

Planning Services

Gateway Determination Report

LGA	Port Macquarie Hastings
RPA	Port Macquarie Hastings Council
NAME	Road Closures
NUMBER	PP_2017_PORTM_007_00
LEP TO BE AMENDED	Port Macquarie Hastings LEP 2011
ADDRESS	various
DESCRIPTION	Various
RECEIVED	16/10/17
FILE NO.	17/13159
QA NUMBER	qA421339
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

To amend the Port Macquarie-Hastings LEP 2011 text to prescribe "subdivisions associated with road closures" as exempt development, and amend the Land Zoning Map, Floor Space Ratio Map and Height of Buildings Map by extending the provisions of the adjoining land onto Burrawan Street, Pacific Drive, Windmill Street, Home Street, Hill Street and Arncliffe Street, Port Macquarie.

Site Description

The proposal to amend the LEP text to allow for subdivisions associated with road closures as exempt development applies to the entire LGA. The land subject to the mapping amendments is shown below, and generally described as the public roadways known as Burrawan Street, Pacific Drive, Windmill Street, Home Street, Hill Street and Arncliffe Street, Port Macquarie.

Surrounding Area

Almost the entire length of Burrawan Street and Pacific Drive have an eastern frontage to natural coastal headlands and foreshore areas, predominantly zoned E2 Environmental Conservation and RE1 Public Recreation, with a western frontage of R1 General Residential and R3 Medium Density Residential zoned land. The western side of the roadway has been developed for residential purposes with a mix of dwellings and larger residential flat buildings. The area identified on the map below as "proposed road closure" is the remaining undeveloped area of land along this western stretch of Pacific Drive.



Locality map showing areas associated with map amendments.

Summary of Recommendation

It is recommended that the Planning Proposal proceed as submitted to allow greater efficiency in processing road closures where subdivision is required, and where the resultant lot does not conform to the minimum lot size under the LEP. It is also recommended that the proposed changes to the LEP maps proceed as proposed, being in keeping with mapping standards encouraged by the Department of appropriate zoned roadways.

PROPOSAL

Objectives or Intended Outcomes

The first objective of the Planning Proposal is to enable subdivisions associated with public road closures to be exempt development so that a subdivision certificate may be issued without the need to submit a development application and obtain development consent. The notification/consultation procedure require under the *Roads Act 1993* to affect the closure of public roads is extensive, and the outcome of this planning proposal will be that this notification/consultation period is not duplicated and will create a more efficient process. This amendment is to apply to all roads throughout the Local Government Area.

The second objective of the Planning Proposal is specific to the properties of Burrawan Street, Pacific Drive, Windmill Street, and Arncliffe Street, Port Macquarie. The outcome of the Planning Proposal will see the Land Zoning Map, Floor Space Ratio Map and Height of

Buildings Map controls that currently apply to the adjoining land, extend over the public road ways. This is in keeping with standard LEP mapping practice, which avoids the situation where uncontrolled land results from private property or public road boundaries changes.

Explanation of Provisions

The planning proposal will amend Schedule 2 Exempt development in the LEP by the inclusion of words to the effect:

“Subdivision required to identify a road closure carried out in accordance with Part 4 of the *Roads Act 1993*.”

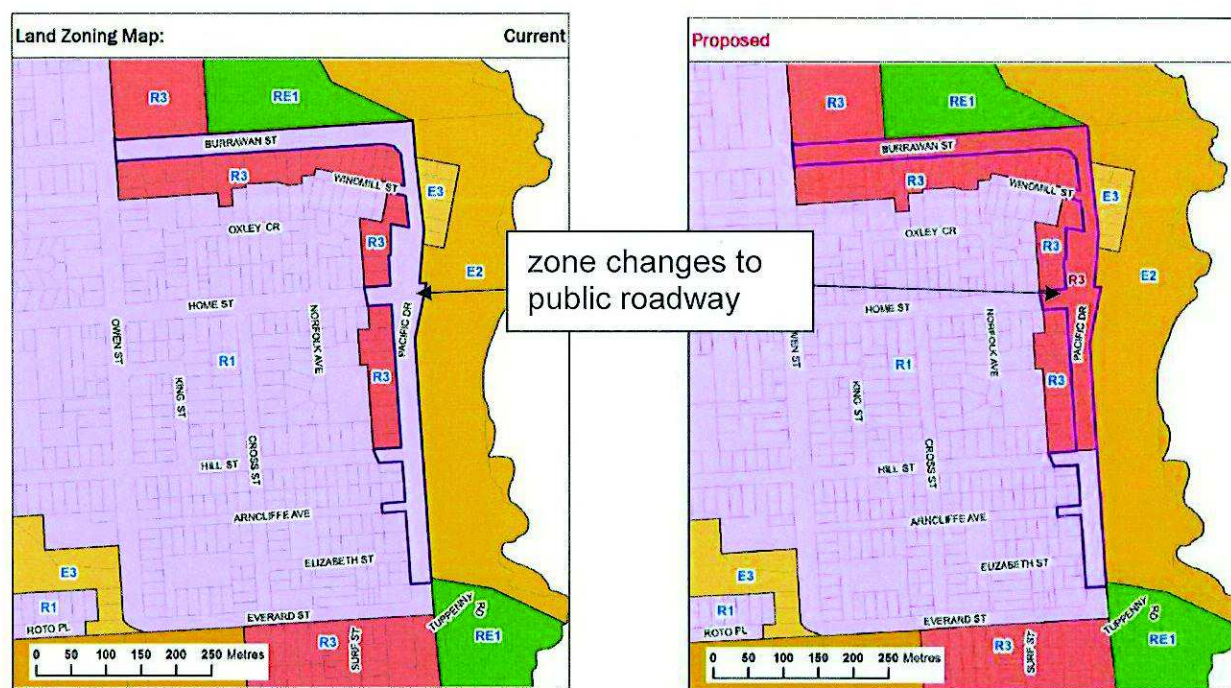
The provision is worded such that it will be easily understood by the public during consultation.

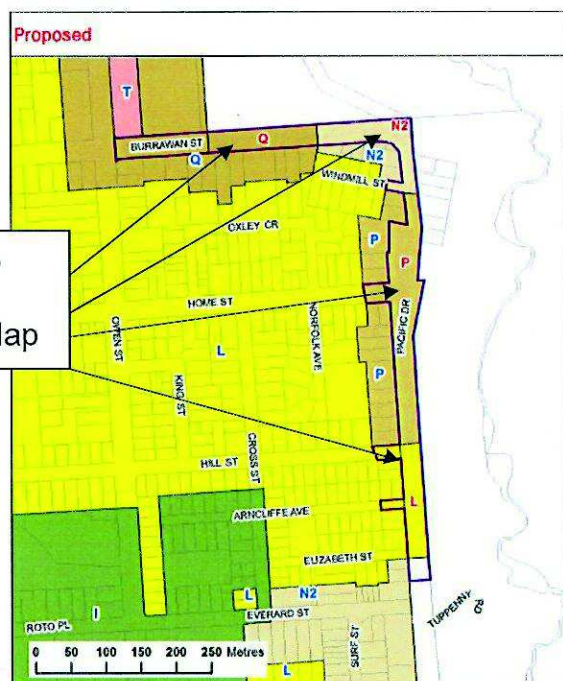
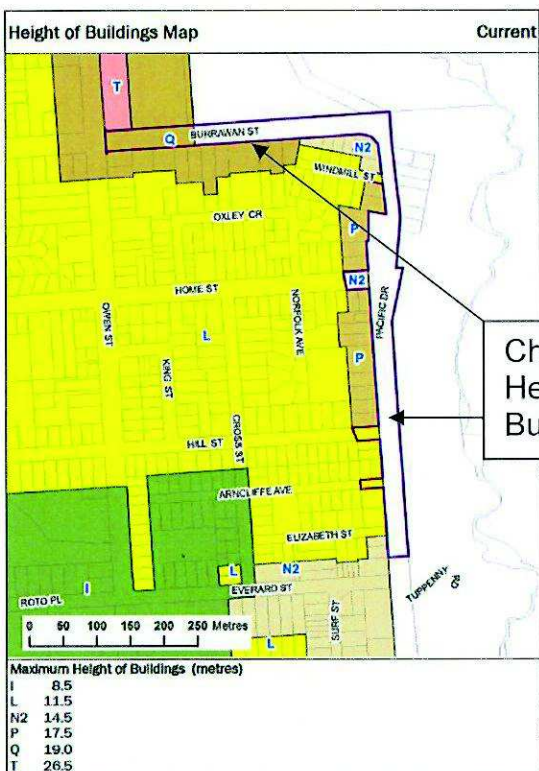
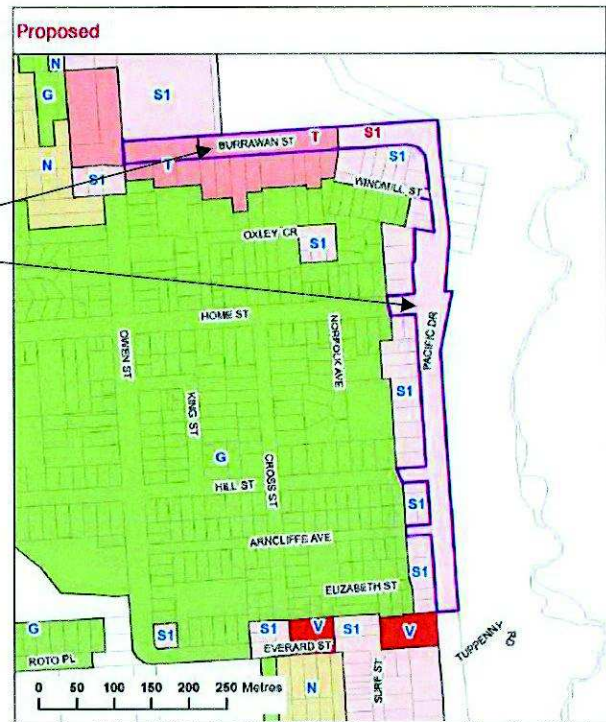
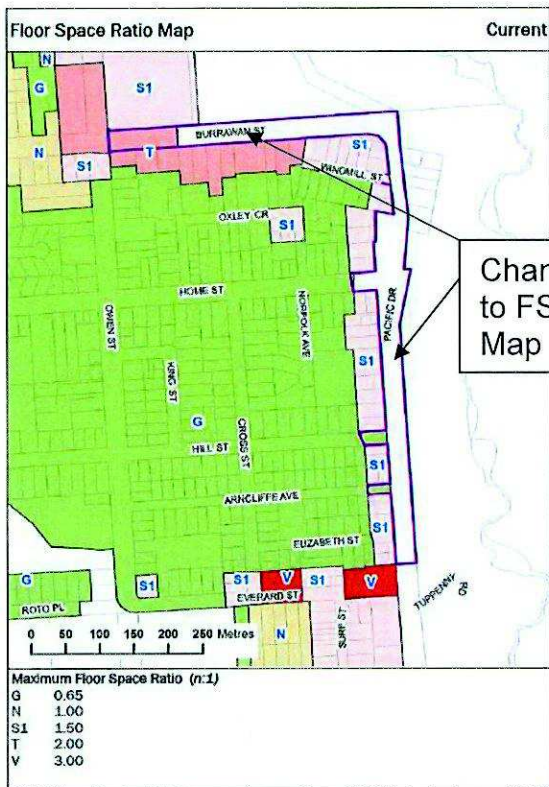
The Planning Proposal also seeks to amend the Land Zoning Map, Floor Space Ratio Map, Height of Building Map as explained in the objectives above.

Mapping

The mapping changes will be:

Map sheets	Map sheet identifier
Land Zoning Map LZN_013FA	6380_COM_LZN_013FA_010_20170308
Floor Space Ratio Map FSR_013FA	6380_COM_FSR_013FA_010_20160205
Height of Buildings Map HOB_013FA	6380_COM_HOB_013FA_010_20151222



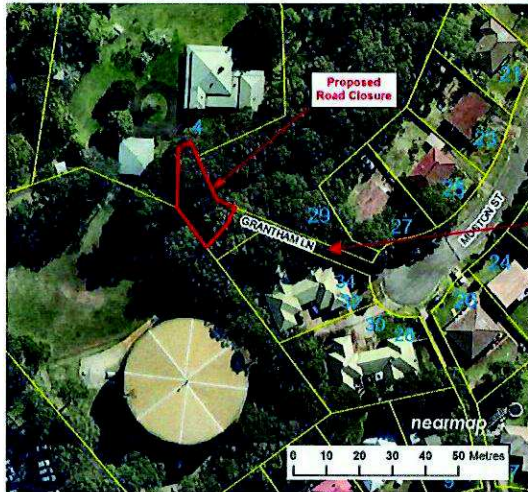


The maps included in the Planning Proposal adequately identify the current and proposed controls.

NEED FOR THE PLANNING PROPOSAL

The Planning Proposal was initially brought about by a road closure application of Grantham Lane, Port Macquarie. However, the application only sought to close part of the public

roadway, 282.7m². This section of Grantham Lane is zoned E3 Environmental Management which has a 4000m² minimum lot size. The enabling provisions of Clause. 4.6 of the LEP specifically exclude their application to E3 Environmental Management zoned land. Rather than submit a site-specific Planning Proposal to enable this subdivision, Council wishes to apply this exemption across the LGA to anticipate any other partial road closures that would otherwise require lodgement and consent to a Development Application. It is considered that whilst this situation arises infrequently, as a Planning Proposal is necessary to achieve the outcome of the road closure, it is sensible to apply it to the LGA as a whole.



The part road closure of Grantham Lane is an example where development consent is required to close part of the road as it will create a new boundary and a separate allotment.

The Planning Proposal further seeks to amend the Zoning, FSR and HOB maps. This again has been brought about by Council's intention to close an unformed part of Pacific Drive, Port Macquarie, subdivide it (to conforming minimum lot size) and sell to an adjoining property owner for subsequent development. Due to sequential changes to adjoining property zones, the public roadway zoning remained unchanged as R1 General Residential zone, where adjoining privately owned land is R3 Medium Density Residential zone. It is in Council's economic interest to increase the permissible density of development over this section of land prior to sale. The proceeds of the sale of former public roads are required to be used by Council for acquiring public roads, or for carrying out road work on public roads. Council has identified this as a financial implication of the Planning Proposal.

STRATEGIC ASSESSMENT

State

The Planning Proposal is not inconsistent with State strategic planning frameworks.

Regional

The Planning Proposal is consistent with Direction 7 which promotes the coordination of growth of regional cities, such as Port Macquarie. The spot rezoning of the proposed closed roadway from R1 General Residential zone to R3 Medium Density zone will provide for greater housing diversity by permitting multi dwelling house which is not permissible within the R1 General Residential zone which is limited to dual occupancy development.

Local

The proposed changes to the maps are in keeping with the adjoining land mapping and within the character of the existing urban area of Port Macquarie township. The Planning Proposal is not inconsistent with the Urban Growth Management Strategy 2011-2031.

Section 117(2) Ministerial Directions

The ability to subdivide a public road as Exempt development, as sought in this Planning Proposal, is not site specific and will apply to the LGA of Port Macquarie. The Planning Proposal is not inconsistent with the Directions other than Direction 4.4 Planning for Bushfire Prone Land. This inconsistency will remain until consultation with the Commissioner of the NSW Rural Fire Service is undertaken. A condition has been included requiring this.

State Environmental Planning Policies

SEPP 71 Coastal Protection applies to parts of the LGA. The Planning Proposal is not inconsistent with SEPP 71.

SITE SPECIFIC ASSESSMENT

Social

No social impacts are likely as a result of this Planning Proposal. Social impacts resulting from the development of the closure of part of the unformed public road of Pacific Drive will be assessed with a future Development Application for that land. The social impact will be limited to the difference between the development permissible in the R1 General Residential zone and that of the new R3 Medium Density Residential zone.

Environmental

The rezoning of the unformed public roadway from R1 General Residential zone to R3 Medium Density Residential zone will have minimum environmental impact on the natural environment, as the subject land is substantially urban in character. Environmental impacts on the natural and built environment will be assessed with a future Development Application for the subject land.



The grassed road reserve of Pacific Drive will be closed and rezoned to R3 Medium Density Residential Zone.

Economic

Upon the closure of public roads vested with Council, the land will become operational land and able to be sold. The Planning Proposal as exhibited must address the financial

implications of Council's interest in this matter. The *Roads Act 1993*, under which such roads will be closed, stipulates that money received by Council is not to be used by the Council except for acquiring land for public roads or for carrying out road work on public roads.

CONSULTATION

Community

The Planning Proposal is a low impact proposal, as per the Department's "Guide to Preparing Local Environmental Plans". An exhibition period of 14 days is appropriate. Council will notify the Planning Proposal in the local newspaper and its own website but proposes limited written notification of adjoining owners to those immediately adjoining the proposed road closure of Pacific Drive. This is considered appropriate given the high number of adjoining landowners along the roadways to be rezoned and the nil impact of rezoning formed and functioning roadways on adjoining landowners.

Agencies

The Planning Proposal will require consultation with the NSW Rural Fire Service so that compliance with s.117 Direction 4.4 can be met. Council has proposed consultation with the Department of Industry – Land and Forestry, which is at Council's discretion and will not be a condition of the Gateway determination if given.

TIMEFRAME

Council have requested an eight-month time frame to process the Planning Proposal post Gateway determination. The Planning Proposal incorporates a Housekeeping Amendment and a Spot Rezoning. The Guidelines recommend a three and six-month time frame respectively for these types. A six-month time frame is considered appropriate.

DELEGATION

Council requested the use of plan making delegations. Council has submitted the evaluation criteria for the delegation of plan making functions and it is recommended that the Planning Proposal be delegated to Council to finalise. Council is aware of its obligation to advise of its financial interests in this matter and are committed to performing its delegated functions in accordance with the Department's best practice guidelines for councils using delegated powers to prepare and make LEP's that are owned or controlled by Council.

CONCLUSION

Preparation of the Planning Proposal is supported to proceed with conditions as the proposed amendments to the Port Macquarie-Hastings LEP 2011 as it will allow for a greater efficiency in processing road closure applications that would otherwise require lodgement of a development application, public exhibition and in limited circumstances, the submission of a variation to a minimum lot size standard. The rezoning of public roadway will correct anomalies in the Zoning, FSR and HOB maps so that they are consistent with the adjoining zoned private land.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Note that the consistency with Section 117 Directions 4.4 Bushfire Fire Prone Land is unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning determine that the Planning Proposal should proceed subject to the following conditions:

1. The Planning Proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
3. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
4. Given the nature of the Planning Proposal, Council should be authorised to exercise delegation to make this plan.

 6/11/17
Tamara Prentice
Team Leader, Northern

 7-11-2017
Jeremy Gray
Director Regions, Northern
Planning Services

Contact Officer: Heidi Naylor
Planning Officer, Northern
Phone: 02 6641 6604

Gateway Determination

Planning Proposal (Department Ref: PP_2017_PORTM_007_00): to permit subdivisions associated with road closures as exempt development and make associated map changes to rezone various roadways to be consistent with adjoining land.

I, the Director Regions, Northern 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 Port Macquarie-Hastings Local Environmental Plan (LEP) (2011) to permit subdivisions associated with road closures as exempt development and amend associated maps should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) 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 local environmental plans* (Department of Planning and Environment 2016).
2. Consultation is required with the NSW Rural Fire Service under section 56(2)(d) of the Act. The NSW Rural Fire Service 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.
3. 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).

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

Dated 7 day of *NOVEMBER* 2017.



Jeremy Gray
Director Regions, Northern
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Port Macquarie-Hastings Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2017_PORTM_007_00	Planning proposal to permit subdivisions associated with road closures as exempt development and make associated map changes to rezone various roadways to be consistent with adjoining land.

In exercising the Minister's functions under Section 59 of the EP&A Act, the Council must comply with the Department's "*A guide to preparing local environmental plans 2016*" and "*A guide to preparing planning proposals 2016*".

Dated *7 November* 2017

Jeremy Gray
Director Regions, Northern
Planning Services
Department of Planning and Environment

Delegate of the Secretary
of the Department of Planning and Environment

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_PORTM_007_00
Date Sent to DP&E under s56	16/10/17
Date considered at LEP Review Panel (if applicable)	N/A
Gateway determination date	7-11-2017

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		
Have changes been made to the draft LEP after obtaining final PC opinion?	YES NO	
Date LEP made by GM (or other) under delegation		
Date sent to DPE requesting notification		

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

Stage	Date/Details
Notification Date and details	



Mr Craig Swift-McNair
General Manager
Port Macquarie-Hastings Council
PO Box 84,
PORT MACQUARIE NSW 2444

Dear Mr Swift-McNair

Planning Proposal PP_2017_PORTM_007_00 to amend the Port Macquarie-Hastings Local Environmental Plan 2011

I am writing in response to Council's request for a Gateway determination under Section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) and additional information received on 16 October 2017, in respect of the Planning Proposal to permit subdivisions associated with road closures as exempt development and make associated map changes to rezone various roadways to be consistent with adjoining land.

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.

Council may still need to obtain the agreement of the Department's Secretary to comply with the requirements of Section 117 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 6 months of 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 of Planning and Environment.

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 further enquiries about this matter, I have arranged for Ms Heidi Naylor to assist you. Ms Naylor can be contacted on (02) 6641 6604.

Yours sincerely



7-11-2017

Jeremy Gray
Director Regions, Northern
Planning Services

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