential purposes. In so doing local employment opportunities have been created which provide positive social benefits. An additional social benefit relates to the ability of the existing older property owners to remain on part of their property for longer whilst ensuring that the major part of the property is used for primary production purposes.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

The nature of this primary production activity does not require any public infrastructure to be provided to service the site beyond that currently available within this locality.

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation with the following authorities has been undertaken as required by the Gateway determination dated 24 February:

- Department of Primary Industries – Agriculture
- NSW Rural Fire Service

Annexure Five contains copies of responses received from the above authorities.

The NSW Rural Fire Service has advised that it has reviewed the plans and documents received for the proposal and subsequently raised no concerns or issues in relation to bush fire.

The Department of Primary Industries – Agriculture has advised that is supportive of the growth of agricultural industries and recognises the success and level of investment in the organics seedlings facility established on the subject site. It further advised that when considered individually, the planning proposal has merit, however the proposal raises a number of concerns in a strategic context which are detailed in their correspondence contained within Annexure Five.

The proponent's planning consultant has addressed strategic concerns raised by the Department of Primary Industries – Agriculture in a letter dated 24 April 2017 which is contained within Annexure Four.

5. Mapping

No mapping has been incorporated within the planning proposal at this stage. Refer to the comments in section 3.5.

6. Community Consultation

Community consultation is being undertaken for this planning proposal in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. A minimum public exhibition period of 28 days has been provided.

The public exhibition period will commence on 3 May 2017 and conclude on 2 June 2017.

7. Project Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	February 2017
Technical Information Completion Timeframe (Completed)	N/A
Government Agency Consultation	March 2017
Public Exhibition Period	May 2017
Public Hearing	N/A
Submissions Assessment	June 2017
RPA Assessment of Planning Proposal and Exhibition Outcomes	June 2017
Submission of Endorsed LEP to P&I for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	July 2017
Forwarding of LEP Amendment to P&I for Notification (if delegated)	August 2017

Annexures

Annexure One – s.117 Direction Checklist

Section 117 Direction Checklist	
Planning Proposal – 111 Friday Hut Road Tintenbar	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Consistent. The planning proposal does not seek to rezone rural land. It seeks to facilitate the use of specific rural land (part Lot 339) for primary production purposes.
1.3 Mining, Petroleum Production and Extractive Industries	Consistent. This proposal does not include any amendments that will result in compromising any future extraction of coal, minerals, petroleum or other resources.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Inconsistent. The planning proposal is considered to be justifiably inconsistent with the Rural Subdivision Principle relating to land fragmentation. In this respect the inconsistency is considered to be justified as the proposed subdivision will facilitate the ongoing use of the land for primary production purposes. In addition the proposal does not preclude future consolidation opportunities relating to the land used for primary production purposes.
2. Environment and Heritage	
2.1 Environmental Protection Zones	Consistent No environmentally sensitive areas, suitable for application of an environmental zone, have been identified as being located on Lot 339.
2.2 Coastal Protection	Does not apply to planning proposal. Land not within the Coastal zone.
2.3 Heritage Conservation	Consistent Ballina LEP 2012 contains heritage conservation provisions. No information is available which suggests that the land contains items or objects of heritage significance. An AHIMS search undertaken on 15 November 2016 with a 1000 metre buffer showed that no Aboriginal sites or places are recorded or declared on or near Lot 339.
2.4 Recreation Vehicle Areas	Consistent. Recreational vehicle areas are not proposed.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. This proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.

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3.3 Home Occupations	Consistent. The proposal will not affect any existing permissibility or exemptions for home occupations.
3.4 Integrated Land Use and Transport	Consistent. This proposal will not result in any negative impacts on accessibility or transport movements.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal. The land is not located within the Obstacle Limitation Surface (OSL) for the Ballina Byron Gateway Airport.
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Does not apply to planning proposal.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal. The land is not considered to be unstable land.
4.3 Flood Prone Land	Inconsistent The land is flood prone land being affected by the 1:100 year flood level. Whilst an increase in the development potential of the land is proposed, through the permissibility of a two lot subdivision, this will not result in additional development without consent or an increased need for additional spending on flood mitigation. The physical use of the land will not change as a consequence of the proposed LEP amendment and therefore the planning proposal is considered to be justifiably inconsistent with this direction.
4.4 Planning for Bushfire Protection	Inconsistent. The subject land is bush fire prone land. Prior to the Gateway determination consultation with the Rural Fire Service was not undertaken. This is occurred post Gateway determination. The NSW Rural Fire Service has subsequently advised that it has no bush fire concerns with the planning proposal.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent. The planning proposal is considered to be generally consistent with Direction 11 and the planning framework set out under the North Coast Regional Plan 2036. This planning proposal seeks to facilitate the agricultural use of part of Lot 339 by permitting the subdivision of the land to create an additional lot for primary production purposes.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Consistent. Lot 339 is designated as Regionally Significant Farmland. The proposal does not propose the rezoning of the land for urban, residential or rural residential purposes.
5.4 Commercial and Retail Development	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked.

Planning Proposal 111 Friday Hut Road Tintenbar

5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.
5.10 Implementation of Regional Plans	Consistent. The planning proposal is considered to be generally consistent with applicable Directions contained within the North Coast Regional Plan 2036. Refer Section 4.2 of this planning proposal for additional comments.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The proposal does not create, alter, or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	Consistent No development standards or restrictions additional to those contained in the principal environmental planning instrument (Ballina LEP 2012) are proposed.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.

Annexure Two – Council Resolutions

9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

Delivery Program Strategic Planning

Objective To outline to Council a proposal to amend the Ballina Local Environmental Plan 2012 so as to permit the creation of two rural zoned allotments with proposed areas less than the minimum required lot size under that Plan.

Background

Council has received a request from Malcolm Scott, Consultant Town Planner, on behalf of Mr F P and Mrs L M Knudson (property owners) of 111 Friday Hut Road Tintenbar (Lot 339 DP 755684) to amend Ballina LEP 2012 to permit the subdivision of Lot 339 into two lots.

A copy of the LEP amendment request application forms Attachment One to this report.

Lot 339 is located on the western side of Friday Hut Road approximately 600 metres north of the Tintenbar Road intersection. Lot 339 has an area of 3.951 hectares and has existed as a separate lot since 1928.

Part of lot 339 (approx. 1 hectare) is used for rural residential purposes and contains a dwelling house (approved in 1979), a garage and small shed.

The residue of lot 339 is used for primary production, by Mr L Sansom, for the growing of organically produced seedlings and for seed production. This part of lot 339 has an area of approximately 3 hectares and contains a farm shed (6m x 12m) and propagation shed (9m x 21m).

Lot 339 is zoned RU1 Primary Production under the provisions of Ballina Local Environmental Plan 2012 (Ballina LEP 2012) and is subject to a 40 hectare minimum lot size for subdivision.

The proposed two lot subdivision would excise the existing dwelling house and its curtilage on approximately one hectare, to be retained by the property owner, with the balance being then proposed to be purchased by Mr Sansom for primary production purposes.

No dwelling entitlement is sought for the proposed primary production lot.

Mr Sansom has occupied part of Lot 339 since some time in 2012 and has advised that he has spent in excess of \$90,000 on various site improvements since that time. As far as can be determined, these improvements (sheds, driveway and landscaping) and the use of the land did not require Council's development consent.

The planning proposal submission also indicates that Mr Sansom commenced removing noxious weeds from the land in 2004.

9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

The business operated on part of Lot 339 is known as *Seedlings Organic*. Organic certification for seedling production was obtained from the National Association for Sustainable Agriculture Australia (NASAA) in 2012 with further certification for seed production obtained in 2014. The business supplies some 50 – 60 Northern Rivers based organic growers on a regular basis with annual production exceeding 900,000 seedlings.

This site has been chosen by Mr Sansom in part because it is isolated from local conventional farming areas which may negatively impact organic production. In addition, the land is subject to occasional winter frosts due to its low lying nature which is beneficial for growing certain winter seedling varieties.

This report provides an overview of the proposed LEP amendment and seeks Council's direction with respect to the further consideration of this matter.

Key Issues

- Merits of proposed LEP amendment
- Precedent concerns
- Processing of LEP amendment request and preparation of a planning proposal.

Information

Location, Site Improvements, and Buffer Distances

Lot 339 is outlined in red on the aerial photo extract below. The approximate location of the proposed subdivision boundary is shown by the purple dots.



9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

The farm and propagation sheds, together with some other site improvements, can be seen on the southern (bottom central) most section of Lot 339.

The dwelling house located on Lot 339 is located at a distance of approximately 190 metres from the propagation shed. The nearest dwelling on an adjoining lot is located approximately 78 metres to the east at 78 Friday Hut Road and 142 metres to the south at 94 Fernleigh Road, Tintenbar.

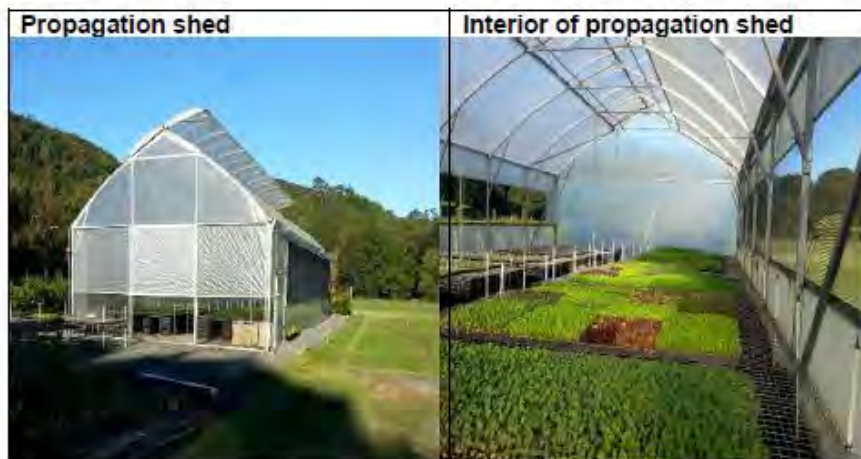
Having regard to the manner in which this business is operated, i.e. no chemical sprays, enclosed propagation shed and planted perimeter landscaping buffer distances are considered to be adequate.

The proponent's consultant has submitted a Land Use Conflict Risk Assessment (LUCRA) which concludes that land use conflict risk, between the proposal and the existing and potential use of adjoining land, is low and acceptable. This view is supported notwithstanding that the NSW DPI Publication *Living and Working in Rural Areas (2007)* recommends a 200 metre buffer distance between greenhouses and controlled environment horticulture and dwellings.

The Western Australian Department of Health (August 2012) *Guidelines for Separation of Agricultural and Residential Land Uses – Establishment of Buffer Areas* have also been considered. These guidelines indicate that where vegetated buffers exist then separation distances otherwise applicable, to uses such as market gardens (300 – 500m), turf farms and lawns (500m) and vineyards (500m) may be reduced to 40 metres.

It is noted that vegetated buffers have already been established adjoining the eastern and southern most sides of the propagation shed.

Photos of the farm and propagation shed appear below.



9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar



Strategic Planning Context

The strategic planning context applicable to the proposed LEP amendment has been examined in Table 1 below. It is considered that the proposal is not inconsistent with applicable regional planning policies or the objectives of the RU1 Primary Production zone under Council's LEP.

Table 1: Summary of Key Strategic Planning Policy Requirements

Planning Policy	Relevance	Compliance
Far North Coast Regional Strategy, December 2006, (FNCRS)	Rural land with agricultural production value is protected from urban development other than appropriately planned rural residential development. The subject land is designated as Regionally Significant Farmland. Appropriate subdivision standards are required to be included within LEP's for rural zones.	Complies – There is no obvious conflict with what is proposed and the strategies contained within the FNCRS. Ballina LEP 2012 sets a minimum 40 hectare subdivision standard for the RU1 zone. Provisions exist within the LEP for smaller lots to be created for primary production purposes although this proposal does not meet the requirements of the existing provisions to enable a subdivision of the land.
Draft North Coast Regional Plan, March 2016, (DNCRP)	Draft <i>Directive 1.2 Protect and enhance productive farmland</i> is considered to be of relevance. It indicates that councils will need to apply minimum subdivision standards for rural zones to limit rural land fragmentation. Provisions to limit dwellings not associated with agriculture to also be applied to avoid land use conflicts. Observes that niche agriculture such as horticulture is common on smaller holdings throughout the North Coast. Indicates that councils should investigate mechanisms to support this type of agriculture, while preventing widespread fragmentation in the rural zone.	There is no obvious inconsistency with what is proposed and the draft strategies contained within the DNCRP. Importantly, the proposal does not seek a dwelling entitlement for the lot proposed for agricultural use. The proposal also facilitates the agricultural use of land designated as regionally significant farmland. The proposal will facilitate the ongoing use of part of the land for a niche agricultural purpose (horticulture). An LEP amendment is considered to be a suitable mechanism to support this use while at the same time continuing to prevent land fragmentation in Ballina Shire's rural zones.
Northern Rivers Farmland Project Final Recommendations Report, February 2005.	Assigns a Regionally Significant Farmland classification to the land. No direct relevance to LEP amendment proposal given proposed continuation of the primary production use.	The proposal is considered to be consistent with the land's Regionally Significant Farmland classification.

9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

Planning Policy	Relevance	Compliance
Section 117 (EP&A Act) Direction 1.2 Rural Zones	The direction seeks to protect the agricultural production value of rural land. A planning proposal must not rezone rural zones to a residential, business, industrial, village or tourist zone; and not contain provisions that increase permissible densities.	The proposal is considered to be consistent with this direction as a rezoning of land is not proposed and permissible densities (number of dwellings) will not change.
Zone Objectives – RU 1 Primary Production Zone	<p>The proposed subdivision will be required to be considered against the objectives of the RU1 zone as contained within Ballina LEP 2012 if it progresses to the DA stage. Consideration at the LEP amendment stage provides guidance as to the merits of the proposal.</p> <p>The first four zone objectives listed below for the RU1 Zone are contained within the <i>Standard Instrument – Principle Local Environmental Plans</i> and are common to all RU1 zones contained within Standard Instrument LEPs in NSW.</p> <ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To encourage diversity in primary industry enterprises and systems appropriate for the area. • To minimise the fragmentation and alienation of resource lands. • To minimise conflict between land uses within this zone and land uses within adjoining zones. <p>The Ballina LEP 2012 contains an additional three objectives for the RU1 zone as listed below:</p> <ul style="list-style-type: none"> • To maintain the rural, cultural and landscape character of the locality. • To enable development that is compatible with the rural and environmental nature of the land. • To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure. 	<p>Attachment Two to this report examines the consistency of the subdivision proposal with the objectives of the RU1 zone.</p> <p>It is considered that the proposed two lot subdivision sought to be facilitated through an amendment of Ballina LEP 2012 is able to be justified as being generally consistent with the zone objectives.</p>

Legislative Context – Need for LEP Amendment

Ballina LEP 2012 contains the legislative requirements relating to subdivision of land within the RU1 Primary Production zone. Clause 4.1(3) of the LEP requires that the size of any lot resulting from the subdivision of land shall not be less than the minimum size shown on the Lot Size Map. The Lot Size Map in respect to Lot 339 indicates a minimum area of 40,000m² (40 hectares).

Various clauses exist within the LEP which provide exceptions to the requirements specified in Clause 4.1. Of relevance is Clause 4.2 *Rural subdivision* which provides flexibility in the application of standards for subdivision in rural zones. Of particular relevance are clauses 4.2(3) to (5) which are reproduced below:

9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

- (3) *Land in a zone to which this clause applies may, with development consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.*
- (4) *However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.*
- (5) *A dwelling cannot be erected on such a lot.*

The Land and Environment Court in the case of *S J Connelly CPP Pty Ltd v Byron Shire Council [2012]* considered the provisions of *State Environmental Planning Policy Rural Lands* (SEPP RL). The SEPP RL at clause 9 contains provisions similar to clause 4.2 of Council's LEP. (Note: the entirety of Clause 9 of the SEPP does not apply in this case due to the provisions of clause 1.9(2) of Ballina LEP 2012.) In the *Connelly* case the Commissioner concluded that:

41. *I am satisfied that a smaller 'primary production lot' such as Lot 2 in the current matter is permissible under the SEPP RL. and*

42. *Instead it seems that the SEPP RL allows the excision of a smaller prime agricultural land lot, with the remaining residual lot being allowed, even if it is less than 20ha. If it contains a dwelling as in the subject application, then a new smaller 'rural/residential' lot is created without any need of consideration of a SEPP 1 Objection.*

Legal advice has not been obtained related to the question of whether it is reasonably open to the Council to consent to a subdivision within the RU1 zone where both proposed lots are below the specified minimum lot size. The position has been taken that the Ballina LEP 2012, unlike the SEPP RL, requires the lot containing the dwelling to meet the minimum lot size requirement. This approach has been applied by Council in relation to other development proposals to date. It is this interpretation of the LEP provisions that has triggered the LEP amendment request.

Precedence Concerns

Council's planning staff has, since the commencement of Ballina LEP 2012, in February 2013, consistently applied the requirement that only the lot proposed for primary production purposes may be less than the minimum prescribed lot size. If this position is now varied through an LEP amendment there is a legitimate concern that such action may give rise to further similar amendment applications.

This may then create a situation where pressure is exerted on the Council to create additional dwelling entitlements relating to the lots created for primary production purposes.

In the subject case no dwelling entitlement has been sought for the primary production lot. Despite this, and the current intentions of the property occupier, no guarantee can be provided that this would always be the case if the LEP amendment and subsequent subdivisions are approved.

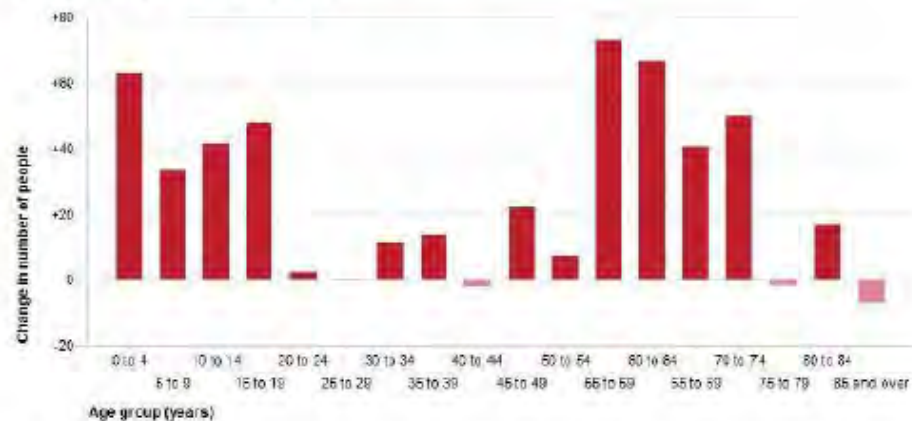
9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

If the LEP amendment is to progress, it is recommended that it incorporates an intention to prevent a dwelling from being constructed on the land as part of the mechanism to enable the subdivision to occur. This is to confirm that Council does not wish to enable additional lots to be created within the Shire’s rural areas below the LEP’s minimum subdivision standard that provide for dwelling houses in an ad hoc manner, but at the same time reinforces a desire of Council to support primary production.

It is also relevant here to consider the demographic (age) characteristics of the Cumbalum – Newrybar Corridor in which the subject site is located, as well as Ballina Shire more generally. The Diagram below illustrates the change in age structure of the Cumbalum – Newrybar Corridor between 2006 and 2011. It indicates that the largest increases have occurred in 55 to 74 year age groups. The results for Ballina Shire are similar.

Change in age structure - five year age groups, 2006 to 2011

Cumbalum - Newry Corridor - Total persons



Source: Australian Bureau of Statistics, Census of Population and Housing, 2006 and 2011 (Usual residence data). Compiled and presented in profile.id by .id, the population experts.



As the population continues to age it may result that older residents now living on rural properties may seek to relocate or reduce the amount of land under their ownership. Consideration of a process through which the rural residential component of significant agricultural land is reduced, and the primary production potential of land is maximized, has merit.

The current LEP amendment application, if supported, may result in additional applications being submitted and lots ultimately being created for primary production purposes which have no dwelling entitlement. Subject to a consistent policy framework being developed which encourages the consolidation of primary production lots, and the rigid imposition and adherence to no dwelling provisions for lots created for primary production purposes, then it is considered that it may be reasonable to contemplate a change in policy direction.

9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

Sustainability Considerations

- **Environment**

It is considered that there are no environmental issues associated with what is proposed or that require further investigation. The subject land is already used for two distinct purposes, one being rural residential and the other primary production (horticulture).

- **Social**

The proposal has social implications in so far as it will facilitate the use of part of the land for its current agricultural purpose and in so doing will provide limited local employment opportunities within the locality.

- **Economic**

The proposal has economic implications through facilitating a productive and viable agricultural use on part of the land. This is considered to add strength and diversity to the local economy.

Legal / Resource / Financial Implications

Council's processing guidelines and adopted fees and charges for LEP amendment requests would be applied to the further processing of this request. All costs associated with the processing of the application would be met by the applicant.

Processing of the amendment can be accommodated within the Strategic and Community Facilities Group work program.

Consultation

There has been no consultation undertaken with either the community or government agencies in relation to this LEP amendment request to date as this matter is in the initial concept phase.

However, should the proposal continue to proceed, community consultation, public exhibition and agency engagement will be undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act*. This would include consultation with the Department of Primary Industry – Agriculture and community consultation for a minimum period of 28 days.

Options

1. Initiate a planning proposal to facilitate the subdivision of Lot 339 DP 755684, so as to create two lots with areas below the required minimum lot sizes.

This is the preferred option. Initiating a planning proposal will enable Council to further investigate the merits of this proposal, determine the best option through which it may be facilitated in terms of amendment of the LEP, and also obtain broad community feedback on the proposal.

The surrounding locality is primarily used for rural residential purposes as a legacy of past concessional lot subdivision approvals previously available under former planning instruments and policies of the Council.

9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

Many of these lots have areas well below those proposed. Use of land for primary production purposes within the immediate locality is also uncommon. In these circumstances, adopting a strategy designed to maintain a niche agricultural – horticulture land use is considered to have merit notwithstanding potential precedent concerns.

A distinguishing feature of the current proposal is that the horticultural enterprise is already well established on the land. If it were the case that this commitment had not been demonstrated, and the bona fides of the proponent not evident, there may be a reluctance to support the proposal on the basis of speculation.

Under this approach a planning proposal would be prepared that identifies the intended outcome, with preference expressed for the use of Schedule 1 Additional Permitted Uses and a restriction of a dwelling entitlement being created. This reinforces the specific nature of the particular proposal and the agricultural land use outcome that is sought.

As further investigations and procedural steps are undertaken it is open to Council to either cease the amendment or change its approach, depending on the available information.

If the Council endorses this approach, staff would lodge the planning proposal with the Department of Planning and Environment upon payment of the applicable processing fees by the proponent. Typical process would involve Council considering the planning proposal document through a further report. However, in the circumstances, it is considered reasonable to progress this matter on the basis of an agreed principle for the amendment as defined in the Council's resolution.

2. Defer consideration of the LEP amendment request.

The Council may defer consideration of the LEP amendment request in order to undertake an inspection of the site and locality, to seek additional information and/or to obtain a more in-depth briefing of the proposal.

This approach is recommended in the event that the Council has concern about any precedent that may be created or would like to examine options to advance the proposal in more detail.

3. Decline to initiate the LEP amendment request.

It is open to the Council to decline the requested LEP amendment. Endorsement of this option would mean that no further action would be taken by Council with respect to the processing of the request. If this was to occur, it is open to the proponent to exercise his right to lodge a request for a pre-Gateway determination review with the Department of Planning and Environment.

Declining the request may also constrain future investment in the business conducted by Mr Sansom on this site and as a consequence the continued use of part of Lot 339 for primary production purposes.

9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

RECOMMENDATIONS

1. That Council endorses the preparation of a planning proposal which proposes to permit the subdivision of Lot 339 into two lots as outlined in this report, but which would preclude the erection of a dwelling on the proposed horticultural allotment.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition.
4. That Council give further consideration to the proposal following the conclusion of the public exhibition period.

Attachment(s)

1. Attachment One - LEP Amendment Application
2. Attachment Two - RU1 Zone Objectives Assessment

9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

A **Motion** was moved by Cr Sharon Cadwallader and seconded by Cr Ben Smith

1. That Council endorses the preparation of a planning proposal which proposes to permit the subdivision of Lot 339 into two lots as outlined in this report, but which would preclude the erection of a dwelling on the proposed horticultural allotment.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition.
4. That Council give further consideration to the proposal following the conclusion of the public exhibition period.

An **Amendment** was moved by Cr Jeff Johnson and seconded by Cr Phillip Meehan

That this matter be deferred and that Council hold a briefing to discuss issues surrounding rural land holdings.

The **Amendment** was **LOST**.

FOR VOTE - Cr Phillip Meehan and Cr Jeff Johnson

AGAINST VOTE - Cr David Wright, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Nathan Willis, Cr Keith Williams, Cr Sharon Cadwallader and Cr Ben Smith

ABSENT. DID NOT VOTE - Cr Sharon Parry

9.3 LEP Amendment Request - 111 Friday Hut Road Tintenbar

The **Motion** was **CARRIED**.

FOR VOTE - Cr David Wright, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Nathan Willis, Cr Keith Williams, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Phillip Meehan and Cr Jeff Johnson

ABSENT. DID NOT VOTE - Cr Sharon Parry

271016/1 RESOLVED

(Cr Sharon Cadwallader/Cr Ben Smith)

1. That Council endorses the preparation of a planning proposal which proposes to permit the subdivision of Lot 339 into two lots as outlined in this report, but which would preclude the erection of a dwelling on the proposed horticultural allotment.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition.
4. That Council give further consideration to the proposal following the conclusion of the public exhibition period.

FOR VOTE - Cr David Wright, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Nathan Willis, Cr Keith Williams, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Phillip Meehan and Cr Jeff Johnson

ABSENT. DID NOT VOTE - Cr Sharon Parry

Annexure Three – Gateway Determination



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

Our ref: PP_2017_BALLI_002_00 (17/03337)
Your ref: BSCPP 16/004

Dear Mr Hickey

Planning proposal to amend Ballina Local Environmental Plan 2012

I am writing in response to your Council's letter dated 03 February 2017 requesting a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to facilitate the subdivision of Lot 339 DP755684, 111 Friday Hut Road, Tintenbar for primary production purposes.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistencies with S117 Directions 1.5 Rural Lands and 4.3 Flood Prone Land are of minor significance. No further approval is required in relation to these Directions.

Council will still need to obtain the agreement of the Department's Secretary to comply with the requirements of S117 Direction 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to the plan being made.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Ms Kate Hanson of the Department's Northern Region office to assist you. Ms Hanson can be contacted on (02) 6641 6604.

Yours sincerely



24 February 2017

Craig Diss
Acting Director Regions, Northern
Planning Services

Encl:
Gateway Determination
Written Authorisation to Exercise Delegation
Attachment 5 – Delegated Plan Making Reporting Template



Gateway Determination

Planning proposal (Department Ref: PP_2017_BALLI_002_00): to facilitate the subdivision of Lot 339 DP755684, 111 Friday Hut Road, Tintenbar for primary production purposes.

I, the Executive Director Regions, at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to facilitate the subdivision of Lot 339 DP755684, 111 Friday Hut Road, Tintenbar for primary production purposes should proceed subject to the following conditions:

1. Prior to community consultation:
 - (a) the planning proposal is to be updated to clarify the objectives in relation to existing use rights for the dwelling and that the proposal is not a LGA wide amendment; and
 - (b) Council is to consider whether the primary production lot should be increased in size to include the greatest amount of regionally significant farmland as possible.
2. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) The planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) The relevant planning 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 section 5.5.2 of *A Guide to Preparing LEPs* (Department of Planning and Environment 2016).
3. Consultation is required with the following public authorities under section 56(2)(d) of the Act and/or to comply with the requirements of relevant S117 Directions:
 - (a) Department of Primary Industries – Agriculture
 - (b) NSW Rural Fire Service

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.



**Planning &
Environment**

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the 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).
5. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

Dated 24 day of February 2017

A handwritten signature in black ink, appearing to read "Craig Diss".

**Craig Diss
Acting Director Regions, Northern
Planning Services
Department of Planning and
Environment**

**Delegate of the Minister for
Planning**

Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by the Department of Planning and Environment following receipt of the planning proposal
- The Department of Planning and Environment will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department of Planning and Environment with the RPA's request to have the LEP notified

Table 1 – To be completed by Department of Planning and Environment

Stage	Date/Details
Planning Proposal Number	PP_2017_BALLI_002_00
Date Sent to DoP&E under s56	14 February 2017
Date considered at LEP Review Panel (if applicable)	N/A
Gateway determination date	24 February 2017

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Date LEP made by GM (or other) under delegation		
Date sent to DoP&E requesting notification		

Table 3 – To be completed by Department of Planning and Environment

Stage	Date/Details
Notification Date and details	

Additional relevant information:



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Ballina Shire Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2017_BALLI_002_00	To facilitate the subdivision of Lot 339 DP755684, 111 Friday Hut Road, Tintenbar for primary production purposes.

In exercising the Minister's functions under section 59, the Council must comply with the Department of Planning and Environment's "*A guide to preparing local environmental plans*" and "*A guide to preparing planning proposals*".

Dated 24 February 2017

A handwritten signature in black ink, appearing to read 'Craig Diss'.

Craig Diss
Acting Director Regions, Northern
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning

Annexure Four – Proponent’s Planning Proposal / LEP Amendment Request & Additional Information

Planning Proposal / LEP Amendment Request Proponent & Proposal Information Form

Lodge Applications at Ballina Shire Council • 40 Cherry Street • Ballina (Mon-Fri 8.15am to 4.30pm)
 mail PO Box 450 Ballina 2478 • dx 27789 • f 02 6666 7035 • e council@ballina.nsw.gov.au
 t 02 6666 4444 • w www.ballina.nsw.gov.au • abn 53 929 887 369



This form is to be completed and submitted when a request for an LEP amendment or planning proposal is lodged with Council.

Proponent Details

All correspondence will be forwarded to this name and address unless alternative details are specified below.

Proponent's Name FRANK PATRICK & LEA MARY KNUDSON

Address 111 FRIDAY HUT ROAD TINTENBAR, NSW 2478

Postal Address 111 FRIDAY HUT ROAD TINTENBAR, NSW 2478

Telephone (w) 0266878192 (h) 0266878192 Mobile 0415460561

Email Address frknudson@gmail.com Fax —

Signature F Knudson J Knudson Date 3-6-16

Consultant / Representative Details

Details of consultants/representatives acting on behalf of the proponent are required. Please nominate whether the consultant/representative will be the principal contact for the proposal.

Name MALCOLM SCOTT

Address 440 DORROUGHEY RD DORROUGHEY 2480

Telephone (w) 66895815 Mobile 0427 202170 Fax —

Email Address m.scott@spol.com.au

Please tick if consultant/representative is to be the principal point of contact with Council.

Description of the Land

Property descriptions of all land holdings the subject of the LEP amendment request/planning proposal are required. Additional properties the subject of the proposal should be documented in the additional information field at the end of the form.

Property Address 111 FRIDAY HUT RD TINTENBAR BALLINA

Lot/Portion 339 Section — DP 755684

Property Address —

Lot/Portion — Section — DP —

Property Address —

Lot/Portion — Section — DP —

Office Use Only		
Proposal Name:	Type: <input type="checkbox"/> Major <input type="checkbox"/> Minor	Pre-Lodgement Discussion: <input type="checkbox"/> Y <input type="checkbox"/> N
Fee Paid: <input checked="" type="checkbox"/> Y <input type="checkbox"/> N Amount: \$ <u>3500.00</u>	Date Received: <u>10/6/16</u>	Receipt No: <u>683922</u>
Code 6, Job No: 20001.1001.061		

Landholder Details and Consent

Details of all landholders are to be provided. If landholders do not sign this form, evidence of the consent of landholders for the nomination of their landholding as part of the LEP amendment/planning proposal is required in conjunction with this form. Space is provided at the end of this form for additional landholder details.

Owner's Name(s) FRANK & REA KNUDSON

Address 111 FRIDAY HUT ROAD TINTENBAR NSW 2478

Lot/Portion 339 Section — DP 755684

Telephone (w) 0266878192 (h) 0266878192 Mobile 0415460561


Email Address flknudson@gmail.com Fax —

I/we being the owner(s) of the property identified above, consent to the submission of this planning proposal/LEP amendment.

Signature Frank & Rea Knudson Date 3-6-16

Summary of the LEP Amendment Request / Planning Proposal

Brief outline of the concept or idea underpinning the LEP amendment request / planning proposal.

Enable the subdivision of land for agriculture
 Please see submissions dated 20 Nov. 2015 &
 4 Jan. 2016 (attached).

 Malcolm Swift MPA.
 6/6/16

MALCOLM SCOTT B.A. & D.U.R.P. (UNE) M.P.I.A.
CONSULTANT TOWN PLANNER

440 Dorrroughby Rd Dorrroughby 2480 NSW (ABN 37 057 633 138)
Ph 0266 895 815 Mobile Ph 0427 202170 Email mscott@spot.com.au

The Manager North Region
Dept. of Planning & Environment
Locked Bag 9022
Grafton NSW 2460

The General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

20 Nov. 2015

Dear Sirs

**Re Subdivision for the purposes of agriculture
Rural Land SEPP and Ballina LEP 2012
Lot 339 DP 755684 – 111 Friday Hut Rd Tintenbar NSW**

I act on behalf of Mr Frank & Mrs Lea Knudson and Mr Luke Sansom. Mr & Mrs Knudson are the owners of the land identified above and have lived on it since 1979 when they erected a dwelling on it.

Mr Sansom, as part of his business 'Seedlings Organic', is developing part of Mr & Mrs Knudson's land for certified organic wholesale seedling and seed production.

Mr & Mrs Knudson and Mr Sansom have requested me to assist them to prepare a submission (this letter report) to the Dept. and Council (BSC) in regard their wish to undertake a subdivision for agricultural purposes which is currently not available to them.

Mr & Mrs Knudson and Mr Sansom request that the Dept. and BSC have regard to the situation and provide assistance either by;

1. amending the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) to enable what is proposed and/or
2. suggesting a means by which a development application might be favourably considered by BSC.

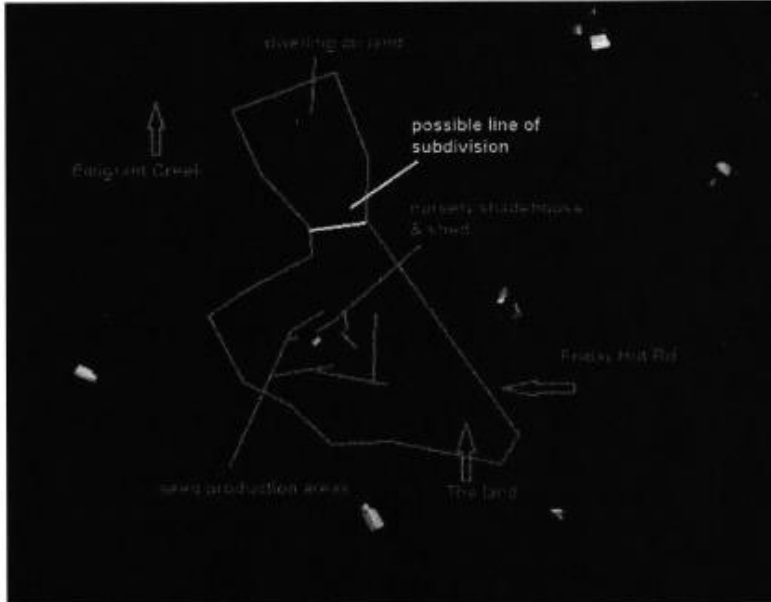
The letter report is set out in the following manner:

- 1 Background**
 - 1.1 Overview
 - 1.2 Consultation and literature review
 - 1.3 Legislative context
- 2 Circumstances**
 - 2.1 The proposed use and organic agriculture
 - 2.2 The suitability of the land
 - 2.3 Land use conflict risk assessment
- 3 Conclusion**

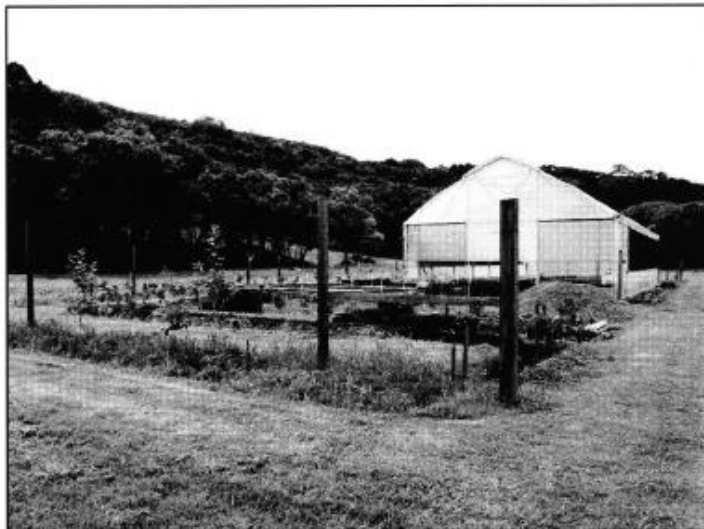
1 Background

1.1 Overview

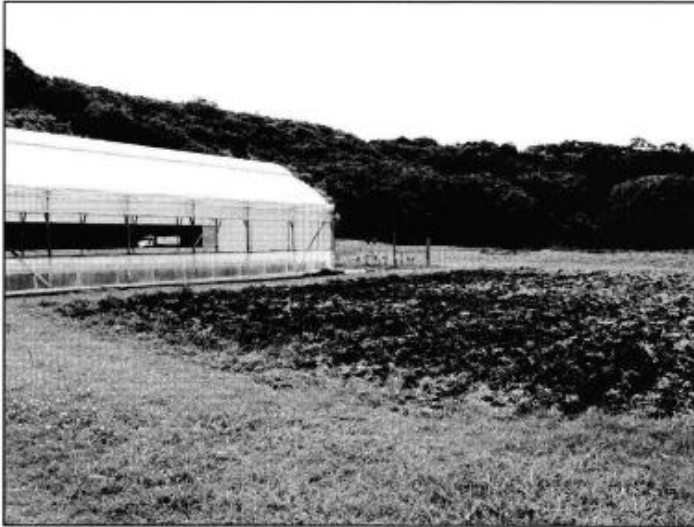
The land and proposed use is shown in the following aerial image and photographs.



Map No. 1 – Land and immediate locality



Photograph No. 1 shade house and plant hardening area



Photograph No. 2 shade house and seed plant area



Photograph No. 3 seedlings in shade house (also shows storage shed)

'Seedlings Organic' has been established for 5 years and grown from a part-time to full-time agricultural business / enterprise.

Mr & Mrs Knudson and Mr Sansom have a mutually agreeable and respectful 'gentleman's agreement' in regard the development and use of the land for the seedling nursery and seed production. As often happens with enterprise development this was based on the realistic proposition 'we shall see how it goes'.

Since he began cleaning up the land in September 2012, Mr Sansom has provided the following key infrastructure and plant which reflects the growth in his agricultural

business and service:

- Compacted road base driveway used for all weather access to the key production areas, propagation shed and farm equipment shed.
- In ground irrigation system including pumps, storage and distribution lines to all production areas.
- Agricultural shed (6m x 12m), drive through access for storage of tractor, cultivation implements, slasher, tools and sundry equipment
- Propagation shed (9m x 21m), vented roof and sides, used for production of seedlings for commercial agricultural purposes.
- Gravel pad (15m x 40m), plastic lined with drainage system and covered with 50mm aggregate, used as a hardening area for vegetable seedlings prior to being transplanted into the field.

It is estimate that land use improvements to date have cost in excess of \$90,000. The business has self-funded these improvements over a 3 year period.

Equipment purchased over the same period to facilitate the growth of the enterprise includes:

- Commercial scale automated seeder used for efficient seedling production.
- Tractor (40HP) for cultivation of seed production areas.
- Cultivation implements including; offset discs, chisel plough, furrowers and deep rippers.
- Slasher/mulcher used for cutting of green manure crops.
- Zero turn mower used to maintain access to all areas of the farm.

The estimated cost of equipment exceeds \$30,000 investment by the business.

A combination of many factors including importantly; the growth in demand for certified organic seedlings and a desire by Mr & Mrs Knudson and Mr Sansom to protect and further grow the business developed on the land are the key reasons for seeking the subdivision of the land for agricultural purposes.

The land has an area of 3.9ha. One (1) lot of approx. 1ha would include the existing dwelling and the other lot (approx. 3ha) would comprise the land used for the seedling nursery and seed production.

Mr Sansom does not seek a dwelling entitlement on the land he uses for seedling and seed production as he lives nearby. He wishes to provide for the growth in demand for organic seedlings and do the further necessary land work required to realise the capability and suitability of the land for organic seed production.

1.2 Consultation and literature review

In the preparation of this submission I have consulted with the following people:

1. Mr & Mrs Knudson and Mr Sansom
2. Mr Andrew Smith, Manager Development Control BSC
3. Mr Simon Scott, Senior Strategic Planner BSC
4. Mr Jim Clarke, Senior Town Planner Dept. of Planning and Environment, Grafton and
5. Ms Selina Stillman, Dept. of Primary Industries, Wollongbar.

Mr Knudson and Mr Sansom have separately consulted with Mr Rod Willis, Chief Town Planner BSC.

In the preparation of this submission I have reviewed the following land use planning documents:

1. Records (DA 1979/222 and BA 1979/744) from BSC for the dwelling on the land.
2. Northern Rivers Farmland Protection Project – final recommendations Feb. 2005.
3. s. 117 Direction 1.2 Rural Zones.
4. Ballina Local Environmental Plan 2012.
5. Ballina Local Environmental Plan 1988.
6. Lismore Local Environmental Plan 2012.
7. Richmond Valley Local Environmental Plan 2012.
8. Byron Local Environmental Plan 2014.
9. State Environmental Planning Policy (Rural Lands) 2008.
10. NSW Dept. of Planning Circular PS08-002 (9 May 2008).
11. The report titled 'Review of Land Use Planning in the Central West' by the Central West Independent Review Panel, Aug. 2007.
12. The Judgement by Senior Commissioner Hussy in regard the hearing of the appeal to the NSW Land & Environment Court; S J Connelly CPP Pty Ltd v Byron Shire Council [2012] NSWLEC 1237.

As relevant I have made comments in relation to the proposal by Mr & Mrs Knudson and Mr Sansom and those land use planning documents further.

1.3 Legislative context

State Environmental Planning Policy (Rural Lands) 2008 [RL-SEPP]

In summary the RL-SEPP (via Part 3 Division 9) provides the legislative framework which enables a person to lodge a development application (DA) for rural subdivision for agricultural purposes. RL-SEPP prevails over the provisions of an LEP if there is an inconsistency or unless it is otherwise exempted in the LEP.

In general terms the objective of RL-SEPP is to provide flexibility in regard rural subdivision to allow land owners a greater chance to achieve the relevant zone objectives. Rural land maybe subdivided to create a lot of a size less than the minimum size otherwise permitted, provided the dwelling on the land is not situated on the lot and the lot not having a dwelling entitlement.

I have appended copy of Part 3 Division 9 of the RL-SEPP for reference.

My understanding is that at times there is an issue with the RL-SEPP in that it is silent on the size of the residual lot with the dwelling erected on it. This is not the case for the lot created for agriculture without the dwelling entitlement which is the / 'a' lot been referred to in the RL-SEPP.

As there are no special conditions or development standards expressed in the SEPP (other than the dwelling on the land is not situated on the agricultural lot) which limit the size of the residual lot it.

It follows:

- the area of the residual lot (with dwelling) should not have to meet the minimum lot size required by an LEP as that in essence and fact would defeat the objective to provide flexibility for agriculture and innovation in the industry and
- as the Policy permits variation of minimum lot sizes for agricultural purposes, without changing the minimum lot size provision in an existing environmental planning instrument it would be reasonable to assume that the area of the residual lot (with dwelling) would not have to achieve the minimum lot size provision in an existing environmental planning instrument.

Having regard to the historic pattern of subdivision and the size of rural allotments in the Northern Rivers region it would be just about impossible to do what the SEPP was created for if the residual lot had to meet the 40ha min. of a LEP.

Ballina Local Environmental Plan 2012 (Ballina LEP 2012)

The land is zoned RU1-Primary Production. The minimum subdivision allotment size for the land is 40ha.

The use

In terms of land use definition the use is a mix of 'intensive plant agriculture' and 'agricultural produce industry' as defined in the Ballina LEP 2012.

'Agriculture' in the Ballina LEP 2012 is defined as:

Parent definition

agriculture means any of the following:

- (a) *aquaculture,*
- (b) *extensive agriculture,*
- (c) *intensive livestock agriculture,*
- (d) *intensive plant agriculture.*

'Intensive plant agriculture' is defined as:

Child definition

intensive plant agriculture means any of the following:

- (a) *the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),*
- (b) *horticulture,*
- (c) *turf farming,*
- (d) *viticulture.*

horticulture means the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include a plant nursery, turf farming or viticulture.

'Rural industry' is defined as:

Parent definition

rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:

- (a) *agricultural produce industries,*
- (b) *livestock processing industries,*
- (c) *composting facilities and works (including the production of mushroom substrate),*
- (d) *sawmill or log processing works,*
- (e) *stock and sale yards,*
- (f) *the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*

'Agricultural produce industry' is defined as:

Child definition

agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins,

feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

The land use is not a 'plant nursery' as that involves retail and other activities which Mr Sansom does not, nor wishes to undertake.

'Intensive plant agriculture' is permissible in the RU1 zone without development consent.

'Rural industries' are permissible in the RU1 zone with development consent.

Zone objectives

The objectives (in *italics*) of the RU1 zone are as follows and relevant comments made:

To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

The use and subdivision of the land to further facilitate growth of the agricultural use on it achieves the objective.

To encourage diversity in primary industry enterprises and systems appropriate for the area.

The use and subdivision of the land further facilitates growth of an established primary industry enterprise and achieves the objective.

To minimise the fragmentation and alienation of resource lands.

The use and subdivision of the land is a higher order appropriate use of an agricultural resource in a manner which does not fragment productive agricultural land as the use is maintained in an allotment which will not have a dwelling entitlement.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

The use has existed on the land since 2012 (3 years) without land use conflict. The probability that the use would create land use conflict in the future is highly unlikely. Refer Section 2.3.

To maintain the rural, cultural and landscape character of the locality.

The rural, cultural and landscape character of the locality is maintained because in reality other than a line on a plan and creation of a Deposited Plan (which obviously no-one will see) nothing changes.

To enable development that is compatible with the rural and environmental nature of the land.

The use has existed on the land since 2013 without land use conflict and is compatible with the rural and environmental nature of the land.

To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.

The use does not require the provision of any services not presently available on the land.

Special conditions or development standards

The Ballina LEP 2012 contains a clause [Cl. 1.9(2)] exempting application of Part 3 Division 9 of the RL-SEPP, which otherwise enables a DA for the subdivision sought. A similar provision exists in the Richmond Valley LEP 2012 and Tweed LEP 2014.

However the provision does not exist in the Lismore LEP 2012 or the Byron LEP 2014, though those LEP's contain Cl. 4.2, as do all the LEP's.

I have appended copy of Cl. 1.9(2) of the Ballina LEP 2012 for reference.

Provision for rural subdivision in the Ballina LEP 2012 is enabled by Cl. 4.2. The wording of Cl. 4.2 mirrors the special conditions or development standards of Division 9 of the RL-SEPP.

I have appended copy of Cl. 4.2 of the Ballina LEP 2012 for reference.

Cl. 4.2 seeks to permit flexibility in regard agriculture and subdivision, allows the creation of a lot of any size for agricultural purposes which is less than the minimum shown on the map (40ha), provided the dwelling on the land is not on the agricultural lot and prohibits a dwelling on the agricultural lot.

My understanding is that BSC, informed by legal advice then links, via Cl. 4.1 (minimum lot sizes), the size of the residual lot (with the dwelling) to the minimum lot size shown on the map (40ha).

The LEP has a clause (Cl. 4.6) to enable departures from or variations to development standards (40ha is a development standard), however it permits only a 10% departure from 40ha.

In summary the Ballina LEP 2012 is in effect prohibiting what is enabled by RL-SEPP and by Cl. 4.2 and is not allowing development applications for agricultural purposes (or achieving the flexibility objective of the enabling provision) where an existing allotment is less than 40+ha.

The reliance on the 40ha development standard does not enable a person with less land to lodge a DA for rural subdivision for agricultural purposes and for it to be considered on merit.

At present the merits of Mr & Mrs Knudson and Mr Sansom's proposal cannot be considered by BSC and the reason for this submission.

Ballina Local Environmental Plan 1987 (Ballina LEP 1987)

The land comprising the Emigrant Creek water catchment area, some 2+km from the land is currently zoned 'DM-deferred matter' under the Ballina LEP 2012. Those lands are subject to the zoning, special provisions and development standards of the Ballina LEP 1987 and the RL-SEPP.

Early rural LEP's used to contain provisions enabling a rural subdivision to create a special purpose allotment for a use permissible in the zone.

NSW Dept. of Planning Circular PS08-002 (9 May 2008)

The Circular makes no reference to any the special conditions or development standards which might apply to the size of the lot containing the dwelling. The circular, though in reference to the time of LEP preparation, suggests that Councils can review the minimum lot size provisions to consider a range of lots sizes which may better reflect existing or emerging trends of agriculture.

The report titled 'Review of Land Use Planning in the Central West' by the Central West Independent Review Panel, Aug. 2007

Whilst the Independent Panel's review was in regard future of agriculture in the central west of the State the report informed the policy direction and special conditions or development standards for subdivision for agricultural purposes in the RL-SEPP.

The Panel identified a range of issues in regard to the on-going viability of agriculture including that there is (amongst some) the lack of understanding of the changing face of agriculture and that there needs to be a strong State position that focuses on clear and transparent process that incorporates certainty and guidance and that contains a degree of flexibility to accommodate changing circumstances over time.

NSW Land & Environment Court S J Connelly CPP Pty Ltd v Byron Shire Council [2012] NSWLEC 1237

This matter related to land near Federal in Byron shire which was at that time subject to the Byron LEP 1988. The application was refused for a number of reasons, key appears to be that the optimum agricultural use of the proposed agricultural lot could not be 'connected' to it to sufficiently convince the Court.

Northern Rivers Farmland Protection Project

The land is mapped as regionally significant farmland.

s. 117 Direction 1.2 Rural Zones

The direction does not apply as no planning proposal is sought which changes the existing zoning of the land.

2 Circumstances

2.1 The proposed use and organic agriculture

Organic agriculture (both certified and non-certified) in the Northern Rivers is an established and growing / emerging agricultural industry, particularly on smaller rural allotments. The availability and reliable provision of locally grown certified seedlings and seed stock is very important input.

'Seedlings Organic' specialises in the production and supply of vegetable seedlings and seed to commercial organic growers in the Northern Rivers region.

Importantly the Northern Rivers region has the highest growth and largest number of certified organic growers of any region in Australia.

'Seedlings Organic' was established in 2010 and began use of the land in 2012, which allowed for the growth and expansion of the business. Organic certification for seedling production on the site was obtained from NASAA (National Association for Sustainable Agriculture Australia) in 2012 and certification for seed production granted in 2014.

The business is certified with NASAA - Certification No. 2656N. Copy of the certification is attached. Refer to **Attachment No. 1**.

'Seedlings Organic' currently supply 50-60 organic growers on a regular basis. The seedlings and seeds form an important (vital) part of their production systems while also assisting them to meet their certification requirements. To comply with the 'National Standard for Organic Produce' and their respective certification bodies growers must actively source certified organic seed and seedlings.

Based on the records supplied to NASAA for the annual inspection in July 2015, 'Seedlings Organic' supplied in excess of 900,000 seedlings to local growers for the production year 2014-2015, an increase of 50% on the previous year. Current production has been averaging 20,000 seedlings per week.

Future expansion will focus on seed production, breeding and variety trials for the Northern Rivers region. 'Seedlings Organic' have established relationships with the world's leading organic plant breeders which has allowed them to introduce a number of new vegetable varieties into Australia developed specifically for the needs of organic growers. This has significantly influenced the profitability of local organic growers in a positive way and 'Seedlings Organic' plan to continue this important work into the future.

The focus of 'Seedlings Organic' is to serve the current needs of the industry while also being an innovator. Future plans involve the purchase of dehumidified cool rooms for long term seed storage under optimal condition and professional seed cleaning and processing equipment to ensure purity.

'Seedlings Organic' aim to focus on producing and supplying varieties that meet the specific needs of organic growers and the overall aim of sustainable production. In this regard considerable work is being undertaken in the following fields:

- Horizontal disease resistance
- Weed competitiveness (growth patterns that rapidly suppress competing weeds)
- Varieties with larger deeper root systems (reducing irrigation requirements) and
- Plants for economic cropping under low input production systems (i.e. resource efficient).

Conventional plant breeding largely ignores the above traits which can be vitally important to organic production systems.

'Seedlings Organic' is currently working with the Organic Federation of Australia and Wollongbar TAFE to provide local training and employment opportunities in the industry.

Letters of support have been provided by people involved with organic agriculture in the region for many years and several of 'Seedlings Organic' key customers. Refer to **Attachment No. 2**.

2.2 The suitability of the land

The following 'tests' the land against the relevant key bio-physical thresholds / criteria (shown in *italics* below) for prime crop and pasture land to merit a 'specialist categorisation', as the proposed use is.

The key bio-physical thresholds / criteria for prime crop and pasture land are founded in the Dept. of Planning Rural Land Evaluation Manual 1988 and NSW Agriculture Agfacts Agricultural Land Classification 2002.

2.2.1 Location, area and existing agricultural use

The land is within a rural locality that is characterised by small rural lot primarily lifestyle subdivision and residential development centred on the former Tintenbar village / hamlet.

The land has an area of 3.9ha and was a grant of land under Returned Soldiers Settlement Acts and created as an allotment 28 Feb. 1928. BSC approved the

erection of the dwelling on the land in DA No. 1979/222 under the Tintenbar Interim Development Order (IDO) and BA No. 1979/774 under Ordinance No. 70 of the *Local Government Act 1919*.

Presumably under the IDO the land was considered an 'existing holding' with dwelling entitlement under the IDO and is not a lot created with the approval of BSC.

The land also contains a dwelling, garage and small shed. The land within the general curtilage of the dwelling and garage (approx. 1ha - 25%) is managed for those purposes.

The balance of the land (approx. 3ha - 75%) was between 1979 and 2003 used for hobby / lifestyle growing of vegetables and light grazing. In 2004 Mr Sansom commenced removing noxious weeds from the land and developing the infrastructure to grow seedlings.

The 2 proposed allotments are approx. 1ha & 3ha as approx. shown on **Map No. 1**.

2.2.2 Climate

The climate of the Ballina local government area and Northern Rivers is warm and temperate tending to sub-tropical in certain areas with a long growing season and moderately high temperatures and high rainfall.

The area has a high and distinct seasonal pattern of rainfall. Most rainfall occurs during the late summer-autumn period. The average rainfall for Tintenbar is approx. 1,700mm per annum.

2.2.3 Soils

The soil landscape is categorised by Morand (1994) as a variant of alluvial 'Eltham'.

Typically soils in the 'Eltham alluvial soil landscape' are well drained alluvial Krasnozems the variant characterised by a narrow floodplain and slopes of 2-5% with darker soils.

The soils are suitable for commercial cultivation for seed production at the scale anticipated by Mr Sansom.

2.2.4 Drainage and slope

The land has a 570m long frontage and drains to Emigrant Creek which is a permanent watercourse. Land adjoining Emigrant Creek generally upstream of the dam and approx. 2+km from the land is within a water catchment area.

Mr & Mrs Knudson previously held (Ref 30SL043195) and have a current water licence (Ref. WAL22728 / 30AL3040083) to extract 3 'units' per annum.

The land is flat and has a general slope of approx. 2-3% (1-2°).

2.2.5 Flooding

The land forms part of the Emigrant Creek floodplain. At the time (1979) Mr & Mrs Knudson purchased the land and built their dwelling BSC advised that the general level of the land was RL7.5m(AHD) and though it at the time had no flood records for the land it was satisfied based on evidence of local people that the March 1976 (1 in 100 year) flood event did not cover the site of the dwelling.

The land is not shown on the BLEP 2012 Flood Planning Map FLD_005 as potentially flood prone.

Mr & Mrs Knudson have provided a general description and map showing of those parts of the land they observed to be covered with floodwaters. Refer to **Attachment No. 3**. Mr Knudson has advised me that for the land to flood the rainfall has to be very heavy and sustained in the catchment and that waters recede quickly when the rain eases and stops.

2.2.6 Vegetation

The significant vegetation on the land comprises the trees (predominantly Camphor laurel) along the bank of Emigrant Creek and that found within the general curtilage of the dwelling. The area considered suitable for the existing and future nursery and seed production areas comprises native and exotic grasses.

The vegetation on the land is not identified as potential as a habitat or corridor of importance. The aerial image and photographs show the vegetation.

2.2.7 Existing development and use of the land

The use of the land is described above.

Seedlings Organic is an established agricultural business and the use of the land clearly establishes connection and legitimacy to the proposal.

The existing use of the land by Mr Sansom is substantially more agriculturally viable than its past use. This situation reflects the changing face of agriculture and the emergence of organic agriculture in the Northern Rivers region.

2.2.8 Buffers to adjoining land use

Mr Sansom chose this land to establish his organic nursery as it is in an area characterised by small rural holdings used primarily for rural residential / lifestyle purposes which is relatively isolated from local conventional farming areas, which might impact on a certified organic land use.

The existing dwelling on the land is approx. 198m from the nursery. The shade house and shed cannot be seen from the curtilage of the dwelling.

The closest dwellings and use of adjoining land (see **Map No. 1**) to the existing nursery are:

- south approx. 142m to the dwelling land used for rural residential purposes
- east approx. 150m to the dwelling land used for rural residential purposes and
- west approx. 226m to the dwelling land used for grazing.

The distance, topography and vegetation combine to provide adequate buffers between the nursery and seed production areas and adjoining development.

The land meets the relevant key bio-physical thresholds / criteria for prime crop and pasture land to merit a 'specialist categorisation' for the production of certified organic seedlings and seeds.

2.3 Land use conflict risk assessment

The NSW Dept. of Primary Industries has published guidelines for identifying and managing land use conflict issues on the NSW North Coast.

The land use conflict risk assessment guidelines (LUCRA guidelines), prepared in 2007 by Learmonth, Whitehead & Fletcher at the Centre of Coastal Agricultural Landscapes in partnership with the Northern River Catchment Management Authority are titled; *Living and Working in Rural Areas A handbook for managing land use conflict issues on the NSW North Coast*.

The LUCRA guidelines:

- identify a range of most common issues and situations that can result in rural neighbourhood disputes
- recommend buffer separation distances between primary industries and development and sensitive environments and
- a process of land use conflict risk assessment.

The minimum buffer separation distances between the primary industries on adjoining lands recommended in the guidelines are identified in Table No. 1.

Table No. 1 Recommended buffer distances - LUCRA

Land use	Recommended distance
Grazing of stock	50m
Cropping & horticulture	200m
Greenhouse & controlled environment horticulture	200m
State & regionally significant farmland	300m
Stock yards including cattle	200m

The existing seedling nursery and seed production areas (and existing dwelling currently on the land to the nursery operation) are located within the recommended minimum separation distances for 'horticulture' and 'greenhouse & controlled environment horticulture' to adjoining agricultural land uses.

Mr Sansom's use of the land however is not comparable to conventional 'horticulture' and 'greenhouse & controlled environment horticulture' for the following key important reasons:

- it is a relatively small niche certified organic agricultural land use
- seedling nutrients are maintained by use of compost and not highly artificial soluble fertilisers which leach in particular nitrogen & phosphorus
- no artificial or petro chemicals / pesticides are utilised – all pest and disease controls are biological so there is no build-up of residuals or for potential for spray drift
- no herbicides are used and no seed stock is treated with fungicides
- most tasks are undertaken manually, including operation of the shade house
- there is no electricity connected to the land
- the shade house is designed to maximise airflow for disease control which also negates use of fans and the like and
- no trucks deliver inputs or collect seedlings as part of the business operation. All inputs and plants are delivered by vehicles no greater in size than a utility or equivalent.

Section 2.2.8 describes the use of land and the separation distances between the existing seedling nursery and seed production areas and adjoining land shown on **Map No. 1**.

The LUCRA guidelines recognise that in certain circumstances variation from the minimum buffer separation distances may be justified for reasons such as; the scale of the proposal, topographic and micro-climatic conditions, technological advancement, operational considerations and arrangements, sensitivity of surrounding lands and land use in the locality.

The LUCRA guidelines recommend consideration of a variation criteria, should the circumstance of the proposal merit variation of the recommended minimum buffer separation distances.

The guidelines recommend the use of land use conflict risk assessment (LUCRA), which is an appraisal system to identify compatibility of land uses and potential for conflict between adjoining land use.

Following preparation and release of the guidelines, the Centre of Coastal Agricultural Landscapes and Northern River Catchment Management Authority engaged Tim Fitzroy & Assoc. to conduct training workshops and prepare a manual (LUCRA manual) to assist practitioners prepare assessments.

The manual recommends that the LUCRA should following the following steps.

Step 1 – gather information

The LUCRA should provide the following information to consider and address the following factors (identified in summary in *lower case italics*).

1. *Determine the nature of the land use change and development proposed.*
The existing and proposed use of the land is described in Section 2. The use of adjoining land and land in the locality is described in Section 2.2.8.
2. *Assess the nature of the precinct where the land use change and development is proposed.*
The use of adjoining land and land in the locality is described in Section 2.2.8.
3. *Appraise the topography, climate and land uses of the land and broader locality.*
The use of the land and land in the locality is described in Section 2.2.8. The topography and climate of the land described in Sections 2.2.2 & 2.2.4.
4. *Undertake a site history search, review the previous environmental assessments and approvals for the site.*
The historic use of the land is described in Section 2.
5. *Conduct site inspections and interview relevant owners of operations of adjacent properties.*
Site inspection is limited to view available aerial imagery and roadside observation. No land use survey was undertaken given the primarily rural residential / lifestyle / small area type land nature of adjoining properties. Refer to Section 2.2.8.
6. *Describe the main activities of the proposed land use and development and regularity of those uses.*
The proposed use is described in Section 2.
7. *Describe and record the main activities of the adjoining land uses and regularity of those uses, including seasonal activities.*
Tables No. 5, 6 & 7 identify the core activities for:

- the land use of grazing
- the operation of the seedling nursery and seed production and
- by the occupation of dwelling (and others generally) on the land.

Step 2 – evaluate the risk level of each activity

The LUCRA manual indicates that; *'it is necessary to differentiate between an 'environmental hazard' and an 'environmental risk'. 'Hazard' indicates the potential for harm, while 'risk' refers to the probability of that harm occurring'.*

The following outlines the methodology of the LUCRA.

Determination of risk consequence and probability

Table No. 2 shows the measurement of the consequence of the environmental hazard / impact / risks used in the LUCRA manual.

Table No. 2 LUCRA measure of consequence

Level	Descriptor	Description	Examples
1	Severe	<ul style="list-style-type: none"> • Severe and/or permanent damage to the environment • Irreversible with management • Severe impact on the community • Neighbours are in prolonged dispute and legal action involved. 	<ul style="list-style-type: none"> • Damage or death to animals, fish, birds or plants • Long term damage to soil or water • Odours so offensive some people are evacuated or leave voluntarily • Many public complaints and serious damage to Council's reputation • Contravenes Protection of the Environment & Operations Act and the conditions of Council's licences and permits. Almost certain prosecution under the POEO Act
2	Major	<ul style="list-style-type: none"> • Serious and/or long-term impact to the environment • Long-term management implications. • Serious impact on the community. • Neighbours are in serious dispute 	<ul style="list-style-type: none"> • Water, soil or air impacted, possibly in the long term • Damage to animals, fish or birds or plants • Public complaints. Neighbour disputes occur. Impacts pass quickly • Contravenes the conditions of Council's licences, permits and the POEO Act • Likely prosecution
3	Moderate	<ul style="list-style-type: none"> • Moderate and/or medium-term impact to the environment and community. • Some ongoing management implications. • Neighbour disputes occur. 	<ul style="list-style-type: none"> • Water, soil or air known to be affected, probably in the short term • No serious damage to plants or animals • Public largely unaware and few complaints to Council • May contravene the conditions of Council's Licences and the POEO Act • Unlikely to result in prosecution

4	Minor	<ul style="list-style-type: none"> • Minor and/or short-term impact to the environment and community. • Can be effectively managed as part of normal operations. • Infrequent disputes between neighbours. 	<ul style="list-style-type: none"> • Theoretically could affect the environment or people but no impacts noticed • No complaints to Council • Does not affect the legal compliance status of Council
5	Negligible	<ul style="list-style-type: none"> • Very minor impact to the environment and community • Can be effectively managed as part of normal operations. • Neighbour disputes unlikely. 	<ul style="list-style-type: none"> • No measurable or identifiable impact on the environment. • No measurable impact on the community or impact is generally acceptable.

Table No. 3 shows the measure of the likelihood or probability of the environmental hazard / impact / risks occurring, as adopted in the LUCRA manual. Five levels (A-E) of probability are provided for.

Table No. 3 LUCRA measure of probability

Level	Descriptor	Description
A	Almost certain	Common or repeating occurrence
B	Likely	Known to occur, or 'it has happened'
C	Possible	Could occur, or 'I've heard of it happening'
D	Unlikely	Could occur in some circumstances, but not likely to occur
E	Rare	Practically impossible

Risk level and ranking

The core activities of the agricultural uses on adjoining lands which have potential to generate off-site environmental impact/s and be a possible source of land use conflict between the seedling nursery and seed production areas and existing agricultural uses, identified by discussion, aerial images and site inspection are considered.

Each activity is rated by nominating a 'probability' score (Table No. 3) and a 'consequence' score (Table No. 2). The LUCRA manual provides a 'risk ranking' table to identify the risk of environmental impact.

The risk is ranked from a score of 25 to 1 for each 'probability' and 'consequence'. A rank of 25 represents the highest magnitude of risk that is highly likely and a serious event. A rank of 1 represents the lowest magnitude of risk, an almost impossible very low consequence event. A risk ranking of 25-11 is deemed to be an unacceptable risk and a risk ranking of 10-1 is deemed to be an acceptable risk.

Table No. 4 shows the 'risk ranking' table as adopted in the LUCRA manual.

Table No. 4 LUCRA 'risk ranking'

Probability	A	B	C	D	E
Consequence					
1	25	24	22	19	15
2	23	21	18	14	10
3	20	17	13	9	6
4	16	12	8	5	3
5	11	7	4	2	1

Tables No. 5, 6 & 7 identify the core activities for:

- the land use of grazing onto the seedling nursery and seed production
- of the seedling nursery and seed production onto adjoining land and
- by the occupation of dwelling (and others generally) on the land to the seedling nursery and seed production area

a 'probability' score (Table No. 3) and a 'consequence' score (Table No. 2) and ranking of risk (Table No. 4).

No assessment is made of seed production as that activity does not require consent of BSC.

Table No. 15 LUCRA 'risk ranking' – from grazing

Core activity & impact	Nature / frequency / mitigation	Hazard	Risk ranking
Grazing animals Safety	Continual activity. Creek forms boundary, fences & perimeter buffer in place & established. Distance between grazing areas and subject land.	5D	2
Pasture slashing / mowing Noise	Continual activity more frequent in summer. Circumstances as above.	4C	8
Pasture fertilising Noise & safety	Annual activity. Circumstances as above.	4C	8
Noxious weed eradication / spraying Noise & safety	Summer more activity. Circumstances as above. Chemical application must be in accordance with Pesticides Act.	4C	8
Cattle branding, marking, assisted birthing & weaning Noise	Annual activity. Circumstances as above. There are no cattle yards within 200m of the land..	4D	5

Cattle drenching Noise	Bi-annual activity. Circumstances as above. Activity is now 'pour-on' as opposed to oral drenching in the past. There are no cattle yards within 200m of the land.	4D	5
Use of plant & equipment Noise	Continual activity. Circumstances as above.	4D	5

Table No. 6 LUCRA 'risk ranking' – from nursery onto adjoining land

Core activity	Nature / frequency / mitigation	Hazard	Risk ranking
Growing plants	Continual activity. Creek forms boundary, fences & perimeter buffer in place & established. Distance between grazing areas and subject land. Most activity in and immediately adjoining shade house & shed. Closest dwelling on adjoining land to the shade house & shed is approx. 142m and dwelling on land, approx. 198m. The shade house & shed is not visible from the immediate curtilage of the dwelling on the land.	5E	1
Mixing of growing mediums	As required activity. Circumstances as above. Manual activity no machinery used. All inputs to make growing mediums are certified organic.	5E	1
Watering of plants Water use & pump noise	As required activity. Circumstances as above. Water use low (pumps 1/month), currently estimated to be 0.3ML pa. Water licence owned by Mr & Mrs Knudson who will transfer it to Mr Sansom.	4C	8
Pest, disease & weed control by application of chemicals Spray drift	No chemicals are used.	5E	1
Movement of plants between growing areas and shade house Noise	As required activity. Circumstances as above. Manual activity no machinery used.	5E	1

Loading and unloading plants Noise	As required activity. Circumstances as above. Manual activity no machinery used. Loading area occurs on a gravelled area immediately adjoining the existing shade house.	5D	2
Transport of plants Noise	Weekly activity. Circumstances as above. Currently 7 utilities per week. Intersection onto Friday Hut Rd approx. 100m from closest dwelling.	5D	2
Use of shade house heating Noise	Winter activity. Shade house is not heated.	5E	1

Table No. 7 LUCRA 'risk ranking' – dwellings

Core activity & impact	Nature / frequency / mitigation	Hazard	Risk ranking
Resident Noise & wandering off-site	Adult supervision. Residential activities generally do not generate offensive noise. Creek forms boundary, fences & perimeter buffer in place & established. Distance between grazing areas and subject land. Most activity in and immediately adjoining shade house & shed. Closest dwelling on adjoining land to the shade house & shed is approx. 142m and dwelling on land, approx. 198m. The shade house & shed is not visible from the immediate curtilage of the dwelling on the land.	4D	5
Traffic Road safety	Continual activity. No adverse impact. Sight distances onto Friday Hut Rd approx. 50+m to the north and 80+m to the south	4D	5
Wastewater disposal Water quality, pollution	Continual activity. Circumstances as above. On-site wastewater systems for dwelling on the land and dwellings on adjoining land BSC approved and well separated from subject land and proposal.	4D	5
Supply of water Water quantity	Continual activity. Circumstances as above.	5D	2

Stormwater run-off	Continual activity. Stormwater falling on roof areas directed to adjoining grassed areas. Stormwater falling on internal vehicular access areas drained to adjoining grassed areas.	4D	5
Fences Wandering stock & children	Continual activity. Circumstances as above. Repair and replacement of fences by mutual agreement and subject to dividing fences legislation.	5C	4
Trespass & theft Personal & property safety	Continual possibility though highly unlikely given nature of development. Circumstances as above. Facility staffed generally during daylight 7 days per week, front gate and shed locked at night.	4E	3
Litter Pollution	Continual possibility though highly unlikely given nature of development. No large amounts of garbage generated - collected and stored in bin which is taken periodically taken to landfill. Circumstances as above.	4D	5
Bushfire & smoke Safety & pollution	Continual possibility though highly unlikely given nature of development. Bushfire threat low. No need to underrate any burning off which is otherwise controlled by environmental protection and pollution legislation. Circumstances as above.	4C	8
Future use of adjoining land	Future use of adjoining land regulated by existing and proposed local environmental plans, planning and other land management and use legislation.	-	-
Firearm use Noise	Continual possibility of use on a grazing property though highly unlikely in a relatively densely settled rural area. Keeping and use of firearms managed by other legislation.	-	-

Step 3 – identify the management strategies and responses that could help lower the risk of the issue resulting in a dispute and conflict

The LUCRA manual identifies that the magnitude of risk can be reduced where certain the physical circumstances, procedures, technologies, scientific and environmental controls might lower probability values.

The key factors which mitigate the potential for land use conflict are as follows:

- The nature of the adjoining land uses and use itself. None generate off-site impacts which might be described as severe, major or even moderate.
- The horizontal and vertical separation between the adjoining land uses and buildings and areas proposed to be used for seedling and seed production.

- Activities (such as the application of chemicals) that maybe undertaken on adjoining land are regulated by legislation and subject to operational application controls and procedures.
- There is no application of chemicals in the production of certified organic seeds and seedlings.
- The existing established mature vegetation that occurs within the land along the creek provides visual and biological buffers to adjoining land use to the south, west and north. The land will have an approx. 230m frontage of Friday Hut Rd which could be easily landscape or equivalent planted.

Step 4 – result of the LUCRA

The above LUCRA identifies and considers the risk of land use conflict from the core activities for existing and proposed land uses.

The low risk rankings shown on Tables No. 5, 6 & 7 demonstrates that the risk of land use conflict between the land use activities that presently occur on land immediately adjoining the land and proposed development to be low and acceptable.

This acceptable low risk is demonstrated by the existing use of the land which will not change and there are no activities generated by the use which in turn might have the potential to impact on the adjoining grazing enterprise or dwellings.

The most obvious potential agricultural use of the adjoining grazing properties is for the growing of macadamia or fruit trees or some more conventional type of farming practice. The size of the properties both adjoining the land and in the locality is a limitation on the potential commercial horticulture.

Table No. 1 identifies the LUCRA guidelines for minimum buffer separation distances between rural and urban land use. The LUCRA guidelines recognise that in certain circumstances variation from buffer distances may be justified for reasons such as; the scale of the proposal, topographic and micro-climatic conditions, technological advancement, operational considerations and arrangements, sensitivity of surrounding lands and land use in the locality.

Having regard to the above LUCRA assessment the potential for land use conflict between the proposal and the existing and potential use of adjoining land is low and acceptable.

The use of the land as proposed is permissible in, provided for by and consistent with the objectives of the RU1 zone.

3 Conclusion

Purchasing the land currently leased provides long term security for the 'Seedlings Organic' business and the commercial growers in the Northern Rivers region that depend on them. To continue to grow and support the industry requires ongoing investment in the land currently leased.

Owning the land is a way of protecting the investment by 'Seedlings Organic' in the organic industry. Currently leasehold improvements to date have exceeded \$120,000 and future expansion will require securing funds, most likely from financial institutions that require land security. Building equity through ownership of the land the business operates on is an important pathway for the business to obtain the funds necessary for growth into the future.

'Seedlings Organic' long term commitment to the organic industry can be cemented most effectively by purchasing the land.

The proposal of Mr & Mrs Knudson and Mr Sansom has considerable merit which should be recognised by the Dept. and BSC, given the changing face of agriculture and supporting industries in the Northern Rivers region.

On behalf of Mr & Mrs Knudson and Mr Sansom I respectfully request that the Dept. and BSC give favourable consideration to their request given the circumstances I have outlined above.

Mr & Mrs Knudson have advised me that they are willing to make suitable reimbursement of BSC's cost to facilitate the necessary modification to the LEP, if required.

Should the Dept. or BSC have any queries and/or wish a copy of my CV please do not hesitate to contact me.

Yours faithfully

Malcolm Scott M.P.I.A.

Encl

Cc Mr & Mrs Knudson and Mr Sansom
Mr R Whitehead & Ms S Stillman Dept. of Primary Industries

Appendices

Part 3 Division 9 of the RL-SEPP

Part 3 Rural subdivisions and dwellings

Note. This Policy does not change the minimum lot size provision in existing environmental planning instruments. This Policy does permit variation of minimum lot sizes for agricultural purposes (see clause 9).

8 Rural Subdivision Principles

The Rural Subdivision Principles are as follows:

- (a) the minimisation of rural land fragmentation,
- (b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,
- (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,
- (d) the consideration of the natural and physical constraints and opportunities of land,
- (e) ensuring that planning for dwelling opportunities takes account of those constraints.

Note. Under section 117 of the Act, the Minister has directed that councils exercise their functions relating to changes in minimum lot sizes under local environmental plans in accordance with the Rural Planning Principles and the Rural Subdivision Principles. Under section 55 of the Act, the Minister may also direct a council to prepare a local environmental plan.

9 Rural subdivision for agricultural purposes

- (1) The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.
- (2) Land in a rural zone may, with consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size otherwise permitted for that land.
- (3) However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.
- (4) A dwelling cannot be erected on such a lot.
- (5) State Environmental Planning Policy No 1—Development Standards does not apply to a development standard under this clause.

10 Matters to be considered in determining development applications for rural subdivisions or rural dwellings

- (1) This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.
- (2) A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:
 - (a) subdivision of land proposed to be used for the purposes of a dwelling,
 - (b) erection of a dwelling.
- (3) The following matters are to be taken into account:
 - (a) the existing uses and approved uses of land in the vicinity of the development,
 - (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,
 - (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).

11 Amendment of concessional lot provisions

The environmental planning instruments specified in Schedule 1 are amended as set out in that Schedule.

Note. The amendments made by the Schedule do not affect any existing entitlement in any environmental planning instrument to erect a dwelling on land within a rural zone or an environment protection zone.

Cl. 1.9(2) of the Ballina LEP 2012

1.9 Application of SEPPs

(1) This Plan is subject to the provisions of any State environmental planning policy that prevails over this Plan as provided by section 36 of the Act.

(2) The following State environmental planning policies (or provisions) do not apply to the land to which this Plan applies:

State Environmental Planning Policy No 1—Development Standards

State Environmental Planning Policy (Rural Lands) 2008 (clause 9)

North Coast Regional Environmental Plan

Cl. 4.2 of the Ballina LEP 2012

4.2 Rural subdivision

(1) The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.

(2) This clause applies to the following rural zones:

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape,
- (c) Zone RU4 Primary Production Small Lots,
- (d) Zone RU6 Transition.

Note. When this Plan was made it did not include Zone RU4 Primary Production Small Lots or Zone RU6 Transition.

(3) Land in a zone to which this clause applies may, with development consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.

(4) However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.

(5) A dwelling cannot be erected on such a lot.

Note. A dwelling includes a rural worker's dwelling (see definition of that term in the Dictionary).

ATTACHMENT No. 1

Copy of organic certification

NASAA CERTIFIED ORGANIC CERTIFICATE OF REGISTRATION

RELEVANT STANDARD:

NASAA Organic Standard
National Standard for Organic & Bio-Dynamic
Produce

RELEVANT ACCREDITOR:

Department of Agriculture

CERTIFIED LICENSEE:

Luke Sansom



Trading as: Seeds Organic & Seedlings Organic

412 Friday Hut Road
Brooklet
NSW 2479
AUSTRALIA
ABN: 93 882 797 896

NCO Certification Number: 2656N

<u>Certified process &/or product</u>	<u>Category of Certification</u>
Certified Sites (3 Ha property located at 111 Friday Hut Rd, Brooklet, NSW)	Certified Organic
Production of seedlings (Seedlings - Vegetables, Herbs and Flowers)	Certified Organic
Production of seeds	Certified Organic

A handwritten signature in black ink, appearing to read "Sachin Ayachit".

Certification Manager - Sachin Ayachit



Valid From: 26 October 2015 Valid until: 30 September 2016

This certificate is limited to the above licensee and is valid until the stated expiry date unless certification is suspended or revoked or deferred by NCO. It is not intended as a commercial or transaction document and remains the property of NCO and shall be returned to NCO when certification ceases.

NASAA Certified Organic P/L (NCO)

ACN 101 829 163 Unit 7B, 3 Mount Barker Road, Stirling in the State of South Australia 5152
T: +61 8 8370 8455 / F: +61 8 8370 8381 / enquiries@nasaa.com.au / www.nasaa.com.au

Certificate Number: C/11116/2015

Page 1 of 1

ATTACHMENT No. 2

Copy of letters of support

The Manager North Region
Dept. of Planning & Environment
Locked Bag 9022
Grafton NSW 2460

The General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2480

17 Nov. 2015

Dear Sirs

Re Luke Sansom & subdivision for the purposes of agriculture

I have been actively involved in the organic agriculture in the Northern Rivers of NSW as an agronomist, grower and producer of organic food, advocate and educator for 37 years.

I have known Luke Sansom for 10 years and have watched with much interest the amount of work Luke has put into developing and growing his business, Seedlings Organic.

Organic agriculture (both certified and non-certified) in the Northern Rivers is an established and growing / emerging agricultural industry, particularly on smaller rural allotments. The availability and reliable provision of locally grown certified seedlings and seed stock is very important input.

Luke continues to supply the growth in demand for certified organic seedlings and is a very important part of the local industry. There are no other suppliers of commercial quantities of Certified Organic seedlings in this or nearby regions.

I have spoken to both Luke and Malcolm Scott about his proposal to create an agricultural lot for the seedling nursery and seed production and understand that this is currently not available under the Ballina LEP or the State's Policy for rural land.

Frustratingly for Luke what he seeks to do is what the LEP and State Policy purport to achieve, i.e. flexibility for agriculture and support of new innovative and emerging forms of agriculture. The level of capital input required to establish facilities to support quality and volume of production needs a high level of surety of tenure to have confidence that a return on investment is available.

I understand Luke wishes focus on seed production, breeding and variety trials for the Northern Rivers region and in doing so has established relationships with the world's leading organic plant breeders which has allowed him to introduce a number of new vegetable varieties specifically for the needs of organic growers.

Luke also provides access and information on site in partnership with the Wollongbar TAFE, where I teach to provide local training and employment opportunities in the industry. These facilities are intrinsic to the value of this instruction.

Luke's long term commitment to the organic industry can also be supported by Local and State government by amending the LEP or State Policy to facilitate what he reasonably seek to do. Should the Dept. or Council have any queries please do not hesitate to contact me.

Yours faithfully

Dave Forrest



**Australian Rural
Industries**

24/10/2015

To who it may concern,

We are an organic producer certified by AUS QUAL and extensively use the seedlings produced by "Seedlings Organic". Our average seedling purchased are in the range of 5,000 – 8,000 seedlings per month.

We believe Seedling Organic to an important professional supplier and propagator to our company and the local organic industry.

We wish to offer our support for Seedlings Organic, if you require any other information for support please contact us at <http://www.seedlingsorganic.com.au> or feel free contact me personally by mobile on 0418367717.

Kind regards,
Jeff King

Managing Director

Australian Rural Industries P/L

A handwritten signature in black ink, appearing to read "Jeff King". The signature is written in a cursive, slightly slanted style.

10 Johnston Road
Newrybar, 2479, NSW
jeff@iccs.com.au
Mobile 0418367717

To whom it may concern,

I Tony Latanzi wish to offer my support to the submission of Luke Sansom of SEEDLINGS ORGANIC to the Ballina Shire Council regards the future sub-division and subsequent purchase of the land currently leased by Mr Sansom for the purpose of agriculture.

I am the co-owner and operator of LATANZI & LANARCH PRODUCE. We are full time commercial organic growers operating in the Cudgera Creek area of the Murwillumbah shire. We produce vegetables for the wholesale market and also attend the Miami Organic Farmers Market on a weekly basis on the Gold Coast.

We engaged the propagation services of SEEDLINGS ORGANIC 5 years ago and believe we were the very first commercial client of Mr Sansom's business which was just beginning at the time.

Prior to having this fundamental service available we had difficulty consistently producing quality vegetable transplants for our operation, it is a highly specialised area and without the appropriate infrastructure and focus was a weak aspect of our production system.

SEEDLINGS ORGANIC produce vegetable transplants of excellent quality and are the only producer of this type in the region that caters specifically to the needs of commercial organic growers. I believe SEEDLINGS ORGANIC as a growing partner is integral to the success of our business and has facilitated our consistent growth over the past 5 years.

Currently SEEDLINGS ORGANIC produces for us on a fortnightly basis with up to 2400 vegetable transplants, in recent years Mr Sansom has begun supplying us with seed for a variety of crops we seed directly into the field, cucumber and zucchini specifically. Mr Sansom's attention to variety selection for commercial organic growers in this region has set him apart from other organic seed suppliers that in many cases offer unsuitable varieties in terms of disease resistance and yield.

We would like to see Mr Sansom continue expanding his operation and services to the local organic industry and feel his proposal to council is worthy of consideration given the significant contribution SEEDLINGS ORGANIC makes to sustainable local producers and the viability of their farming operations.

Yours Faithfully



Tony Latanzi

LATANZI & LANARCH PRODUCE

12/10/2015

ATTACHMENT No. 3

Flood information

When property purchased in 1979 I had discussions with Mr. Kirkland who had owned the land since the 1920's/30's regarding flooding of the ~~land~~ property. He showed me that the area on which our home is located and the area on which Luke has placed his growing facility & shed had never been inundated by floodwater.

As residents of the property since 1979 we have experienced major flooding but in no case have either area been affected.



THE INKED AREAS SHOW THE APPROX. AREAS OUTSIDE THE CREEK BANKS THAT BECOME INUNDATED FOR SOME HOURS DURING MAJOR FLOOD EVENTS. VERY RARE SITUATIONS.

Tom L. Kirkland
27/10/15.

MALCOLM SCOTT B.A. & D.U.R.P. (UNE) M.P.I.A.
CONSULTANT TOWN PLANNER

440 Dorrroughby Rd Dorrroughby 2480 NSW (ABN 37 057 633 138)
Ph 0266 895 815 Mobile Ph 0427 202170 Email mscott@spot.com.au

The General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

4 Jan. 2016

Att Mr Steve Barnier and Mr Simon Scott

Dear Steve and Simon

**Re Subdivision for the purposes of agriculture
Rural Land SEPP and Ballina LEP 2012
Lot 339 DP 755684 – 111 Friday Hut Rd Tintenbar NSW**

As you know I act on behalf of Mr Frank & Mrs Lea Knudson and Mr Luke Sansom and prepared the submission to both Council and the Dept. of Planning and Environment in regard their wish to undertake a subdivision of Mr & Mrs Knudson's land for the purposes of agriculture.

Please find attached copy of the response from the Dept. and the Dept. of Primary Industries to me. The Dept. of Planning and Environment appears to be receptive to the proposition provided Council is and the Dept. of Primary Industries no longer provides specialist advice in regard such matters.

The Dept. has suggested, should Council support the proposition, an amendment to the minimum lot size for the allotment. I am uncertain and would take instruction from Council as to the most effective means of achieving that, presumably by either amendment to the zoning map and/or inclusion of the land into Schedule One of the instrument.

I thought other solutions to the situation and so that innovation and enterprise in agriculture could be fostered might be by way of either:

- amendment to Clause 1.9 of the instrument so that Clause 9 of the Rural Land SEPP is operative or
- amendment to Clause 4.2 of the instrument so the operation of it has a better possibility of achieving its objective (flexibility of standards for subdivision for agriculture) by clarifying the whether or not the residual lot has to achieve the minimum shown on the zoning map.

Defining the area of the residual lot when a lot is created under the SEPP would (as highlighted in the report 'Review of Land Use Planning in the Central West' by the Central West Independent Review Panel, Aug. 2007) provide a clearer and transparent process that incorporated certainty and guidance and that provides a degree of flexibility to accommodate changing circumstances in agriculture over time.

I am sure there are other legislative mechanisms available as well.

I understand from discussions in late December 2015 that Council is somewhat concerned that by enabling what Mr & Mrs Knudson and Mr Sansom wish to do, it will create a precedent i.e. *'an action of decision that can be used subsequently as an example for a similar decision or to justify a similar action'* for other agricultural subdivision requests.

Whilst I appreciate Council's concerns I respectfully submit that the proposition should not create a precedent which Council (or others) can draw upon for the following reasons:

1. Good or bad the NSW planning system is supposedly 'merits' based and the merits of Mr & Mrs Knudson and Mr Sansom's proposition is reasonable, strong and I would have thought persuasive.
2. The proposed subdivision will support use of the land which is an operating a very unique sustainable agricultural enterprise and a similar or same request highly unlikely.
3. The use is a very important part of an emerging and innovative form of agriculture that embraces ecological sustainability as an integral component of the production system, this has many positive outcomes in regard soil and water quality.
4. The substantial investment in infrastructure by Mr Sansom has greatly improved the agricultural potential of the site.
5. Council is the consent authority and by condition of development can prescribe what it thinks reasonable to ensure what is requested is how the land is used.

The outputs of Mr Sansom's use of the land has wide support and demand within the local organic industry as the business continues to grow, showing that the land use works; economically, socially and ecologically sustainably.

If other proposals for agricultural subdivision to council are required to demonstrate similar merit then precedent really becomes a good thing. Encouraging local sustainable agriculture into the future and perhaps even creating opportunities for a young new generation of farmers to care responsibly for the Regions farmland and waterways.

I respectfully conclude that:

1. Clause 4.2 purports to provide flexibility for agriculture, however its administrative operation is acting against it! Therefore a logical question arises - why have the clause in the instrument?
2. It would be manifestly unfair of Council to Mr & Mrs Knudson and Mr Sansom (and possibly others in the future) if it held a position which I understand has been applied and formulated to prevent inappropriate use of Clause 4.2 to prevent exploitation of the provisions and the lowest common denominator, which their proposal is obviously not.

I and Mr Sansom would like meet with you either on-site or at Chambers when convenient in the new year to discuss the matter. I shall contact Council mid-January to make arrangements.

Should you have any queries please do not hesitate to contact me.

Yours faithfully

Malcolm Scott M.P.I.A.

Encl

Cc Mr & Mrs Knudson and Mr Sansom
Dept of Planning and Environment (Daniel Summerhayes)



Rec'd
9/12/15

Mr Malcolm Scott
440 Dorroughby Rd
Dorroughby NSW 2480

15/01067

Dear Mr Scott

I refer to your correspondence of 20 November 2015 regarding subdivision for agricultural purposes at Lot 339 DP 755684 – 111 Friday Hut Road, Tintenbar.

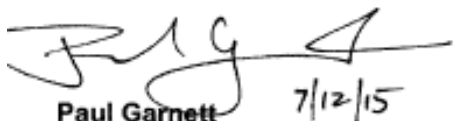
I appreciate the issues you have raised regarding the legislative context, proposed land use suitability and land use conflict assessment.

As the consent authority this is a matter for Ballina Shire Council and is subject to its interpretation of the provisions of the Ballina LEP 2012 and other relevant planning instruments. I note that Council has advised that subdivision of the land is not possible given the current provisions of the Ballina LEP 2012. It would however be possible for Council to amend the minimum lot size for the lot to enable the proposed subdivision if Council supports the proposal. The Department would be prepared to consider such an amendment to the Ballina LEP should Council resolve to progress the matter.

I suggest that you discuss this matter further with Ballina Shire Council.

Should you have any further enquiries please contact Daniel Summerhayes at the Department's Northern Region Office on (02) 6641 6614.

Yours sincerely


Paul Garnett 7/12/15
A/Team Leader, Local Planning
Planning Services



Department of
Primary Industries

OUT15/35909

17 December 2015

Malcolm Scott
Consultant Town Planner
440 Durroughby Rd
DURROUGHBY NSW 2480

Dear Malcolm

Re: Subdivision Proposal – Lot 339 DP775684, 111 Friday Hut Rd, Tintenbar

I refer to your letter of 25 November 2015 regarding your request for a letter of support for the subdivision of Lot 339 DP775684, 111 Friday Hut Rd, Tintenbar, for agricultural purposes.

DPI Agriculture does not have a referral role in relation to subdivision development applications and no longer provides specific comment on individual development applications irrespective of the subdivision purpose.

DPI Agriculture has developed a guideline on rural subdivision that may provide further information for your consideration. This guideline is available at:

http://www.dpi.nsw.gov.au/data/assets/pdf_file/0005/313565/farm-subdivision-assessment-guideline.pdf

Should you wish to discuss this matter further please contact Selina Stillman on (02) 66261215 or Alex Wells on (02) 66503125.

Yours Sincerely

A handwritten signature in black ink that reads 'Liz Rogers'.

Liz Rogers
Manager, Agricultural Land Use Planning

enquiries refer

Simon Scott

in reply please quote

Strategic Planning – Rural Lands (16/1726)

13 January 2016

Mr Malcolm Scott
440 Dorrroughby Road
DORROUGHBY NSW 2480
Emailed: msscott@spot.com.au



Dear Mr Scott

**Re: Subdivision for the purposes of agriculture Rural Land SEPP and Ballina LEP 2012
Lot 339 DP 755684 – 111 Friday Hut Road Tintenbar NSW**

I refer to your correspondence dated 20 November 2015 and 4 January 2016 with respect to the above.

From Council's perspective, the key particulars relating to this matter include:

- The subject land, being Lot 339 DP 755684, is a 3.9 Hectare rural land parcel that is zoned RU2 Rural Landscape Zone pursuant to the Ballina Local Environmental Plan 2012. A 40 hectare minimum lot size for subdivision applies to the subject land;
- The objectives of the RU2 zone include: *'To encourage sustainable primary industry production by maintaining and enhancing the natural resource base; To minimise the fragmentation and alienation of resource lands; and To minimise conflict between land uses within the zone and land uses within adjoining zones'*;
- Mr Luke Samson currently operates an organic wholesale plant nursery on the subject land, owned by Mr Frank & Mrs Lea Knudson under a leasehold arrangement;
- A dwelling house is currently erected on the parcel, which is occupied by Mr & Mrs Knudson;
- The owner wishes to excise, by way of subdivision, the land on which Mr Samson's wholesale plant nursery is located, leaving a rural residential land parcel of approximately 1 hectare. It is understood that a dwelling entitlement for the agricultural parcel is not being sought. The subdivision of the agricultural parcel to be excised would facilitate it's proposed freehold sale to Mr Samson;
- Under this proposal, both lots would be below the minimum lot size for subdivision that applies to the land (40Ha);
- Clause 4.2 of the Ballina LEP 2012, which provides flexibility with respect to the application of minimum lot sizes in the case of rural subdivision, does not facilitate the proposal, as clause 4.1 of the LEP requires that the lot containing the dwelling must meet the minimum lot size applying to the land, which it would not under the proposed subdivision;
- Clause 9 of the Rural Land SEPP, which similarly provides flexibility with respect to minimum lot sizes (without the limitations of clause 4.1 of the LEP), does not apply to land to which the Ballina LEP 2012 applies, by virtue of clause 1.9 of the LEP;
- Clause 4.2 of the Ballina LEP 2012 forms part of the LEP as a compulsory clause under the State Government's standard instrument Local Environmental Plan.

Page 2
Mr Malcolm Scott
13 January 2016

In relation to the above, your clients are seeking Council's support for the amendment of the Ballina LEP 2012 to facilitate the proposal via one of a number of possible mechanisms, including:

1. Amendment to the minimum lot size map relating to the subject land, to apply a smaller minimum lot size to enable conformance with clause 4.1;
2. Amendment of clause 4.1(3) to remove the requirement that all lots (other than those specifically created for agricultural purposes under clause 4.2) conform with the minimum lot size; or
3. Amendment of Clause 1.9 to 'switch-on' the Rural Lands SEPP for Ballina Shire.

Council staff have reviewed the proposal and the particular circumstances.

Council staff do not support option 1 above, due to the potential to set a precedent for site-specific amendments to the minimum lot size map, which more broadly applied could result in the fragmentation of agricultural land over time, inconsistent with the objectives of the zone and of clause 4.1 of the LEP.

With respect to option 2, the LEP as currently drafted provides flexibility in rural subdivision, by virtue of clause 4.1 and 4.2, where a lot that is currently above the 40 hectare minimum lot size (and that contains a dwelling house) is able to be subdivided to create an agricultural land parcel that is below the minimum lot size standard (but that will not enjoy a dwelling entitlement) while retaining the dwelling on a lot that meets the relevant lot size standard. Consequently, rural subdivision is enabled where this will not result in the creation of additional rural residential land parcels that are not associated with agricultural activity. This outcome represents Council's preferred land use planning outcome, with respect to rural subdivision, and one which is consistent with the zone objectives as well as the objectives of clause 4.1 of the LEP. As a consequence, Council staff do not support option 2.

With respect to option 3 above, the Rural Lands SEPP is subject to some ambiguity as to whether a 'residual parcel' (containing a dwelling) is created in association with such subdivisions and if so whether the minimum lot size standard applies to such lots. The recent case of NSW Land & Environment Court S J Connelly CPP Pty Ltd v Byron Shire Council [2012] NSWLEC 1237 appears to confirm the concept of 'residual parcels' and that such lots are not restricted by the relevant minimum lot size standard, in relation to the application of the Rural Land SEPP. Notwithstanding, in light of the points made with respect to option 2 above, Council staff question how this interpretation is consistent with the principles of clause 8 of the Rural Land SEPP which seeks to minimise rural land fragmentation.

In summary, Council's current policy position is to minimise fragmentation of agricultural land and land use conflict. One of Council's planning mechanisms to achieve this is the minimum lot size for subdivision standards contained in the Ballina LEP 2012. Given this, staff do not support amendment of the LEP in the subject circumstances on the basis of an individual business situation.

Notwithstanding the above, your clients may lodge a formal LEP amendment request in order that the matter be reported to the Council. In this regard I draw your attention to Council's process guidelines for planning proposals and LEP amendments available from Council's website. Should your clients wish to lodge an LEP amendment request, please note that fees

Page 3
Mr Malcolm Scott
13 January 2016

will be applicable. Council's current fee for the initial consideration of an LEP amendment is \$3500 (with other fees applicable if the matter progresses).

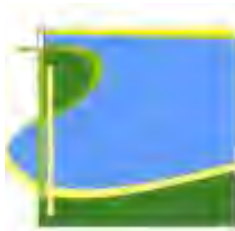
Notwithstanding the above, staff are available to meet with you and your clients should you wish to discuss this matter further. If you have any enquiries in regard to this matter please contact me on telephone 6686 1432 or email simons@ballina.nsw.gov.au.

If you have any enquiries in regard to this matter please contact me on telephone 6686 1432 or email simons@ballina.nsw.gov.au.

Yours faithfully



Simon Scott
Strategic Planner
Strategic & Community Facilities Group



Peter Lucena
& Associates
Pty. Ltd.

consulting and
structural engineers

23 May 2016

Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Sir,

Re: Development Application for Proposed Subdivision of Existing Property at 111 Friday Hut Road, Tintenbar for F and L Knudson

I have been approached by the Knudsons to provide my opinion regarding the proposal to subdivide the existing property at the abovementioned address.

Along with my family, I have lived at 78 Friday Hut Road since 1990 - approximately 26 years. Our property is directly opposite the open pasture that forms the south component of Mr Knudson's property.

We understand that Mr Knudson is seeking approval to subdivide his property to break the residential component at the north end of the property away from the agricultural component to the south.

We are aware that the south end of the property has been developed over the last few years as an intensive nursery for organic seedlings. We have been watching with interest as this enterprise gains momentum.

My wife, Angie and I are fully supportive of the uses that the property is currently supporting. The purpose of subdividing the agricultural component of the property from the residential component appears entirely practical and sensible.

We fully support the proposed subdivision and wish the Knudsons success with their application.

If you have any questions, please do not hesitate to contact the undersigned.

Yours faithfully

Peter Lucena
Peter Lucena and Associates Pty Ltd

27th May 2016

Ballina Shire Council
PO Box 450
Ballina NSW 2478

Dear Sir,

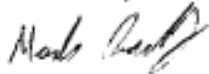
**Re: Development Application for Proposed Subdivision of Existing Property
at 111 Friday Hut Road, Tintenbar for F & L Knudson**

I have been approached by the Knudsons to provide my opinion regarding the proposal to subdivide the existing property at the above mentioned address.

My wife and I have lived at 94 Fernliegh Road for the past three years. We live directly across and close to the creek that separates the Knudsons property from ours.

The Organic seedlings enterprise conducted by Mr. Luke Sansom on the Knudsons property was operating before we came to live here. We have had no issues with Mr. Sansom's operation and offer our full support for the proposal.

Yours faithfully,



Mark and Wendy Donnelly

24th May 2016

Ballina Shire Council
PO Box 450
Ballina NSW 2478

Dear Sir,

Re: Development Application for Proposed Subdivision of Existing Property at 111 Friday hut Road, Tintenbar for F & I Knudson

I have been approached by the Knudsons to provide my opinion regarding the proposal to subdivide the existing property at the above mentioned address.

Along with my husband, I live at 64 Friday Hut Road. Our property is opposite the southern end of the Knudsons property where the current Organic seedling enterprise is being conducted.

Although only recent residents to the area we think the proposal has great merit for the continued development of the existing enterprise. It certainly has no detrimental effect on us and offer our full support.

Yours faithfully,



Andrea Campbell and Stuart Kellaway

24th May 2016

Ballina Shire Council
PO Box 450
Ballina NSW 2478

Dear Sir,

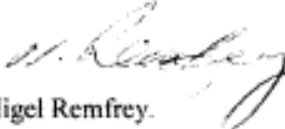
Re: Development Application for Proposed Subdivision of Existing Property at 111 Friday hut Road, Tintenbar for F & I Knudson

I have been approached by the Knudsons to provide my opinion regarding the proposal to subdivide the existing property at the above mentioned address.

Along with my family I have lived at 45 Friday Hut Road since 2006. Our property is adjacent to the southern end of the Knudsons property where the current Organic seedling enterprise is being conducted.

We have noticed with interest the continued development of the organic seedlings enterprise over the past four years. It has had no impact on us and we are fully supportive of the proposal.

Yours faithfully,


Nigel Remfrey.

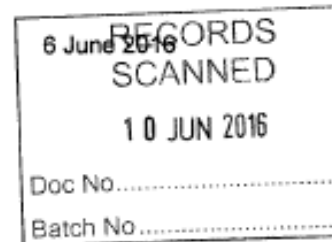
MALCOLM SCOTT B.A. & D.U.R.P. (UNE) M.P.I.A.
CONSULTANT TOWN PLANNER

440 Dorrroughby Rd Dorrroughby 2480 NSW (ABN 37 057 633 138)
Ph 0266 895 815 Mobile Ph 0427 202170 Email mscott@spot.com.au

The General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478
Att Mr Steve Barnier and Mr Simon Scott

Dear Mr Barnier and Mr Scott

**Re Subdivision for the purposes of agriculture
Planning Proposal to Amend the Ballina LEP 2012
Lot 339 DP 755684 – 111 Friday Hut Rd Tintenbar NSW**



As you know I act on behalf of Mr Frank & Mrs Lea Knudson and Mr Luke Sansom and prepared the submissions dated 20 Nov. 2015 and 4 Jan. 2016 to both Council and the Dept. of Planning and Environment in regard their wish to undertake a subdivision of Mr & Mrs Knudson's land for the purposes of agriculture.

The submissions of 20 Nov. 2015 and 4 Jan. 2016 adequately describe the current use of the land and proposition.

Mr & Mrs Knudson have now instructed me to make a submission to Council in support of their request for Council to prepare a Planning Proposal to amend the Ballina LEP 2012 to enable them to make, should the Planning Proposal be supported, a Development Application for the subdivision of their land for the purposes of agriculture.

Enclosed with this submission are:

1. Council's Form
2. A cheque from Mr Knudson of \$3,500 as payment of Council's fees
3. Copy of my submissions dated 20 Nov. 2015 and 4 Jan. 2016
4. Copy of Council's response dated 13 Jan. 2016 to the submissions and
5. Copy of letters of support from adjoining landowners comprising; Mr Peter Lucena, Mrs Wendy & Mr Mark Donnelly, Ms Andrea Campbell & Mr Stuart Kellaway and Mr Nigel Remfrey.

As I have previously indicated and as we have discussed I am uncertain and would take advice from Council as to the most effective means of achieving what is sought, should the Planning Proposal be supported by Council.

To-date of the range of possible LEP amendment mechanisms that have been identified the following appear to me the most likely:

1. Amendment to the LEP minimum lot size map.
The Dept. in its letter dated 7 Dec. 2015 had suggested this, should Council support the proposition.
2. Inclusion of the land into Schedule One of the instrument.

Having regard to the nature of the proposition, Council's concerns in regard 'precedent' and the definition of 'development' in the Environmental Planning and Assessment Act 1979 this pathway would seem appropriate.

Other means to provide for what is been sought might be by way of either:

- amendment to Clause 1.9 of the LEP so that Clause 9 of the Rural Land SEPP is operative or
- amendment to Clause 4.2 of the LEP so the operation of it has a better possibility of achieving its objective (flexibility of standards for subdivision for agriculture) by clarifying the whether or not the residual lot has to achieve the minimum shown on the zoning map.

though I understand Council's staff is not supportive of those.

I would like to make the following comments in response to some of the issues raised in Council's letter of 13 Jan. 2016 that may allay concerns it may have in regard the merit of the proposition and proposed land use.

My understanding is that the land is zoned RU1-Primary Production and not RU2-Rural Landscape.

Other than argument in regard interpretation and application of 'fragmentation' and 'alienation' within the 3rd objective it is my view that the proposition and documentation I have provided to-date demonstrates that it sits comfortably with the majority of the objectives of the zone (my underlining of emphasis):

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To maintain the rural, cultural and landscape character of the locality.
- To enable development that is compatible with the rural and environmental nature of the land.
- To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.

I make the following brief comments in regard the 3rd and 4th objectives:

- 'Fragmentation' – the land with dwelling currently exists as a rural residential allotment and as I understand what used to be referred to as an 'existing holding', i.e. it is the same size since the introduction of planning control.
- 'Alienation' – prior to Mr Sansom commencing use of part of the land for his nursery and seed production it was in a neglected agriculturally unproductive state. The use of the land by Mr Sansom and future use should Council support the proposition has not alienated the land from productive agriculture but rather enhanced it.
- 'Conflict between land uses' – the LUCRA assessment I prepared in my submission of 20 Nov. 2015 and letters of support from adjoining landowners clearly demonstrates that there is very little potential for land use conflict.

A rural subdivision would allow Mr Sansom, as he would own it, to further capitalise and develop the land for the certified organic nursery and seed production and undertake environmental and riparian repair and rehabilitation on the land.

Having regard to Clause 2.3(2) and the objectives of the RU1 zone and Clauses 4.1 and 4.2 of the LEP, I respectfully submit that the proposition will achieve the core objectives of those LEP provisions, in particular those relating to 'flexibility', 'sustainable primary industry production' and 'encouraging diversity in primary industry enterprises'.

I re-iterate my comments made in my letter of 4 Jan. 2016 that I appreciate and understand Council's staff concerns that the proposition may create a precedent which Council (or others) can draw upon. However for the following reasons I do not believe this will be the case:

1. The NSW planning system is 'merits' based and the merits of Mr & Mrs Knudson and Mr Sansom's proposition is reasonable, strong and persuasive.
2. The proposed subdivision will support the on-going use of the land which is an operating very unique sustainable agricultural enterprise and a similar or same request highly unlikely.
3. The use is a very important part of an emerging and innovative form of agriculture that embraces ecological sustainability as an integral component of the production system, this has many positive outcomes in regard soil and water quality.
4. The substantial investment in infrastructure by Mr Sansom has greatly improved the agricultural potential of the site.
5. Council is the consent authority and by condition of development can prescribe what it thinks reasonable to ensure what is requested is how the land is used.

The outputs of Mr Sansom's use of the land has wide support and demand within the local and regional organic industry as his agricultural business continues to grow, showing that the land use works; economically, socially and ecologically sustainably.

On behalf of Mr & Mrs Knudson and Mr Sansom I lodge the request for preparation on the planning proposal (Form completed) and respectfully seek Council's and its professional staff support.

Should Council have any queries please do not hesitate to contact me in the first instance or Mr Knudson.

Yours faithfully,



Malcolm Scott M.P.I.A.

Encl

Cc Mr & Mrs Knudson and Mr Sansom

MALCOLM SCOTT B.A. & D.U.R.P. (UNE) M.P.I.A.
CONSULTANT TOWN PLANNER

440 Dorrroughby Rd Dorrroughby 2480 NSW (ABN 37 057 633 138)
Ph 0266 895 815 Mobile Ph 0427 202170 Email mscott@spot.com.au

The General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478
Att Mr Klaus Kerzinger

17 March 2017

Dear Mr Kerzinger

Re Planning Proposal No.
Subdivision for the purposes of agriculture
Lot 339 DP 755684 – 111 Friday Hut Rd Tintenbar NSW

I act on behalf of Mr Frank & Mrs Lea Knudson and Mr Luke Sansom and I would like to acknowledge Council's support of the proposal and assistance.

I refer to Council's email of 1 March 2017 to me when it advised of the Dept.'s determination and issue of the Gateway Determination.

Council in response to the Gateway Determination condition Item 1(b) has requested 'whether it was possible to move the proposed boundary line further towards the north'.

I have spoken to Mr Knudson and Mr Sansom and again inspected the land and am of the view having regard to land use and constraints that the proposed boundary line is, for the purposes of Planning Proposal, in the approximate correct location.

Moving the boundary line further to the north whilst in theory may yield slightly more land in the rural lot does not provide land suitable for intensive farming (seed production) or additional nursery infrastructure. The section of land is narrow contains a small overland flow path. Moving the boundary further to the north also reduces the width of a buffer area between the dwelling and use of the rural lot.

I understand that a Development Application for the subdivision will follow the amendment to the Ballina LEP and the exact location of the boundary line will be accurately determined at that stage, having regard to the Gateway Determination condition Item 1(b).

Should Council have any queries please do not hesitate to contact me.

Yours faithfully



Malcolm Scott M.P.I.A.
Cc Mr & Mrs Knudson and Mr Sansom

MALCOLM SCOTT B.A. & D.U.R.P. (UNE) M.P.I.A.
CONSULTANT TOWN PLANNER

440 Dorrroughby Rd Dorrroughby 2480 NSW (ABN 37 057 633 138)
Ph 0266 895 815 Mobile Ph 0427 202170 Email mscott@spot.com.au

The General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2480
Att Mr Klaus Kerzinger
Strategic Planner

24 April 2017

Dear Mr Kerzinger

**Re Planning Proposal / LEP Amendment (1840)
Subdivision for the purposes of agriculture
Lot 339 DP 755684 – 111 Friday Hut Rd Tintenbar NSW**

I act on behalf of Mr Frank & Mrs Lea Knudson and Mr Luke Sansom.

On behalf of them, thank you for forwarding the comments of the NSW Rural Fire Service (12 April 2017) and NSW Dept. of Primary Industries-Agriculture (19 April 2017) in regard to the Planning Proposal (PP).

I note that:

- NSW Rural Fire Service raises no concerns or issues in relation to bush fire and the PP and
- NSW Dept. of Primary Industries-Agriculture is supportive of growth of agricultural industries, recognises the success and level of investment of Mr Sansom and though it states that the proposal has merit it has raised a number of concerns of a strategic nature.

Whilst I respect the strategic concerns of Primary Industries-Agriculture it is my view given the overall supportive position those concerns should not be regarded as a 'bar' to the PP administratively moving forward.

I make that submission to Council having regard to the following circumstances and brief comments in regard each of the concerns expressed by the Dept.

In a regional strategic planning context subdivision for agriculture is facilitated / enabled through *State Environmental Planning Policy (Rural Lands) 2008* and the *North Coast Regional Plan 2036*.

The Rural Lands SEPP enables the proposal in the adjoining Lismore and Byron local government areas via submission of a Development Application (DA) in accordance with their respective local environmental plans (2012 & 2014). However given the wording of the Ballina local environmental plan (2012) that approval pathway is not available.

The PP sits comfortably with the policy context and actions of 'Direction 11-protect and enhance productive agricultural lands' and 'Direction 12-grow agribusiness across the region' of the *North Coast Regional Plan 2036*.

Ballina Shire Council and the NSW Dept. Planning and Environment were consulted prior to lodging the PP and are supportive as evidenced by the progression to the 'Gateway Determination' stage of the process. Primary Industries-Agriculture were also consulted prior to lodging the PP and advised (in general terms) that it had not role in respect of DA's for subdivision irrespective of purpose.

I make the following brief comments in regard to the 4 concerns raised by Primary Industries-Agriculture in its letter of 19 April 2017.

Item 1 – needs of future landowners and land use and potential for land use conflict
From a practical perspective it is very difficult to predict and understand the needs of future landowners and land use and potential for land use conflict, simply because future landowners and land use is unknown.

My submission (20 Nov. 2015) to Council requesting the amendment to the Ballina Local Environmental Plan 2012 and basis for the PP includes a land use conflict risk assessment (LUCRA), prepared in accordance with the guidelines titled; *Living and Working in Rural Areas A handbook for managing land use conflict issues on the NSW North Coast*. That LUCRA assessment was undertaken for the PP following the initial round of consultation with Council, Planning and Environment and Primary Industries-Agriculture.

Neither the methodology nor conclusion of the LUCRA assessment have been challenged. My submission (20 Nov. 2015) to Council included letters of support from all adjoining landowners.

It is acknowledged that the land is mapped 'regionally significant', however having regard to its particular land attributes, the use of land both immediately adjoining it and in the locality the accuracy of that mapping is debatable.

Notwithstanding, the PP represents a sustainable and viable agricultural use of considerable importance to local and sub-regional certified organic agriculture.

Item 2 – consistency with state policies and Ballina LEP and precedence
My submissions (20 Nov. 2015 & 4 Jan. 2016) to Council adequately consider the consistency of the PP with state policies and Ballina LEP and the issue of precedence.

Other than seeking relief from the 'blanket' arbitrary 40ha minimum lot area the PP is generally consistent with *State Environmental Planning Policy (Rural Lands) 2008* and the *Ballina Local Environmental Plan 2012*.

The LEP amendment process adopted by Council for the PP provides a mechanism by which exploitive or unwise precedence can be controlled by it and the Dept. Planning and Environment.

Item 3 – consistency with farm subdivision guideline
The farm subdivision assessment guideline expresses a number of issues in regard assessment of DA's for farm subdivision.

Whilst farm subdivision can result in permanent fragmentation of rural land and a decrease in the production and efficiency of agriculture, particularly where additional dwelling entitlements occur, this is simply not the case in regard the PP.

The PP is to enable the subdivision of land (with an existing dwelling) that was previously not used for productive agricultural purposes to create an allotment for an established productive agricultural use (without dwelling entitlement). Unproductive rural land is being and proposed to be continued to be used for a productive agricultural purpose.

The existing dwelling used for rural residential purposes in a closely settled rural / hamlet locality will no doubt in the future continue to be used for rural residential purposes. The agricultural lot will not contain a dwelling and be used for the continued growing of certified organic seedlings and seed.

It is my respectful submission that the PP, in general terms, satisfactorily addresses the relevant considerations of the guidelines.

Item 4 – consistency with North Coast Regional Plan 2036

It is my view that the PP sits comfortably with the policy context and actions of 'Direction 11-protect and enhance productive agricultural lands' and 'Direction 12-grow agribusiness across the region' of the Plan.

Council professional officers have visited and inspected the use of the land and Ballina Shire Council is clearly supportive. I am unaware of any officers from Primary Industries-Agriculture either visiting the site or talking to me or the proponents about the PP.

Council has properly discharged its duties pursuant to s. 56(2)(d) of the *Environmental Planning and Assessment Act 1979* and with respect the strategic issues raised by Primary Industries-Agriculture are irrelevant to the PP and its merit.

Finally I note that Primary Industries-Agriculture have not said, 'no'!

The PP clearly achieves positive local, environmental, social and economic outcomes and certainly merits continued support and progression to the next LEP amendment stage.

Should Council have any queries please do not hesitate to contact me.

Yours faithfully



Malcolm Scott M.P.I.A.

Encl

Cc Mr & Mrs Knudson and Mr Sansom

Annexure Five – Government Authority Submissions

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Headquarters
Locked Bag 17
Granville NSW 2142

Telephone: 1300 NSW RFS
e-mail: csc@rfs.nsw.gov.au

Facsimile: 8741 5433



The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Your Ref: BSCPP 16/004
Our Ref: L12/0003
DA17031406412 AB

ATTENTION: Klaus Kerzinger

12 April 2017

Dear Mr Kerzinger

Planning Instrument for Consultation Of Ballina LEP 2012 -Planning Proposal 16/004 - 111 Friday Hut Road Tintenbar 2478

I refer to your letter dated 13 March 2017 seeking advice for the above Planning Instrument in accordance with the 'Environmental Planning and Assessment Act 1979'.

The Service has reviewed the plans and documents received for the proposal and subsequently raise no concerns or issues in relation to bush fire.

For any queries regarding this correspondence please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely

John Ball
Manager



Department of
Primary Industries

OUT17/15689

19 April 2017

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478
Klaus.Kerzinger@ballina.nsw.gov.au

Dear Sir/Madam

BSCPP 16/004 111 Friday Hut Road Tintenbar (Trim 1840)

Thank you for the opportunity to provide comment for the above proposal as per your correspondence dated 13 March 2017. The NSW Department of Primary Industries (NSW DPI) Agriculture has reviewed the supporting documents and provides the following comments:

DPI Agriculture is supportive of the growth of agricultural industries and recognises the success and level of investment in the organics seedlings facility established on the subject site. When considered individually, the planning proposal has merit however the proposal raises a number of concerns in a strategic context as follows.

- Approving this application based on the merit of the existing land use, does not give due consideration of the needs of any future potential use/owner of the land and increased potential for land use conflict risk upon sale of the retained dwelling parcel. This is particularly important given that the subject land is identified as regionally significant farmland.
- There is concern that the inconsistency of this proposal with state policies, minimum lot size considerations, and general LEP provisions, could set precedence for further subdivisions within the Ballina LGA.
- The proposed subdivision is inconsistent with the principles of DPI's farm subdivision guideline given that one lot would effectively be rural residential in perpetuity unless an application to consolidate the lots was received in the future. Refer to: http://www.dpi.nsw.gov.au/data/assets/pdf_file/0005/313565/farm-subdivision-assessment-guideline.pdf
- the North Coast Regional Plan provides for flexibility within the planning framework to support small lot agriculture, however the intent is for councils to consider this at the strategic level such as when preparing rural land use strategies.

Should you require clarification on any of the information contained in this response please contact Resource Management Officer, Selina Stillman, on 02 66261215.

Yours sincerely

A handwritten signature in blue ink that reads 'Liz Rogers'.

Liz Rogers
Manager Agricultural Land Use Planning

NSW Department of Primary Industries - Agriculture
Locked Bag 21, Orange NSW 2800 | 161 Kite St, Orange NSW 2800
Tel: 02 6391 3391 | Email: landuse.ag@dpi.nsw.gov.au | www.dpi.nsw.gov.au | ABN: 72 189 919 072