



Nambucca Shire Council

Nambucca Local Environmental Plan 2010 Review

Planning Proposal

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*Department of Environment and Planning
Nambucca Shire Council*

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1.0 Preliminary

1.1 Context

This planning proposal has been drafted in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979*, and 'A guide to preparing planning proposals' (DoP, 2009). A gateway determination under Section 66 of the Act is requested.

The NLEP 2010 was made on the 30 July 2010. During the preparation of the LEP 2010 a number of anomalies were identified and the purpose of the Planning proposal is to correct these matters. The background to each of the items is discussed below.

This planning proposal applies to the following subject land.

1.2 Lot 2 DP 1071503, Uriti Road Macksville

1.2.1 Subject Land, zoning and background

Figure 1 and 2 show the location of Lot 2 DP1071503 Uriti Road Macksville. Part Lot 2 DP1071503 Uriti Road Macksville is presently zoned R1 General Residential, it has a minimum Lot Size of 450sqm and a Floor Space Ratio of 0.55:1. The land subject to this amendment presently has no maximum building height which is require to be corrected.

The land is adjoined by residential and environmental protection zoned land however it is presently rural in character.

After the exhibition of the Draft LEP and in response to a submission received in relation to this land, council resolved to Zone part of this land from RU1 Primary Production to R1 General Residential. This land was zoned in the NLEP 2010.

For consistency and to ensure inappropriate development does not occur on this land, LEP standards for Floor Space Ratio and Lot Size were also amended to reflect other areas of general residential zone. It was in error the height of the Building was not amended to 8.5m in keeping with other residential land in the shire.

To amend this anomaly, on the 16 September 2010 Council resolved the following:

Lot 2 DP 1071503 Uriti Road Macksville be amended to a include a height limit of 8.5m to reflect other R1 General Residential land in the shire and previous resolutions of Council.

Figure 1 Location Context Lot 2 DP1071503 Uriti Road Macksville and Lot 11 DP805157 Dudley Street Macksville

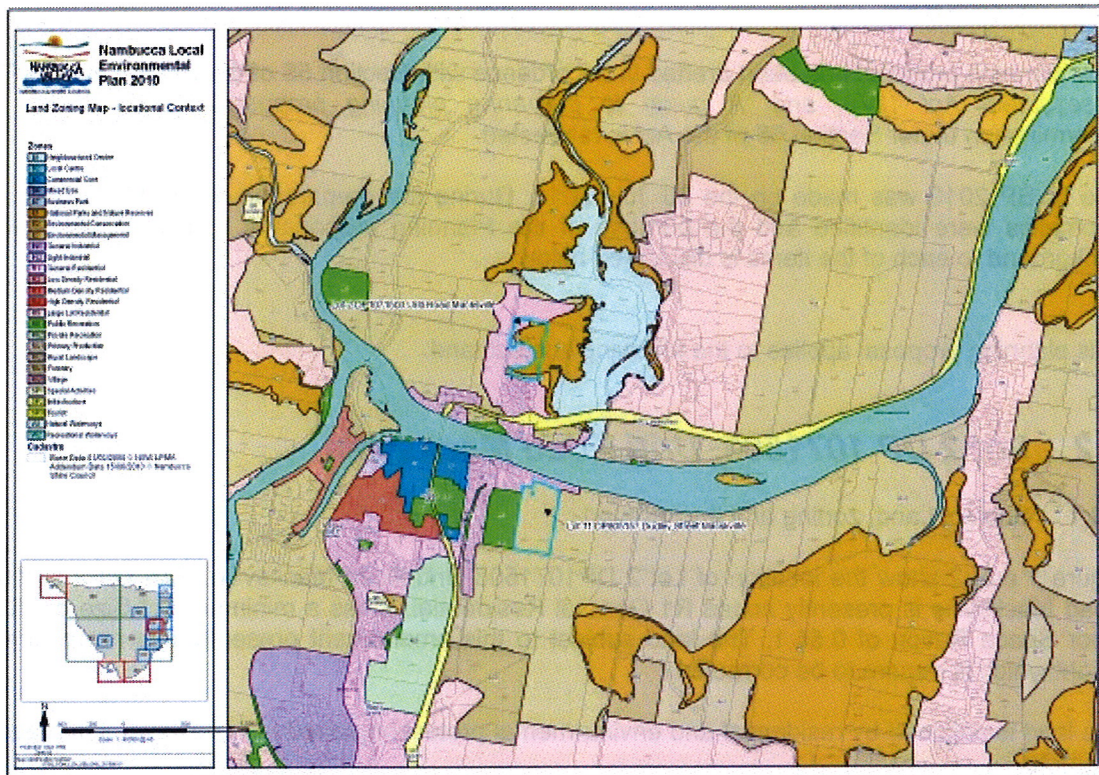


Figure 2 Lot 2 DP1071503 Uriti Road Macksville

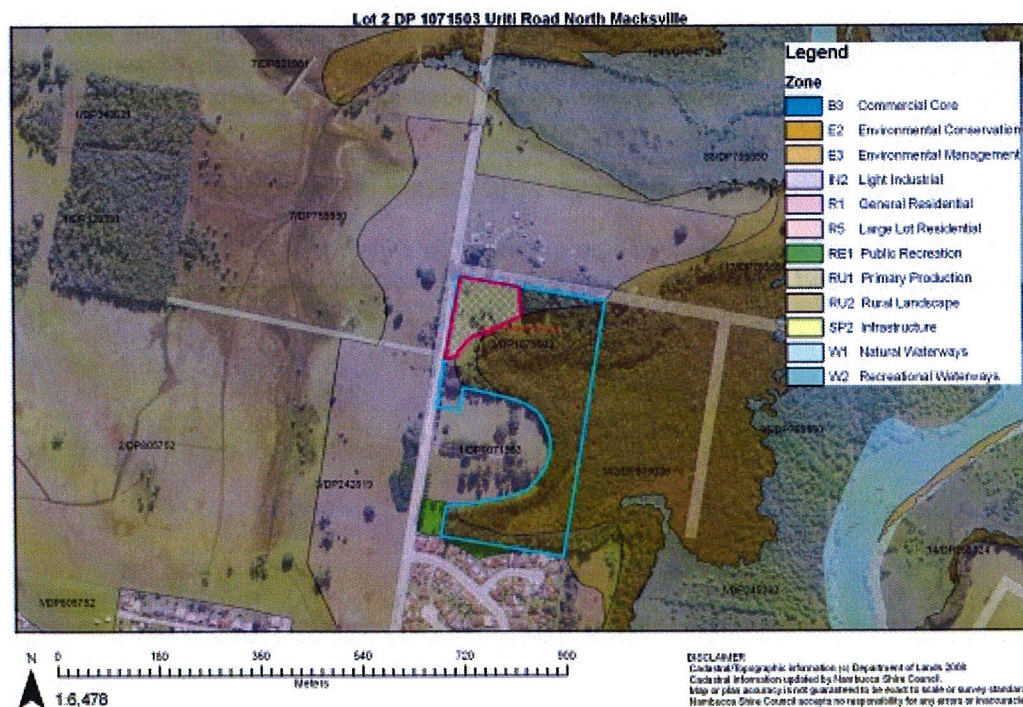
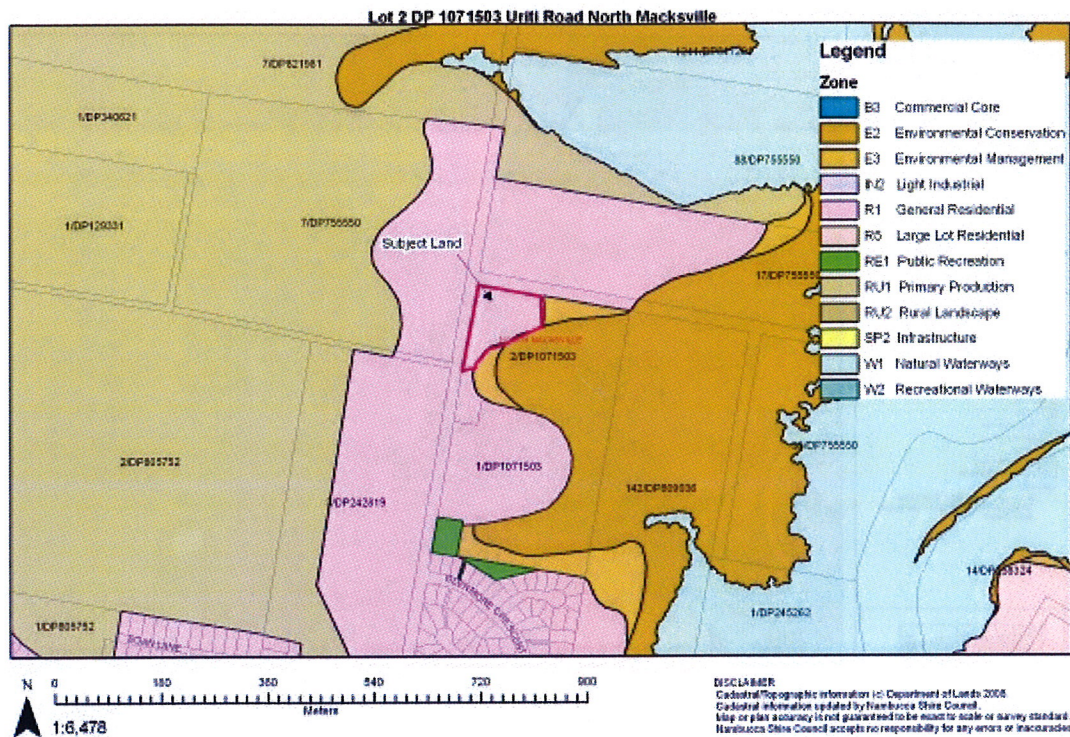


Figure 3 Land Zoning Lot 2 DP1071503 Uriti Road Macksville



1.3 Lot 2 DP864792 Short St Nambucca

1.3.1 Subject Land, zoning and background

Figure 4 and 5 illustrate the location of the subject land, being part Lot 2 DP864792 Short St Nambucca. Lot 2 DP864792 Short Street Nambucca (Coronation Park) is presently zoned R3 Medium Density Residential, it has no floor space ratio, no maximum building height and no minimum lot size.

The surrounding land use is predominately medium density residential and open space.

Lot 2 DP864792 Short Street Nambucca (Coronation Park) was subject to Nambucca LEP 1995 amendment no. 42, which was for a reclassification and rezoning of Council community land. This amendment was approved and incorporated into the Nambucca LEP 1995. Council's final resolution regarding this matter reduced the density of the land from medium density to low medium density to address concerns raised by submissions.

The NLEP 2010 was intended to incorporate these changes, however due to the timing of the approval and the drafting NLEP 2010, the LEP Maps have been approved with the incorrect zone, building height, floor space ratio and Lot size.

As such on the 16 September 2010 Council resolved the following:

That council owned operational land at Coronation Park (Lot 2 DP 864792) be amended in accordance with Council's Previous resolution under the Nambucca LEP 1995 amendment no. 42 listed below:

- Zone maps be amended to R1 General Residential;
- Lot size Maps be amended to 450sqm;
- Height of Building maps be amended to 8.5m; and
- Floor Space Ratio maps be amended to 0.55:1

Figure 4 Location Context Lot 2 DP864792 Short Street Nambucca (Coronation Park)

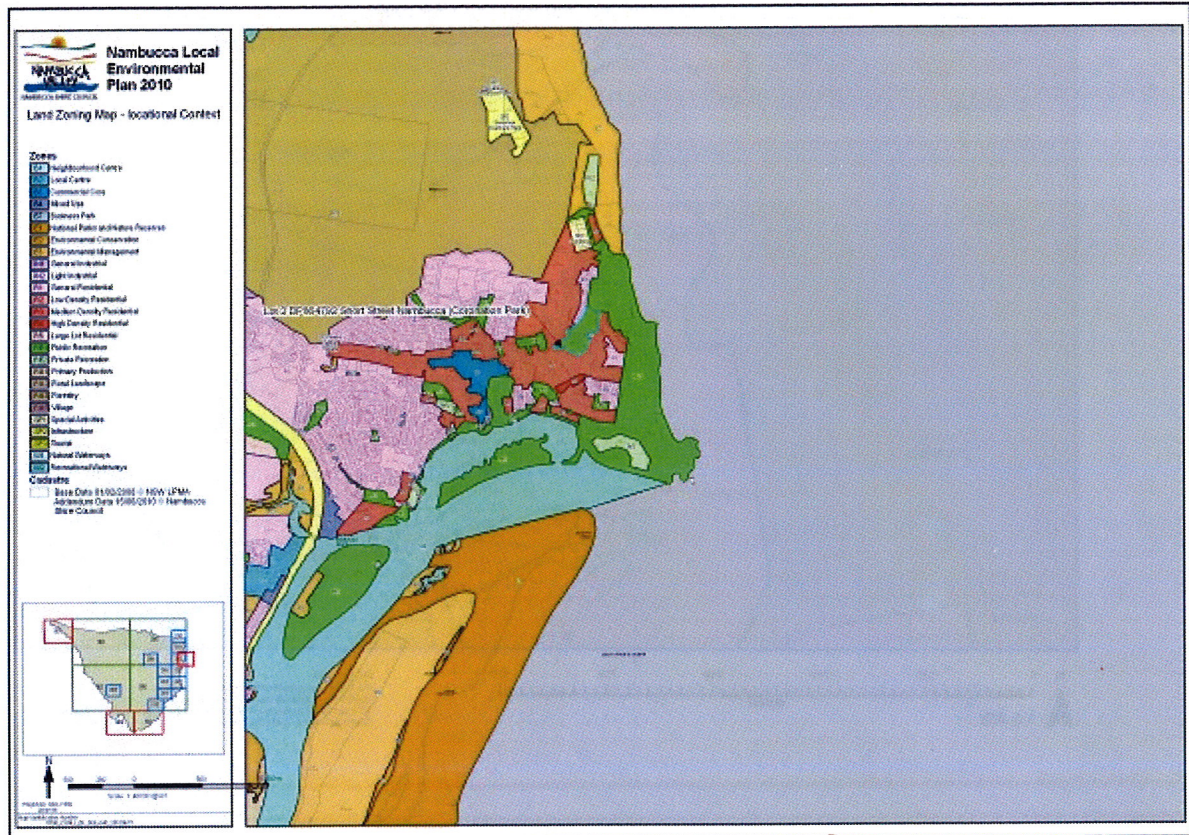


Figure 5 Subject Land Lot 2 DP864792 Short Street Nambucca (Coronation Park)

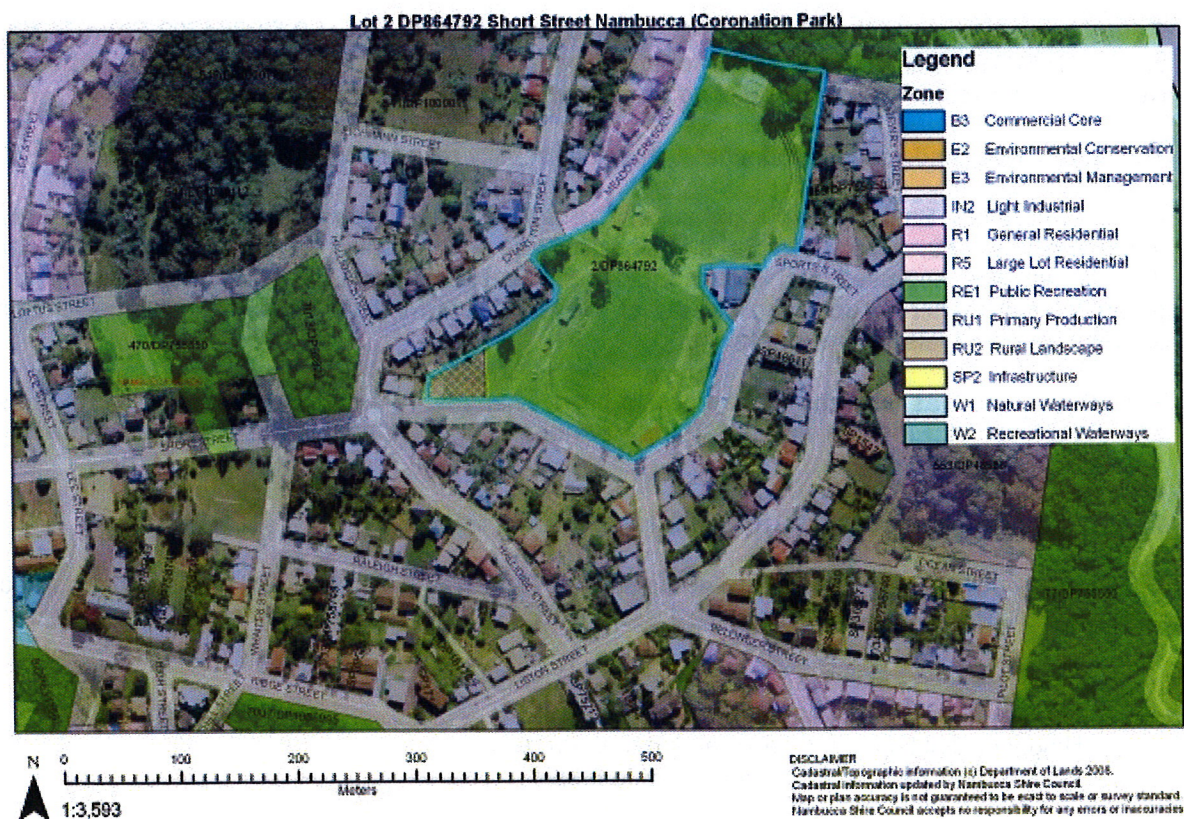
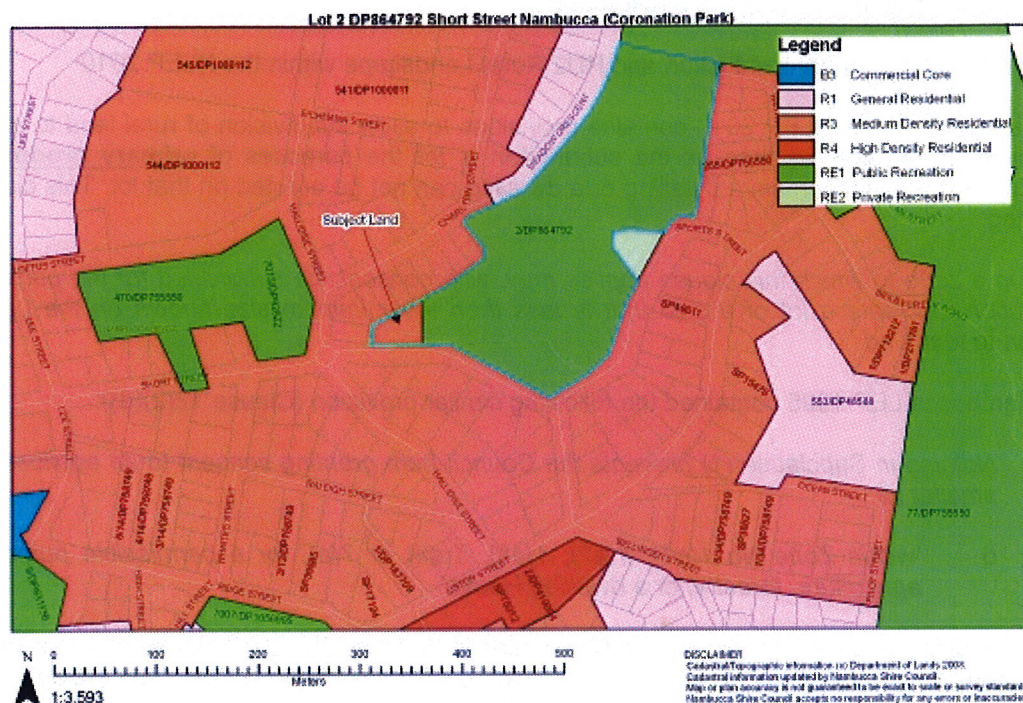


Figure 6 Lot 2 DP864792 Short Street Nambucca (Coronation Park)



1.4 Secondary Dwellings in R5 Large Lot Residential Zone

1.4.1 Subject Land, zoning and background

This proposed amendment applies to all R5 Large Lot Residential Zoned land. The extent of the land effected by this amendment can be found via the Land Zone Maps provided at the following link:

<http://www.legislation.nsw.gov.au/mapindex?type=epi&year=2010&no=401>

The Draft NLEP 2010 was prepared to ensure consistency with State Policies.

The SEPP Affordable Rental Housing allows secondary dwellings to be undertaken within the R5 Large Lot Residential Zone. To reflect this, the R5 Large Lot Residential was drafted to incorporate Secondary Dwellings within the R5 Large Lot Residential Zone as permissible with Consent.

A secondary dwelling is considered to be a form of Residential Accommodation which is prohibited in the zone, unless identified as permitted with consent. At present the NLEP 2010 identifies Secondary Dwellings as prohibited in the R5 Large Lot Residential Zone.

To ensure the NLEP 2010 is consistent with the SEPP (affordable housing) the LEP 2010 is required to be amended to permit Secondary Dwellings with consent in the R5 Large Lot Residential Zone. Council resolved on the 16 September 2010 the following:

To ensure consistency with SEPP (Affordable Rental Housing) secondary dwellings be made a permissible use in the R5 Large Lot Residential Zone.

1.5 Rural Subdivision

1.5.1 Subject Land, zoning and background

All land zone R1 Primary Production and RU2 Rural Landscape within the NLEP 2010

Clause 4.2 (3) of the NLEP 2010 contains provisions to allow subdivision of rural land to a size less than the minimum lot size, as long as the subdivision is for the purposes of **primary production**, and the resulting lot does not contain a dwelling or a dwelling can not be erected on that lot. This clause states the following:

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

The Nambucca LEP 1995 contained the following similar provision (Clause 12(2)(d)):

2 *Nothing in Subclause (1) prevents the Council from granting consent to an application to create a smaller lot:*

d *'within Zone No 1(a1), 1(a2), 1(a3), 1(a4) or 7(a), for a permissible purpose other than agriculture, forestry, or a dwelling House'*

The main difference between these two (2) clauses is that the LEP 2010 clause allows a reduced lot size but it needs to be related to primary production where as the Nambucca LEP 1995 allowed the reduced lot size as long as it was associated with a permissible use in the zone.

Council has received two (2) enquiries regarding this provision since the LEP 2010 was made. The enquiries were regarding major infrastructure and a potential school development in Macksville. On both these occasions the new clause has provided complications to the development process, which would not have occurred under the Nambucca LEP 1995.

To rectify this issue on 16 September 2010 Council resolved that:

Clause 4.2 Rural Subdivision be amended or a new local provision be included to ensure that a subdivision resulting in a lot less than the minimum lot size may occur on rural land where it is related to a permissible land use and does not result in an additional dwelling entitlement.

1.6 Schedule 1 Amendment Lot 11 DP 805157, Dudley Street Macksville

1.6.1 Subject land, zoning and background

Figure 7 and Figure 8 illustrate the location of Lot 11 DP805157 Dudley Street Macksville. Lot 11 DP805157 is presently zoned RU1 Primary production. The land is vacant grazing land or pasture which is bounded by residential development to the north, rural land zones and land uses to the south and east and public reserve to the west. A school is located adjacent to the land to the north west. The preferred route for the highway realignment traverses the land immediately to the east of the subject land.

Council has received a Planning Proposal prepared by GeoLink (Attachment 1) to allow the subdivision of Rural Land for the purposes of a School Development on Lot 11 DP805157 Dudley Street Macksville. This item is directly related to item 1.4.4 and should the DoP permit Council to pursue an amendment to Clause 4.2 of the NLEP 2010 this amendment will no longer be necessary.

However should the DoP not allow an amendment to Clause 4.2 of the NLEP 2010 then it will be necessary to pursue this amendment which requires an amendment to Schedule 1 of the NLEP 2010.

Figure 7 Location Context Lot 2 DP1071503 Uriti Road Macksville and Lot 11 DP805157 Dudley Street Macksville

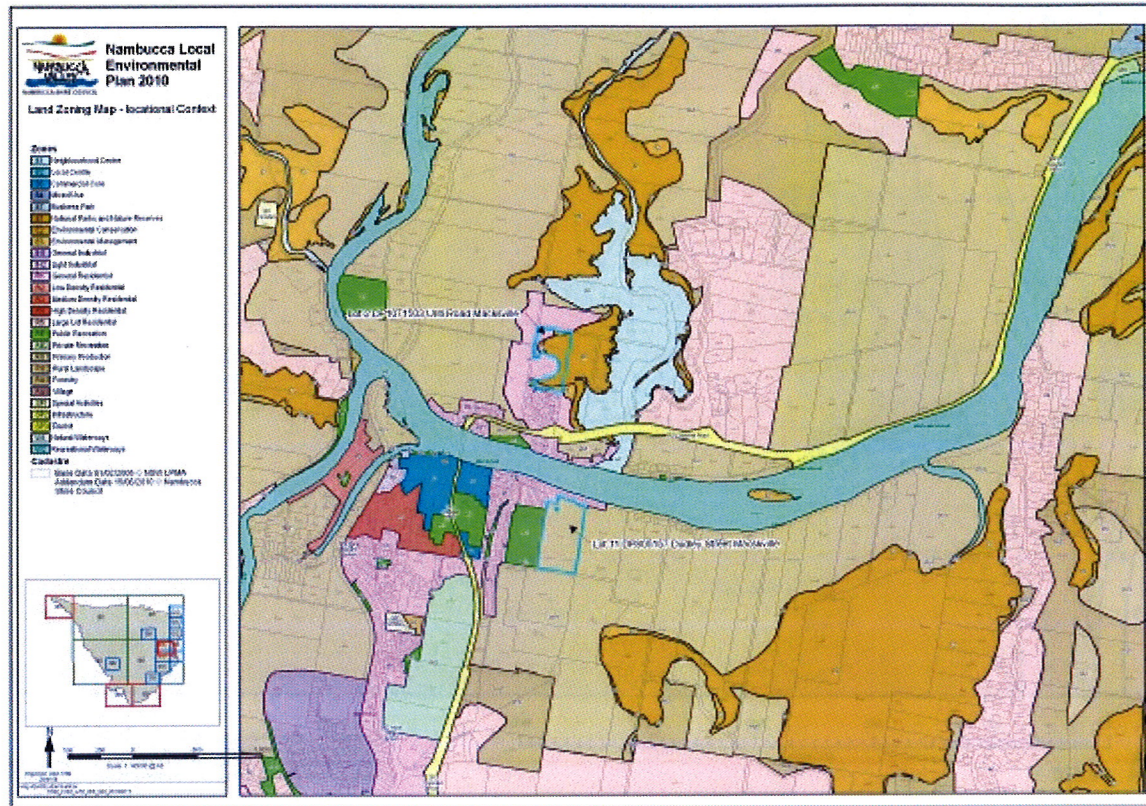


Figure 8 Subject Land Lot 11 DP805157 Dudley Street Macksville

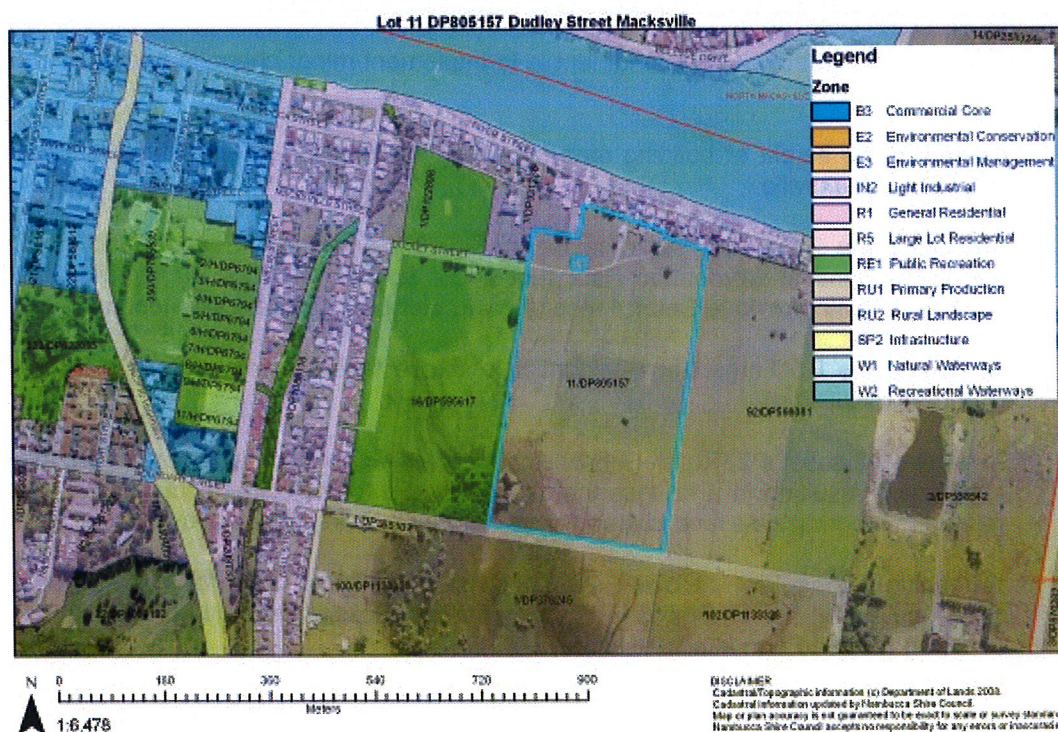
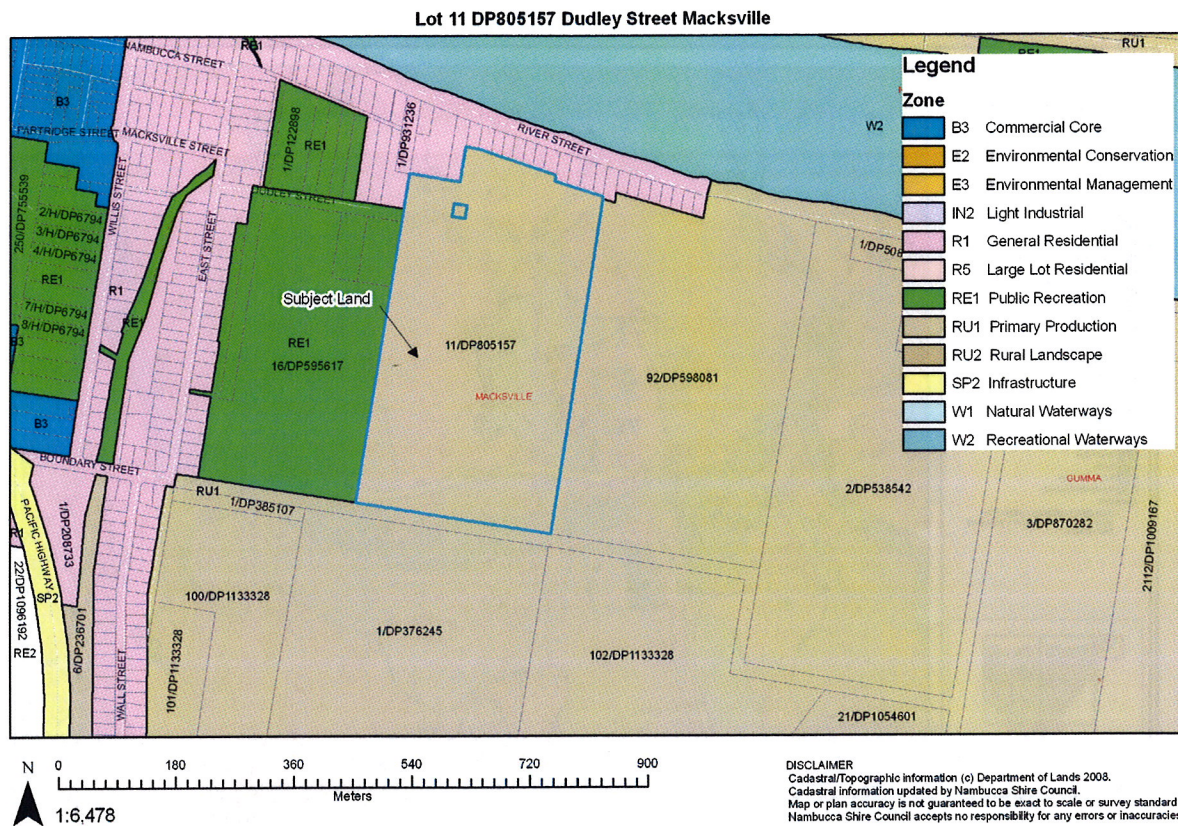


Figure 9 Land Zoning Lot 11 DP805157 Dudley Street Macksville



Part 1 Objectives or Intended outcomes

The primary objective of this LEP Amendment is to implement minor changes and correct anomalies with the NLEP 2010 by:

1. Amending the height of building map over recently zoned residential land at Lot 2 DP 1071503 Uriti Road Macksville.
2. Amending the Zone, Lot size, Height of Building and Floor Space Ratio on Council owned operational land at Coronation Park (Lot 2 DP 864792 Short St Nambucca Heads) to ensure consistency with previous Council resolutions under LEP 1995 amendment no. 42.
3. Amending the R5 Large Lot Residential land use table to ensure consistency with the SEPP (Affordable Housing).
4. Amending Clause 4.2 Rural Subdivision or creating a new local provision to ensure that a subdivision resulting in a lot less than the minimum lot size may occur on rural land where it is related to a permissible land use and does not result in an additional dwelling entitlement.
5. Amending Schedule 1 to allow the subdivision of Rural Land for the purposes of a School Development on Lot 11 DP805157 Dudley Street Macksville should an amendment to Clause 4.2 of the NLEP 2010 be unsuccessful.

Part 2 Explanation of Provisions

The objectives of the LEP amendment will be achieved by:

1 Lot 2 DP1071503 Uriti Road Macksville

An amendment to the NLEP 2010 Height of Building Map in accordance with the proposed Height of Building Map Attachment 1, which indicates a maximum building height of 8.5m for Lot 2 DP1071503 Uriti Road Macksville.

2 Part Lot 2 DP864792 Short St Nambucca Head

- a An amendment to the NLEP 2010 Land Zone Map in accordance with the Attachment 2, which indicates Part Lot 2 DP864792 has a Zone of R1 General Residential.
- b An amendment to the NLEP 2010 Lot Size Map in accordance with attachment 3, which indicates Part Lot 2 DP864792 has a Minimum Lot Size of 450sqm.
- c An amendment to the NLEP 2010 Height of Building Map in accordance with attachment 4, which indicates Part Lot 2 DP864792 has a Maximum Building Height of 8.5m.
- d An amendment to the NLEP 2010 Floor Space Ratio Map in accordance with attachment 5, which indicates Part Lot 2 DP864792 has a maximum Floor Space Ratio of 0.55:1.

3 R5 Large Lot Residential land uses and SEPP Affordable Housing

Adding 'Secondary Dwellings' to land uses permissible with consent in the R5 Large Lot Residential Zone under Part 2 of the NLEP 2010.

4 Special Purposes Development

Amending Clause 4.2 (3) Rural Subdivision to read the following:

*Land in a zone to which this clause applies may, with consent, be subdivided for the purpose of primary production **or other use permissible in the zone**, to create a lot of a size that is less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*

Or alternatively adding a new clause such as follows;

4.2B Special purpose subdivision [local]

Land in a zone to which clause 4.2 applies may, with consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land, where the Council is satisfied that the subdivision is for the purpose of development for which consent has been granted (other than for the purpose of a dwelling house or a dual occupancy).

5 Special Purpose Development Lot 11 DP805157 Dudley St Macksville

Adding to Schedule 1 Additional Permitted Uses of the NLEP 2010:

3 Subdivision of certain land at Dudley St, Macksville

- i This Clause applies to land being Lot 11 DP805157 Dudley Street Macksville.
- ii Subdivision of the land for the purpose of creating a 3ha (or similar sized) allotment for use by an approved educational establishment is permitted with consent.

Note: As stated previously this amendment will not be required should amendment number 4 proceed.

Part 3 Justification

Section A – Need for the Planning Proposal

1 Is the Planning Proposal the Result of any Strategic Study or Report

The Planning Proposal is not specifically the result of any Strategic Study or Report, rather it is implementing minor changes and correcting anomalies within the NLEP 2010. The NLEP 2010 was prepared in accordance with a number of State Government Policies, Local Strategies and the Nambucca Structure Plan.

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

Yes, the Planning Proposal is the best means of achieving the objectives. Where options are available these have been identified.

3 Is there a net community benefit?

Council envisages that this planning proposal will result in the following net community benefits in consideration of the criteria set out in the NSW Department of Planning's 'draft Centres Policy - Planning for Retail and Commercial Development':

- The planning proposal will rectify minor discrepancies and errors with the NLEP 2010, creating consistency and certainty for landholders, the community and government authorities.
- Amendments to allow special purpose developments will ensure consistency with previous provisions which had been successfully implemented under the NLEP 1995.

Implications of not proceeding at this time

Should Council not proceed with the rezoning at this time, Council may receive applications for inappropriate development on certain specific sites where the incorrect standards are present in the NLEP 2010.

Should the special purpose development changes not be implemented Council will be required to prepare a planning proposal for special purpose developments in rural areas on each occasion.

Section B –Relationship to strategic planning framework.

4 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy.

Yes, the NLEP 2010 is consistent with the Mid North Coast Regional Strategy and this planning proposal is correcting minor anomalies with the NLEP 2010.

5 Is the planning proposal consistent with the local Council's Community Strategic Plan, or other strategic plan?

Yes, the NLEP 2010 is consistent with Councils Strategies and Structure Plan and this planning proposal is correcting minor anomalies with the NLEP 2010.

6 Is the Planning Proposal consistent with applicable state environmental planning policies (SEPP's)?

Yes – see Appendix 1

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

Yes – see Appendix 2

Section C – Environmental, social and economic impact

- 8** *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.*

No, where these amendments will result in future developments, these developments will be subject to threatened species consideration under the *Environmental Planning and Assessment Act 1979* and the *Threatened Species Conservation Act 1995*.

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

No, the majority of amendments proposed in this Planning Proposal are rectifying errors with the NLEP 2010 which have potential to result in detrimental environmental impacts or an unreasonable level of development.

- 10** *How has the planning proposal adequately addressed any social and economic effects?*

Yes, the majority of amendments proposed in this Planning Proposal are rectifying errors with the NLEP 2010 which have the potential to result in detrimental social impacts and an unreasonable level of development.

By correcting the anomalies the planning proposal will be likely to reduce social and economic impacts otherwise expected.

Section D – State and Commonwealth Interests

- 11** *Is there adequate public infrastructure for the planning proposal?*

Yes

- 12** *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

A gateway determination is yet to be issued, however it is unlikely that other government authorities would be interested in minor amendments of this nature.

Part 4 Community Consultation

The proposal is considered to be a low impact proposal in accordance with Section 4.5 of 'A guide to preparing local environmental plans'. The proposed amendments are minor in nature and as such it is intended that exhibition period for the planning proposal will be a minimum of 14 days and the exhibition will be undertaken in accordance with Section 4.5 of 'A guide to preparing local environmental plans'.

Appendix 1 - State Environmental Planning Policies

The following State Environmental Planning Policies (SEPP) have been considered in the preparation of the planning proposal for the :

- **State Environmental Planning Policy No. 44 – Koala Habitat Protection**

SEPP 44 encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.

Under SEPP 44, potential koala habitat is defined as areas of native vegetation where the trees listed in Schedule 2 of the SEPP constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. A koala habitat assessment is required for any significant development in such areas.

The amendments within this planning proposal are consistent with the requirements of this SEPP.

- **State Environmental Planning Policy No 71 – Coastal Protection**

The object of this policy is to provide for the protection and management of sensitive and significant areas within the coastal zone. Part of the subject land is located within the coastal zone. Therefore, in preparing the final LEP, Council must consider the natural, cultural, recreational and economic attributes of land within the coastal zone to ensure that public access to foreshore areas, Aboriginal heritage, visual amenity, coastal flora and fauna, coastal processes and cumulative impacts are addressed.

The amendments within this planning proposal are consistent with the requirements of this SEPP.

- **State Environmental Planning Policy (Infrastructure) 2007**

The SEPP supports greater flexibility in the location of infrastructure and service facilities and allows efficient development, redevelopment or disposal of surplus government owned land.

The amendments within this planning proposal are consistent with the requirements of this SEPP.

- **State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

Streamlines assessment processes for development that complies with specified development standards. The policy provides exempt and complying development codes that have State-wide application, identifying, in the General Exempt Development Code, types of development that are of minimal environmental impact that may be carried out without the need for development consent; and, in the General Housing Code, types of complying development that may be carried out in accordance with a complying development certificate as defined in the *Environmental Planning and Assessment Act 1979*.

The amendments within this planning proposal are consistent with the requirements of this SEPP.

- **State Environmental Planning Policy (Rural Lands)**

The aim of this policy is to facilitate the orderly and economic use and development of rural lands for rural and related purposes.