



Ballina Shire Council

Planning Proposal 13/002 – August 2013

Dual Occupancy Lots Lennox Head

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Final



Introduction

Summary of Planning Proposal

This planning proposal relates to four existing allotments of land and three approved (but not created allotments) at Lennox Head as described below:

- Existing allotments described in real property terms as lots 182, 183 & 184 DP 1165078 (Kell Mather Drive) and Lot 168 DP 1166175 (Meadows Drive).
- Two approved lots in DA 2008/628 within existing Lot 177 DP 1172682 (Kell Mather Drive) and one approved lot in DA 2007/503 within existing Lot 20 DP 1121759 and Lot 3 DP 253428 (Morton Way).

The location of the subject land is shown in Figure 1 below.

The need for the planning proposal has arisen from delays and staging involved in the processing and introduction of the Ballina Local Environmental Plan 2012 and subdivision works and lot creation having occurred during the interim stage of implementation of the LEP.

Planning Context

Ballina LEP 2012

The Ballina LEP 2012 provides for the following residential zones:

- R2 Low Density Residential Zone – provides for low density residential development forms including dwellings and secondary dwellings (and other compatible uses);
- R3 Medium Density Residential Zone – provides for a broad range of residential development forms including dual occupancies, residential flat buildings, multi dwelling housing and the like (and other compatible uses).

The subject land is currently zoned R2 under the terms of the Ballina LEP 2012. The subject allotments (mixture of newly created and approved lots) are nominated in the respective development approvals as comprising dual occupancy lots for the purpose of future residential development. Consequently, the planning proposal seeks to acknowledge these approvals by the application of the R3 Medium Density Residential Zone to the land.

Ballina Shire Growth Management Strategy 2012

The Ballina Shire Growth Management Strategy 2012 provides the strategic planning context for urban development in Ballina Shire. The development of the land, to which the planning proposal relates, is consistent with Council's Growth Management Strategy.

Processing & Gateway Determination

Council considered the subject planning proposal at its Ordinary Meeting held on 24 April 2013, resolving (Minute 240413/7) as follows:

1. *That the Council endorses the application of an R3 Medium Density Residential zone and associated minimum lot standard for subdivision of 800m² as the basis for a planning proposal applying to the following land:*
 - *Lots 182, 183 & 184 DP 1165078 and Lot 168 DP 1166175.*
 - *Two approved lots under development consent No 2008/628 within existing Lot 177 DP 1172682 and one approved lot under development consent No 2007/503 within existing Lot 20 DP 1121759 and Lot 3 DP 253428 (as shown in Figure 1 of the planning proposal contained in Attachment 1).*
2. *That the Council submit the planning proposal relating to various approved dual occupancy lots in Lennox Head to the NSW Department of Planning & Infrastructure for review and Gateway determination.*
3. *That upon an affirmative Gateway determination being received from the Department of Planning & Infrastructure, the procedural steps associated with progression of the planning proposal, including public exhibition, be undertaken.*
4. *That a further report be presented to the Council in relation to this matter following mandatory community consultation.*

The Department of Planning and Infrastructure (DP&I) determined on 13 May 2013, under section 56(2) of the Environmental Planning & Assessment Act 1979 (EP&A Act) that the subject planning proposal could proceed conditionally. A copy of the Gateway determination is attached in Appendix 3. The Gateway determination required consultation with the NSW Rural Fire Service (RFS). The RFS did not raise any objections to the planning proposal proceeding. A copy of the RFS response is provided in Appendix 4.

The planning proposal was publicly exhibited, in accordance with the Gateway determination for a minimum 28 days from 26 June 2013 to 26 July 2013. No submissions were received in response to the public exhibition.

Part 1 - Objectives or Intended Outcomes

The objective of this planning proposal is to enable residential development for the purposes of dual occupancy, as defined in the Ballina LEP 2012, on allotments of land that created for the purpose of dual occupancy development, consistent with the planning context and history of the land.

Part 2 - Explanation of the Proposal

This planning proposal relates to four existing allotments of land and three approved (but not created allotments) at Lennox Head as described below:

- Existing allotments described in real property terms as lots 182, 183 & 184 DP 1165078 (Kell Mather Drive) and Lot 168 DP 1166175 (Meadows Drive).
- Two approved lots in DA 2008/628 within existing Lot 177 DP 1172682 (Kell Mather Drive) and one approved lot in DA 2007/503 within existing Lot 20 DP1121759 and Lot 3 DP 253428 (Morton Way).

The subject land is currently zoned R2 Low Density Residential under the terms of the Ballina LEP 2012. The subject allotments (mixture of newly created and approved lots) are nominated in the respective development approvals as comprising dual occupancy lots for the purpose of future residential development. Consequently, the planning proposal seeks to acknowledge these approvals by the application of the R3 Medium Density Residential zone to the land.

The R3 zone will permit dual occupancy development on the land with development consent, whereas the current R2 zone does not.



Figure 1. Land to which the planning proposal relates

Part 3 - Justification

Section A - Need for the Planning Proposal

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

The need for the planning proposal has arisen from delays and staging involved in the processing and introduction of the Ballina Local Environmental Plan 2012 and subdivision works and lot creation having occurred during the interim stage of implementation of the LEP.

Essentially, the subject lots were not created at the time the land was zoned under the LEP. As such, the land was not recognised as being for dual occupancy purposes under the LEP.

The proposal is consistent with Ballina LEP 2012 and the Ballina Shire Development Control Plan 2012 (including previous iterations of these plans).

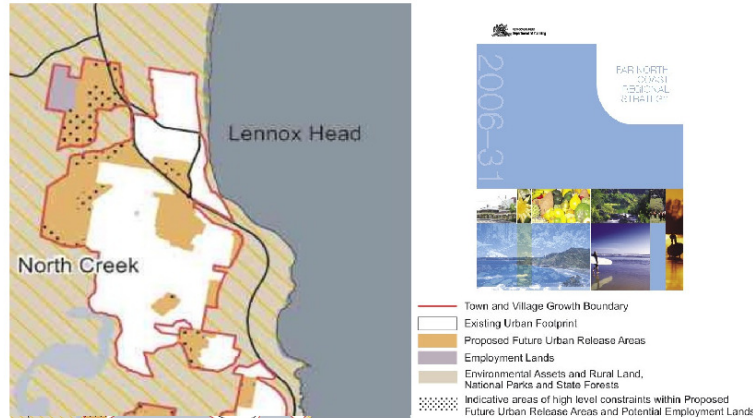
2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the most appropriate means of enabling dual occupancy development on the land. An alternative option would involve the identification of the land via the Additional Permitted Uses mechanism in the LEP, however, this is not preferred.

Section B - Relationship to the Strategic Planning Framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The proposal is consistent with the Far North Coast Regional Strategy (FNCRS), which provides the regional framework for the consideration of policy development and the overall vision of the future. The proposal is not in conflict with the outcomes or actions of the strategy.



4. Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plans?

The planning proposal is consistent with the following key local plans:

Ballina LEP 2012

The Ballina LEP 2012 provides for the following residential zones:

- R2 Low Density Residential Zone – provides for low density residential development forms including dwellings and secondary dwellings (and other compatible uses);
- R3 Medium Density Residential Zone – provides for a broad range of residential development forms including dual occupancies, residential flat buildings, multi dwelling housing and the like (and other compatible uses).

The subject land is currently zoned R2 under the terms of the Ballina LEP 2012. The subject allotments (mixture of newly created and approved lots) are nominated in the respective development approvals as comprising dual occupancy lots for the purpose of future residential development. Consequently, the planning proposal seeks to acknowledge these approvals by the application of the R3 Medium Density Residential zone to the land, thereby enabling dual occupancy development on the lots with development consent.

Ballina Shire Growth Management Strategy 2012

The Ballina Shire Growth Management Strategy 2012 provides the strategic planning context for urban development in Ballina Shire. The development of the land, to which the planning proposal relates, is consistent with this strategy.

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

Yes, the proposal is generally consistent with applicable State Environmental Planning Policies (SEPP).

6. Is the planning proposal consistent with the applicable Ministerial Directions (S. 117 directions)?

Yes, the proposal is consistent with the relevant Section 117 Directions. A Section 117 Direction checklist for the planning proposal is contained in Appendix 1.

Section C - Environmental, Social and Economic Impact

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

The subject land is zoned for the purposes of low density residential development (single detached dwellings and secondary dwellings) and is approved for subdivision for residential purposes. The planning proposal will enable development for two dwellings to occur on each subject lot rather than one. The planning proposal is unlikely, therefore, to have any greater environmental impact than is anticipated from the development of the land under the current zoning arrangement.

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

No significant adverse environmental impacts are likely to arise as a result of the planning proposal.

9. How has the planning proposal adequately addressed any social and economic effects?

As a consequence of its minor nature, no broad positive or negative social or economic impacts are likely to arise as a result of the planning proposal.

Section D - State and Commonwealth Interests

10. Is there adequate public infrastructure for the planning proposal?

The planning proposal does not create the need for any additional public infrastructure.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Consultation was undertaken with the NSW Rural Fire Service (RFS) in accordance with the Gateway determination. The RFS did not raise any objections to the planning proposal. A copy of the RFS response is provided in Appendix 4.

Part 4 - Mapping

As outlined above, the subject planning proposal involves amendment of the Zoning Map, under the terms of the Ballina LEP 2012, from R2 Low Density Residential to R3 Medium Density Residential Zone.

The proposal also includes amendment to the Lot Size Map to change the minimum lot size for subdivision of the subject land from 600m² to 800m². This provides for consistency in lot size standards associated with land zoned R3 for similar purposes in the locality.

Mapping showing the existing and proposed Land Zoning and Lot Size maps under the Ballina LEP 2012 is contained in Appendix 2.

Part 5 – Community Consultation

This planning proposal was publicly exhibited for the minimum 28 day period, in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act* 1979, from 26 June 2013 to 26 July 2013. A copy of the Gateway determination is provided in Appendix 3.

No submissions were received from the community during the public exhibition phase.

Part 6 – Project Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination (Anticipated)	May 2013
Public Exhibition Period	July 2013
Submissions Assessment	July 2013
RPA Assessment of Planning Proposal and Exhibition Outcomes	August 2013
Submission of Endorsed LEP to DP&I for Finalisation	N/A – LEP finalisation has been delegated to Council.
RPA Decision to Make the LEP Amendment (if delegated)	September 2013
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	September 2013

Appendices

Appendix 1 – Section 117 Direction Checklist

Section 117 Direction Checklist	
Planning Proposal – Dual Occupancy Lots Lennox Head	
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	Does not apply to planning proposal.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Does not apply to planning proposal.
2. Environment and Heritage	
2.1 Environmental Protection Zones	Does not apply to planning proposal.
2.2 Coastal Protection	Consistent.
2.3 Heritage Conservation	Consistent.
2.4 Recreation Vehicle Areas	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Consistent. The planning proposal proposes to increase to permissible dwelling density on the land. The delivery of appropriate urban infrastructure to service the land has been secured by existing development consents relating to the creation of the subject allotments.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to planning proposal.
3.3 Home Occupations	Does not apply to planning proposal.
3.4 Integrated Land Use and Transport	Does not apply to planning proposal.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulphate Soils	Consistent.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Does not apply to planning proposal.
4.4 Planning for Bushfire Protection	Consistent. The subject land is within areas approved for residential subdivision and development.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent.

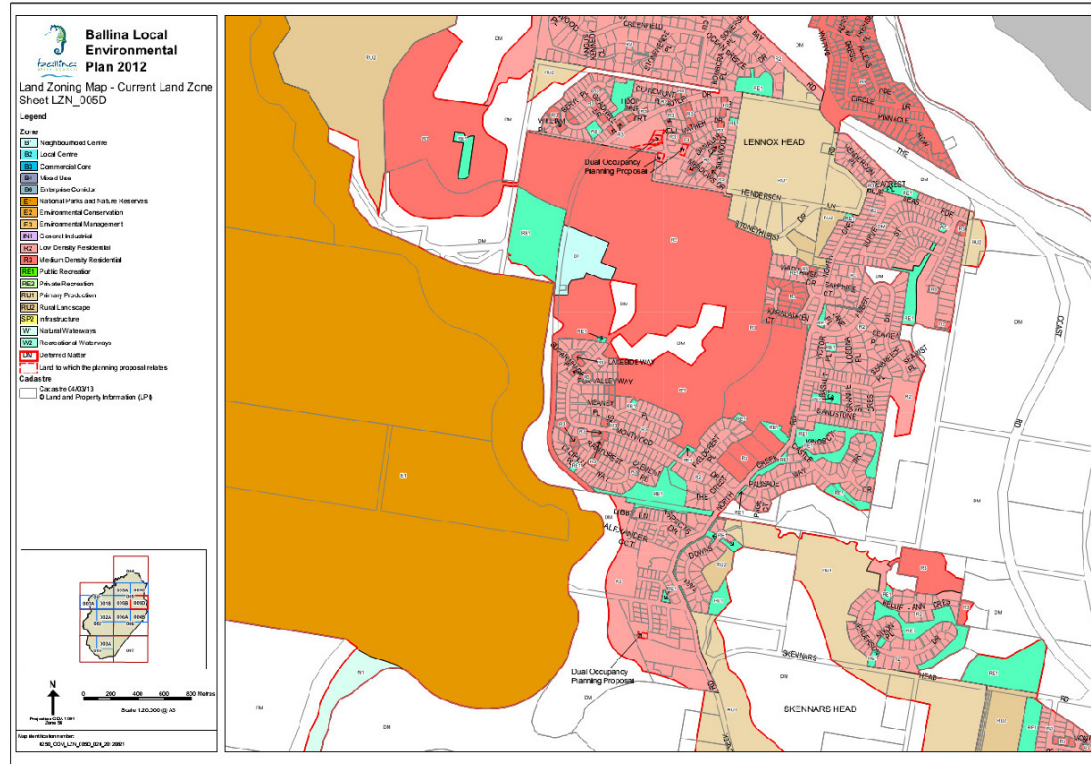
9.4 Planning Proposal - Dual Occupancy Lots, Lennox Head.DOC

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	Does not apply to planning proposal.
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).	Repealed.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Repealed.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Repealed.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent.
6.2 Reserving Land for Public Purposes	Consistent.
6.3 Site Specific Provisions	Does not apply to planning proposal.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.

9.4 Planning Proposal - Dual Occupancy Lots, Lennox Head.DOC

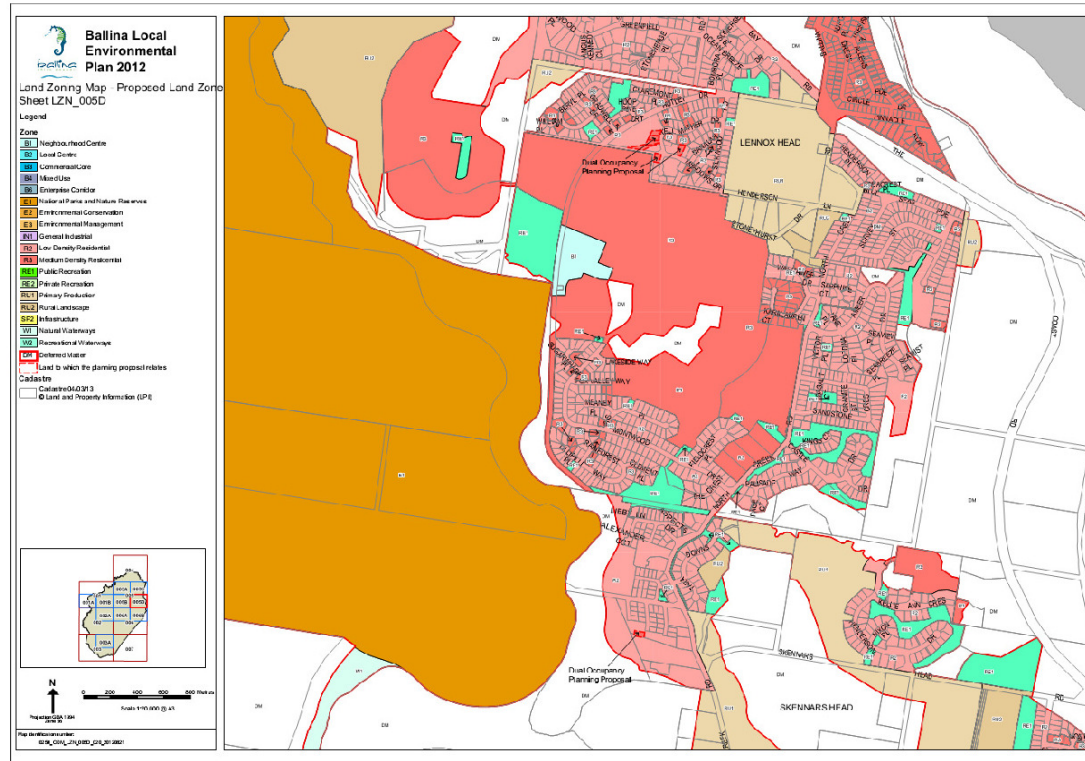
Appendix 2 – Current and Proposed Map Sheets Ballina LEP 2012

9.4 Planning Proposal - Dual Occupancy Lots, Lennox Head.DOC



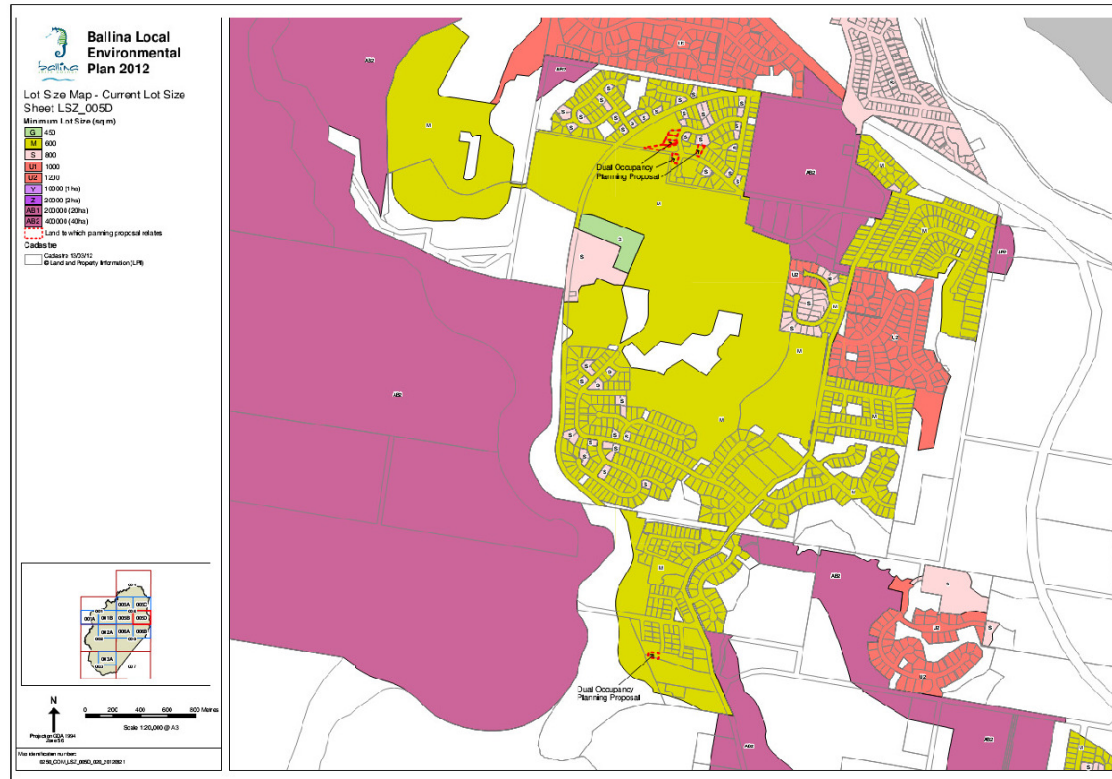
Ballina Shire Council Planning Proposal – August 2013
Dual Occupancy Lots Lennox Head

9.4 Planning Proposal - Dual Occupancy Lots, Lennox Head.DOC



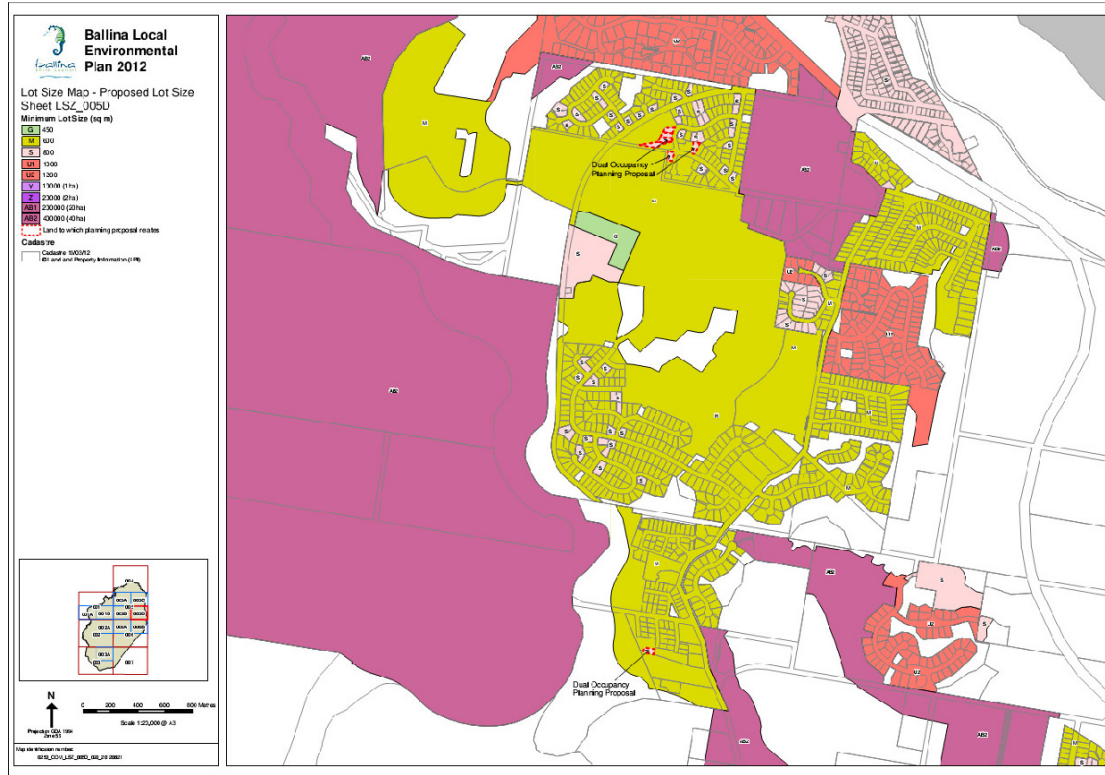
Ballina Shire Council Planning Proposal – August 2013
 Dual Occupancy Lots Lennox Head

9.4 Planning Proposal - Dual Occupancy Lots, Lennox Head.DOC




Ballina Shire Council Planning Proposal – August 2013
Dual Occupancy Lots Lennox Head

9.4 Planning Proposal - Dual Occupancy Lots, Lennox Head.DOC



Ballina Shire Council Planning Proposal – August 2013
 Dual Occupancy Lots Lennox Head

Appendix 3 – Gateway determination



NSW
GOVERNMENT

**Planning &
Infrastructure**

Contact: Jennifer Vallis
Phone: (02) 9541 6600
Fax: (02) 9541 6901
Email: Jenny.Vallis@planning.nsw.gov.au
Postal: Locked Bag 9022, Grafton NSW 2460

Our ref: PP_2013_BALLI_002_00 (13/07575)
Your ref: Planning Proposal - Dual Occupancy Lots
Lennox Head (13/24026)

**RECORDS
SCANNED**

20 MAY 2013

Doc No.....

Batch No.....

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

Dear Mr Hickey,

Planning proposal to amend Ballina Local Environmental Plan 2012

I am writing in response to your Council's letter dated 29 April 2013 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to rezone certain land at Kell Mather Drive, Meadows Drive and Morton Way, Lennox Head from R2 Low Density Residential to R3 Medium Density Residential and to increase the minimum lot size for the subject land to 800sqm.

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

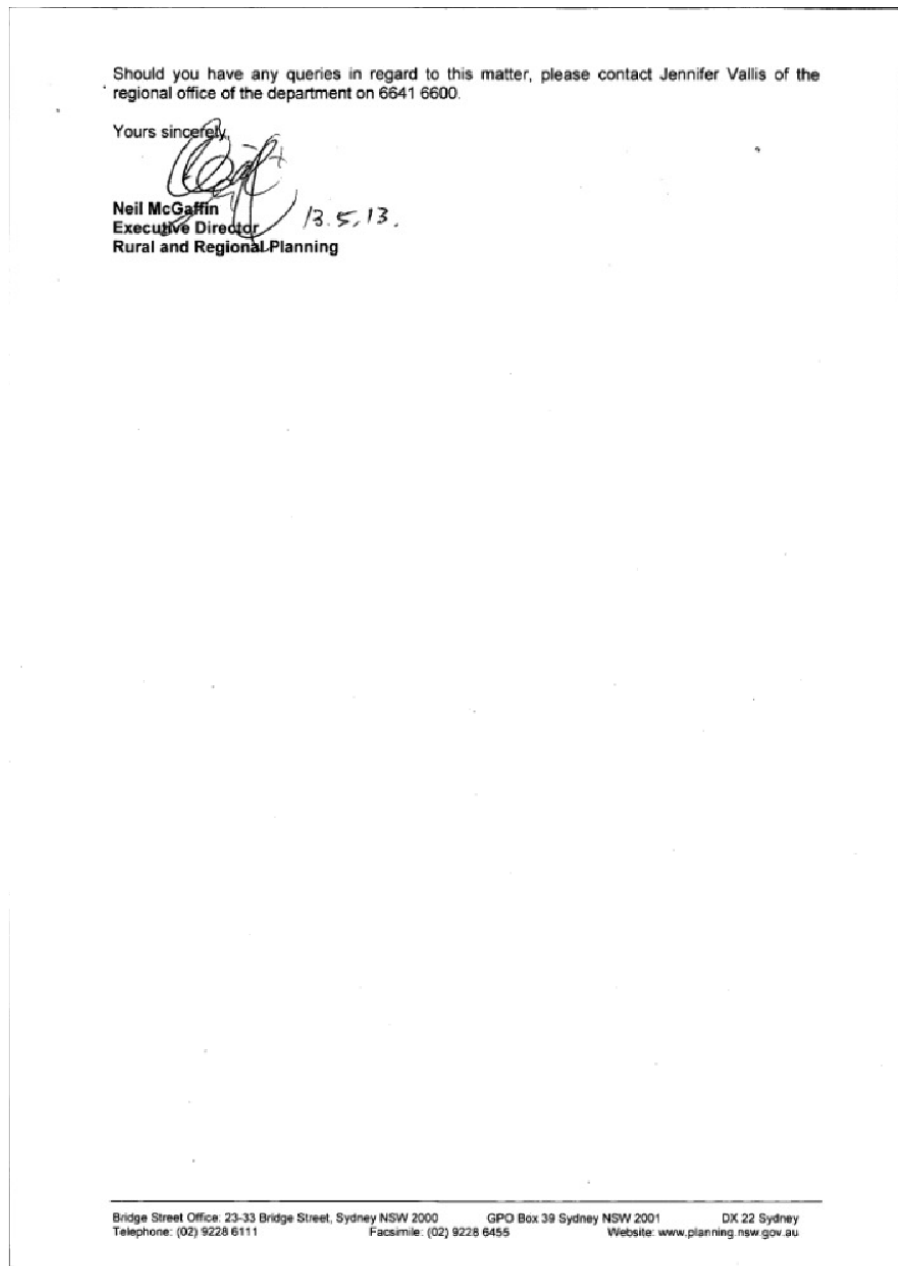
I note that Council proposes to apply an 800sqm minimum lot size to the subject land at Lennox Head. Given the proposed zoning is for medium density residential, Council is to consider reducing the minimum lot size to better reflect the proposed zoning. If Council supports the above position, it is to amend the planning proposal and proposed Lot Size Map accordingly prior to undertaking public exhibition.

The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. 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 because the proposal is considered to be of local significance.

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 to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the department for administrative purposes.

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 EP&A Act if the time frames outlined in this determination are not met.

Bridge Street Office: 23-33 Bridge Street, Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney
Telephone: (02) 9228 6111 Facsimile: (02) 9228 6455 Website: www.planning.nsw.gov.au





Planning &
Infrastructure

Gateway Determination

Planning proposal (Department Ref: PP_2013_BALLI_002_00): to rezone land at Lennox Head for medium density residential and amend the minimum lot size applying to the land.

I, the Executive Director, Rural and Regional Planning at the Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to rezone certain land at Kell Mather Drive, Meadows Drive and Morton Way, Lennox Head from R2 Low Density Residential to R3 Medium Density Residential and to increase the minimum lot size for the subject land to 800sqm should proceed subject to the following conditions:

1. Council is to consider reducing the proposed 800sqm minimum lot size to better reflect the medium density residential zoning proposed for the subject site. If Council supports the above position, it is to amend the planning proposal and proposed Lot Size Map accordingly prior to undertaking public exhibition.
2. Prior to undertaking public exhibition, Council is to update the planning proposal to include the appropriate street names in the address of the subject land, to assist the public in locating the sites.
3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A 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 & Infrastructure 2013)*.
4. Consultation is required with the NSW Rural Fire Service (RFS) as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection. No other consultation is required under section 56(2)(d) of the EP&A Act. RFS 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. If necessary, the planning proposal is to be updated to take into consideration any comments made by RFS, prior to undertaking public exhibition.
5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

BALLINA PP_2013_BALLI_002_00 (13/07575)



**Planning &
Infrastructure**

6. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

Dated *13th* day of *May* 2013


Neil McGaffin
Executive Director
Rural and Regional Planning
Department of Planning and Infrastructure

Delegate of the Minister for Planning and Infrastructure

BALLINA PP_2013_BALLI_002_00 (13/07575)



Planning & Infrastructure

WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Ballina Shire Council is authorised to exercise the functions of the Minister for Planning and Infrastructure 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_2013_BALLI_002_00	Planning proposal to rezone certain land at Kell Mather Drive, Meadows Drive and Morton Way, Lennox Head from R2 Low Density Residential to R3 Medium Density Residential and to increase the minimum lot size for the subject land to 800sqm.

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

Dated 13th May 2013

Neil McGaffin
Executive Director
Rural and Regional Planning
Department of Planning and Infrastructure

Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by the department following receipt of the planning proposal
- The department 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 department's publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the department with the RPA's request to have the LEP notified

Table 1 – To be completed by the department

Stage	Date/Details
Planning Proposal Number	PP 2013 BALLI 002 00
Date Sent to Department under s56	29/04/2013
Date considered at LEP Review Panel	09/05/2013
Gateway determination date	13/05/2013

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 DP&I requesting notification		

Table 3 – To be completed by the department

Stage	Date/Details
Notification Date and details	

Additional relevant information:

Appendix 4 – Agency response - NSW Rural Fire Service

All communications to be addressed to:

Headquarters
NSW Rural Fire Service
Locked Mail Bag 17
GRANVILLE NSW 2142

Telephone: (02) 8741 5175
e-mail: csc@rfs.nsw.gov.au

Headquarters
NSW Rural Fire Service
15 Carter Street
LIDCOMBE NSW 2127

Facsimile: (02) 8741 5433



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

Attention: Mr Simon Scott



Your Ref: BSCPP 13/002
Our Ref: L12/0003
DA13052887603 PC

13 June 2013

Dear Mr Scott,

Planning Proposal – Dual Occupancy Lots at Lennox Head

I refer to your letter dated 22 May 2013 seeking comments from the NSW Rural Fire Service (RFS) with respect to the above Planning Proposal.

The RFS understands the Planning Proposal seeks to amend Ballina LEP 2012 to enable dual occupancy development on a number of specific lots at Lennox Head.

The RFS has no objection to the Planning Proposal proceeding.

It is noted that the subject lots contain or adjoin grassland areas that may present a bushfire hazard. Where these areas are not mapped as bushfire prone land, Council should consider assessment of future development applications against the requirements of s.79C of the *Environmental Planning and Assessment Act, 1979* and *AS3959 Construction of building in bushfire prone areas*.

For any enquiries regarding this correspondence please contact Paul Creenaune on 1300 NSW RFS.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alan Bawden'.

Alan Bawden
Team Leader – Development Assessment and Planning

For information on *Planning for Bush Fire Protection 2006* visit the RFS web page www.rfs.nsw.gov.au

1 of 1