



**Ballina LEP 2012 - 111 Friday Hut Road Tintenbar - Rural subdivision**

Proposal Title : **Ballina LEP 2012 - 111 Friday Hut Road Tintenbar - Rural subdivision**

Proposal Summary : **The planning proposal seeks to facilitate the subdivision of Lot 339, into two lots which reflects the separate uses undertaken on the land.**

PP Number : **PP\_2017\_BALLI\_002\_00**      Dop File No : **16/15250**

**Proposal Details**

Date Planning Proposal Received : **14-Feb-2017**      LGA covered : **Ballina**

Region : **Northern**      RPA : **Ballina Shire Council**

State Electorate : **BALLINA**      Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

**Location Details**

Street : **111 Friday Hut Road**

Suburb : **Tintenbar**      City :      Postcode :

Land Parcel : **Lot 339 DP 755684**

**DoP Planning Officer Contact Details**

Contact Name : **Kate Hanson**

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**RPA Contact Details**

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**DoP Project Manager Contact Details**

Contact Name : **Tamara Prentice**

Contact Number : **0266416610**

Contact Email : **Tamara.Prentice@planning.nsw.gov.au**

**Land Release Data**

Growth Centre :      Release Area Name :

Regional / Sub Regional Strategy :      Consistent with Strategy :

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MDP Number :  
Area of Release (Ha) **0.00**  
No. of Lots : **0**  
Gross Floor Area : **0**

Date of Release :  
Type of Release (eg Residential / Employment land) :  
No. of Dwellings (where relevant) : **0**  
No of Jobs Created : **0**

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **The Department of Planning and Environment's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge. The Northern Region has not met with any lobbyists in relation to this proposal, nor has the Northern Region been advised of any meeting between other Departmental Officers and lobbyists concerning the proposal.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

### Supporting notes

Internal Supporting Notes : **14/02/2017 - Additional supporting information was requested and received**

External Supporting Notes :

## Adequacy Assessment

### Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives broadly describe the intention of the planning proposal. The proposal intends to amend Ballina LEP 2012 to enable the subdivision of 111 Friday Hut Road Tintenbar into two lots. The objectives should be clarified to remove the reference to 'existing use rights' unless it is intended that this mechanism be used, and to clarify in dot point 3 that this is a site specific proposal and the mechanism would not apply across the shire.**

### Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions adequately addresses the intended outcome of the proposal. This will enable the most appropriate legal drafting method to be employed when finalising the LEP amendment.**

### Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

**1.2 Rural Zones**

\* May need the Director General's agreement

**1.3 Mining, Petroleum Production and Extractive Industries**

**1.5 Rural Lands**

**2.1 Environment Protection Zones**

- 2.3 Heritage Conservation
- 2.4 Recreation Vehicle Areas
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified? **SEPP No 44—Koala Habitat Protection  
SEPP (Rural Lands) 2008**

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain : **Yes. See the assessment section of this report.**

#### **Mapping Provided - s55(2)(d)**

Is mapping provided? **Yes**

Comment : **The planning proposal contains maps which adequately show the subject land. These maps are adequate for exhibition purposes. Maps which comply with the Standard Technical Requirements for SI LEP Maps will need to be prepared before the LEP is made should an amended MLS be considered the preferred mechanism at drafting stage.**

#### **Community consultation - s55(2)(e)**

Has community consultation been proposed? **Yes**

Comment : **The Planning Proposal indicates that community consultation will be undertaken and nominates a minimum 28 day consultation timeframe. A 28 day community consultation period is considered appropriate given the ambiguity of the complexity of the proposal.**

#### **Additional Director General's requirements**

Are there any additional Director General's requirements? **No**

If Yes, reasons :

#### **Overall adequacy of the proposal**

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **Time Line  
The planning proposal includes a project timeline which estimates the completion of the planning proposal in 7 months concluding in July 2017. To ensure the RPA has adequate time to complete the exhibition, reporting, and legal drafting, it is recommended that a time frame of 9 months is appropriate.**

**Delegation  
The RPA has requested an Authorisation to exercise delegation for this proposal. It is**

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recommended that an Authorisation for delegation be issued in this instance as this proposal does not contain matters of State or regional significance. The mechanism for progression will be looked at by parliamentary counsel to ensure it is legally viable.

### Overall Adequacy

The planning proposal satisfies the adequacy criteria by:

1. Providing appropriate objectives and intended outcomes.
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.
3. Providing an adequate justification for the proposal.
4. Outlining a proposed community consultation program.
5. Providing a project time line.

## Proposal Assessment

### Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The Ballina LEP 2012 is in force. This planning proposal seeks an amendment to the Ballina LEP 2012.**

### Assessment Criteria

Need for planning proposal :

#### Context and Background

This planning proposal applies to Lot 339 DP 755684 known as 111 Friday Hut Road, Tintenbar. The subject land is 3.9 hectares and zoned RU1 Primary Production pursuant to Ballina Local Environmental Plan (BLEP) 2012. A 40 hectare minimum lot size for subdivision applies to the subject land.

Part of Lot 339 (approximately 1 hectare) is used for rural residential purposes. This part contains a dwelling house and ancillary buildings. The residue of Lot 339 has an area of approximately 3 hectares and currently used for the propagation of organic seedlings and seeds. This use is characterised as intensive plant agriculture (horticulture) under BLEP 2012.

It is the landowner's intention to sell the residue of Lot 339 used for primary production to the current tenant who owns the organic seedlings business. The tenant seeks to purchase the land he currently occupies to enable further investment in the business to take place. It is proposed the subdivision will allow the tenant to further develop the land as a certified organic nursery and seed production business and undertake environmental and riparian repair and rehabilitation on the land.

Council has confirmed the primary reason for supporting the planning proposal relates to facilitating local employment opportunities through encouragement of primary production on rural zoned land.

#### Need for a Planning Proposal

Provision for rural subdivision in BLEP 2012 is enabled by clause 4.2 which provides flexibility in the application of minimum lot size (MLS) standards. The need for a planning proposal arises due to Council's interpretation of 4.1 and 4.2 of BLEP 2012.

Council has interpreted clause 4.2 as permitting the lot proposed for primary production to be below the MLS specified, while clause 4.1 continues to operate to require the residue lot to be compliant with the adopted MLS. In the subject case both the primary production and residue lots are proposed to be below the specified minimum lot size. As such Council have determined that this proposal can not proceed under the LEP.

This is juxtaposed to the provisions of SEPP Rural Lands (the RLSEPP) which has been interpreted as allowing the excision of a smaller agricultural lot, even if the remaining residual lot is less than the MLS. However the enabling clause (Clause 9) of RLSEPP does not apply in this case as clause 1.9(2) of BLEP 2012 repeals its application. The RLSEPP was found to override the minimum lot size requirements of the residue allotment as the SEPP overrode the MLS standards within the LEP. Council were asked to consider the adopted of clause 9 of the RLSEPP to enable this subdivision to proceed using this mechanism. However Council have made a decision from a policy position that they would rather consider these cases on merit at a strategic level and therefore declined readoption of this clause.

The objective of the planning proposal is therefore to create a mechanism through which the subdivision of Lot 339 in to two lots can be facilitated, and the dwelling entitlement on the lot containing the dwelling house be maintained, without enabling undersized subdivision of residue lots across the LGA. Having regard to the stated objective, the intention is to:

- maintain the dwelling entitlement on the proposed lot containing a dwelling house;
- the use of residue lot with for primary production without a building entitlement;
- the subdivision of this land separating the residential and primary production uses, and
- the reinforcement of the prohibition related to the erection of a dwelling on the primary production lot.

Whilst the mechanism for achieving the objectives has not been specified it is considered that an amended MLS for the residue rural residential lot be considered at drafting stage. This will allow the residue lot to be compliant with clause 4.1(3) of BLEP and the primary production portion of the land to be excised under clause 4.2. It will also enable a dwelling eligibility to be retained on the rural residential allotment. This will require amendment to the LEP Lot Size Map – Sheet LSZ\_005B. In order to reinforce the prohibition related to the erection of a dwelling on the primary production lot an 88B Restriction to Title may also be considered at development assessment stage.

The proposal to amend the BLEP 2012 is the best means of achieving the intent of the proposal which is to enable the subdivision of Lot 339 into two lots reflective of the separate uses undertaken on the land, while respecting Councils interpretation of its LEP.

Consistency with strategic planning framework :

**Consistency with Regional Strategies**

**Far North Coast Regional Strategy (FNCRS)**

The proposal is generally consistent with the actions and outcomes in the Far North Coast Regional Strategy (FNCRS). The FNCRS states that rural land with agricultural production value is protected from urban development other than appropriately planned rural residential development. It is considered this proposal will support niche agricultural uses and be a means through which land used for rural residential purposes can be returned to primary production.

**Draft North Coast Regional Plan**

There is no obvious inconsistency with the Draft North Coast Regional Growth Plan (Draft NCRGP).

The subject site has been mapped as Regionally Significant Farmland under the Northern Rivers Farmland Protection Project (NRFPP). The proposal does not seek a dwelling entitlement for the lot proposed for primary production and facilitates the continued agricultural use of the land designated as Regionally Significant Farmland.

**Consistency with Council's Local Strategies**

The Planning Proposal is not the result of any strategic or economic study. The proposal, whilst resulting in one additional lot below the minimum prescribed lot size, will secure the continued use of the land for primary production purposes and is therefore not inconsistent with the RPA's strategies and structure plans.

**SEPPs**

The proposal lists the following State Environmental Planning Policies (SEPPs) that are applicable to the land:

**SEPP (Rural Lands) 2008**

SEPP Rural Lands (the RLSEPP) contains Rural Planning Principles to guide development on rural land. It is considered the proposal is consistent with the Rural Planning Principles as the proposal:

- provides a means through which the primary production activities undertaken on the proposed primary production lot are able to be continued;
- recognises the changing nature of agriculture and supports an emerging agricultural industry within the Far North Coast;
- results in economic benefits being derived from the land due to the continued operation and future investment of the sustainable horticultural business;
- balances the social, economic, and environmental interest of the community by: facilitating local employment opportunities through encouragement of primary production on rural zoned land, recognises the need for organic operations to be separated from commercial agricultural activities, and supports sustainable farming practices;
- does not increase additional demand for services and infrastructure as the intended uses of the land are to remain the same;
- is not in conflict with the Far North Coast Regional Strategy and the Draft North Coast Regional Plan.

The proposal also relates to the rural subdivision principles contained in the RLSEPP in the following ways:

- The proposal facilitates the fragmentation of rural land and is therefore inconsistent with this principle. It is noted that this allotment is surrounded by rural residential sized allotments, and that being surrounded by creek and a road is likely to limit its opportunity for consolidation with other valuable agricultural land. However it is considered that the inconsistency with this principle can be justified as the proposal seeks to enable the continued primary production on the land, noting an established and expanding industry reliant on separation from other commercial enterprises due to its organics status, and the

niche market this proposal is meeting.

- The proposal demonstrates that the potential for land use conflict between the proposal and existing and potential use of adjoining land is low and acceptable.
- The proposal facilitates further investment in existing agricultural holdings.
- The proposal takes account of the constraints of the land, such as flooding, and ensures that the subdivision is appropriate to the natural and physical characteristics of the land and the existing land use.
- The proposal does not seek to create an additional dwelling opportunity. The proposal seeks to find a means through which land used for rural residential purposes can be returned to primary production without creating dwelling entitlements.

It is noted that 1 ha of land is proposed to be retained with the dwelling house. The aerial photography suggests that some of this land would be suitable for agricultural purposes. As the residential use is unlikely to require an entire 1 ha it is recommended this area be reduced to maximise the land being retained for primary production purposes. A condition will be applied accordingly.

#### **SEPP 44 Koala Habitat Protection**

The land does not contain Core Koala Habitat as identified in the Ballina Shire Koala Management Strategy 2016. Council has identified that riparian areas on the site contain vegetation communities categorised as an 'other' habitat category for koalas and as such may still play an important role for local koala populations. It is considered that the current agricultural uses do not adversely impact riparian vegetation or potential koala habitat areas.

The proposal is otherwise consistent with State Environmental Planning Policies.

#### **S117 Directions**

A number of S117 Directions are relevant to this Planning Proposal. These include:

**Direction 1.2 Rural Zones.** This Direction does apply to the planning proposal as it will affect land within an existing or proposed rural zone. The proposal is considered to be consistent with this direction as a rezoning of land is not proposed and permissible densities (number of dwellings) will not change.

**Direction 1.5 Rural Lands** is relevant to the proposal. The direction provides that a planning proposal that affects land within a rural or environmental zone must be consistent with the Rural Planning Principles in SEPP (Rural Lands) 2008. The proposal is justifiably inconsistent with Direction 1.5 as the proposed subdivision will facilitate the ongoing use of the land for primary production purposes. Council notes that the proposal does not preclude future consolidation opportunities relating to the land used for primary production purposes.

**Direction 4.3 Flood Prone Land** provides that a planning proposal should not intensify the permissibility of development on flood prone land. The land is flood prone, being affected by the 1:100 year flood level. The proposal acknowledges that whilst a two lot subdivision will increase the development potential of the land, this will not result in additional development without consent or an increased need for additional spending on flood mitigation. In addition, the physical use of the land is not intended to change as a consequence of the proposal. It is considered that the inconsistency with this direction can be justified as being of minor significance.

**Direction 4.4 Planning for Bushfire Protection** is relevant to the proposal. The subject land is identified as being bush fire prone. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service, and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

**Direction 5.3 Farmland of State and Regional Significance.** This Direction does apply to

the planning proposal as the land is identified as regionally significant farmland. The proposal seeks to maintain the current land uses and support the horticultural enterprise located on the land. The proposal is considered to be consistent with this direction as it does not propose to rezone the land for urban, residential or rural residential purposes.

The proposal is considered to be consistent with all other s117 Directions.

Environmental social economic impacts :

**Environmental Bushfire**

The site has been identified as being bushfire prone. The planning proposal will require referral to the NSW Rural Fire Service due to the land being bushfire prone. It is likely that the requirements of Planning for Bush Fire Protection 2006 can be satisfied with minimal environmental impact.

**Flooding**

The land is identified as being flood prone, however the physical use of the land will not change. The land utilised form primary production purposes is substantially impacted by the 1:100 year flood due to its low lying nature, however the dwelling is located on the high part of the land and is flood free. It is therefore not considered a constraint to the proposal proceeding.

**Land use conflict**

The proponent has undertaken a Land Use Conflict Risk Assessment which has examined the adequacy of buffer distances between the horticultural use and adjoining land containing dwellings. The proposal states that the potential for land use conflict as being low, however it is considered consultation with Department of Primary Industries – Agriculture be undertaken to ensure this is the case.

Overall it is considered there are no adverse environmental effects associated with the planning proposal. The use of the residue land has been primary production for the past four years and it is the intention of the current tenant to maintain this use once subdivided. Whilst the subdivision may result in the intensification of the horticultural use of the land (due to the ability to capitalise on certainty of tenure), it is not considered that this will have negative environmental impacts given the ecologically sustainable nature of the enterprise.

**Social and Economic**

The proposed subdivision will enable the orderly and economic use and development of rural land for rural purposes because:

- The proposed subdivision reflects the existing economic use of the land and reinforces the existing separate uses on the land.
- The proposed subdivision will also facilitate separate legal titles. This will provide greater flexibility and more secure tenure for future development opportunities for this site. Such will facilitate and promote the orderly and economic use of this land

Furthermore, Council has noted that the primary reason for supporting the planning proposal relates to facilitating local employment opportunities through encouragement of primary production on rural zoned land.

**Assessment Process**

Proposal type :	<b>Routine</b>	Community Consultation Period :	<b>28 Days</b>
Timeframe to make LEP :	<b>0 months</b>	Delegation :	<b>DDG</b>
Public Authority Consultation - 56(2)(d) :	<b>NSW Department of Primary Industries - Agriculture NSW Rural Fire Service</b>		



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Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

**No internal consultation required**

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

### Documents

Document File Name

DocumentType Name

Is Public

### Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.2 Caravan Parks and Manufactured Home Estates**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 5.3 Farmland of State and Regional Significance on the NSW Far North Coast**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**
- 6.3 Site Specific Provisions**

Additional Information : **It is recommended that the planning proposal proceed subject to the following:**

- 1. Prior to community consultation the planning proposal be updated to:**
  - (a) clarify the objectives in relation to dot point (1) to remove reliance on existing use rights for the dwelling, and (3) that this mechanism is specific to this proposal and not a LGA wide amendment, and**
  - (b) reduce the area of land being included with the residence to only that necessary to meet statutory set back criteria eg accommodation of a compliant waste water system and appropriate setbacks. The aim of this amendment is to maximise the area of land retained for primary production.**
- 2. Consultation is required with the following public authorities under section 56(2)(d)**

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of the Act and/or to comply with the requirements of relevant S117 Directions:

- a. Department of Primary Industries – Agriculture
- b. NSW Rural Fire Service

2. Community Consultation is required under sections 56(2)(c) and 57 of the Act as follows:

- a. The planning proposal must be made publicly available for a minimum of 28 days;
- b. The relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Environment 2016).
- c. 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).

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

It is also recommended that:

4. The Secretary's delegate determine that the inconsistencies with s117 Directions 1.5 Rural Lands and 4.3 Flood Prone Land are justified as they are of minor significance.

5. The Secretary's delegate note the outstanding inconsistency of the proposal with s117 Direction 4.4 Planning for Bushfire Protection; and

6. A written authorisation to exercise delegation be issued to Ballina Shire Council.

Supporting Reasons : The reasons for the recommendation are as follows:

1. The proposal will enhance the orderly and economic use and development of rural land for rural purposes.

Signature:

T Prentice

Printed Name:

Tamara Prentice

Date:

23 February 2017