

Nambucca Shire Council

**Planning Proposal
Nambucca Local Environmental Plan
Amendment No. 21
Correction of Anomalies and Other Minor
Amendments**

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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 56 of the Act is requested.

The Nambucca Local Environmental Plan 2010 (NLEP2010) was made on 30 July 2010. Since its commencement a number of anomalies have been identified and the purpose of the planning proposal is to correct these matters. Other minor amendments have also been included in the planning proposal. The background to each of the items is discussed below.

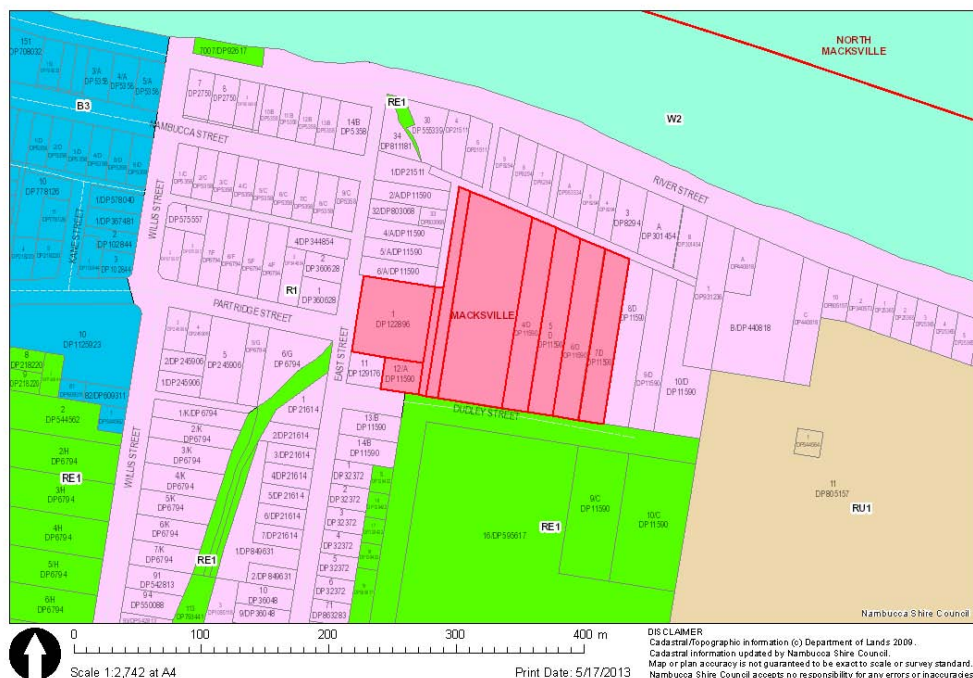
This planning proposal applies to the following subject land:

1.2 Lot 12 Sec A DP 11590; Lot 1 DP 122896; Lot 1 DP 122897; Lot 1 DP 122898; Lot 7 Sec D DP 11590; Lot 6 Sec D DP 11590; Lot 5 Sec D DP 11590; Lot 4 Sec D DP 11590; Lot 1 DP 729696, Dudley Street, Macksville (Known as Thistle Park)

Figure 1 shows the location and Land Use Zoning of Thistle Park. Thistle Park Reserve, Macksville is presently zoned R1 General Residential. This land was acquired from the Department of Education in 2009 during the development of the NLEP2010. One of the terms of the contract of sale was that Council agreed not to dispose of the land and the land would be zoned for open space purposes.

To that effect, this amendment proposes to zone Thistle Park (Lot 12 Sec A DP 11590; Lot 1 DP 122896; Lot 1 DP 122897; Lot 1 DP 122898; Lot 7 Sec D DP 11590; Lot 6 Sec D DP 11590; Lot 5 Sec D DP 11590; Lot 4 Sec D DP 11590; Lot 12 Sec A DP 11590; Lot 1 DP 729696) RE1 Public Recreation and to remove the following controls – Floor Space Ratio of 0.55, Height of Buildings of 8.5m and Minimum Lot Size of 450m².

Figure 1: Location and Land Use Zoning, Thistle Park, Macksville



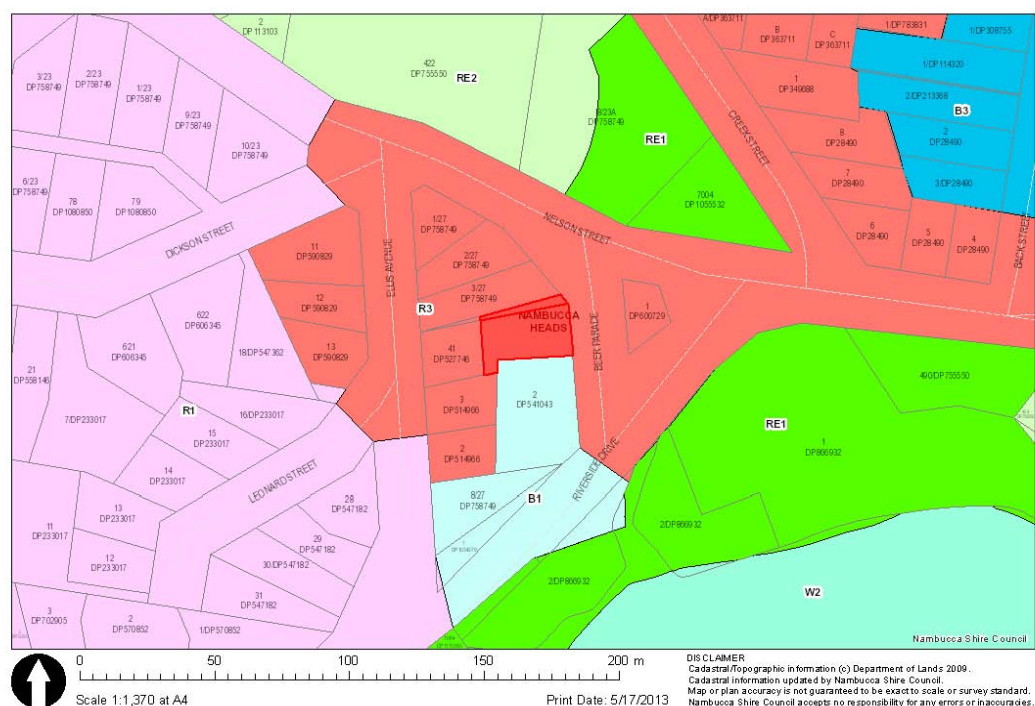
1.3 Nambucca Veterinary Clinic, 5 Beer Parade, Nambucca Heads (Lot 1 DP 541043 & Lot 9 Sec 27 DP 758749)

Examination of the zoning relating to the above property has confirmed that this land was incorrectly zoned when the NLEP2010 was gazetted. The landowner has provided Council with a letter confirming their request to correct the anomaly.

The NLEP1995 zoned Lot 1 DP 541043 as 3(a) Commercial. Lot 9 Sec 27 DP 758749, a small portion of land measuring approximately 65 m² was zoned 2(b) Residential (Medium-High Density). In preparing the NLEP2010 the intention was to prepare a best fit transfer from the existing zones to the new template requirements unless otherwise specified. However, an error has occurred and the entire land has been zoned R3 Medium Density Residential.

It is proposed to correct the anomaly and zone the entire land B1 Neighbourhood Centre and remove the Floor Space Ratio and Minimum Lot Size to reflect the adjoining land and other commercial land in the Shire. A Development Application for a Veterinary Clinic was approved over both lots in 1982.

Figure 2: Location and Land Use Zoning, 5 Beer Parade, Nambucca Heads (Lot 1 DP 541043 & Lot 9 Sec 27 DP 758749)



1.4 Macksville Post Office, Cooper Street, Corner River Street, Macksville (Lot 1 DP 816339)

On 9 November 2011 the Macksville Post Office was gazetted in the Commonwealth Heritage List under the *Environment Protection and Biodiversity Conservation Act 1999*. Macksville Post Office was one of 43 post offices listed throughout Australia at this time.

Macksville was identified for the following reasons:

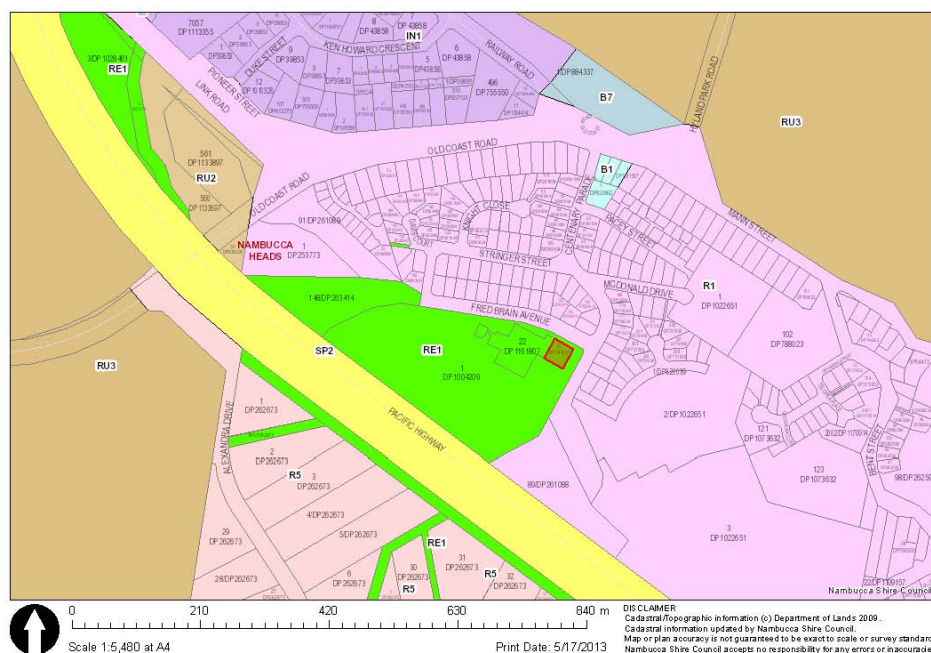
Macksville Post Office, constructed in 1917, is of historical significance as one of the first two NSW Post offices, along with Botany, credited to Commonwealth architects. Although extended and modified, the building is legible as a 1917 era structure. The freestanding timber clad telephone exchange is extant, although in poor condition and no longer used for its original function. The significant components of Macksville Post Office include the main building dating from 1917.

To complement the Commonwealth listing of this item, it is recommended the Post Office be listed in Schedule 5 Part 1 of the NLEP2010. This will allow for the appropriate consideration of heritage matters related to the building should future development occur.

1.5 Nambucca Bridge Club, 2 Fred Brain Avenue, Nambucca Heads (Lot 21 DP 1161807)

The Nambucca Bridge Club acquired a portion of land at Fred Brain Avenue, Nambucca Heads in 2012. The land is presently zoned RE1 Public Recreation. As the land is no longer owned by Council it is considered that a Land Use Zone of RE2 Private Recreation is more appropriate.

Figure 3: Location & Land Use Zoning, 2 Fred Brain Avenue, Nambucca Heads (Lot 21 DP 1161807)



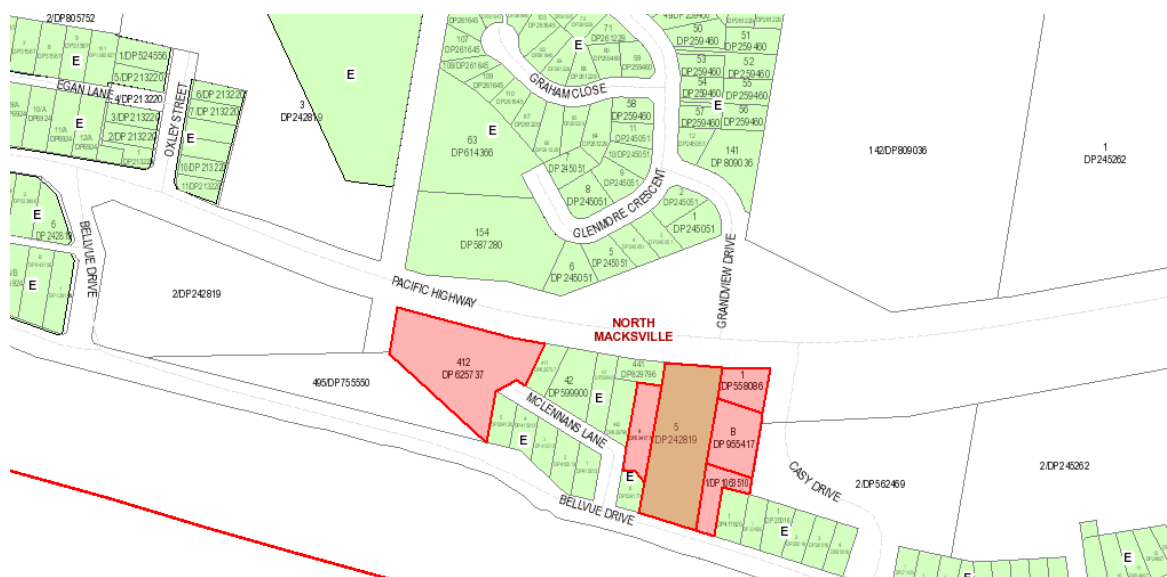
1.6 Amendment to the Floor Space Ratio Map - 24 Bellevue Drive & 10 McLennans Lane, North Macksville

24 Bellevue Drive, North Macksville is made up of five allotments which are legally known as Lot 5 DP 242819, Lot 9 DP 534177, Lot B DP 955417, Lot 1 DP 558086, and Lot 1 DP 1063510. The site is commonly known as the 'Midco Site'. 10 McLennans Lane is legally known as Lot 412 DP 625737.

Figure 4 below is an extract of the Floor Space Ratio Map of the above allotments and the surrounding area. All of the above allotments are highlighted in red and are located within the R1 General Residential Zone under the NLEP. However, only one of the allotments is shown on the Floor Space Ratio Map and the Height of Buildings Map.

In order to correct this anomaly, it is recommended that the Floor Space Ratio Map be amended to include all of the above allotments on the map with a maximum floor space ratio of 0.55:1. It is also recommended that the Height of Buildings Map be amended to provide a maximum building height of 8.5m on these lots. This is consistent with surrounding allotments within the R1 General Residential Zone (coloured green in figure 4) which already have a maximum floor space ratio of 0.55:1 and a building height of 8.5m. This will ensure future buildings on the allotments are compatible with the desired bulk and scale of built form within the surrounding area. The land was previously identified as 2(a) Residential (Low-Medium Density) under the NLEP1995 and had an 8 metre maximum building height and relative density requirements.

Figure 4: Location & FSR Map, 24 Bellevue Drive & 10 McLennans Lane, North Macksville



1.7 Amend clause 7.1(6) to clarify the exempt provisions contained within the clause

The objective of clause 7.1 of the NLEP2010 is “to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage”. The development standard within clause 7.1 prohibits Council from granting development consent for the specified works within the clause on land mapped on the Acid Sulfate Soils Map, unless “an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority”.

Clause 7.1 (6) states:

“development consent is not required under this clause to carry out any works if:

- (a) the works involve the disturbance of less than 1 tonne of soil, such as occurs in carrying out agriculture, the construction or maintenance of drains, extractive industries, dredging, the construction of artificial water bodies (including canals, dams and detention basins) or foundations or flood mitigation works, or*
- (b) the works are not likely to lower the water table.*

It is considered that the word ‘or’ located at the end of paragraph (a) in clause 7.1 (6) is an error because it excludes the operation of the clause from developments which may result in significant environmental impacts resulting from the disturbance of acid sulfate soils. The use of the word ‘or’ in clause 7.1 (6) derives from the Settled Model Local Provisions prepared by the Department of Planning. However, examples of the use of the word ‘and’ in similar clauses are found within the Coffs Harbour and Kempsey local environmental plans.

Having regard to the above, it is recommended that clause 7.1 (6) be amended as follows:

- (6) Despite subclause (2), development consent is not required under this clause to carry out any works if:*
 - (a) the works involve the disturbance of less than 1 tonne of soil, and*
 - (b) the works are not likely to lower the water table.*

The amendment has been requested by the Department of Planning and Environment during the preparation of this Planning Proposal.

1.8 Rezone land owned by the Nambucca Heads Local Aboriginal Land Council

a Lot 701 DP 1054525, Boronia Street, Nambucca Heads

The Nambucca Heads Local Aboriginal Land Council (NHLALC) currently owns Lot 701 DP 1054525, Boronia Street, Nambucca Heads which is illustrated below in Figure 5. This allotment is currently connected to reticulated sewer and water, with both legal and physical access available from Boronia Street and Pacific Street. It is zoned RE1 Public Recreation.

The RE1 Public Recreation Zone is generally intended for a wide range of public recreational areas and activities including local and regional parks and open space. As Lot 701 DP 1054525 is owned by the NHLALC and not been reserved for public recreation purposes on the Land Reservation Acquisition Map, it is not considered that its current zoning is appropriate for the location and nature of the site, an opinion shared by the NHLALC.

While the development potential of the site is constrained due to steep slopes and watercourses; it is considered that some form of residential development could potentially occur on the site subject to matters such as slope, flora and fauna, bushfire, and drainage been addressed during the development assessment process.

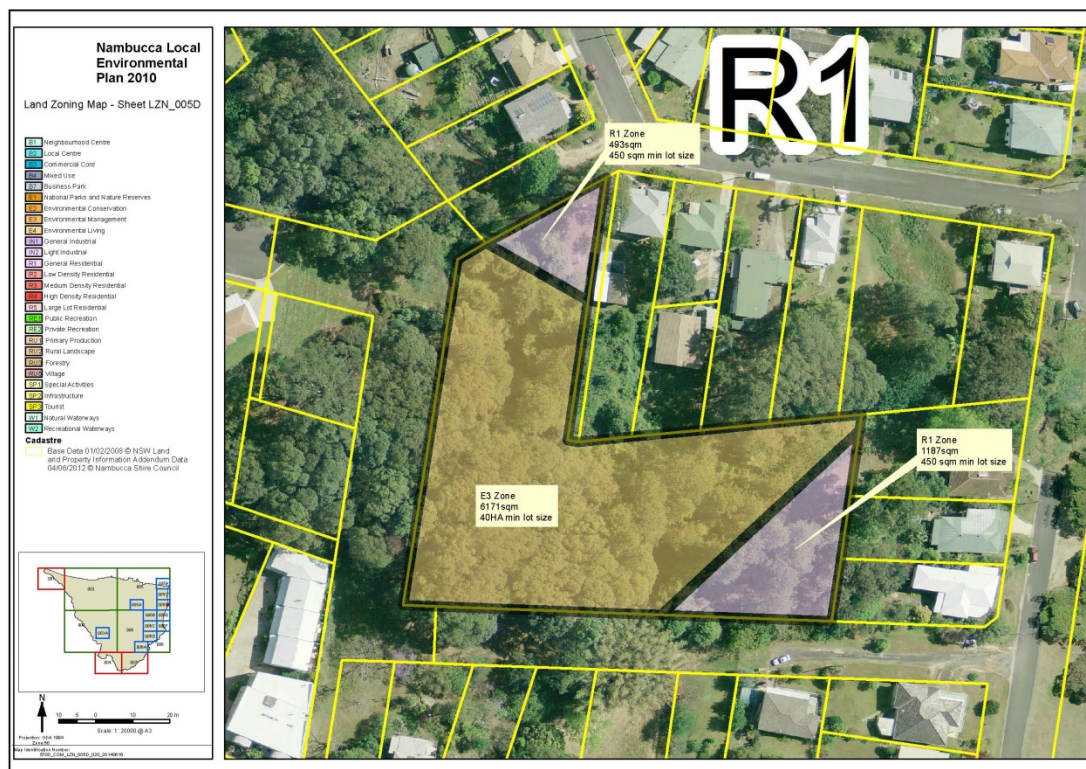
Having regard to the above, it is recommended that part of the land be rezoned to part R1 General Residential and part E3 Environmental Management. Figure 6 shows the proposed R1 zone boundaries which are contained areas with managed or disturbed lawn with scattered trees and reasonable grades.

As part of this rezoning, it is also recommended that the residential part of the lot be provided with 450m² minimum lot size and the E3 Environmental Management be provided with a 40HA minimum lot size. Further, the Height of Buildings Map would show a maximum building height of 8.5m, and the Floor Space Ratio Map a maximum floor space ratio of 0.55:1. The inclusion of these standards and zones will provide consistency with adjoining land. Further to this it is noted that this land was previously zoned 2(a) Residential (Low-Medium Density) and the proposed R1 and E3 zones provide a sustainable balance to the potential future development of the land.

Figure 5: Location & Land Use Zoning, Lot 701 DP 1054525, Boronia Street, Nambucca Heads



Figure 6: Proposed Land Use Zoning, Lot 701 DP 1054545, Boronia Street, Nambucca Heads



b Lot 470 DP 755550, Loftus Street, Nambucca Heads

As with the aforementioned allotment, the NHLALC also owns Lot 470 DP 755550, Loftus Street, Nambucca Heads which is illustrated below in Figure 7. This allotment is also zoned RE1 Public Recreation and has not been reserved for public recreation purposes on the Land Reservation Acquisition Map. The lot has access to reticulated sewer and water, with both legal and physical access available from Loftus Street.

Having regard to the above, it is not considered that its current zoning is appropriate for the location and nature of the lot. Furthermore, it is considered that the lot is less constrained than Lot 701 DP 1054525 and has potential for residential development in a manner which is consistent with the surrounding area. Some constrained vegetated land exists on the eastern portion of the site.

As such, it is recommended that the western portion of the lot be rezoned to R3 Medium Density Residential to be consistent with the zoning of the surrounding area and the constrained area be zoned E3 Environmental Management (Figure 8). As part of this rezoning, it is also recommended that the lot be included on the Lot Size Map with a minimum lot size of 450m² over the residential portion and 40HA on the E3 portion. The Height of Buildings Map would be designated with a maximum building height of 8.5m, and the Floor Space Ratio Map with a maximum floor space ratio of 0.75:1 for the R3 zoned area. The inclusion of the lot on these maps will ensure the development standards applicable to the lot will be the same as the adjoining R3 Medium Density Residential zoned land illustrated red in Figure 7 below. Further to this it is noted that the land was zoned 2(b) Residential (Medium Density) under the Nambucca LEP 1995.

Figure 7: Location & Land Use Zoning, Lot 470 DP 755550, Loftus Street, Nambucca Heads

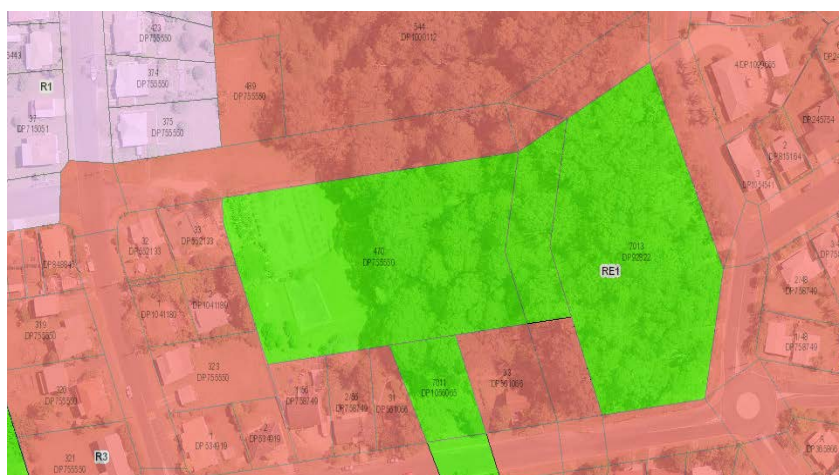
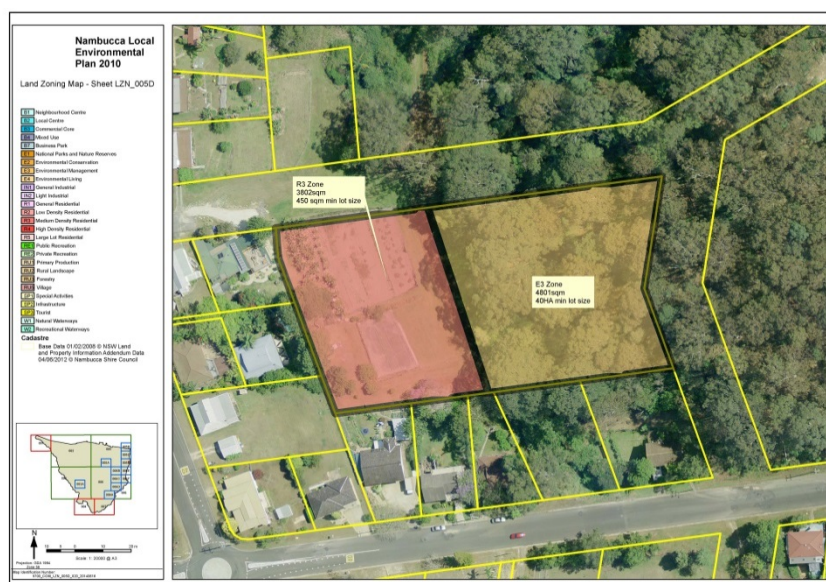


Figure 8: Proposed Land Use Zoning, Lot 470 DP 755550, Loftus Street, Nambucca Heads



1.9 Amend clause 4.1(4A) (a) to clarify the exempt provisions contained within the clause

Clause 4.1 (3) of the NLEP2010 states that “The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land”.

However, clause 4.1 (4A) (a) excludes the operation of clause 4.1 to development applications for the subdivision of land if the land contains an existing dual occupancy. Clause 4.1 (4A) reads as follows:

“(4A) This clause does not apply in relation to the subdivision of land in Zone R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential or R4 High Density Residential:

- if the land contains an existing dual occupancy, or
- for the purpose of erecting an attached dwelling or a semi-detached dwelling, or
- if a single development application is made for the subdivision of the land into 2 lots and for the erection of a dwelling house on each of the 2 resulting lots.”

The intention of clause 4.1 (4A) (a) is to exclude the minimum lot size development standard from applying to the subdivision of land which contains a dual occupancy, if only two lots will result from the subdivision and one existing dwelling is located on each resulting lot. However, as can be seen above, the way the clause is written is that clause 4.1 does not apply to the subdivision of land as long as a dual occupancy is located on the land. This means that a development application for the subdivision of land into more than two allotments with sizes below the minimum lot size is excluded from the operation of clause 4.1. It is considered that this is an error as it is contrary to the objective of the clause because such an exemption to the operation of the clause removes a vital control which helps ensure subdivision layouts are compatible with the desired future character of the locality in which the subdivision is located.

Having regard to the above, it is recommended that clause 4.1 (4A) be amended as follows:

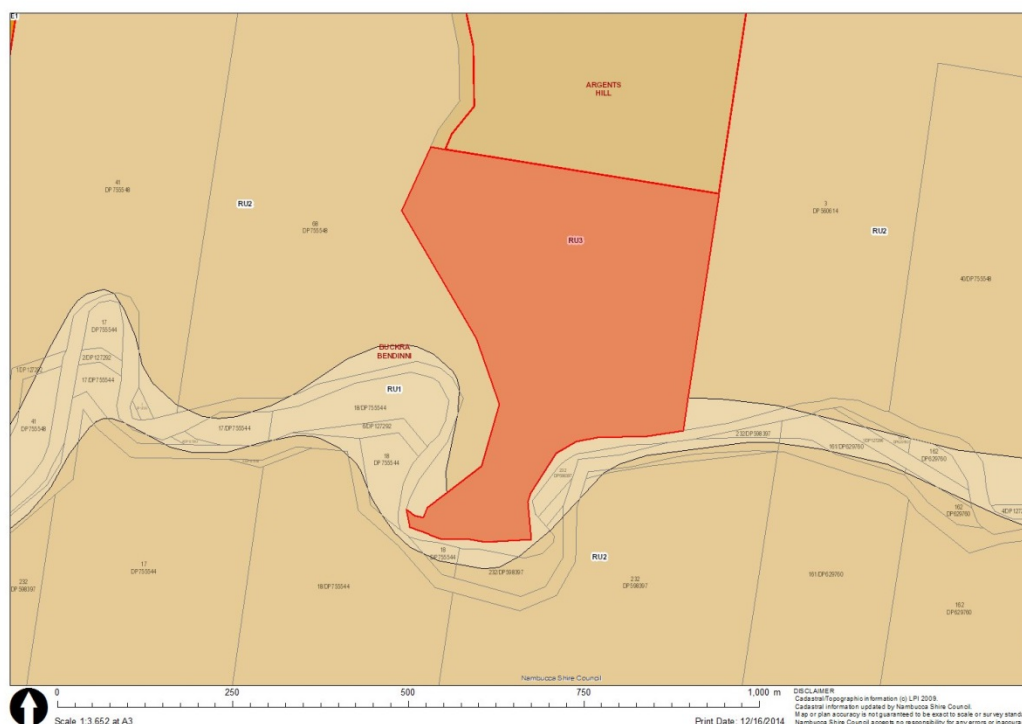
(4A) This clause does not apply in relation to the subdivision of land in Zone R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential or R4 High Density Residential:

- (a) if the land contains an existing dual occupancy and there are only 2 lots resulting from the subdivision, with an existing dwelling located on each resulting lot, or*
- (b) for the purpose of erecting an attached dwelling or a semi-detached dwelling, or*
- (c) if a single development application is made for the subdivision of the land into 2 lots and for the erection of a dwelling house on each of the 2 resulting lots.*

1.10 Rezone Lot 1 DP 560614 currently zoned RU3 Forestry

Lot 1 DP 560614, Upper Buckrabendinni Road, Buckra Bendinni was created in 1973 by a subdivision initiated by the State Government so that land could be purchased by the then Minister for Conservation to add to the Buckra Bendinni State Forest. A subdivision of Lot 45 DP 755548 and the adjoining State Forest was undertaken. The new Lot 2 DP 560614, with an area of 15.38 hectares at the rear of the previous Lot 45 DP 755548 was transferred to the ownership of the State Government and is part of the State Forest. It is now zoned RU3 Forestry and it is not proposed to change this. In return for acquiring this parcel of land, Lot 1 DP 560614 was transferred from the State Forest to private ownership. It has an area of approximately 15.05 hectares. This parcel of land remains in private ownership but is still zoned RU3 Forestry. A more appropriate zone would be a combination of RU1 Primary Production and RU2 Rural Landscape, similar to the lots around it (see Figure 9 below). It is also proposed to amend the minimum lot size map to 100 Hectares to be in line with the adjoining lots.

Figure 9: Location & Land Use Zoning, Lot 1 DP 560614, Upper Buckrabendinni Road, Buckra Bendinni

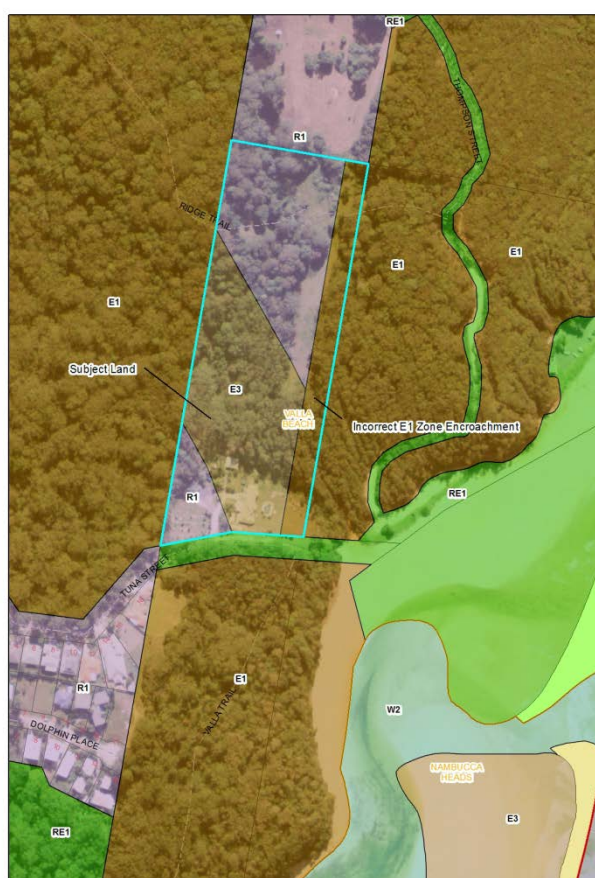


1.11 Rezone privately owned land zoned E1 National Parks and Nature Reserves to R1 General Residential and E3 Environmental Management

Lot 157 DP 755560 – 31 Tuna Street, Valla Beach is privately owned and contains areas of land zoned R1 General Residential, E1 National Parks & Nature Reserves, and E3 Environmental Management.

The NLEP2010 was produced as a best fit transfer from the NLEP1995. As such, the intent was for this land to be zoned R1 General Residential with a strip of E3 Environmental Management over a riparian corridor which crosses the site. However, during the preparation of the NLEP2010 the NSW Land and Property Information Services incorrectly mapped the cadastre boundary of the adjoining National Park 20m to the west of its actual location. This resulted in the position of the E1 National Park and Nature Reserve zone incorrectly encroaching within Lot 157 DP 755560. This is shown in the aerial photo below.

Figure 10: Aerial photo and Land Use Zone map, Lot 157 DP 755560, 31 Tuna Street, Valla Beach



In order to rectify this error, it is recommended that the land zoning map be amended by removing the E1 National Parks & Nature Reserves zone from Lot 157 DP 755560 and replacing it with the corresponding R1 General Residential and E3 Environmental Management zones, together with the corresponding floor space ratios, height of buildings and minimum lots sizes for each of the proposed zones.

1.12 Ensure permissibility of Secondary Dwellings in the R5 Large Lot Residential Zones

During the preparation of the NLEP2010, Council proposed to make secondary dwellings permissible with consent in the R5 Large Lot Residential Land Use Table. However, at the time the Department of Planning advised that as secondary dwellings were permissible in the R5 Zone within the provisions of the SEPP (Affordable Rental Housing) 2009 it was not necessary to reiterate this within the Land Use Table.

However, Council has since had enquiries regarding approval for secondary dwellings in the R5 Large Lot Residential zone and the following issue has been identified in applying the SEPP provisions.

Clause 22(3)(b) of the SEPP states the following:

'the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.'

Council's provisions in the NLEP2010 allow development of secondary dwellings up to 50% of the size of the primary dwelling. However, as the LEP does not specifically permit secondary dwellings in the R5 zone then the SEPP provisions must be relied upon. It could be argued that the SEPP provisions would only allow secondary dwellings to be constructed to the 60sqm, not 50% of the size of the primary dwelling.

The proposed amendment is to simply include 'secondary dwellings' as permissible with consent within the R5 Large Lot Residential zone. This would ensure consistency with secondary dwelling provisions within rural and other residential land in the NLEP2010.

1.13 Amend the Land Use Table to make detached dual occupancies permissible within the RU1 Primary Production, RU2 Rural Landscape and R5 Large Lot Residential zones and remove the word "attached" from Clause 4.2A

Under the NLEP2010, the erection of an attached dual occupancy (two dwellings of any size attached to each other) is permissible within the RU1 Primary Production, RU2 Rural Landscape and R5 Large Lot Residential zones. Also, a secondary dwelling (a dwelling which can be detached from the primary dwelling with limited floor area) is permissible with consent within the RU1 Primary Production and RU2 Rural Landscape zones. However, a detached dual occupancy is prohibited in all three land use zones.

It is considered that amending the Land Use Table of the NLEP2010 to permit detached dual occupancies with development consent in the RU1, RU2 and R5 zones would result in the same positive outcomes for property owners that secondary dwellings and attached dual occupancies provide, while allowing landowners greater freedom in the development of their land.

It is to be noted that potential impacts on the natural, social, and economic environments associated with the construction of a detached dual occupancy are no different to that of a detached secondary dwelling; all of which would be considered by Council prior to determining the development application. It should also be noted that Council's current development controls within the Nambucca Development Control Plan 2010 (DCP2010) and relevant State Environmental Planning Policies are sufficient to ensure the development of detached dual occupancies will not result in any significant impacts on the natural, social or economic environments of the locality in which they are located.

Furthermore, due to the current ability to have an attached dual occupancy and secondary dwelling within the RU1, RU2 & R5 (secondary dwellings pending – see above) zones, it is not considered that permitting detached dual occupancies will result in any increased demands on public infrastructure or services, or any significant increase in rural housing supply than that which could already occur. Having regard to this, it is currently permissible to grant development consent for 3 or more detached dwellings on land within the RU1 and RU2 zones which have an area greater than 10 hectares and comply with the provisions of the State Environmental Planning Policy No 15—Rural Landsharing Communities (SEPP). However, it is not permissible to grant development consent for 2 detached dwellings under the SEPP or the NLEP2010.

The existing subdivision development standards are proposed to remain in force. This means that the subdivision of land to locate the detached dwellings onto separate allotments will only be permissible if it is already permissible to subdivide the land; therefore ensuring rural land fragmentation will not occur as a result of permitting detached dual occupancies.

As such, it is recommended that the Land Use Tables for the RU1 Primary Production, RU2 Rural Landscape and R5 Large Lot Residential Land Use Tables be amended by deleting "dual occupancies

(attached)” and adding “dual occupancies” as permissible with consent. Also, the word “attached” is proposed to be removed from clause 4.2A.

1.14 Amend the Land Use Table to make eco-tourist facilities permissible within the RU1 Primary Production, RU2 Rural Landscape, and R5 Large Lot Residential zones

Amendment No 7 of the NLEP2010 was to allow ‘*Tourist and Visitor Accommodation*’ as permissible with consent in the RU1 Primary Production Zone, RU2 Rural Landscape Zone, and R5 Large Lot Residential Zones but prohibit the land uses ‘*backpackers accommodation*’, ‘*hotel and motel accommodation*’ and ‘*serviced apartment*’. By preparing the Land Use Tables in this way ‘*farm stay accommodation*’, ‘*bed and breakfast accommodation*’ and any other form of tourist accommodation which did not fall within the definition of a prohibited land use became permissible uses.

It is to be noted that clause 5.4 of the NLEP2010 restricts guest accommodation within farm stay accommodation to no more than 5 bedrooms and no more than 3 bedrooms for bed and breakfast accommodation.

The intent of Amendment No 7 was to promote alternative forms of temporary accommodation in rural areas, such as tourist cabins, as it was considered that ‘*farm stay accommodation*’ and ‘*bed and breakfast accommodation*’ was too restrictive in the development of tourism in the rural areas of the shire.

However, having regard to the definition of ‘*tourist and visitor accommodation*’ and the definition of ‘*hotel or motel accommodation*’; it is not considered that there are other forms of tourist and visitor accommodation which are permissible as it is considered that they would fall within the definition of ‘*hotel or motel accommodation*’ which is a prohibited land use.

In order to permit alternative forms of temporary accommodation in rural areas (such as self-contained cabins) in a manner which will not be contrary to the rural planning principles, it is recommended that the Land Use Table be amended by making an ‘*eco-tourist facility*’ permissible with consent in the above zones.

Furthermore, if an ‘*eco-tourist facility*’ was permissible with consent; clause 5.13 of the NLEP2010 would become applicable which would read as follows:

5.13 Eco-tourist facilities

- (1) *The objectives of this clause are as follows:*
 - (a) *to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out*
 - (b) *to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site.*
- (2) *This clause applies if development for the purposes of an eco-tourist facility is permitted with development consent under this Plan.*
- (3) *The consent authority must not grant consent under this Plan to carry out development for the purposes of an eco-tourist facility unless the consent authority is satisfied that:*
 - (a) *there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and*
 - (b) *the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and*
 - (c) *the development will enhance an appreciation of the environmental and cultural values of the site or area, and*
 - (d) *the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal, and*
 - (e) *the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and*
 - (f) *waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and*

- (g) *the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native flora, and*
- (h) *any infrastructure services to the site will be provided without significant modification to the environment, and*
- (i) *any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and*
- (j) *the development will not adversely affect the agricultural productivity of adjoining land, and*
- (k) *the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:*
 - (i) *measures to remove any threat of serious or irreversible environmental damage*
 - (ii) *the maintenance (or regeneration where necessary) of habitats*
 - (iii) *efficient and minimal energy and water use and waste output*
 - (iv) *mechanisms for monitoring and reviewing the effect of the development on the natural environment*
 - (v) *maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.*

Having regard to the above, it is considered that amending the Land Use Table by making an 'eco-tourist facility' permissible with consent within the RU1 Primary Production, RU2 Rural Landscape, and R5 Large Lot Residential Zones will promote additional tourist accommodation within the rural areas of the shire in a manner which will positively contribute to the local economy and be consistent with Council's previous resolution to support Amendment No 7 of the NLEP.

It is considered that clause 5.13 will provide sufficient grounds to regulate the location and size of eco-tourism developments to ensure they are suitable for the area in which they are to be located. Should Council wish to further regulate the location and size of such developments, an amendment to the DCP could be made in the future.

Part 1 Objectives or Intended outcomes

The primary objective of this LEP Amendment is to implement minor changes and correct anomalies with the NLEP2010.

Part 2 Explanation of Provisions

The proposed amendments are outlined in the previous section of this Planning Proposal.

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 NLEP2010, some of which have been noticed by Council and others being requested by property owners. The NLEP2010 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 objectives are unable to be achieved without a Planning Proposal.

Section B –Relationship to strategic planning framework.

3 *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?*

Yes, the NLEP2010 is consistent with the Mid North Coast Regional Strategy and this planning proposal is correcting minor anomalies with the NLEP2010 and making other minor amendments. New housing options provided by changes to dual occupancy and secondary dwelling permissibility will cater to the needs of an ageing population.

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

Yes, the NLEP2010 is consistent with Council's 2023 Community Strategic Plan and this planning proposal is correcting minor anomalies and making other minor changes within the NLEP2010. In particular, the changes to dual occupancies and secondary dwellings will assist in meeting strategy 5.2.1: "Provide diverse, sustainable, adaptable and affordable housing options through effective land use planning".

5 *Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPP's)?*

Yes – see Appendix 1.

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

Yes – see Appendix 2.

Section C – Environmental, social and economic impact

7 *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

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*.

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

No, the amendments proposed in this Planning Proposal are mostly rectifying errors with the NLEP2010 which have potential to result in detrimental environmental impacts or an unreasonable level or inappropriate type of development. Any other environmental effects will be assessed via the development application process.

9 *Has the planning proposal adequately addressed any social and economic effects?*

Yes, amendments proposed in this Planning Proposal are mostly rectifying errors with the NLEP2010 which have the potential to result in detrimental social impacts and an unreasonable level of development. With regard to secondary dwellings, dual occupancies and eco-tourist facilities, the addition of these uses in the Land Use Table will provide greater capacity for inter-generational farming, more diverse uses of rural properties and better economic outcomes for property owners.

Section D – State and Commonwealth Interests

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

Yes – much of the proposal relates to minor corrections to the NLEP2010 for which additional public infrastructure is not required. The issue of provision of public infrastructure for dual occupancies, secondary dwellings and eco-tourist facilities is not considered significant as

attached dual occupancies and other tourist and visitor accommodation types are already permitted in these zones.

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

Government authorities have not been formally involved in this Planning Proposal as it is yet to receive Gateway Approval. It is anticipated that consultation will be required with the NSW Rural Fire Service and Department of Primary Industries regarding some of the proposed amendments.

Part 4 Mapping

Relevant maps have been provided previously in this Planning Proposal.

Part 5 Community Consultation

Council will commence community consultation in accordance with the Gateway Determination. The proposal will be advertised in the local newspaper and on Council's website.

Part 6 Project Timeline

February – March 2016	Gateway determination issued by Department of Planning & Environment
April – May 2016	Public exhibition of planning proposal and consultation with government agencies
May 2016	Analysis of public submissions and agency responses
	Preparation of Council report
June 2016	Endorsed planning proposal submitted to Department of Planning and Environment for finalisation

Appendix 1 - State Environmental Planning Policies

The following State Environmental Planning Policies (SEPPs) are considered relevant to and have been considered in the preparation of this planning proposal:

- **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 (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. The SEPP identifies rural planning principles (clause 7) that must be taken into account when a Council prepares a planning proposal. These are brought into effect through a Section 117 Direction. This is dealt with in more detail in the following section. It also identifies matters to be considered in determining development applications for rural subdivision and rural dwellings (clause 10). These are the matters that Council must take into account if it receives an application for a detached dual occupancy or a secondary dwelling, should the planning proposal succeed in amending NLEP2010.

The planning proposal is consistent with the rural planning principles and any application arising from this planning proposal will only be approved if it is consistent with the matters in clause 10. On balance it is consistent with the SEPP.

- **State Environmental Planning Policy No 55 – Remediation of Land**

SEPP 55 (Remediation of Land) recognises that land which is known to be contaminated by past land uses can still be zoned for development as long as:

*“(a) the planning authority has considered whether the land is contaminated, and
(b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and
(c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.”*

In this planning proposal, only minor amendments to correct errors are causing land to be rezoned. Further, detached dual occupancies, secondary dwellings and eco-tourist facilities will only be permissible where a dwelling is already permitted on the land.

Because the planning proposal is not significantly increasing the range of sensitive land uses on the site and past land use will still be addressed in any development application, it is consistent with the SEPP.

Appendix 2 - Section 117 Directions

A number of directions under Section 117 of the Environmental Planning and Assessment Act 1979 are relevant to this planning proposal.

1 Employment and Resources

Direction 1.2 Rural Zones

The objective of this direction is to protect the agricultural production value of rural land.

This direction applies when a council prepares a draft LEP that affects land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

A draft LEP shall:

- a not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.
- b not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).

A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are:

- a justified by a strategy which:
 - i gives consideration to the objectives of this direction,
 - ii identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular site or sites), and
 - iii is approved by the Director-General of the Department of Planning, or
- b justified by an environmental study prepared in accordance with section 57 of the *Environmental Planning and Assessment Act 1979* which gives consideration to the objectives of this direction, or
- c in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- d is of minor significance.

The minor amendments which are rectifying errors within this planning proposal are consistent with the requirements of this direction. As attached dual occupancies and some tourist and visitor accommodation types are already permitted in the RU1, RU2 and R5 zones, permitting detached dual occupancies, secondary dwellings and eco-tourist facilities will not increase the permitted density on these properties, but will provide more flexibility in how developments can be carried out.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

This direction applies when a council prepares a draft LEP that would have the effect of:

- a prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or
- b restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.

In the preparation of a draft LEP affected by this direction, the council shall:

- a consult the Director-General of the Department of Primary Industries (DPI) to identify any:
 - i resources of coal, other minerals, petroleum or extractive material that are of either State or regional significance, and
 - ii existing mines, petroleum production operations or extractive industries occurring in the area subject to the draft LEP, and
- b seek advice from the Director-General of DPI on the development potential of resources identified under (4)(a)(i), and
- c identify and take into consideration issues likely to lead to land use conflict between other land uses and:
 - i development of resources identified under (4)(a)(i), or
 - ii existing development identified under (4)(a)(ii).

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

Direction 1.5 Rural Lands

The objectives of this direction are to:

- a protect the agricultural production value of rural land,
- b facilitate the orderly and economic development of rural lands for rural and related purposes.

This direction applies when:

- a a council prepares a draft LEP that affects land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or
- b a council prepares a draft LEP that changes the existing minimum lot size on land within a rural or environment protection zone.

What a council must do if this direction applies

- a A draft LEP to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.
- b A draft LEP to which clause 3(b) applies must be consistent with the Rural Subdivision Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.

The amendment is consistent with this direction – see Direction 1.2 above.

2 Environment and Heritage

Direction 2.1 Environment Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas.

This direction applies when a council prepares a draft LEP.

What a council must do if this direction applies:

- a A draft LEP shall include provisions that facilitate the protection and conservation of environmentally sensitive areas.
- b A draft LEP that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP shall not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “*Rural Lands*”.

The amendments within this planning proposal are consistent with the requirements of this direction as some of the anomalies to be corrected relate to land in environment protection zones.

Direction 2.2 Coastal Protection

The objective of this direction is to implement the principles in the NSW Coastal Policy.

This direction applies to the coastal zone, as defined in the *Coastal Protection Act 1979*.

This direction applies when a council prepares a draft LEP that applies to land in the coastal zone.

A draft LEP shall include provisions that give effect to and are consistent with:

- a the *NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997*, and
- b the *Coastal Design Guidelines 2003*, and
- c the manual relating to the management of the coastline for the purposes of section 733 of the *Local Government Act 1993* (the *NSW Coastline Management Manual 1990*).

The amendments within this planning proposal are consistent with the requirements of this direction. The NLEP2010 contains provisions which address Coastal Development.

Direction 2.3 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

This direction applies when a council prepares a draft LEP.

A draft LEP shall contain provisions that facilitate the conservation of:

- a items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,
- b Aboriginal objects or Aboriginal places that are protected under the *National Parks and Wildlife Act 1974*, and
- c Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the council, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

The amendments within this planning proposal are consistent with the requirements of this direction, particularly the proposed listing of the Macksville Post Office. The NLEP2010 contains provisions to address Heritage Areas and Items.

3 Housing, Infrastructure and Urban Development

Direction 3.1 Residential Zones

The objectives of this direction are:

- a to encourage a variety and choice of housing types to provide for existing and future housing needs,
- b to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- c to minimise the impact of residential development on the environment and resource lands.

This direction applies when a council prepares a draft LEP that affects land within:

- a an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- b any other zone in which significant residential development is permitted or proposed to be permitted.

A draft LEP shall include provisions that encourage the provision of housing that will:

- a broaden the choice of building types and locations available in the housing market, and
- b make more efficient use of existing infrastructure and services, and
- c reduce the consumption of land for housing and associated urban development on the urban fringe, and
- d be of good design.

A draft LEP shall, in relation to land to which this direction applies:

- a contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- b not contain provisions which will reduce the permissible residential density of land.

The amendments within this planning proposal are consistent with the requirements of this direction. Amendments under this proposal are proposed to rectify anomalies with residential zoned land in a number of areas.

Direction 3.4 Integrated Land Use and Transport

The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- a improving access to housing, jobs and services by walking, cycling and public transport, and
- b increasing the choice of available transport and reducing dependence on cars, and
- c reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
- d supporting the efficient and viable operation of public transport services, and
- e providing for the efficient movement of freight.

This direction applies when a council prepares a draft LEP that creates, alters or removes a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

A draft LEP shall locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:

- a *Improving Transport Choice – Guidelines for planning and development* (DUAP 2001), and
- b *The Right Place for Business and Services – Planning Policy* (DUAP 2001).

The proposal does not propose to rezone areas rather it is rectifying anomalies with the standards associated with the zones.

4 Hazard and Risk

Direction 4.1 Acid Sulfate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

This direction applies when a council prepares a draft LEP that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.

Council shall consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a draft LEP that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.

When a council is preparing a draft LEP to introduce provisions to regulate works in acid sulfate soils, those provisions shall be consistent with:

- a the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Director-General, or
- b such other provisions provided by the Director-General of the Department of Planning that are consistent with the Acid Sulfate Soils Planning Guidelines.

A council shall not prepare a draft LEP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the council has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. Council shall provide a copy of any such study with its statement to the Director-General of the Department of Planning under section 64 of the EP&A Act.

Where provisions referred to under paragraph (5) of this direction have not been introduced and council is preparing a draft LEP that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the draft LEP must contain provisions consistent with paragraph (5).

The following properties are indicated as being impacted by acid sulphate soils:

Thistle Park, Dudley Street, Macksville (Lot 12 Sec A DP 11590; Lot 1 DP 122896; Lot 1 DP 122897; Lot 1 DP 122898; Lot 7 Sec D DP 11590; Lot 6 Sec D DP 11590; Lot 5 Sec D DP 11590; Lot 4 Sec D DP 11590; Lot 1 DP 729696) – Classes 3 and 4

5 Beer Parade, Nambucca Heads, Lot 1 DP 541043 and Lot 9 Sec 27 DP 758749 – Class 5

Macksville Post Office, Cnr Cooper and River Streets, Macksville, Lot 1 DP 816339 – Classes 3 and 4

2 Fred Brain Avenue, Nambucca Heads, Lot 21 DP 1161807 – Class 4

24 Bellevue Drive & 10 McLennans Lane, North Macksville, Lot 5 DP 242819, Lot 9 DP 534177, Lot B DP 955417, Lot 1 DP 558086, Lot 1 DP 1063510 & Lot 412 DP 625737 – Classes 5, 3 and 2

Boronia Street, Nambucca Heads, Lot 701 DP 1054525 – Class 5

31 Tuna Street, Valla Beach, Lot 157 DP 755560 – Class 5

The amendments within this planning proposal are consistent with this direction and will result in better environmental protection with regard to acid sulphate soils.

Direction 4.3 Flood Prone Land

The objectives of this direction are:

- a to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*, and
- b to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

This direction applies when a council prepares a draft LEP that creates, removes or alters a zone or a provision that affects flood prone land.

A draft LEP shall include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005* (including the *Guideline on Development Controls on Low Flood Risk Areas*).

A draft LEP shall not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.

A draft LEP shall not contain provisions that apply to the flood planning areas which:

- a permit development in floodway areas,
- b permit development that will result in significant flood impacts to other properties,
- c permit a significant increase in the development of that land,
- d are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or
- e permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.

A draft LEP must not impose flood related development controls above the residential flood planning level for residential development on land, unless a council provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

For the purposes of a draft LEP, a council must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the *Guideline on Development Controls on Low Flood Risk Areas*) unless a council provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

The following lots are indicated as being flood-prone land:

Thistle Park, Dudley Street, Macksville (Lot 12 Sec A DP 11590; Lot 1 DP 122896; Lot 1 DP 122897; Lot 1 DP 122898; Lot 7 Sec D DP 11590; Lot 6 Sec D DP 11590; Lot 5 Sec D DP 11590; Lot 4 Sec D DP 11590; Lot 1 DP 729696)

5 Beer Parade, Nambucca Heads, Lot 1 DP 541043 and Lot 9 Sec 27 DP 758749

Macksville Post Office, Cnr Cooper and River Streets, Macksville, Lot 1 DP 816339

24 Bellevue Drive & 10 McLennans Lane, North Macksville, Lot 5 DP 242819, Lot 9 DP 534177, Lot B DP 955417, Lot 1 DP 558086, Lot 1 DP 1063510 & Lot 412 DP 625737

31 Tuna Street, Valla Beach, Lot 157 DP 755560

The planning proposal is consistent with this direction. The NLEP2010 contains provisions that address flooding.

Direction 4.4 Planning for Bushfire Protection

The objectives of this direction are:

- a to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- b to encourage sound management of bush fire prone areas.

This direction applies when a council prepares a draft LEP that affects, or is in proximity to land mapped as bushfire prone land.

In the preparation of a draft LEP a Council shall consult with the Commissioner of the NSW Rural Fire Service under section 62 of the EP&A Act, and take into account any comments so made.

A draft LEP shall:

- a have regard to *Planning for Bushfire Protection 2006*,
- b introduce controls that avoid placing inappropriate developments in hazardous areas, and
- c ensure that bushfire hazard reduction is not prohibited within the APZ.

A draft LEP shall, where development is proposed, comply with the following provisions, as appropriate:

- a provide an Asset Protection Zone (APZ) incorporating at a minimum:
 - i an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
 - ii an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
- b for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the draft LEP permit Special Fire Protection Purposes (as defined under section 100B of the *Rural Fires Act 1997*), the APZ provisions must be complied with,
- c contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
- d contain provisions for adequate water supply for fire fighting purposes,
- e minimise the perimeter of the area of land interfacing the hazard which may be developed,
- f introduce controls on the placement of combustible materials in the Inner Protection Area.

The following lots are indicated as being bushfire-prone:

24 Bellevue Drive & 10 McLennans Lane, North Macksville, Lot 5 DP 242819, Lot 9 DP 534177, Lot B DP 955417, Lot 1 DP 558086, Lot 1 DP 1063510 & Lot 412 DP 625737

Boronia Street, Nambucca Heads, Lot 701 DP 1054525

Loftus Street, Nambucca Heads, Lot 470 DP 755550

Upper Buckrabendinni Road, Buckra Bendinni, Lot 1 DP 560614

31 Tuna Street, Valla Beach, Lot 157 DP 755560

The planning proposal is consistent with this direction.

5 Regional Planning

Direction 5.1 Implementation of Regional Strategies

The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

This direction applies to land to which the following regional strategies apply:

- (a) Far North Coast Regional Strategy
- (b) Lower Hunter Regional Strategy
- (c) Illawarra Regional Strategy
- (d) South Coast Regional Strategy
- (e) Sydney–Canberra Corridor Regional Strategy
- (f) Central Coast Regional Strategy, and
- (g) Mid North Coast Regional Strategy

This direction applies when a relevant planning authority prepares a planning proposal.

Planning proposals must be consistent with a regional strategy released by the Minister for Planning.

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy:

- (a) is of minor significance, and
- (b) the planning proposal achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.

The planning proposal is consistent with this direction.

Direction 5.4 Commercial and Retail Development along the Pacific Highway, North Coast

The objectives for managing commercial and retail development along the Pacific Highway are:

- (a) to protect the Pacific Highway's function, that is to operate as the North Coast's primary inter- and intra-regional road traffic route;
- (b) to prevent inappropriate development fronting the highway;
- (c) to protect public expenditure invested in the Pacific Highway;
- (d) to protect and improve highway safety and highway efficiency;
- (e) to provide for the food, vehicle service and rest needs of travellers on the highway; and
- (f) to reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns.

This Direction applies to those council areas on the North Coast that the Pacific Highway traverses, being those council areas between Port Stephens Shire Council and Tweed Shire Council, inclusive.

This Direction applies when a relevant planning authority prepares a planning proposal for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.

A planning proposal that applies to land located on "within town" segments of the Pacific Highway must provide that:

- (a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway;
- (b) development with frontage to the Pacific Highway must consider impact the development has on the safety and efficiency of the highway; and
- (c) for the purposes of this paragraph, "within town" means areas which, prior to the draft local environmental plan, have an urban zone (eg: "village", "residential", "tourist", "commercial", "industrial", etc) and where the Pacific Highway speed limit is less than 80km/hour.

A planning proposal that applies to land located on "out-of-town" segments of the Pacific Highway must provide that:

- (a) new commercial or retail development must not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction;
- (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and
- (c) for the purposes of this paragraph, "out-of-town" means areas which, prior to the draft local environmental plan, do not have an urban zone (eg: "village", "residential", "tourist", "commercial", "industrial", etc) or are in areas where the Pacific Highway speed limit is 80km/hour or greater.

Notwithstanding the requirements of paragraphs (4) and (5), the establishment of highway service centres may be permitted at the localities listed in Table 1, provided that Roads and Maritime Services is satisfied that the highway service centre(s) can be safely and efficiently integrated into the Highway interchange(s) at those localities. For the purposes of this paragraph, a highway service centre has the same meaning as is contained in the Standard Instrument (Local Environmental Plans) Order 2006.

A planning proposal may be inconsistent with the terms of this Direction only if the relevant planning authority can satisfy the Secretary of the Department of Planning and Environment (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are of minor significance.

The planning proposal is consistent with this direction.

6 Local Plan Making

Direction 6.1 Approval and Referral Requirements

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

A draft LEP shall:

- a minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and
- b not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the council has obtained the approval of:
 - i the appropriate Minister or public authority, and
 - ii the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General),prior to a certificate under section 65 of the Act being issued, and
- c not identify development as designated development unless the council:
 - i can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and
 - ii has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to a certificate being issued under section 65 of the Environmental Planning and Assessment Act 1979.

This Planning Proposal does not require the implementation of any concurrence provisions. The planning proposal is consistent with this direction.

Direction 6.2 Reserving Land for Public Purposes

The objectives of this direction are:

- a to facilitate the provision of public services and facilities by reserving land for public purposes, and
- b to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

A draft LEP shall not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

When a Minister or public authority requests a council to reserve land for a public purpose in a draft LEP and the land would be required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*, the council shall:

- a reserve the land in accordance with the request, and
- b include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and
- c identify the relevant acquiring authority for the land.

When a Minister or public authority requests a council to include provisions in a draft LEP relating to the use of any land reserved for a public purpose before that land is acquired, the council shall:

- a include the requested provisions, or
- b take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired.

When a Minister or public authority requests a council to include provisions in a draft LEP to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the council shall rezone and/or remove the relevant reservation in accordance with the request.

A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:

- a with respect to a request referred to in paragraph (7), that further information is required before appropriate planning controls for the land can be determined, or
- b the provisions of the draft LEP that are inconsistent with the terms of this direction are of minor significance.

This Planning Proposal is consistent with this direction

Direction 6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

This direction applies when a council prepares a draft LEP to allow a particular development to be carried out.

A draft LEP that amends another environmental planning instrument in order to allow a particular development proposal to be carried out shall either:

- a allow that land use to be carried out in the zone the land is situated on, or
- b rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or
- c allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

A draft LEP shall not contain or refer to drawings that show details of the development proposal.

The planning proposal is consistent with this direction.