

## Planning and Assessment

IRF19/6028

### Gateway determination report

<b>LGA</b>	Nambucca Shire
<b>PPA</b>	Nambucca Shire Council
<b>NAME</b>	Housekeeping Amendments to Nambucca LEP 2010
<b>NUMBER</b>	PP_2019_NAMBU_002_00 (3 homes)
<b>LEP TO BE AMENDED</b>	Nambucca Local Environmental Plan 2010
<b>ADDRESS</b>	Various allotments across the local government area
<b>RECEIVED</b>	4 September 2019
<b>FILE NO.</b>	IRF19/6028
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks a number of 'housekeeping' amendments to the Nambucca Local Environmental Plan 2010, including:

- Item 1: Introduce restrictions on the height and floor space ratio of buildings as follows:
  - Lot 12 DP 804952 - 2A Banyandah Road, Hyland Park; Lots 1-15 DP 1253328 - Yamaan Road and Bolwarra Close, Hyland Park: proposed height of building limit of 8.5m and maximum floor space ratio of 0.55:1;
  - Lot 2 Sec C DP 5574 & Lot 6 DP 722732 - 65 Wallace Street, Macksville; Lot 1 DP 129408 & Lot 2 DP 386999 - 78 Wallace Street Macksville: proposed height of building limit of 10m and maximum floor space ratio of 1:1;
- Item 2: Remove floor space ratio controls on commercial land within High Street, Bowraville, affecting the following allotments:
  - Lots 1 & 2 DP 1083368 – 82 High Street; Lots 1 & 2 DP 1088352 – 86 High Street; Lot 1 DP 982339 & Lot 2 DP 921273 – 88 High Street; Lots 1 & 2 DP 315965 – 90 High Street; Lots A & B DP 398302 – 78 & 80 High Street; Lot 1 DP 334892 – 84 High Street; Lot 1 DP 909679 – 92 High Street; Lot 1 DP 1116306 – 94 High Street; Lot 1 DP 510320 – 96 High Street; Lot 2 DP 510320 – 98 High Street; Lot 2 DP 1110903 – 44 High Street; Lot 6 DP 666989 – 70 High Street; Lot 7 DP 664103 – 76 High Street; Lots 1 & 2 DP 948816 – 40 & 42 High Street; Lot 1 DP 575454 – 38 High Street; Lot 1 DP 950036 – 54 High Street; Lot 4

DP 654671 – 56 High Street; Lot 1 DP 933803 – 58 High Street; Lot 1 DP 958895 & Lot 1 DP 958894 – 72 High Street; Lot 14 Section 9 DP 758150 and Lot 1 DP 361405 – 34 High Street; Lot 2 DP 361405 – 36 High Street; Lots C & D DP 5611 – 46 & 48 High Street; Lots 30 & 31 DP 558328 – 50 & 52 High Street; Lot 3 DP 900933 – 60 High Street; Lots A & B DP 399273 – 62 & 64 High Street; Lots A & B DP 316099 – 66 & 68 High Street; Lot 1 DP 330860 – 74 High Street.

- Item 3: Rezone Lot 30 DP 635529 - 45 Old Coast Road, Nambucca Heads from RU2 Rural Landscape to R1 General Residential, amend the minimum lot size map from 40ha to 450m<sup>2</sup>, implement a floor space ratio of 0.55:1 and an 8.5m height of building control;
- Item 4: Rezone Lot 701 DP 1054525 - Boronia Street, Nambucca Heads (previously zoned 2(a) Residential (Low-Medium Density)) from RE1 Public Recreation to part R1 General Residential and part E3 Environmental Management, introduce a minimum lot size map of part 450m<sup>2</sup> and part 40ha, implement a floor space ratio of 0.55:1 and an 8.5m height of building control;
- Item 5: Introduction of a local provision to enable temporary events on public reserves and roads to be carried out without development consent;
- Item 6: Rezone Lot 1 DP 525851 & Lot 11 DP 1076031 - 21 Riverside Drive, Nambucca Heads from R1 General Residential to E2 Environmental Conservation, amend the minimum lot size map from 450m<sup>2</sup> to 40ha, list the allotment as part of Schedule 5 'Environmental heritage' and introduce a Heritage Map;
- Item 7: Rezone land within the road reserve at the intersection of Hyland Park Road and Mann Street, Nambucca Heads from R1 General Residential to B7 Business Park, remove the existing 450m<sup>2</sup> minimum lot size and implement a 10m height of building control;
- Item 8: Rezone land and adjoining road reserves in the Macksville CBD from B3 Commercial Core to B4 Mixed Use, introduce a minimum lot size of 450m<sup>2</sup> and implement a floor space ratio of 1:1 and 1.6:1;
- Item 9: List the Reserve Hall (known now as the Rec Hut) on the Crown Reserve at Scotts Head as part of Schedule 5 'Environmental heritage' and introduce a Part Heritage Map;
- Item 10: Amend the minimum lot size for the Valla Beach caravan park (Lot 1 DP 1212394 and Lot 2 DP 1212394 – 1 Regatta Drive, Valla Beach) from 40 hectares to 16 hectares;
- Item 11: Introduce a new clause titled 'Floodplain Risk Management' which will implement measures to manage risk to life from flood in areas above the 'Flood Planning Level' up to the 'Probable Maximum Flood' level;
- Item 12: Amend Schedule 1 'Additional permitted uses' of the LEP by adding a 'pub' as an additional permitted use on Lot 519 DP 859627 and part Lot 1 DP 1187844 & Lot 520 DP 859627 – Wellington Drive, Nambucca Heads and inclusion of an Additional Permitted Uses Map;

- Item 13: Amend Schedule 1 'Additional permitted uses' of the LEP by adding a 'caravan park' as an additional permitted use on part Lot 7003 DP 1113130, Lot 7001 DP 1117183 and Lot 70 DP 1187005 and inclusion of an Additional Permitted Uses Map;
- Item 14: Rezone part Lot 1 DP 114320 and Lot 1 DP 213368 - 4 Back Street, Nambucca Heads from B3 Commercial Core to R3 Medium Density Residential, introduce a minimum lot size of 450m<sup>2</sup>, implement a floor space ratio of 1.4:1 and implement a 12m height of building control;
- Item 15: Amend Schedule 2 'Exempt development' of the LEP by adding a local provision that permits the creation of a grave or monument in a cemetery and any necessary maintenance works as exempt development;
- Item 16: Amend Schedule 2 'Exempt development' of the LEP by adding a provision that permits the placement of an A-frame sign on a public footpath within a Business Zone as exempt development;
- Item 17: Amend Schedule 2 'Exempt development' and Schedule 3 'Complying development' of the LEP to remove provisions relating to re-stumping of an existing building; signage (excluding the inclusion of A-framed signs referred to in Item 16, above); tennis courts; alterations and additions to industrial buildings and strata subdivision.

## **1.2 Site description**

The planning proposal contains 17 separate amendments, 12 of which relate to specific properties as detailed in Section 1.1, above. Five amendments relate to the written instrument only.

## **1.3 Existing planning controls**

A description of the existing and proposed land zoning for site-specific amendments, pursuant to the Nambucca LEP 2010, is included below:

### Item 3: Existing and proposed land zoning

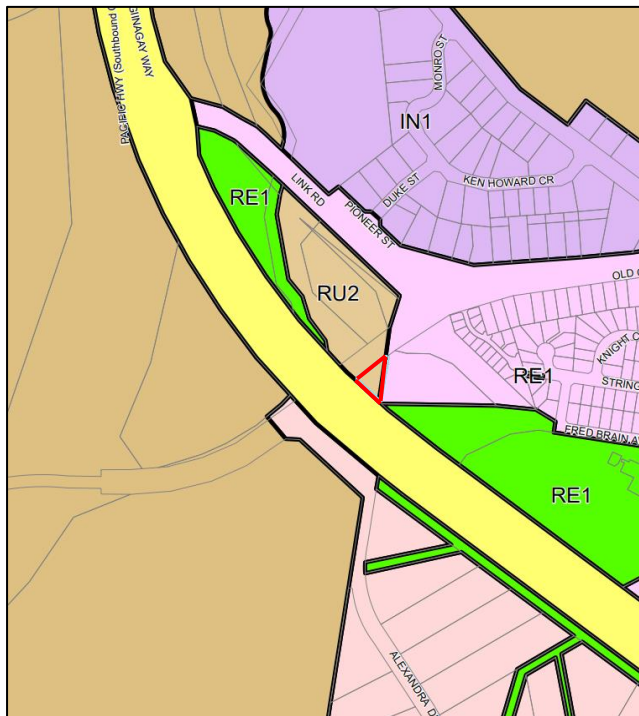


Figure 1 - Lot 30 DP 635529, 45 Old Coast Road, Nambucca Heads - Existing Land Zoning - RU2 Rural Landscape



Figure 2 - Lot 30 DP 635529, 45 Old Coast Road, Nambucca Heads - Proposed Land Zoning - R1 General Residential



## Item 4: Existing and proposed land zoning

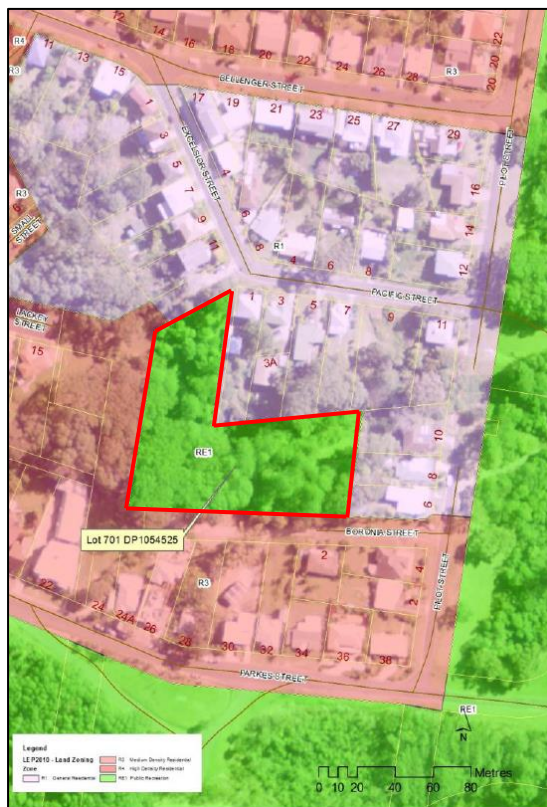


Figure 3 - Lot 701 DP 1054525, Boronia Street, Nambucca Heads - Existing Land Zoning - RE1 Private Recreation

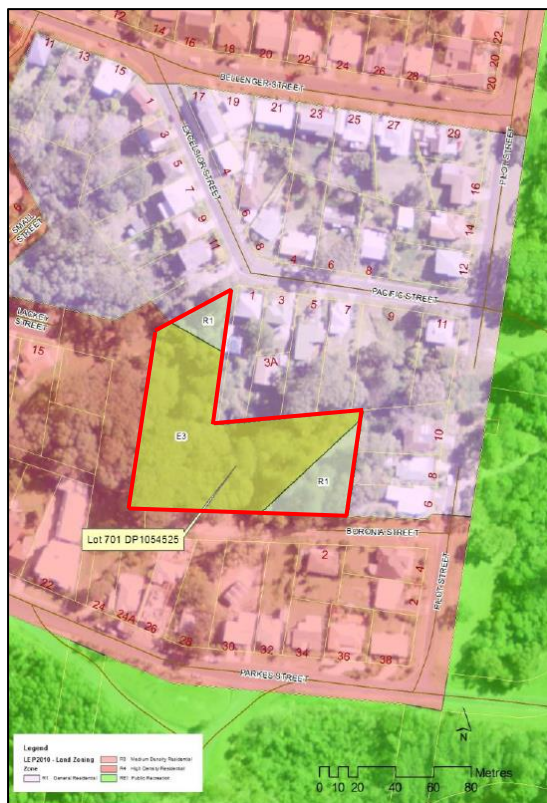


Figure 4 - Lot 701 DP 1054525, Boronia Street, Nambucca Heads - Proposed Land Zoning - R1 General Residential and E3 Environmental Management

## Item 6: Existing and proposed land zoning

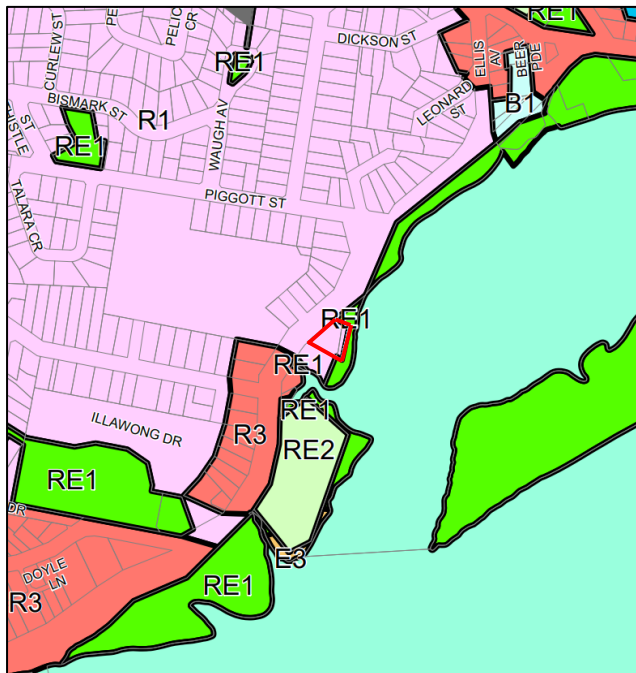


Figure 5 - Lot 1 DP 525851 & Lot 11 DP 1076031, 21 Riverside Drive, Nambucca Heads - Existing Land Zoning - R1 General Residential

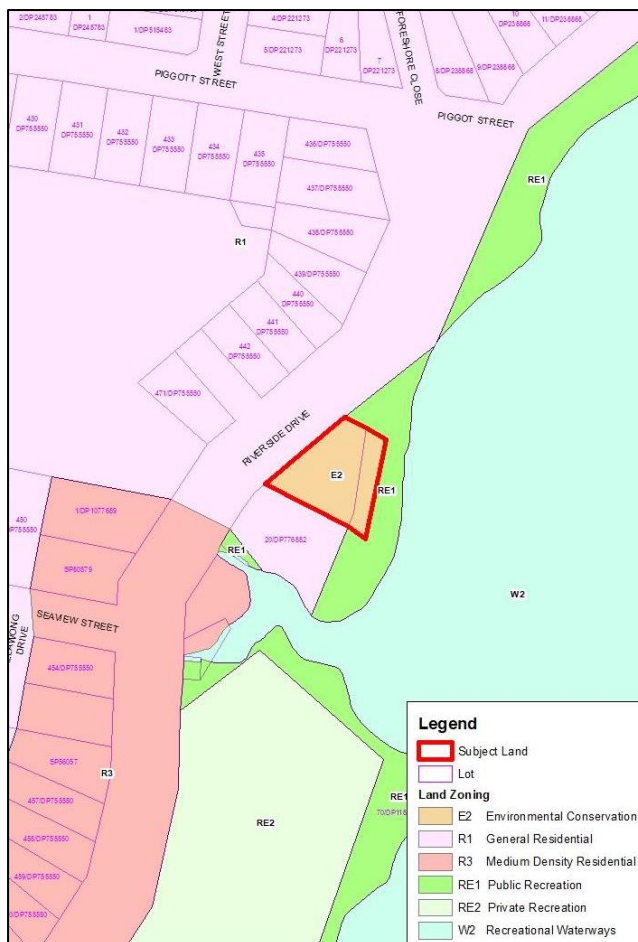


Figure 6 - Lot 1 DP 525851 & Lot 11 DP 1076031, 21 Riverside Drive, Nambucca Heads - Proposed Land Zoning - E2 Environmental Conservation

## Item 7: Existing and proposed land zoning

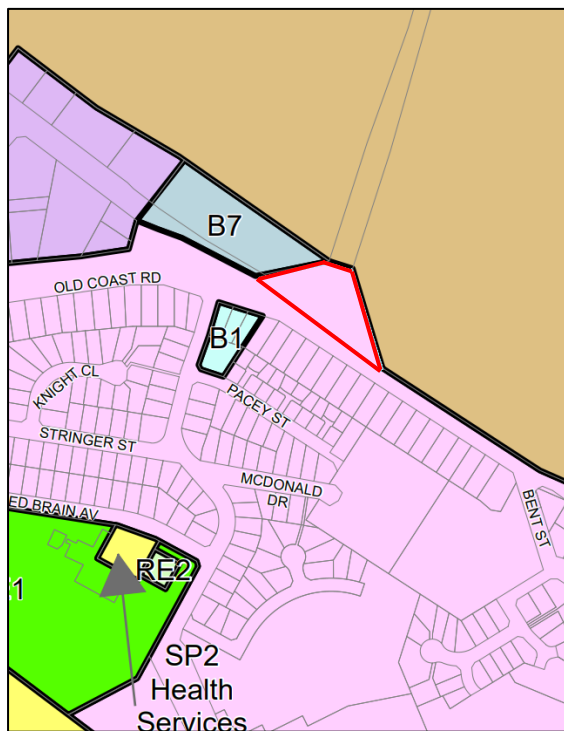


Figure 7 - Road Reserve at the intersection of Hyland Park Road and Mann Street, Nambucca Heads - Existing Land Zoning - R1 General Residential



Figure 8 - Road Reserve at the intersection of Hyland Park Road and Mann Street, Nambucca Heads - Proposed Land Zoning - B7 Business Park



Item 8: Existing and proposed land zoning

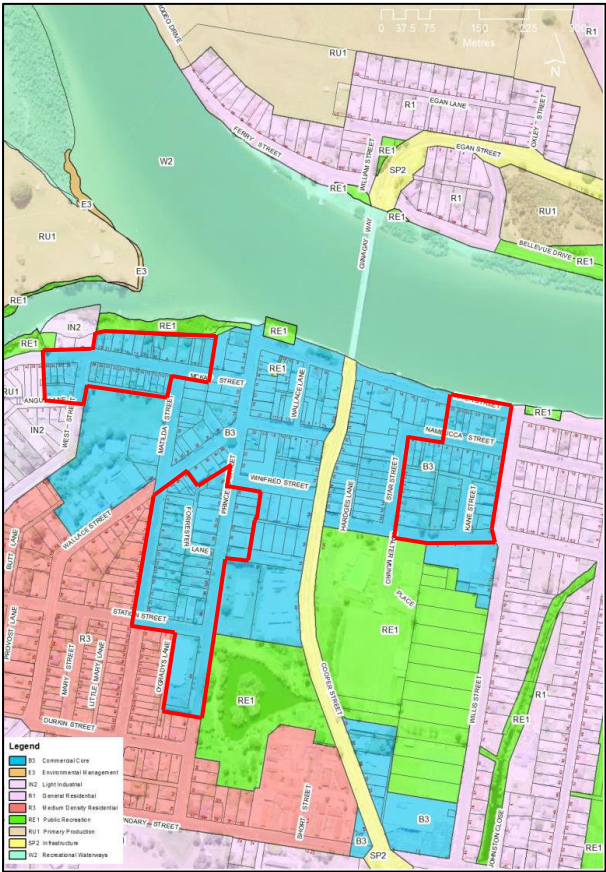


Figure 9 - Macksville CBD - Existing Land Zoning - B3 Commercial Core

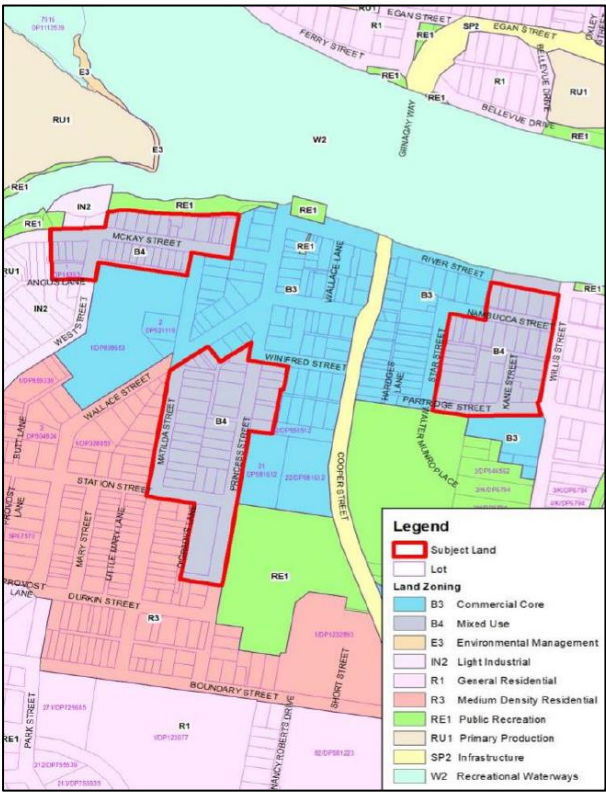


Figure 10 - Macksville CBD - Proposed Land Zoning - B4 Mixed Use



## Item 14: Existing and proposed land zoning

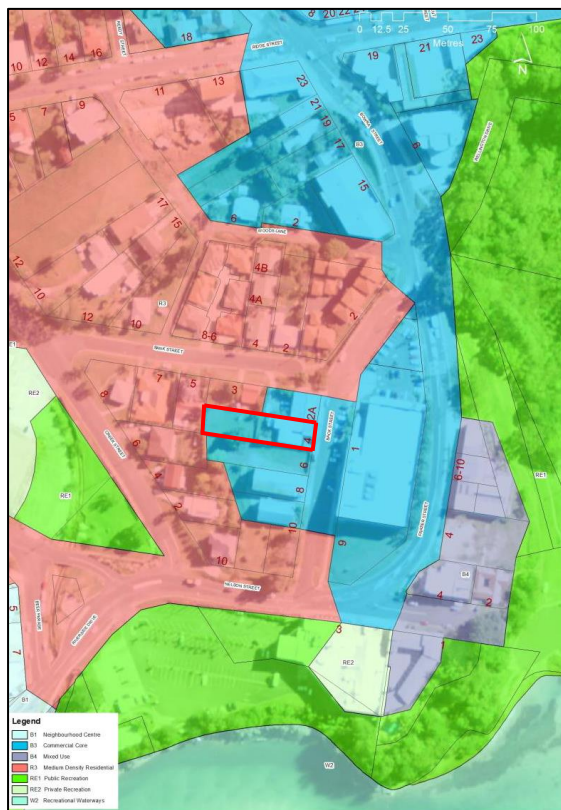


Figure 11 - Part Lot 1 DP 114320 and Part Lot 1 DP 213368, 4 Back Street, Nambucca Heads - Existing Land Zoning - B3 Commercial Core

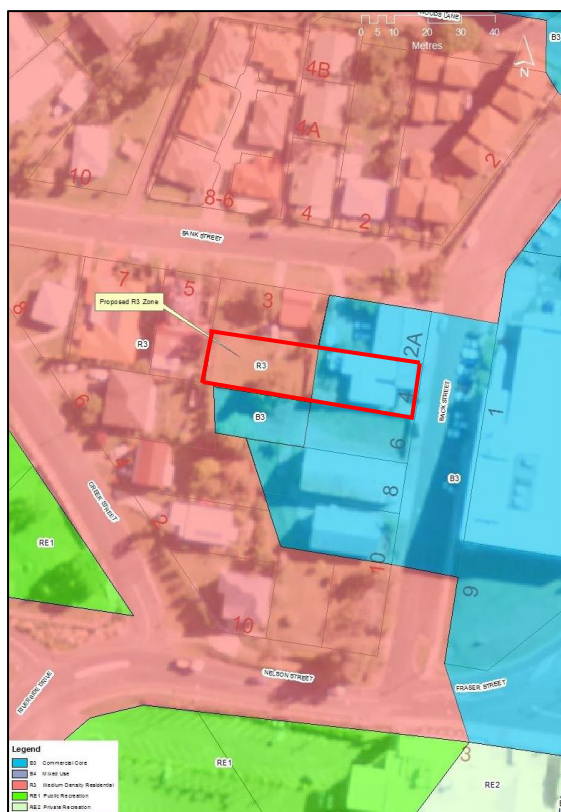


Figure 12 - Part Lot 1 DP 114320 and Part Lot 1 DP 213368, 4 Back Street, Nambucca Heads - Proposed Land Zoning - R3 Medium Density Residential

## **1.4 Surrounding area**

This PP proposes numerous housekeeping amendments across various locations and zones within the LGA. All proposed changes have regard for surrounding land uses and planning provisions as detailed in the planning proposal. The proposal adequately considers the provisions of the North Coast Regional Plan 2036 as well as adopted strategic studies and reports prepared by the Department of Planning, Industry and Environment as well as Council.

## **1.5 Summary of recommendation**

It is considered that the proposal has merit to proceed to Gateway. It is recommended that the planning proposal proceed subject to conditions for the following reasons:

1. the proposal seeks to undertake a number of minor 'housekeeping' amendments to ensure consistency with surrounding land uses and facilitate the highest and best use of each of the identified sites;
2. the introduction of model provisions, a flood clause and amendments to Schedules 2 and 3 of the LEP will permit streamlined development and assessment of applications in the future; and
3. the proposal is generally consistent with the *North Coast Regional Plan 2036* (NCRP) and helps attain Council's strategic framework.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The statement of objectives clearly describes the intention of the planning proposal. The proposal seeks to undertake various minor 'housekeeping' amendments and map changes to Nambucca LEP 2010.

### **2.2 Explanation of provisions**

The explanation of provisions clearly addresses the intended changes to the Nambucca LEP 2010, with the exception of the following:

- Item 10: the explanation of provisions is required to be updated in order to specify that the proposal also relates to Lot 2 DP 1212394 (as detailed by the proposed Minimum Lot Size map included as Attachment 1).

### **2.3 Mapping**

The planning proposal includes amendments to the Land Zoning, Minimum Lot Size, Height of Building, Floor Space Ratio, Heritage and Additional Permitted Uses maps. The maps in the planning proposal adequately reflect the proposed amendments for the respective LEP maps and show the current and proposed controls, with the exception of the following:

- Item 1: include an existing Height of Buildings map for Wallace Street, Macksville;
- Item 1: clarify that the Floor Space Ratio map for Wallace Street, Macksville accommodates both the existing Floor Space Ratio as well as the proposed Floor Space Ratio;
- Item 3: include an existing Land Zoning map, an existing Height of Buildings map, an existing Floor Space Ratio map and an existing Minimum Lot Size map;

- Item 4: include an existing Minimum Lot Size map;
- Item 6: include an existing Land Zoning map and existing Minimum Lot Size map;
- Item 7: include an existing Land Zoning map, existing Height of Buildings map and existing Minimum Lot Size map;
- Item 8: amend the proposed land zoning map so that the selected section for rezoning also includes all applicable road reserves;
- Item 14: include an existing Height of Buildings map and existing Minimum Lot Size map.

It is recommended that the PP be amended prior to exhibition to include these maps.

All maps will need to be prepared to comply with the *Standard Technical Requirements for Standard Instrument LEP Maps* prior to finalisation of the LEP.

### 3. NEED FOR THE PLANNING PROPOSAL

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The planning proposal is not the result of a strategic study or report. Rather, it is an outcome of a review of the general efficiency of the existing LEP provisions. The majority of the amendments included in the planning proposal are considered to be minor and will ensure consistency of land uses in a specific area. Additional justification is provided for the following amendments:

- Item 4: examination of the ecological report prepared in support of the proposed rezoning of Lot 701 DP 1054525 - Boronia Street, Nambucca Heads from RE1 Public Recreation to part R1 General Residential and part E3 Environmental Management indicates that the areas proposed for future rezoning to R1 are dominated by exotic vegetation. Clearing required to accommodate a proposed dwelling house and required asset protection zones would need to be considered as part of a future development application.
- Item 8: the rezoning of land and adjoining road reserves in the Macksville CBD from B3 Commercial Core to B4 Mixed Use will facilitate the continuation of existing residential land uses without the requirement to rely on existing use rights. Furthermore, this will also allow dwelling houses that have been subject to a change of use to revert back to a residential use. The proposed rezoning is consistent with the recommendations of the *North Coast Employment Land Review* completed by the Department of Planning, Industry and Environment as well as the *Nambucca Shire Council Growth Management Strategy – Employment Lands Strategy 2010*.
- Item 11: the introduction of a new clause titled 'Floodplain Risk Management', intends to implement measures to manage risk to life from flood in areas above the 'Flood Planning Level' up to the 'Probable Maximum Flood' level, is a direct result of a recommendation of Council's *Floodplain Risk Management Study* undertaken in 2017. While some mapping was undertaken as part of the Study, this was not exhaustive and as such there are no corresponding maps proposed to be included as part of the LEP at this point in time. Council staff have advised that, until complete maps are prepared, existing mapped areas can be viewed on Council's website.

It is considered that a planning proposal is the best means for achieving the intended outcomes.

## **4. STRATEGIC ASSESSMENT**

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### **4.1 State**

The planning proposal does not contain any matters of state or regional significance and is not inconsistent with the Premier's Priorities currently being actioned by the State Government.

The planning proposal, and specifically proposed Items 4 and 6, has been assessed against the provisions of *PN09-002 'Environment Protection Zones'* and *PN11-002 'Preparing LEPs using the Standard Instrument: standard zones'* and is considered to be appropriate.

### **4.2 Regional / District**

The planning proposal has been assessed against the provisions of the *North Coast Regional Plan 2036* (NCRP). All proposed amendments, with the exception of Item 3, are within the urban growth boundary and are considered to be consistent with the intent and direction of the Plan. There are no changes in policy which are considered inconsistent with matters of regional environmental planning.

As mentioned above, Item 3 - being the rezoning of Lot 30 DP 635529 - 45 Old Coast Road, Nambucca Heads from RU2 Rural Landscape to R1 General Residential - is outside the mapped urban growth area boundary. However, the minor variation to the boundary is considered to be consistent with the *NCRP* Urban Growth Area Variation principles detailed at Appendix A as follows:

- Policy – the proposal is consistent with the overarching objectives and outcomes of the *NCRP*. The subject allotment is approximately 1,500m<sup>2</sup> in size and is improved by an existing dwelling house. Surrounding land uses comprise residential development, and the land is segregated from adjoining rural land by Old Coast Road and the Pacific Highway. The allotment is not identified as important farmland and does not accommodate any significant biodiversity. The proposal is justifiably inconsistent with section 9.1 Directions 1.2 Rural Zones and 1.5 Rural Lands as detailed later within this report. The subject site has been historically utilised for residential purposes and Council's records do not indicate any contamination, consistent with State Environmental Planning Policy No. 55 – Remediation of Land.
- Infrastructure – the subject land is improved by an existing dwelling house. There will be no additional infrastructure required in order to accommodate the proposed rezoning.
- Environmental and farmland protection – the subject land is not identified as being of high environmental or heritage value and is not mapped as important farmland.
- Land use conflict – the subject site is currently utilised for residential purposes, is located within an existing urban area and adjoins residential zoned land along its eastern boundary. There is no land use conflict anticipated as a result of the proposed rezoning.



- Avoiding risk – the subject land is classified as bushfire prone and is affected by acid sulfate soils. Notwithstanding, the allotment is currently utilised for residential purposes and the land is considered suitable for ongoing residential use.
- Heritage – the land is not known to accommodate any Aboriginal or non-Aboriginal heritage.
- Coastal area – the subject site is not mapped as being within a coastal area. Furthermore, it is not identified as containing coastal wetland or littoral rainforest, nor is it within the coastal use area.

It is considered that the planning proposal is consistent with the *NCRP* as it satisfies the variation principles required for development outside the Urban Growth Area.

### **4.3 Local**

The proposal is consistent with Council's adopted *2027 Community Strategic Plan* and Council's *Delivery Program 2017-2021*. The proposed amendments will ensure the LEP is continually amended to accommodate community and development industry needs and to ensure its operational efficiency.

As discussed earlier within this report, Item 8 is consistent with the recommendations of the *Nambucca Shire Council Growth Management Strategy – Employment Lands Strategy 2010*, and Item 11 is a direct recommendation of Council's *Floodplain Risk Management Study*.

### **4.4 Section 9.1 Ministerial Directions**

The following section 9.1 Directions are relevant to the planning proposal:

1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Management, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.10 Implementation of Regional Plans, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes and 6.3 Site Specific Provisions.

It is considered that the Planning Proposal is justifiably inconsistent with the following directions:

#### **Direction 1.1 Business and Industrial Zones**

This Direction applies to Items:

- 2 (remove floor space ratio controls on commercial land within High Street, Bowraville),
- 7 (rezone land within the road reserve at the intersection of Hyland Park Road and Mann Street, Nambucca Heads from R1 General Residential to B7 Business Park),
- 8 (rezone land in the commercial zone within the Macksville CBD from B3 Commercial Core to B4 Mixed Use), and
- 14 (rezone part Lot 1 DP 114320 and Lot 1 DP 213368 - 4 Back Street, Nambucca Heads from B3 Commercial Core to R3 Medium Density Residential).

Of the proposed amendments, only Item 14 will result in a reduction of potential floor space area for employment uses, being approximately 520m<sup>2</sup>. The subject land is affected by steep topography which limits future commercial development and as such, the site has been assessed to be better suited to residential development. Considering the availability and underutilisation of adjoining commercial land as well as the minimal reduction of the total potential floor space area for employment uses, the inconsistency with this Direction is considered to be of minor significance.

#### Direction 1.2 Rural Zones

This Direction applies to Item 3 (rezone Lot 30 DP 635529 - 45 Old Coast Road, Nambucca Heads from RU2 Rural Landscape to R1 General Residential). The planning proposal is inconsistent with this direction as it proposes to rezone rural land for residential purposes. The inconsistency is considered to be of minor significance in this instance as only approximately 1,500m<sup>2</sup> of land will be rezoned from RU2 to R1; the allotment is improved with an existing dwelling house; surrounding land uses are predominantly residential; the land is segregated from adjoining rural land by Old Coast Road and the Pacific Highway; the allotment is not identified as important farmland and does not form a viable parcel of agricultural land. As such, any inconsistency with this direction is considered to be of minor significance.

#### Direction 1.5 Rural Lands

This Direction applies to Items:

- 3 (rezone Lot 30 DP 635529 - 45 Old Coast Road, Nambucca Heads from RU2 Rural Landscape to R1 General Residential),
- 4 (rezone Lot 701 DP 1054525 - Boronia Street, Nambucca Heads from RE1 Public Recreation to part R1 General Residential and part E3 Environmental Management),
- 6 (rezone Lot 1 DP 525851 & Lot 11 DP 1076031 - 21 Riverside Drive, Nambucca Heads from R1 General Residential to E2 Environmental Conservation),
- 10 (amend the minimum lot size for the Valla Beach caravan park (Lot 1 DP 1212394 and Lot 2 DP 1212394 – 1 Regatta Drive, Valla Beach, zoned E2, E3, R3, RE1 and W1) from 40 hectares to 16 hectares) and
- 13 (amendment to Schedule 1 'Additional permitted uses' of the LEP by adding a 'caravan park' as an additional permitted use on part Lot 7003 DP 1113130, Lot 7001 DP 1117183 and Lot 70 DP 1187005 and inclusion in an Additional Permitted Uses Map).

With regard to Item 3, the minor inconsistency with this Direction is considered acceptable in this instance due to historic use of the land for residential purposes; surrounding residential land uses and minimal potential for land use conflict; segregation from adjoining rural land uses and the insufficient size of the allotment for viable agricultural uses. As such, any inconsistency with this direction is considered to be of minor significance.

Items 4 and 6 are consistent with this Direction as they aim to protect identified environmental values.

With regard to Item 10, the intent of the reduction in the minimum lot size is to provide an opportunity to subdivide one (1) additional 450m<sup>2</sup> allotment zoned R3 Medium Density Residential from the existing caravan park. Given the scale of the proposal and the zoning of the affected land, it is considered that inconsistency with this Direction is minor. Nevertheless, consultation will be required with Department of Planning, Industry and Environment (Environment, Energy and Science) during exhibition of the planning proposal.

In relation to Item 13, the introduction of an Additional Permitted Uses map will facilitate the approval of existing caravan park encroachments in adjoining E3 Environmental Management zones. Given the scale of the proposal as well as the fact that this amendment aims to legitimise existing structures, it is considered that inconsistency with this Direction is minor. Consultation will be required with Department of Planning, Industry and Environment (Environment, Energy and Science) during exhibition of the planning proposal.

#### Direction 2.1 Environment Protection Zones

This Direction applies to Items:

- 1 (introduce restrictions on the height and floor space ratio of buildings at Lot 12 DP 804952 - 2A Banyandah Road, Hyland Park and Lots 1-15 DP 1253328 - Yamaan Road and Bolwarra Close, Hyland Park),
- 4 (rezone Lot 701 DP 1054525 - Boronia Street, Nambucca Heads from RE1 Public Recreation to part R1 General Residential and part E3 Environmental Management),
- 6 (rezone Lot 1 DP 525851 & Lot 11 DP 1076031 - 21 Riverside Drive, Nambucca Heads from R1 General Residential to E2 Environmental Conservation),
- 9 (list the Reserve Hall (known now as the Rec Hut) on the Crown Reserve at Scotts Head as part of Schedule 5 'Environmental heritage'),
- 10 (amend the minimum lot size for the Valla Beach caravan park (Lot 1 DP 1212394 and Lot 2 DP 1212394 – 1 Regatta Drive, Valla Beach, zoned E2, E3, R3, RE1 and W1) from 40 hectares to 16 hectares),
- 12 (amend Schedule 1 'Additional permitted uses' of the LEP by adding a 'pub' as an additional permitted use on Lot 519 DP 859627 and part Lot 1 DP 1187844 & Lot 520 DP 859627 – Wellington Drive, Nambucca Heads) and
- 13 (amendment to Schedule 1 'Additional permitted uses' of the LEP by adding a 'caravan park' as an additional permitted use on part Lot 7003 DP 1113130, Lot 7001 DP 1117183 and Lot 70 DP 1187005 and inclusion in an Additional Permitted Uses Map).

Item 1 is listed as potential High Environmental Value (HEV). However, the amendment will not reduce the environmental protection standards that apply to the land, as such, consistency with this Direction is achieved.

Item 4 is also listed as potential HEV. However, as the amendment aims to protect identified environmental values, it is not inconsistent with this Direction.

Item 6 is consistent with this Direction as it aims to protect identified environmental values.

Item 9 is listed as potential (HEV). However, the amendment will not reduce the environmental protection standards that apply to the land, as such, consistency with this Direction is achieved.

With regard to Item 10, the intent of the reduction in the minimum lot size is to provide an opportunity to subdivide one (1) additional 450m<sup>2</sup> allotment zoned R3 Medium Density Residential from the existing caravan park. Given the scale of the proposal and the zoning of the affected land, it is considered that inconsistency with this Direction is minor. Nevertheless, consultation will be required with Department of Planning, Industry and Environment (Environment, Energy and Science) during exhibition of the planning proposal.

Item 12 is listed as potential HEV. This amendment aims to legitimise an existing use and facilitate future extensions. Given the improvements on the land as well as the modified nature of the curtilage of the existing building, it is considered that inconsistency with this Direction is minor.

Item 13 is listed as potential HEV. The introduction of an Additional Permitted Uses map will facilitate the approval of existing caravan park encroachments in adjoining E3 Environmental Management zones. Given the scale of the proposal as well as the fact that this amendment aims to legitimise existing structures, it is considered that inconsistency with this Direction is minor. Consultation will be required with Department of Planning, Industry and Environment (Environment, Energy and Science) during exhibition of the planning proposal.

### Direction 3.1 Residential Zones

This Direction applies to Items:

- 1 (introduce restrictions on the height and floor space ratio of buildings at Lot 12 DP 804952 - 2A Banyandah Road, Hyland Park; Lots 1-15 DP 1253328 - Yamaan Road and Bolwarra Close, Hyland Park, Lot 2 Sec C DP 5574 & Lot 6 DP 722732 - 65 Wallace Street, Macksville; Lot 1 DP 129408 & Lot 2 DP 386999 - 78 Wallace Street Macksville),
- 2 (remove floor space ratio controls on commercial land within High Street, Bowraville),
- 3 (rezone Lot 30 DP 635529 - 45 Old Coast Road, Nambucca Heads from RU2 Rural Landscape to R1 General Residential),
- 4 (rezone Lot 701 DP 1054525 - Boronia Street, Nambucca Heads from RE1 Public Recreation to part R1 General Residential and part E3 Environmental Management),
- 6 (rezone Lot 1 DP 525851 & Lot 11 DP 1076031 - 21 Riverside Drive, Nambucca Heads from R1 General Residential to E2 Environmental Conservation),
- 7 (rezone land within the road reserve at the intersection of Hyland Park Road and Mann Street, Nambucca Heads from R1 General Residential to B7 Business Park),
- 8 (rezone land in the commercial zone within the Macksville CBD from B3 Commercial Core to B4 Mixed Use),



- 10 (amend the minimum lot size for the Valla Beach caravan park (Lot 1 DP 1212394 and Lot 2 DP 1212394 – 1 Regatta Drive, Valla Beach) from 40 hectares to 16 hectares) and
- 14 (rezone part Lot 1 DP 114320 - 4 Back Street, Nambucca Heads from B3 Commercial Core to R3 Medium Density Residential).

All proposed amendments are consistent with this Direction, with the exception of Items 1, 6 and 7 which will result in the reduction of permissible residential density.

With regard to Item 1, the introduction of height of building and floor space ratio development standards will ensure that permissible density on the subject land is consistent with adjoining allotments and existing land uses. In relation to Item 6, the rezoning of land and the reduction of the minimum lot size will ensure the protection of significant Aboriginal heritage. Item 7 involves the rezoning of existing R1 land for employment land purposes, reflecting the highest and best use of the site, consistent with adjoining development. Considering these matters, the proposed inconsistencies with this Direction are of minor significance.

### Direction 3.2 Caravan Parks and Manufactured Home Estates

This Direction applies to Items:

- 3 (rezone Lot 30 DP 635529 - 45 Old Coast Road, Nambucca Heads from RU2 Rural Landscape to R1 General Residential),
- 4 (rezone Lot 701 DP 1054525 - Boronia Street, Nambucca Heads from RE1 Public Recreation to part R1 General Residential and part E3 Environmental Management),

The abovementioned amendments will result in caravan parks no longer being permitted on the subject land. Considering the size of the sites (1,500m<sup>2</sup> & 8,000m<sup>2</sup> respectively) as well as existing improvements on Lot 30 DP 635529 and site constraints of Lot 701 DP 1054525, the allotments are not deemed capable of accommodating caravan parks. As such, the inconsistencies with the terms of this Direction are considered to be of minor significance.

### Direction 4.1 Acid Sulfate Soils

This Direction applies to Items:

- 1 (introduce restrictions on the height and floor space ratio of buildings on Lot 12 DP 804952 - 2A Banyandah Road, Hyland Park),
- 3 (rezone Lot 30 DP 635529 - 45 Old Coast Road, Nambucca Heads from RU2 Rural Landscape to R1 General Residential), and
- 12 (amendment to Schedule 1 'Additional permitted uses' of the LEP by adding a 'pub' as an additional permitted use on Lot 519 DP 859627 and part Lot 1 DP 1187844 & Lot 520 DP 859627 – Wellington Drive, Nambucca Heads).

The abovementioned amendments are inconsistent with this Direction as they relate to land that is identified as containing acid sulfate soils, and the planning proposal is not supported by an acid sulfate soils study. The inconsistency is considered to be of minor significance as further consideration regarding the issue can be undertaken at the development application stage as required by the acid sulfate soil provisions of Nambucca LEP 2010.

#### Direction 4.4 Planning for Bushfire Protection

This Direction applies to the following Items, as the land has been identified as bushfire prone:

- 1 (introduce restrictions on the height and floor space ratio of buildings at Lot 12 DP 804952 - 2A Banyandah Road, Hyland Park; Lots 1-15 DP 1253328 - Yamaan Road and Bolwarra Close, Hyland Park),
- 3 (rezone Lot 30 DP 635529 - 45 Old Coast Road, Nambucca Heads from RU2 Rural Landscape to R1 General Residential),
- 4 (rezone Lot 701 DP 1054525 - Boronia Street, Nambucca Heads from RE1 Public Recreation to part R1 General Residential and part E3 Environmental Management),
- 7 (rezone land within the road reserve at the intersection of Hyland Park Road and Mann Street, Nambucca Heads from R1 General Residential to B7 Business Park),
- 9 (List the Reserve Hall (known now as the Rec Hut) on the Crown Reserve at Scotts Head as part of Schedule 5 'Environmental heritage'),
- 10 (amend the minimum lot size for the Valla Beach caravan park (Lot 1 DP 1212394 and Lot 2 DP 1212394 – 1 Regatta Drive, Valla Beach) from 40 hectares to 16 hectares),
- 12 (amendment to Schedule 1 'Additional permitted uses' of the LEP by adding a 'pub' as an additional permitted use on Lot 519 DP 859627 and part Lot 1 DP 1187844 & Lot 520 DP 859627 – Wellington Drive, Nambucca Heads), and
- 13 (amendment to Schedule 1 'Additional permitted uses' of the LEP by adding a 'caravan park' as an additional permitted use on part Lot 7003 DP 1113130, Lot 7001 DP 1117183 and Lot 70 DP 1187005 and inclusion in an Additional Permitted Uses Map).

This direction requires Council as the relevant Planning Authority to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred, consistency of the proposal with this direction will remain unresolved.

#### Direction 6.2 Reserving Land for Public Purposes

This Direction applies to Item 4 (rezone Lot 701 DP 1054525 - Boronia Street, Nambucca Heads from RE1 Public Recreation to part R1 General Residential and part E3 Environmental Management). The Nambucca Heads Local Aboriginal Land Council currently owns this allotment. The site has not been reserved for public recreation purposes on the Land Reservation Acquisition Map that accompanies the LEP and Council does not consider the current zoning as appropriate given the location of the property and physical nature of the land. The allotment is constrained due to steep slopes and watercourses, although sufficient area exists for portions of the allotment to be utilised for residential purposes. Reflecting this, the land was previously zoned 2(a) Residential (Low-Medium Density). Furthermore, the site is not improved with any facilities for public recreation purposes, and expansive public

recreation areas are available approximately 50 metres to the east and 80 metres to the south of the site.

The agreement of the Secretary to the proposed reduction of land for public purposes has not been obtained and therefore the proposal is inconsistent with the direction. However, as discussed above, it is considered that the inconsistency of the proposal with the terms of this direction is justified as being of minor significance.

#### **4.5 State environmental planning policies (SEPPs)**

The proposal is consistent with all applicable SEPPs with the exception of State Environmental Planning Policy (Primary Production and Rural Development) 2019. While the planning proposal does not comply with the aims of this Policy, the proposal is considered to be appropriate as discussed in Section 4.4 of this report.

Consideration of historic land uses on land affected by Items 3, 4, 6, 7, 8 and 14 has been undertaken with regard to the provisions of State Environmental Planning Policy No. 55 – Remediation of Land. These allotments are not listed in Council's contaminated land register and there are no known historic land uses that would deem the land unsuitable for their proposed use.

### **5. SITE-SPECIFIC ASSESSMENT**

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#### **5.1 Social and Economic**

The planning proposal involves minor housekeeping matters and is therefore unlikely to create any negative social or economic impacts. The proposal seeks to align permissible land uses with existing surrounding development, remove the floor space ratio controls in Bowraville to encourage the activation of Adam Lane, facilitate temporary events on public reserves and roads, impose a flood planning clause to minimise the risk to life during flood events and amend the exempt and complying development criteria in order to facilitate low-risk development. The proposal is expected to provide a consistent and accurate planning instrument for the community and greater certainty of development controls.

#### **5.2 Environmental**

The planning proposal generally involves minor housekeeping matters and is therefore unlikely to create any negative environmental impacts, with the exception of Item 4, being the rezoning of Lot 701 DP 1054525 - Boronia Street, Nambucca Heads from RE1 Public Recreation to part R1 General Residential and part E3 Environmental Management. An Ecological Assessment accompanies the planning proposal and it is considered that any potential impact arising from future development of the subject land will be capable of being addressed at the development application stage.

#### **5.3 Heritage**

Where relevant, the planning proposal intends to preserve items of Aboriginal and non-Aboriginal heritage. There are no adverse impacts on heritage anticipated as a result of the planning proposal.

#### **5.4 Infrastructure**

The provision and funding of State infrastructure is not necessary for this proposal.

## 6. CONSULTATION

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### 6.1 Community

The proposal meets the requirements to be a low impact proposal under the *Guide to Preparing Local Environmental Plans*, and as such only requires a 14 day consultation. However, Council has nominated a 28 day public exhibition period in the planning proposal. There is no impediment to Council electing to undertake a longer community consultation period than the mandatory 14 days.

### 6.2 Agencies

Council has not proposed consultation with any specific agencies. Given the nature of the proposed amendments, consultation with the following agencies is considered appropriate:

- NSW Rural Fire Service
- Department of Planning, Industry and Environment (Environment, Energy and Science)
- Department of Planning, Industry and Environment (Agriculture)
- Nambucca Heads Local Aboriginal Land Council.

## 7. TIME FRAME

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The planning proposal includes a project time line which indicates a completion time of four months. To ensure Council has adequate time to complete community consultation, it is recommended that the nine month timeframe be specified.

## 8. LOCAL PLAN-MAKING AUTHORITY

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The proposal is consistent, or justifiably inconsistent, with the State, regional and local planning framework and deals primarily with matters of local significance. Council has not requested delegation in this instance as an original version of the planning proposal included the reclassification of land. As the reclassification component has been removed from the subject planning proposal, it is considered appropriate that Council be provided authorisation to act as the local plan-making authority for this matter.

## 9. CONCLUSION

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The Nambucca housekeeping planning proposal is supported as it:

- meets the adequacy criteria by providing: appropriate objectives and intended outcomes; a suitable explanation of the provisions and justification for the proposal; appropriate community consultation; a suitable project timeline; and an evaluation for the delegation of plan making functions;
- is consistent or justifiably inconsistent with all relevant section 9.1 Directions and SEPPs;
- is consistent with the *North Coast Regional Plan 2036*;
- is consistent with the local planning framework, including the *Nambucca Shire Council Growth Management Strategy – Employment Lands Strategy 2010*;



- is unlikely to have any detrimental impact on the socio-economic welfare of the Local Government Area;
- will enable the introduction of planning controls that are within the public interest.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 4.1 Acid Sulfate Soils and 6.2 Reserving Land for Public Purposes are minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister 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;
  - Department of Planning, Industry and Environment (Environment, Energy and Science);
  - Department of Planning, Industry and Environment (Agriculture);
  - Nambucca Heads Local Aboriginal Land Council.
3. The time frame for completing the LEP is to be nine months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.
5. Prior to public exhibition, the planning proposal shall be amended as follows:
  - (a) The planning proposal is to ensure consistency in referencing the proposed amendment numbers (particularly between Parts 1 and 2 and Part 3);
  - (b) Part 2: the explanation of provisions in relation to Item 10 is required to be updated in order to specify that the proposal also relates to Lot 2 DP 1212394 (as detailed by the proposed Minimum Lot Size map included as Attachment 1);
  - (c) Update the maps for the following items:
    - Item 1: include an existing Height of Buildings map for Wallace Street, Macksville;

- Item 1: clarify that the Floor Space Ratio map for Wallace Street, Macksville accommodates both the existing Floor Space Ratio as well as the proposed Floor Space Ratio;
- Item 3: include an existing Land Zoning map, an existing Height of Buildings map, an existing Floor Space Ratio map and an existing Minimum Lot Size map;
- Item 4: include an existing Minimum Lot Size map;
- Item 6: include an existing Land Zoning map and existing Minimum Lot Size map;
- Item 7: include an existing Land Zoning map, existing Height of Buildings map and existing Minimum Lot Size map;
- Item 8: amend the proposed Land Zoning map so that the selected section for rezoning also includes all applicable road reserves;
- Item 14: include an existing Height of Buildings map and existing Minimum Lot Size map.



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**2-10-2019**

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