

Planning and Assessment

IRF19/5935

Gateway determination report

LGA	Ballina
PPA	Ballina Shire Council
NAME	Farm Gate Retail Activity on Rural Land
NUMBER	PP_2019_BALLI_004_00
LEP TO BE AMENDED	Ballina LEP 2012
ADDRESS	The proposal will apply to all land in the Ballina Local Government Area zoned RU1 Primary Production and RU2 Rural Landscape
DESCRIPTION	Zones RU1 and RU2 under the Ballina LEP 2012
RECEIVED	4 September 2019
FILE NO.	IRF19/5935
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to:

- permit with consent 'industrial retail outlets' associated with an approved rural industry within the RU1 Primary Production zone and RU2 Rural Landscape zone under the Ballina Local Environment Plan 2012;
- identify a maximum floor space of 100m² for industrial retail outlets in the RU1 and RU2 zones; and
- amend clause 7.9 Rural and Nature Based Tourism of Ballina LEP 2012 to apply to industrial retail outlets in the RU1 and RU2 zones.

1.2 Site description

The proposal applies to all land zoned RU1 Primary Production and RU2 Rural Landscape under Ballina LEP 2012 (Figure 1).

1.3 Existing planning controls

Industrial retail outlets are currently prohibited in the RU1 and RU2 zones under Ballina LEP 2012.

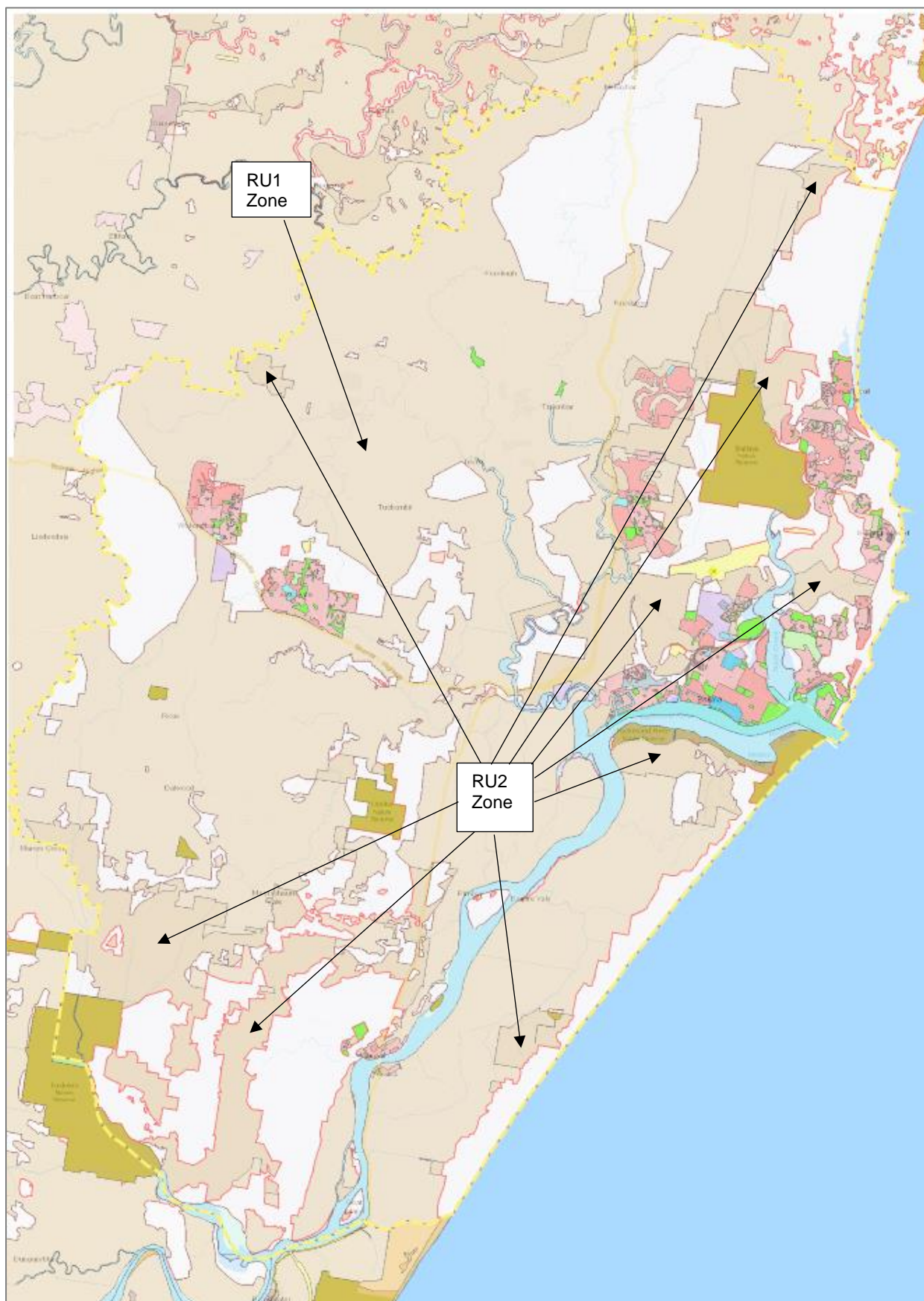


Figure 1: Ballina LGA zone map

Clause 5.4 of the Ballina LEP 2012 includes controls relating to 'Industrial retail outlet' uses. Clause 5.4(4) states:

(4) Industrial retail outlets

If development for the purposes of an industrial retail outlet is permitted under this Plan, the retail floor area must not exceed:

- (a) 25% of the gross floor area of the industry or rural industry located on the same land as the retail outlet, or*
- (b) 400 square metres,*

whichever is the lesser.

Clause 7.9 of the Ballina LEP 2012 includes controls for rural and nature-based tourism development and applies to development within RU1 and RU2 zoned land. Clause 7.9 (3) states:

(3) Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that:

- (a) there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed, and*
- (b) the development is small scale and low impact, and*
- (c) the development is complementary to the rural or environmental attributes of the land and its surrounds, and*
- (d) the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.*

1.4 Summary of recommendation

It is considered that the planning proposal has merit to proceed to a Gateway determination. It is recommended that the proposal proceed subject to conditions as it will provide opportunities to support the agricultural sector by facilitating diversification through agri-based tourist activities and low scale retail activities associated with an approved rural industry.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objective of the planning proposal is clear and seeks to provide for low scale retail sale of manufactured goods produced by approved rural industries located on land within the RU1 Primary Production zone and RU2 Rural Landscape zone.

The outcomes of this planning proposal will be to provide opportunities for the diversification of agri-based tourist activity on rural land and development at a scale and intensity that will compliment rather than compete with approved rural activities.

2.2 Explanation of provisions

The explanation of provisions to achieve the objectives of the proposal is clear and will be achieved by amending the Ballina LEP 2012 to:

- permit 'industrial retail outlets' with development consent on land zoned RU1 Primary Production or RU2 Rural Landscape only where an approved 'rural industry' is on the land;
- prohibit 'industrial retail outlets' on land zoned RU1 Primary Production or RU2 Rural Landscape where they are associated with 'home industry';

- nominate a maximum floor space area control of 100m² for 'industrial retail outlets' on land zoned RU1 Primary Production or RU2 Rural Landscape; and
- make 'industrial retail outlets' on land zoned RU1 Primary Production or RU2 Rural Landscape subject to the provisions of clause 7.9 (Rural and nature-based tourism development).

While the formal drafting of the amendment will be undertaken by Parliamentary Counsel, it is anticipated the changes will be implemented through an amendment to the RU1 and RU2 zone tables and the inclusion of appropriate local provisions applying to industrial retail outlets associated with an approved rural industry that limit the scope and size.

2.3 Mapping

The planning proposal report indicated that the land subject to the proposal is shown on a 'site identification map' contained within the appendices. A discussion with Council Officer Mr Simon Scott on 16 September 2019 confirmed that this was an error and a map is not intended to be included in the planning proposal.

It is considered appropriate however for the planning proposal to be amended prior to agency and public consultation to include a map of all land affected by this planning proposal to assist the community understand where the proposed planning control changes will apply (particularly as Ballina LGA contains a number of deferred areas to which Ballina LEP 1987 still applies and will not be subject to the proposed changes).

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report and responds to interest expressed from rural landholders, particularly those engaged in value adding around food/agriculture products grown on their land and boosting brand recognition and diversification of on-farm income. The proposal is needed to support farm and food tourism due to the increasing popularity of activities such as visiting working farms and on farm production facilities and participating in tasting and retail sale of farm produced goods.

The planning proposal confirms that the intended objectives of the planning proposal are unable to be achieved under the current roadside stall provisions as it limits the retail activity to 'a place or temporary structure'.

The proposal is also needed to give effect to the following actions of Council's adopted strategies:

- Ballina Shire Economic Development Strategy (2018) – Action C6 – '*Facilitate low scale commercial activities in rural areas such as roadside stalls and rural food tourist activities through changes to the land use planning regime*'.
- Alstonville Strategic Plan (2018) – '*Develop policies that promote a vibrant rural hinterland. Encourage primary production including the development of related income streams such as roadside stalls, farmers markets, farm trails, farm stay accommodation and similar rural tourism activities*'.

The current proposal contains limited information on the reasons for excluding home industries and the identification of a maximum 100m² as an appropriate floor space standard for industrial retail outlets in rural areas. Council staff have provided the following further information in regard to these issues:

- *the proposed restriction of the industrial retail outlet to apply only the rural industry and not home industry, this matter was discussed during the debate in the Council Chamber with Council's Director of Planning and Environmental Health advising the Council in response to a question put by a Councillor that the intention of the planning proposal was only to have it to apply to rural industries (such as those activities set out in the report) rather than to home industry which may include activities such as potteries. This was not reflected in the resolution of the Council however as the Councillors were satisfied with the verbal advice of the Director; and*
- *the floor space restriction, the 100m² restriction was provided in the absence of a "or 10% of the rural industry GFA" so as to not overly restrict the floor space for the activity, as practically a minimum area would need to be provided to enable the display of goods, sales area and customer circulation. Notwithstanding this matter may be subject to further consideration post public exhibition.*

It is recommended that the Gateway determination require the proposal be amended prior to agency and community consultation to include additional details on the reasons for excluding home industries and the identification of a maximum 100m² as an appropriate floor space standard for industrial retail outlets in rural areas.

4. STRATEGIC ASSESSMENT

4.1 State

The proposal is consistent with State Planning Framework.

4.2 Regional / District

North Coast Regional Plan 2036 (NCRP)

The NCRP contains the following Directions and associated actions of relevance to the proposal:

- 'Direction 8 – Promote the growth of tourism'

This proposal directly aligns with "*Action 8.2 – Facilitate tourism and visitor accommodation and supporting land uses in coastal and rural hinterland locations through local growth management strategies and local environment plans*" in that the proposed amendment to the LEP will enable additional opportunities and facilities to increase tourism opportunities within rural areas of Ballina.

- 'Direction 11 – Protect and enhance productive agricultural lands'

The proposal is consistent in particular with "*Action 11.4 – Encourage niche commercial, tourist and recreation activities that complement and promote a stronger agricultural sector and build the sector's capacity to adapt to changing circumstances*".

While the proposal is likely to be satisfactory with this Direction as it is limited in scale and aims only to complement approved rural industries, as the proposal does apply to identified important farmland, it is recommended that consistency with this Direction remain unresolved until after consultation with the Department of Planning Industry and Environment (Primary Industries) confirms the suitability of the proposal in terms of any potential rural land use impacts.

- 'Direction 12 – Grow agribusiness across the region'

The proposal seeks to protect existing agribusiness, ensure appropriate co-location of related industries and provide increased confidence and opportunities in agribusiness within the region. The proposal will facilitate the Ballina LEP to align and achieve *"Action 12.1 – Promote the expansion of food and fibre production, agrichemicals, farm machinery, wholesale and distribution, freight and logistics, and processing through flexible planning provisions in local growth management strategies and local environmental plans"*.

4.3 Local

Ballina Shire Council Community Strategic Plan 2013-2023

The planning proposal is in accordance with the *Ballina Shire Council Community Strategic Plan* as it aligns with the following outcomes:

- PE1 – *"We attract new business and visitors"* by promoting the area as an attractive place to invest and visit and minimise costs and regulatory requirements.
- PE2 – *"My Business can grow and diversify"* by developing plans that encourage business growth and diversification and facilitate a range of business activities.

Ballina Shire Economic Development Strategy 2018 (EDS)

The planning proposal is consistent with the *Ballina Shire Economic Development Strategy 2018* in that it aligns with Strategy C *"Attracting key anchor industries and talent"* and helps to achieve C6 *"Facilitate low scale commercial activities in rural areas such as roadside stalls and rural food tourist activities through changes to the land use planning regime"*.

4.4 Section 9.1 Ministerial Directions

1.5 Rural Lands

The planning proposal is inconsistent with this Direction as the proposal will affect RU1 and RU2 zoned land and does not identify and protect environmental values or potentially support farmers on properties adjoining future 'industrial retail outlets' in exercising their right to farm. While the inconsistency is considered likely to be of minor significance for the reasons discussed above regarding Direction 11 of the NCRP, it is recommended that this consistency remain unresolved until after consultation with the Department of Planning, Industry and Environment (Primary Industries) can confirm the suitability of the proposal in terms of any potential rural land use impacts.

2.2 Coastal Management

The planning proposal is inconsistent with this Direction as the RU1 and RU2 zones contain land mapped within the coastal zone and does not include provisions that give effect to and are consistent with the *Coastal Management Act 2016* or the associated toolkits and guidelines. This inconsistency is considered to be of minor significance as the proposal does not impact on matters of coastal significance and the SEPP (Coastal Management) 2018 already contains adequate protections relating to the coastline and coastal processes.

4.1 Acid Sulfate Soils

This Direction applies as sites that are zoned RU1 and RU2 within the Ballina LGA are identified as containing acid sulfate soils. The planning proposal is inconsistent with this Direction as it is not supported by an acid sulfate soils study. This inconsistency

is of minor significance as the Ballina LEP 2012 already contains suitable provisions that can appropriately address acid sulfate soils at the development stage.

4.3 Flood prone land

The planning proposal is inconsistent with this Direction as it affects flood prone land and does not specifically 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 *Guideline on Development Controls on Low Flood Risk Areas*). This inconsistency is of minor significance as the Ballina LEP 2012 already contains suitable provisions that can appropriately address flood impacts at the development stage.

4.4 Planning for Bushfire Protection

This Direction applies as the proposal affects bushfire prone land zoned RU1 and RU2 within the Ballina LGA. The Direction requires Council consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred the consistency of the proposal with the Direction remains unresolved.

5.10 Implementation of Regional Plans

As discussed in Section 4.2, the proposal is considered to be potentially inconsistent with the *North Coast Regional Plan 2036* (Direction 11) and this Direction will remain unresolved until after consultation with the Department of Planning, Industry and Environment (Primary Industries) can confirm the suitability of the proposal in terms of any potential rural land use impacts.

4.5 State environmental planning policies (SEPPs)

The proposal is considered to be generally consistent with all applicable SEPPs, noting the discussion in Section 4.4 regarding consistency with section 9.1 Direction 1.5 Rural Lands (and therefore the associated SEPP Primary Production and Rural Development).

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal to permit industrial retail outlets with consent in the RU1 and RU2 zones is considered likely to have a positive social impact. The proposal will help to diversify tourism activities and opportunities within the Ballina Shire and create potential tourist drive routes.

There is an increased demand for locally grown food and produce, driven by health and wellness within the region and Australia. The food culture and desire to seek opportunities for outdoor experiences away from the city and regional town centres will be catered for via this proposal. The introduction of industrial retail outlets in the RU1 and RU2 zones will increase awareness about locally grown food produce, manufactured products and the variety of farming/rural uses within the area.

Any potential adverse amenity impacts on neighbouring properties can be appropriately managed during the site-specific development assessment stage by Council.

5.2 Environmental

A number of potential environmental impacts could result from an 'industrial retail outlet' including additional noise, traffic and amenity issues associated with issues such as hours of operation. The planning proposal addresses these potential impacts by limiting the size of the future industrial retail outlet and expanding clause 7.9 of the

Ballina LEP to ensure any proposed development is assessed against an appropriate range of considerations for the rural context in which they are located.

It is anticipated that the restriction in the scale and size of the industrial retail outlet will limit any potential environmental impacts and that these can be adequately assessed and addressed as needed at the development application stage.

5.3 Economic

At a regional scale the planning proposal will contribute to the economic development of the Ballina Shire Local Government Area. The intended outcome of the proposal is to provide a value adding opportunity to existing and future rural industries which will increase sales and business opportunities.

At a local and site-specific level, permitting industrial retail outlets with consent has the potential to enhance farm economic viability and resilience. Diversification through industrial retail activities, is an alternative way to use farm resources to generate extra income and employment. This will result in job growth, increased revenue and reinvestment in existing rural industries which will add value to existing farm production.

5.4 Infrastructure

No adverse impact on State infrastructure has been identified associated with the proposal. It is however recommended that consultation with Transport for NSW (RMS) be undertaken to confirm the suitability of the proposal in terms of any potential efficiency and safety impacts on the road network. Other infrastructure issues associated with water, electricity and onsite effluent and waste disposal can be adequately assessed and addressed as needed at the development application stage.

6. CONSULTATION

6.1 Community

The proposal confirms that it will be exhibited in accordance with the Gateway determination and in accordance with the *Environmental Planning and Assessment Act 1979* (the Act).

This proposal is consistent with the description of a low impact proposal in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) which recommends a 14 day exhibition period. This exhibition period is considered appropriate.

6.2 Agencies

It is recommended that the following agencies be consulted:

- NSW Rural Fire Service (RFS)
- Department of Planning, Industry and Environment (Primary Industries)
- Transport for NSW (RMS)

7. TIME FRAME

The planning proposal includes a project timeline which estimates completion by January 2020.

To ensure the local plan making authority has adequate time to complete the necessary exhibition, reporting and legal drafting, it is recommended that a timeframe of nine months be provided.

8. LOCAL PLAN-MAKING AUTHORITY

Council is seeking an authorisation to act as the local plan-making authority under section 3.36(2) of the *Environment Planning and Assessment Act 1979* for this LEP amendment.

The proposal deals primarily with minor matters of local significance. It is recommended that an authorisation to act as the local plan making authority be issued to Council in this instance.

9. CONCLUSION

The planning proposal is considered to have merit as it will provide opportunities to support the agricultural sector by facilitating diversification through agri-based tourist activities and low scale retail activities associated with an approved rural industry.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions, 2.2 Coastal Management, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are justified; and
2. note that the consistency with section 9.1 Directions 1.5 Rural Lands, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans are 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 proposal is to be amended prior to agency and community consultation to include:
 - (a) a map of all affected land to assist the community understand where the proposed planning control changes will apply; and
 - (b) additional details on the reasons for excluding home industries from the proposed changes and the identification of a maximum 100m² as an appropriate floor space standard for industrial retail outlets in rural areas.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following public authorities:
 - NSW Rural Fire Service (RFS)
 - Department of Planning, Industry and Environment (Primary Industries)
 - Transport for NSW (RMS)
4. The time frame for completing the LEP is to be nine months from the date of the Gateway determination.

5. Given the nature of the planning proposal, Council should be the local plan-making authority



27/9/19

Craig Diss
Team Leader, Northern Region



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Jeremy Gray
Director, Northern Region
Planning and Assessment

Assessment officer: Rebecca Carpenter
Planning Officer, Northern Region
Phone: 6643 6421