

ballina shire council



Ballina Shire Council

Planning Proposal BSCPP 13/003– January 2014

Lots 31 and 32 DP 837448, 31 and 32 Tara Downs, Lennox Head

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Planning Proposal – January 2014 (14/2992) Final
Lots 31 and 32 DP 837448 31 and 32 Tara Downs, Lennox Head

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Introduction

Summary of Planning Proposal

This planning proposal relates to Lots 31 and 32 DP 837448, 31 and 32 Tara Downs Lennox Head, as shown on the locality plan in Appendix 1.

The subject lots are owned by Ms Tracy Chambers and Mr Brett Stephenson and Mrs Jenny Stephenson. The land comprises a total area of 5191m² (2303m² and 2888m² respectively) and is separated by an access handle for 33 Tara Downs. Both lots currently contain an existing dwelling, gaining access from an adjoining right of carriageway.

The subject lots are currently zoned RU1 Primary Production under the provisions of the Ballina Local Environmental Plan (LEP) 2012 as shown in Appendix 1.

It is proposed that the R2 Low Density Residential zone be applied to the subject land within Lots 31 and 32 DP 837448, 31 and 32 Tara Downs, Lennox Head. It is also proposed to amend the Minimum Lot Size Map to enable subdivision of the land for residential purposes. The rezoning will provide the land with a minimum lot size standard of 800m². The application has included a proposed lot layout resulting in an additional two lots upon the subject land, creating four lots in total.

Planning Context

The application of a residential zone to the subject land is generally consistent with both Council and State Government urban planning policy. The following provides an overview of the proposed amendment with respect to key planning policy documents.

Site History

The parent lot of the subject land, Lot 19 DP 715304, (3.032ha) was created in 1985 in conjunction with a 30 lot residential subdivision in Tara Downs. Upon gazettal of Ballina LEP 1987, the subject land was zoned 1(b) Rural (Secondary Agricultural).

In 1989, Lot 19 was further subdivided to create the subject Lots 31 and 32 in addition to Lot 33 located at the rear of the subject land. Lots 31 and 32 were approved in conjunction with DA 1989/53 and the provisions of Clause 16 (Development of land on adjoining boundaries), Ballina LEP 1987.

Considering the adjoining residential properties had minimum lot sizes of 600m², the creation of two lots greater than 2000m² was considered consistent with the provisions of Clause 16 at that time. The DA assessment also stated that *"the 1(b) zoning of the land is in contiguous and (the land) should be incorporated into future urban development"*, indicating that the land was identified as being suitable for a residential zoning during this DA process in 1989.

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Far North Coast Regional Strategy (FNCRS)

The subject land is identified as being located within the existing urban footprint, despite the rural zoning. Accordingly, the application of a residential zone to the land is consistent with this strategy.

Ballina Shire Growth Management Strategy 2012 (GMS)

The subject land is not recognised as a strategic urban growth area under this strategy as the two lots are essentially part of an existing residential area. The site is adjoined by R2 Low Density Residential zoned land to the south (Tara Downs) and west (North Creek Road and Aspects Drive). Land to the immediate north is an unformed road and subject to Ballina LEP 1987, being land currently deferred from the provisions of the Ballina LEP 2012. Immediately adjoining this deferred land to the north is low density residential zoned land (Page Court and Palisade Way). A 2.513ha parcel of RU1 Primary Production zoned land is located immediately to the east of the subject site.

Surrounding existing residential lot sizes are approximately 1000m². The subject lots being 2303m² and 2888m², if zoned low density residential, would have the potential for subdivision creating lots of a comparable size to those surrounding, dependant upon additional information regarding potential site constraints such as site vegetation and bushfire protection.

The land has not been identified for any other purpose within the GMS such as future employment lands, open space or the like. The land is, however, identified within the Lennox Head Structure Plan as being located within an existing developed area and/ or urban zone. This plan is discussed below and is considered to be the appropriate framework for growth management considerations in the locality. Therefore, the proposal is considered consistent with the GMS.

Lennox Head Structure Plan (LHSP)

The LHSP provides a framework for the development of new urban land release areas within the Lennox Head locality and includes the subject land. Whilst the subject land is not identified as a candidate release area, it is identified as being located within an existing developed area and/or urban zoned.

Ballina Local Environmental Plan (LEP) 2012

During the preparation of the Ballina LEP 2012, Ms Tracy Chambers of Lot 31 lodged a submission during each exhibition period in support of the rezoning of the land to residential. Council agreed to give further consideration to the matter following discussions with the owner adjoining being Lot 32 (Environmental and Sustainability Committee May 2011). Reporting of submissions to Council's December 2011 Meeting identified that it was unlikely that progress of the shire-wide LEP matter would allow a zoning change prior to the implementation of the Ballina LEP 2012. Consequently, the LEP amendment request was lodged by the applicant in March 2013 following the commencement of Ballina LEP 2012.

The subject land is zoned RU1 Primary Production under the terms of the BLEP 2012. Previously under the Ballina LEP 1987, the subject land was zoned 1(b) Rural (Secondary Agricultural Land) zone.

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The RU1 Primary Production zone has a minimum allotment size of 40ha. The subject lots have an individual site area of 2303m² and 2888m². These lots are well below the minimum lot size for RU1 land and are not be considered suitable for sustaining an agricultural use, even with consolidation.

It is proposed to rezone the land as R2 Low Density Residential (Appendix 1). It is also proposed to change the minimum lot size map for the subject site to facilitate subdivision of the subject land. The surrounding R2 Low Density Residential zoned lots have minimum lot sizes of 600m². The applicant has proposed a minimum lot size of 800m² to facilitate functional sized parcels. The application has included a potential subdivision layout (Appendix 3). It is considered that the 800m² minimum lot size is appropriate having regard to the particular characteristics of the site relating to access, bushfire and vegetation.

The two lots are identified as adjoining strategic urban growth areas in accordance with the Strategic Urban Growth Area (SUGA) Map. The SUGA map will not require amending regardless of the outcome of this proposal.

Gateway Determination

The planning proposal has been considered by the DP&I's Gateway Panel and the Gateway determination (Appendix 4) enables the LEP amendment to proceed to public exhibition subject to several conditions.

Bushfire Prone Land

The subject lots are identified as Category 2, Bush Fire Prone Land. Pursuant to Clause 62 and Section 117 of the Environmental Planning and Assessment Act 1979, (EP&A Act), Council was required to consult with the Rural Fire Service (RFS) in conjunction with the LEP amendment process.

In response to this requirement, the proponents engaged a planning consultant to prepare documentation to address Section 117 of the EP&A Act. This information is contained within the documentation supporting the requested amendment provided by the proponent (available under separate cover). The report has concluded that the proposed development will be compliant with all aspects of *Planning for Bushfire Protection 2006* based on the recommendations contained with the report. On this basis, the site is suitable for rezoning for residential purposes based on the proposed low density use, minimum lot size and preliminary lot layout.

The positive Gateway determination dated 14 June 2013 also required consultation with the RFS prior to public exhibition of the planning proposal. A response from the RFS has been received raising no objection to the planning proposal (Appendix 5).

Part 1 - Objectives or Intended Outcomes

The objective of this planning proposal is to rezone the subject land to a low density residential zone, consistent with residential land in the North Creek Road and Tara Downs localities. The proposal also seeks to enable subdivision of the subject land. The amendment to the Ballina LEP 2012 in this locality will remove an existing zoning anomaly.

Part 2 - Explanation of the Proposal

This planning proposal relates to land described as Lots 31 and 32 DP 837448, 31 and 32 Tara Downs, Lennox Head. The subject lots are currently RU1 Primary Production zone pursuant to the provisions of the Ballina LEP 2012.

This planning proposal seeks to rezone the subject land to a R2 Low Density Residential zone to reflect the urban nature of each lot and to correct a current zoning anomaly within Tara Downs. The proposal also involves a change in the minimum lot size for subdivision from 40ha to 800m² to enable subdivision of the land.

In response to a positive Gateway determination in June 2013, the applicant's engaged Ardill Payne and Partners to provide planning and engineering services to address the suitability of the site in relation to the proposed LEP amendment. The proponents' supporting documentation is available under separate cover.

The documentation addresses issues of relevance to the proposal including servicing of the lots, proposed subdivision layouts, stormwater management, site contamination, and ecology. The submission also addresses the legislative requirements of the EP&A Act for LEP Amendments.

The documentation includes a Bushfire Threat Assessment Report. It is pertinent to note that the bushfire threat assessment and ecological report were not undertaken independently, rather in conjunction with one another, mindful of the possible conflicts between creating Asset Protection Zones (APZ) for building envelopes that may adversely impact native vegetation.

Lot Layout

The documentation has provided a proposed lot layout and specifications regarding lot sizes, building envelopes and access provisions. The proponent has proposed a minimum lot size of 800m² (Appendix 3). A summary of the proposed lot specifications is provided as follows:

Proposed Lot	Area and Shape	Improvements	Road frontage	Access
Lot 1	1128m ² - Irregular (triangular)	Existing Dwelling House	3.57m frontage to Tara Downs	Via existing driveway from ROC
Lot 2	1174m ² - Battleaxe	Vacant-12x15 building envelope	3.57m frontage to Tara Downs (battleaxe)	Via proposed driveway to ROC
Lot 3	955m ² - Irregular (triangular)	Vacant-12x15m building envelope	3.43m to Tara Downs	Via existing driveway from ROC

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Proposed Lot	Area and Shape	Improvements	Road frontage	Access
Lot 4	1932m ² - Battleaxe	Existing Dwelling House	4.33m to Tara Downs (battleaxe)	Via proposed driveway to ROC

* ROC – Right of Carriageway

All lots will have either direct street frontage or access via a battleaxe handle of 4m width. However, each lot will also have driveway access via the adjoining right of carriageway.

Council's Development Engineer has undertaken an assessment of the potential lot layout and technical aspects of the proposed development. The proposed lots will have satisfactory access via the existing cul de sac and right of carriageway. It is recommended that the existing right of carriageway is upgraded to serve the existing parcels and proposed allotments. The existing kerb and gutter is in good condition and does not require replacement. The frontage to Tara Downs will be satisfactory for waste collection and Australia post. The proposal does not require referral to the Local Traffic Development Committee and there are no parking requirements for the proposed rezoning.

The site has no major geotechnical constraints.

Stormwater

A drainage channel traverses the site and has provided an alignment for the boundary between lots 1 and 2 and also between lots 3 and 4. Each lot has the ability to be serviced by the proposed stormwater channel traversing the site.

Easements are able to be recorded on the lots where inter-allotment stormwater drainage will result.

Council's Development Engineer does not require an upgrade for this existing drainage channel at rezoning stage.

Preliminary SEPP 55 - Remediation of Land

A preliminary assessment in accordance with the provisions of SEPP 55 has been undertaken. The assessment concluded that the site is suitable for the proposed future residential zoning.

Mosquitoes

Council's Environmental Health Officer has advised that while the development is likely to result in two additional dwellings following rezoning and subdivision, entomological advice will not be required. However, any application for dwellings will require full screening and appropriate stormwater design to discourage mosquito breeding.

Services

Services have been provided to the subject land in association with the existing residential subdivision. Accordingly, services are acceptable to support a future residential use.

Part 3 - Justification

Section A - Need for the Planning proposal

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

No. The lots are currently of a residential character in a predominantly residential area. The proposal is the result of a request from the landholders.

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

As noted above, a planning proposal for the application of a residential zone to the subject lots and enabling subdivision is generally consistent with the local planning framework.

An LEP amendment is the best way of achieving the proposed outcomes as the proposal directly relates to land use zoning and subdivision potential.

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 FNCRS, which provides the regional framework for the consideration of rezoning land for urban purposes in Ballina Shire. The FNCRS identifies the subject land as being within the existing urban footprint within the 'Town & Village Growth Boundary Map – Sheet 3, as shown in the excerpt below).

The planning proposal involves potential future subdivision that will not result in the need for additional infrastructure and will provide additional housing opportunities for the projected regional population increase. This is consistent with the FNCRS regional framework.



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Accordingly, investigation of the subject land for future urban development through the statutory rezoning process, involving assessment of the land's capability to accommodate urban development, is consistent with the regional planning framework.

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:

The Ballina LEP 2012

The subject land is currently zoned RU1 Primary Production under the provisions of the Ballina LEP 2012. The primary zone objectives are:

- *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.*

The land given its location, current use and site area is not well suited to agricultural use. This zone relates to the historic circumstances around the creation of Lots 31 and 32.

The objectives of the R2 Low Density Residential zone are;

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To provide for development that meets the social and cultural needs of the community.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

The proposal is generally consistent with the objectives of the R2 Low Density Residential zone, in that the lots currently accommodate single dwellings in a locality that can provide facilities and services to meet the needs of the residents.

Having regard for the size of the subject lots, infill style development would be compatible with the character and amenity of the surrounding neighbourhood.

The proposal demonstrates that the site is physically capable of supporting future residential development with regard to servicing.

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Assessments of environmental matters such as bushfire protection and the significance of onsite vegetation have concluded that the site is suitable for low density residential purposes and can accommodate 800m² minimum lot sizes.

Ballina Shire Growth Management Strategy 2012 (GMS)

The purpose of the Ballina Shire Growth Management Strategy is to provide the framework for managing population and employment growth in Ballina Shire over the planning period of 2012-2031.

The strategy sets out local growth management arrangements for each of the shire's urban localities. These outline the desired future character of the particular locality, identify key locality objectives and proposed actions to give effect to those objectives.

The subject land, while not recognised as being within the strategic urban growth area, is within the existing urban footprint of Lennox Head.

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). The relevant SEPP's are as follows:

SEPP Title	Compliance of Planning Proposal
SEPP (Rural Lands) 2008	The subject land is currently zoned RU1 Primary Production. The rezoning of these lots to residential will not be prejudicial to agricultural land due to the residential characteristics and size of the lots as existing. Amending the BLEP to create residential zoned lots and enable subdivision of the land will not result in increased land use conflicts with adjoining agricultural land having regard to the existing dwelling locations, the character of the surrounding land being primarily residential and the limited potential for agriculture of the remaining agricultural land to the east of the subject site (Lot 33, DP 837448). Therefore it is considered that the planning proposal is consistent with the provisions of this SEPP.
SEPP No. 26 - Littoral Rainforests	Lot 32 is partially located within the 100m buffer of a SEPP 26 Littoral rainforest, pursuant to Clause 4(1)(b) of this SEPP. Information submitted by the proponent has examined site ecology and has concluded that the proposal will have no adverse impact on the adjoining SEPP 26 Littoral Rainforest. Further assessments and conditions of consent are likely during the development application process to ensure the adjoining SEPP 26 land is not detrimentally affected as a result of the additional dwellings onsite following subdivision.
SEPP No. 55 - Remediation of Land	In accordance with Clause 6(1) of this SEPP, a change of use of the land to residential zone cannot occur until the planning authority has considered whether the land is contaminated. A preliminary contamination assessment has concluded that the site is suitable for residential use.
SEPP No. 71 - Coastal Protection	The planning proposal is consistent with the provisions of this SEPP and supports the intent of the SEPP. The subject land is located within the coastal zone. However, it is well separated from the coastal strip and public lands. The rezoning to enable residential development is consistent with the objectives of the SEPP.

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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 2.

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?

Ecology

Ecologically, the future subdivision of the land as a consequence of the planning proposal has the potential to result in some adverse impacts on site vegetation. An ecological assessment has been undertaken by Blackwood Ecological Services in conjunction with the bushfire assessment and stormwater report. The proposed dwelling envelope within Lot 2 (Appendix 3) is clear of existing vegetation and clearing will not be required for the construction of a dwelling, access or creation of an APZ.

The dwelling envelope upon proposed Lot 3 is located within an area dominated by garden plantings. The clearing of vegetation will be required for construction of a dwelling and associated driveway. No native trees will be removed for the establishment of an APZ. The creation of an access for the existing dwelling upon Lot 4 will require the removal of a mango tree. No impacts on existing vegetation will result from the creation of proposed Lot 1 that contains an existing dwelling.

The ecological assessment identifies the potential for the development to impact upon native vegetation during the construction and stormwater drainage process. This assessment has recommended 'tree protection zones' to prevent certain vegetation from being directly impacted as a result of future earthworks.

Three threatened flora species were recorded during the site survey. Each plant is located outside of the proposed building envelopes and amelioration measures have been recommended to ensure no indirect impacts occur as a result of future residential development.

Council's Environmental Scientist has undertaken a review of the ecological assessment submitted for the subject site. This review has concluded that the assessment adequately addresses the ecological aspects of the proposed rezoning. However, further detail regarding the location of the proposed stormwater drain and corresponding ecological impacts will be required. This would be appropriate during the development application process. A site management plan relating to vegetation may also be considered as part of a future development application.

The review also questioned the impacts of an increased population density on the surrounding sensitive vegetation. It is considered that while additional dwellings will potentially impact surrounding vegetation, the assessment provided coupled with the identification and protection of sensitive vegetation onsite is considered satisfactory for this relatively small scale development in this instance.

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The Office of Environment & Heritage (OEH) has also reviewed the planning proposal and ecological assessment submitted for the subject site. Advice was provided (Appendix 6) that the OEH has no objection to the rezoning and lot size amendments proposed.

State Environmental Planning Policy No. 26 – Littoral Rainforest (SEPP 26)

An area of SEPP 26 - Littoral Rainforest is located to the east of Lot 31. A smaller patch of SEPP 26 Rainforest is located to the south-east of Lot 32.

The south-eastern corner of Lot 32 is located within the 100m buffer of the area of SEPP 26 Littoral rainforest. This area consists of landscaped yard for the existing dwelling and does not contain any littoral rainforest. The ecological assessment has concluded that the proposed development will not result in any impact to the part of the site located within the 100m buffer.

Council's Environmental Scientist has advised that the assessment provided by the applicant has not assessed the core SEPP 26 littoral rainforest, rather the buffer within the subject site. It is recommended that any vegetation plantings in the 100m buffer upon the subject site should be restricted to local native, ideally littoral rainforest species. It is considered appropriate that these matters be further assessed during the development application stage.

Section 5A Assessment of Significance

Assessments of significance were completed for a number of threatened fauna considered possible occurrences on the site. These assessments concluded that the proposed development anticipated as a result of the rezoning is unlikely to result in a significant impact on any threatened species, population or ecological community.

Council's Environmental Scientist has concurred with these findings.

Noxious Weeds

A dense infestation of the noxious weed *Salvinia Molesta* was located during the ecological survey within a small pond located at the southern corner of Lot 32. Five other noxious weeds were discovered during the site survey. Council's Environmental Scientist recommends that these noxious weeds should be managed as required under the Noxious Weeds Act. These are matters that can be managed during the development application process. Council is not the authority responsible for the regulatory functions of the Noxious Weeds Act.

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

Other potential environmental effects of the proposal are as follows:

- Slope stability;
- Bushfire hazard;
- Drainage; and

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These and other issues have been addressed in the documentation submitted by the proponent following the Gateway determination. These matters are addressed elsewhere in this planning proposal.

The land is considered generally suitable for residential development based on this additional information. It is likely that matters such as slope stability, mosquitoes and drainage will require further consideration during any future development application process.

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

The proposed rezoning and changes to applicable subdivision standards do not raise any significant social implications, given that the land is capable of sustaining residential development and further subdivision. There is opportunity to address site amenity issues as part of future development application.

The land is already adequately serviced and as such, the proposal will not have adverse economic impacts in relation to the provision of infrastructure.

Section D – State and Community Interests

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

Infill development on the subject land can be economically serviced with the full range of infrastructure.

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

Consultation has been undertaken with the Rural Fire Service in accordance with the DP&I's Gateway determination. A response has been received raising no objection to the proposal (Appendix 5).

Consultation was also undertaken with the NSW Office of Environment and Heritage. This agency raised no objection to the proposal (Appendix 6).

Part 4 - Mapping

The following maps have been prepared to support the planning proposal:

- Map 1 – illustrates the location of the subject land – Site Identification Map;
- Map 2 – presents the proposed zoning of the land under the terms of the Ballina LEP 2012 (LZN Zoomed Map);
- Map 3 – presents the proposed Lot Size Map under the terms of Ballina LEP 2012 (LSZ Zoomed Map)

Part 5 - Community Consultation

This planning proposal was exhibited from 4 December 2013 to 20 December 2013. The exhibition period complied with the minimum 14 day period specified within the Department of Planning and Infrastructure's Gateway determination (Appendix 4).

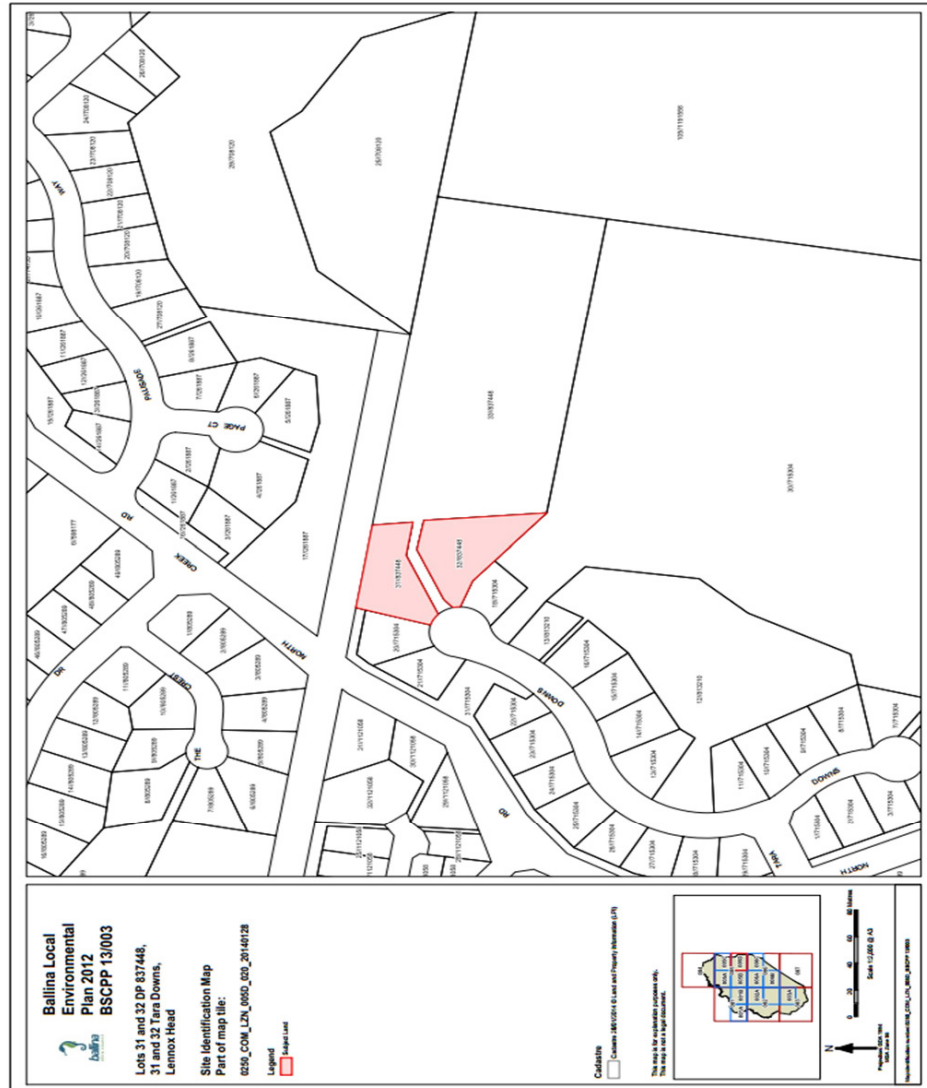
No submissions have been received.

Part 6 - Project Timeline

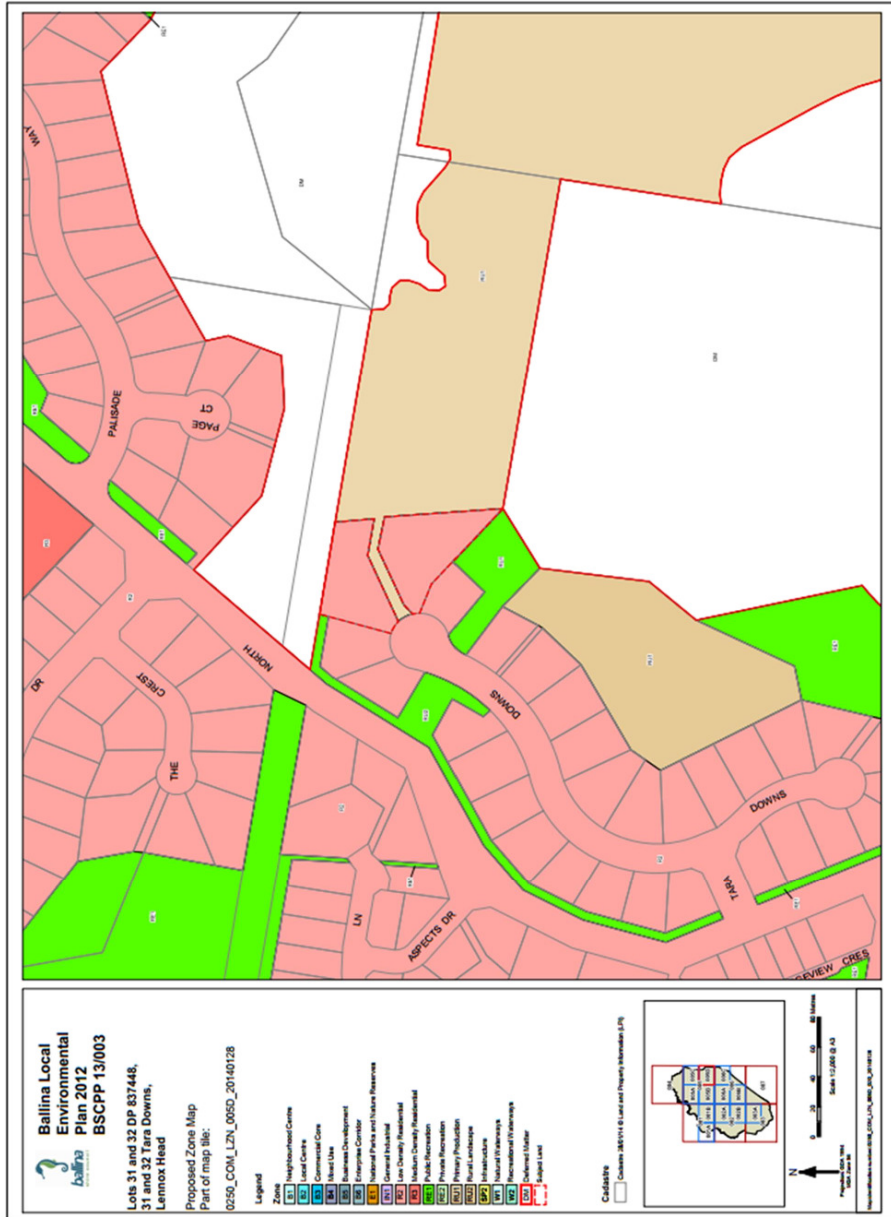
Plan Making Step	Estimated Completion (Before)
Gateway Determination	June 2013
Completion of Technical Assessment	October 2013
Government Agency Consultation	November 2013
Public Exhibition Period	December 2013
Public Hearing	Not Required
Submissions Assessment	January 2014
RPA Assessment of Planning Proposal and Exhibition Outcomes	January 2014
Submission of Endorsed LEP to DP&I for Finalisation	Not Required (delegated)
RPA Decision to Make the LEP Amendment (if delegated)	February 2014
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	March 2014

Appendices

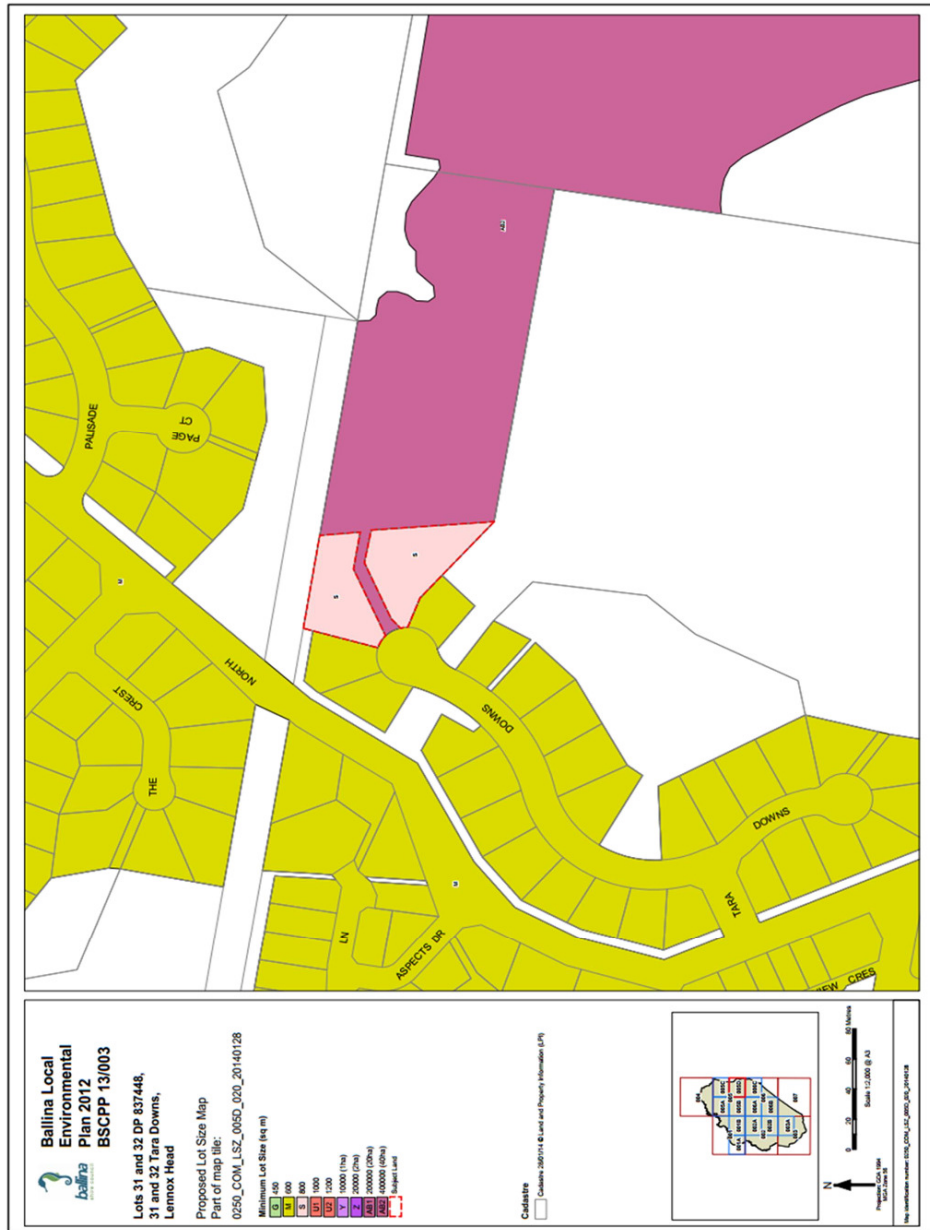
Appendix 1 – Map Set



Map 1 – The Subject land (Site Identification Map)



Map 2 - Proposed Zoning (Ballina LEP 2012 LZN Zoomed Map)



Map 3 - Proposed Lot Size Map (Ballina LEP 2012 LSZ Zoomed Map)

Appendix 2 - Section 117 Direction Checklist

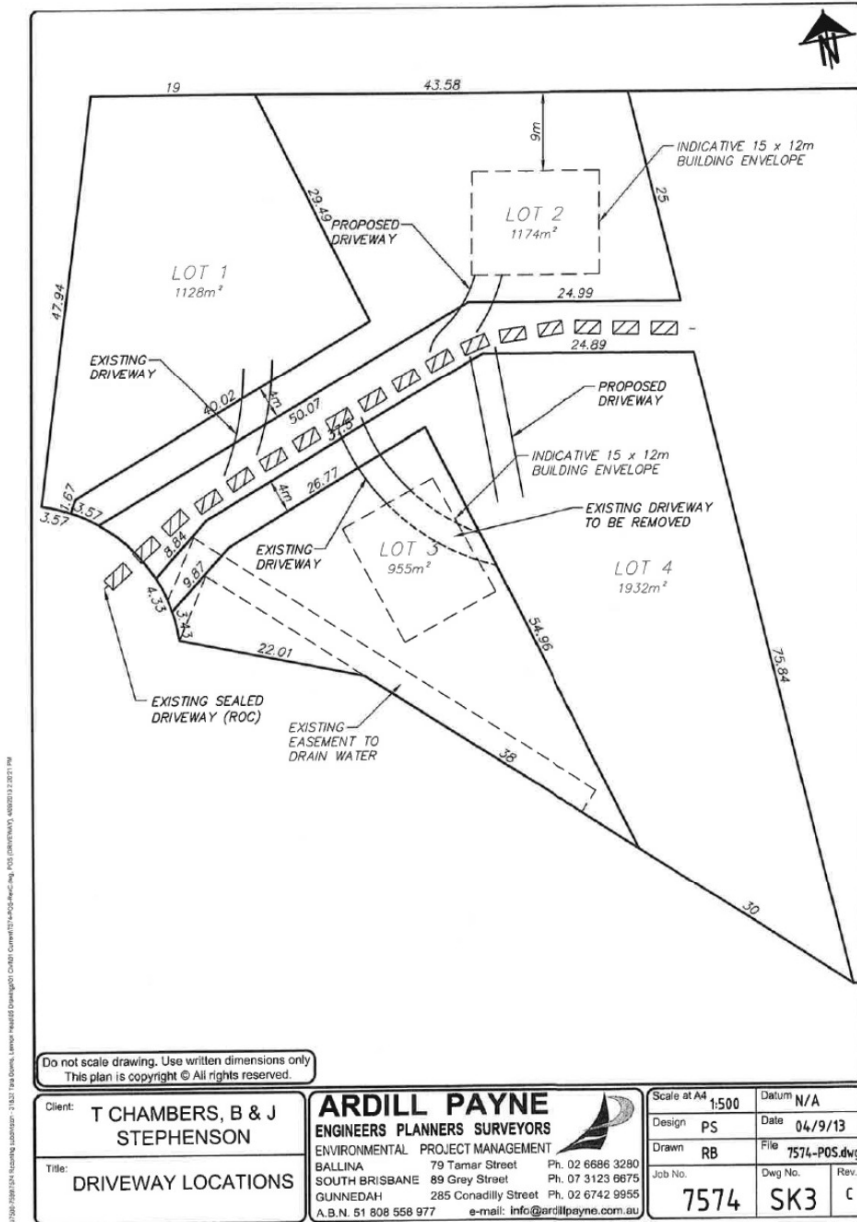
Section 117 Direction Checklist Planning Proposal – Tara Downs, Lennox Head	
DIRECTION NO.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	It is considered that the planning proposal is consistent with this Direction because the proposed residential area is within the urban footprint identified in the Far North Coast Regional Strategy and in the local urban planning framework. The subject lots are not considered of a sufficient size to sustain agricultural activities, even with consolidation. The planning proposal is considered of minor significance as the subject lots are less than 6000m ² combined, and therefore will result in a negligible loss to the agricultural production value of the land in the locality.
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	The table in Section B5 of this report addresses the Planning Principles contained in State Environmental Planning Policy (Rural Lands). In addition, this planning proposal is of relatively minor significance and is consistent with the Far North Coast Regional Strategy 2006 – 2031 in that the lots are located within the coastal town and village growth boundary.
2. Environment and Heritage	
2.1 Environmental Protection Zones	Does not apply to planning proposal
2.2 Coastal Protection	This planning proposal is consistent with this Direction. The proposal is considered to be minor in nature and results in two existing rural lots becoming residential lots. These lots will have the potential for further subdivision. A minimum lot size of 800m ² is proposed. This proposed lot size will not impact on public foreshore access due to physical separation from the coastal strip and the minor nature of the development.
2.3 Heritage Conservation	There are no items of environmental or cultural heritage identified by Council within the site that are considered to warrant specific LEP based protection based on the information currently available. A heritage item adjoining the site (dry stone wall) identified within Schedule 5 of Ballina LEP 2012 will not be adversely impacted as a result of this planning proposal.
2.4 Recreation Vehicle Areas	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	The planning proposal is consistent with this Direction in that adequate infrastructure is available to service the two lots and future subdivision of the land. The proposed rezoning will correct an anomaly in the zoning of the locality by placing a residential zoning upon land that is practically currently used for residential purposes within an urban environment.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to planning proposal.
3.3 Home Occupations	This planning proposal is consistent with this Direction as home occupations are permitted in the R2 Low Density Residential zone without consent under the Ballina LEP 2012.

Section 117 Direction Checklist	
Planning Proposal – Tara Downs, Lennox Head	
3.4 Integrated Land Use and Transport	The planning proposal is consistent with this Direction as the land is identified in the urban footprint of the Far North Coast Regional Strategy. Additionally, the site is located within an existing residential subdivision which is considered to have satisfactory access to public transport.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulphate Soils	The subject lots do not contain acid sulphate soils.
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	The planning proposal is consistent with this Direction. The Rural Fire Service has been consulted in accordance with the Gateway determination. The planning proposal is accompanied by a Bushfire Threat Assessment Report that has been undertaken for the subject land. The RFS have responded and raise no objection to the planning proposal (Appendix 5).
5. Regional Planning	
5.1 Implementation of Regional Strategies	The site is identified within the urban footprint of the Far North Coast Regional Strategy. Therefore, the proposal is consistent with this Direction.
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	The land is identified within the "Northern Rivers Farmland Protection Project - Final Recommendations, February 2005" as "significant non-contiguous farmland". However, the land is also identified as being within the "town and village growth boundary" by the Far North Coast Regional Strategy. In accordance with subclause (2), land identified within this boundary is excluded from the requirements of this Direction. Therefore, the provisions of this Direction do not apply to the subject land.
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).	Does not apply to Ballina Shire
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	The planning proposal is consistent with this Direction in that it does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	The planning proposal is consistent with this provision as it does not include creation, altering or reduction of land for public purposes.
6.3 Site Specific Provisions	The planning proposal is consistent with this Direction as it seeks to apply a land use zone and standards compatible with the residential development of the site.

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Section 117 Direction Checklist Planning Proposal – Tara Downs, Lennox Head	
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.

Appendix 3 – Proposed Subdivision Layout





Do not scale drawing. Use written dimensions only
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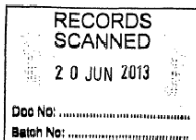
Client: T CHAMBERS, B & J STEPHENSON	ARDILL PAYNE ENGINEERS PLANNERS SURVEYORS ENVIRONMENTAL PROJECT MANAGEMENT BALLINA 79 Tamar Street Ph. 02 6686 3280 SOUTH BRISBANE 89 Gray Street Ph. 07 3123 6675 GUNNEDAH 285 Conadilly Street Ph. 02 6742 9955 A.B.N. 51 808 558 977 e-mail: info@ardillpayne.com.au	Scale at A4 1:500	Datum N/A
Title: PROPOSED PLAN OF SUBDIVISION		Design PS	Date 15/8/13
		Drawn RB	File 7574-POS.dwg
		Job No. 7574	Dwg No. SK2
			Rev. C

Appendix 4 – Gateway Determination



Planning & Infrastructure

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



Contact: Gina Davis
Phone: (02) 6701 9689
Fax: (02) 6701 9690
Email: Gina.Davis@planning.nsw.gov.au
Postal: PO Box 550, Tamworth NSW 2340
Our ref: PP_2013_BALLI_003_00 (13/09313)
Your ref: LEP Amendment Request – Tara Downs,
Lennox Head (13/29889)

Dear Mr Hickey,

Planning proposal to amend Ballina Local Environmental Plan 2012

I am writing in response to your Council's letter dated 29 May 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 land at 31 and 32 Tara Downs, Lennox Head from RU1 Primary Production to R2 Low Density Residential and amend the minimum lot size for the subject land.

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 have also agreed the planning proposal's inconsistency with S117 Direction 1.2 Rural Zones is justified as it is consistent with the Far North Coast Regional Strategy. No further approval is required in relation to this Direction.

The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation, however has asked not to use its delegation for the making of this plan. 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. Council should contact the regional office of the department should it require assistance in relation to the exercise of its delegation.

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

9.3 Planning Proposal 13/003 - 31 and 32 Tara Downs, Lennox Head.DOC

Should you have any queries in regard to this matter, please contact Gina Davis of the regional office of the department on 02 6701 9689.

Yours sincerely,



Neil McGaffin
Executive Director
Rural and Regional Planning
Planning Operations and Regional Delivery

14.6.13



Gateway Determination

Planning proposal (Department Ref: PP_2013_BALLI_003_00): to rezone land at Lennox Head for residential purposes and amend the minimum lot size applicable to the subject 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 land at 31 and 32 Tara Downs, Lennox Head from RU1 Primary Production to R2 Low Density Residential and amend the minimum lot size for the subject land should proceed subject to the following conditions:

1. To demonstrate the proposal satisfies the requirements of State Environmental Planning Policy (SEPP) 26 – Littoral Rainforests, additional information regarding potential constraints relating to sensitive vegetation and bushfire hazard is to be placed on public exhibition with the planning proposal in view of the sites proximity to Littoral Rainforest areas.
2. Prior to undertaking public exhibition, Council is to update the 'explanation of provisions' within the planning proposal to include the proposed minimum lot size to be applied to the subject land. The planning proposal is to include existing and proposed lot size maps, which are at an appropriate scale and clearly identify the subject land.
3. Prior to undertaking public exhibition, Council is to update the project timeline within the planning proposal to reflect the decision to delegate plan making functions for this planning proposal to Council.
4. 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 is classified as low impact as described in *A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013)* and must be made publicly available for a minimum of **14 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)*.
5. 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.
6. 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_003_00 (13/09313)



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

Dated 14th day of June 2013.

A handwritten signature in black ink, appearing to read "Neil McGaffin".

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

Delegate of the Minister for Planning and
Infrastructure

BALLINA PP_2013_BALLI_003_00 (13/09313)



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_003_00	Planning proposal to rezone land at 31 and 32 Tara Downs, Lennox Head from RU1 Primary Production to R2 Low Density Residential and amend the minimum lot size for the subject land.

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 *14th June* 2013

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

Appendix 5 – Rural Fire Service

All communications to be addressed to:

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

Telephone: (02) 8741 5555
e-mail: csc@rfs.nsw.gov.au

Headquarters
NSW Rural Fire Service
15 Carter Street
HOMEBUSH BAY NSW 2127

Facsimile: (02) 8741 5550



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

Your Ref: BSCPP 13/003
Our Ref: L12/0003
DA13110589608 AB

Attention: Ms Joanne Kay

26 November 2013

Dear Ms Kay,

Planning Proposal BSCPP 13/003: Amendment to Ballina Local Environment Plan 2012 – Lots 31-32 DP 837448; Tara Downs Street Lennox Head

I refer to your letter dated 30 October 2013 seeking the NSW Rural Fire Service (RFS) comments as directed under the Gateway Determination issued by NSW Planning for this Planning Proposal.

The RFS has reviewed the referred documentation and understands the Planning Proposal relates to the following amendments to Ballina LEP 2012:

1. Rezoning of lots 31-32 DP 837448 to RU1 Low Density Residential zone;

The RFS notes that the subject lots are mapped bush fire prone by Ballina Shire Council. The rezoning to a residential land use will provide an opportunity under Ballina LEP 2012 minimum residential (RU1) lot size provisions, for each lot to be further subdivided.

The RFS has no objection to the planning proposal proceeding to Public Exhibition. Further the Council does not need to further consult with the RFS with respect to this planning proposal.

With respect to future subdivision potential of the proposed residential lots, the RFS provides the following advice:

- Development applications for all development on bush fire prone lands will be required to comply with either S79BA of the *Environmental Planning and Assessment Act 1979* or S100B of the *Rural Fires Act 1997* depending upon the nature of the proposed development.

1 of 2

9.3 Planning Proposal 13/003 - 31 and 32 Tara Downs, Lennox Head.DOC

- Council should note that Australian Standard AS 3959-2009 *Construction of buildings in bushfire-prone areas* includes grasslands as a hazardous vegetation category. Any future development will need to consider this at the design and construction stage.
- Council should also note that the minimum specifications for asset protection zones for residential and rural-residential subdivisions in Table A2.5 of *Planning for Bush Fire Protection 2006* do not correspond directly with the minimum separation distances for BAL-29 construction under Table 2.4.3 of AS 3959-2009 *Construction of buildings in bushfire-prone areas*, and may therefore have implications for future complying development proposals on lots created with a minimum asset protection zone between a bush fire hazard and the proposed building.

For any enquiries regarding this correspondence please contact Alan Bawden on 6655 7002.

Yours faithfully,



John Ball
Manager – Customer Service Centre Coffs Harbour

The RFS has made getting additional information easier. For general information on *Planning for Bush Fire Protection 2006*, visit the RFS web page at www.rfs.nsw.gov.au and search under *Planning for Bush Fire Protection 2006*.

Appendix 6 – Office of Environment & Heritage



Your reference: BSCP 13/003 Tara Downs (13/75286)
Our reference: DOC13/89112
Contact: John Martindale 02 9599 8222

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2430



Att: Ms Joanne Kay, Strategic Facilities

Dear Mr Hickey

Re: Planning Proposal – Tara Downs Lennox Head.

Thank you for Council's letter, dated 29 November 2013, requesting comment from the Office of Environment and Heritage (OEH) on the above proposal relating to Lots 31 and 32, DP837448.

I note this referral was not required by the Gateway Determination issued by the Department of Planning and Infrastructure (DP&I). Nonetheless, I do appreciate the opportunity to provide comment on certain matters relevant to our statutory responsibilities being, in this case, the potential for impact on threatened species, endangered ecological communities and SEPP 26 littoral rainforest.

OEH has reviewed Council's Planning Proposal and the Ecological Assessment prepared by Blackwood Ecological Services. I advise that OEH has no objections to the rezoning and lot size amendments proposed for the following reasons:


- The ecological assessment is thorough and well written.
- The identified threatened flora will not be impacted by the development footprint and is subject to appropriate protective measures.
- There is evidence that these species may have been planted in the area in the past.
- Although not mandated in a Planning Proposal, the Part 5A test of significance conclusions relating to the impact on threatened fauna appear to be reasonable.
- The proposed dwelling sites occur largely on cleared land with limited vegetation removal of non-threatened flora being needed for access purposes.
- The land affected by the 100m SEPP 26 buffer is already landscaped, does not hold any littoral rainforest and remains outside the development envelope.
- The clearing required for Bushfire Asset Protection Zones will not require the removal of rainforest or other native vegetation.
- Wildlife corridors values will not be affected and the land is not identified in the OEH Key Habitat and Corridors Study as being part of any subregional or regional corridor.
- Exotic vegetation is to be removed and native vegetation used to rehabilitate the SEPP 26 buffer and along the drainage line by way of consent conditions.

Locked Bag 914, Coffs Harbour NSW 2450
Federation House Level 7, 24 Moore Street,
Coffs Harbour NSW 2450
Tel: (02) 6651 5546 Fax: (02) 6651 5107
ABN 30 841 387 271
www.environment.nsw.gov.au

- The land does not appear to be flood prone or of significance to the Aboriginal community.
- The subdivision size is consistent with neighbouring properties and current DP&I and Council planning strategies.
- The site and proposal have been independently assessed by Council's environmental scientist and found to be environmentally acceptable.

If you require further information or clarification, or should Council be in possession of information that suggests that OEH's statutory interests may be affected, please contact Conservation Planning Officer, Mr John Martindale, on telephone 02 6659 8222.

Yours sincerely



19/12/2013

ROSALIE NEVE
Acting Senior Team Leader Planning, North East Region
Regional Operations