



Planning Proposal 19/004

**» Farm Gate Retail Activity
on Rural Land**

September 2019 (V1. Gateway) 19/58867

ballina
shire council



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1. Introduction

1.1 Summary of Planning Proposal

This planning proposal applies to land within the RU1 Primary Production zone and RU2 Rural Landscape zone under the terms of the Ballina Local Environmental Plan 2012 (BLEP 2012). The land the subject of the proposal is shown on the Site Identification Map contained within Appendix 1.

The purpose of this planning proposal is to provide for modest low-scale retail activity on rural land in association with rural industry.

1.2 Council Resolutions

Council considered this planning proposal at its Ordinary Meeting of 25 July 2019. The Council resolved as follows (Minute No.250719/8):

- 1. That Council prepare a planning proposal to introduce provisions into the Ballina Local Environmental Plan 2012 to enable 'industrial retail outlet' as permissible with development consent on land within the RU1 Primary Production zone and RU2 Rural Landscape zone.*
- 2. That the planning proposal include 'industrial retail outlet' as a land use subject to clause 7.9 of the Ballina Local Environmental Plan 2012.*
- 3. That the planning proposal introduce floor space area controls to apply to industrial retail outlets located on rural land consistent with the parameters outlined in this report.*
- 4. That the planning proposal be forwarded to the Department of Planning, Industry and Environment for a Gateway determination.*
- 5. That the Department of Planning, Industry and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.*
- 6. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.*
- 7. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.*
- 8. That Council prepare complimentary amendments to the Ballina Shire Development Control Plan 2012 and include provisions to clarify the scope of activities considered to be ancillary to agriculture.*
- 9. That the draft amendments to the Ballina Shire Development Control Plan 2012 be reported to Council for further consideration prior to proceeding with the public exhibition of the amendments.*

A copy of the Council's resolution and the related report are contained in Appendix 3.

1.3 Gateway Determination

To be completed following the Gateway determination.

2. Objectives & Intended Outcomes

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

The proposal seeks to achieve this by amending the Ballina LEP 2012 to:

- allow ‘ industrial retail outlets’ with development consent on land zoned RU1 Primary Production or RU2 Rural Landscape only where they are associated with a ‘rural industry’ on the land;
- prohibit ‘industrial retail outlets’ on land zoned RU1 Primary Production or RU2 Rural Landscape where they are associated only with a ‘home industry’;
- nominate a maximum floor space area control of 100 square meters 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).

The outcomes of this planning proposal will be to:

- Provide opportunities for the diversification of agri-based tourist activity on rural land.
- Provide for such development at a scale and intensity that will compliment rather than compete with other legitimate rural activities.

The planning proposal is supported by development control plan provisions, which are provided in Appendix 1.

3. Explanation of the Proposal

3.1 Land to Which the Planning Proposal Applies

This planning proposal relates to all land within the following zones, under the terms of the Ballina Local Environmental Plan 2012:

- RU1 Primary Production zone
- RU2 Rural Landscape zone

3.2 The Proposal – Explanation of Provisions

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

The proposal seeks to achieve this by amending the Ballina LEP 2012 to:

- allow ‘industrial retail outlets’ with development consent on land zoned RU1 Primary Production or RU2 Rural Landscape only where they are associated with a ‘rural industry’ on the land;
- prohibit ‘industrial retail outlets’ on land zoned RU1 Primary Production or RU2 Rural Landscape where they are associated only with a ‘home industry’;
- nominate a maximum floor space area control of 100 square meters 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).

A copy of the Council report and associated Minute of the Council is provided in Appendix 3.

The planning proposal is supported by proposed draft Development Control Plan provisions. These draft provisions are contained in Appendix 1 (may be subject to change).

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

Yes. The planning proposal will give effect to the following actions of Council endorsed 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’.

Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. A planning proposal is the appropriate and only mechanism to integrate these changes into the Ballina LEP 2012.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

North Coast Regional Plan 2016

Ballina is identified in the Plan within the Far North Coast subregion.

The Regional Plan (under Direction 6 - Develop successful centres of employment) encourages the clustering of commercial uses within centres of activity through the following actions:

‘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 environmental plans’

‘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’

‘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’

This proposal seeks to support the viability of primary production and rural industry by providing for modest agri-based tourism activity in association with rural value-adding enterprises (rural industries). The proposal also seeks to support the development of regional tourism and export branding.

Q4 Will the planning proposal give effect to a council’s endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Ballina Shire Council Community Strategic Plan 2013-2023

The proposal is considered to be consistent with the following Prosperous Economy and Engaged Leadership outcomes contained within Council’s Community Strategic Plan 2017 - 2027:

REF:	OUR OUTCOMES AND WHAT COUNCIL WILL DO	WHAT THE BENEFITS WILL BE
PE1	WE ATTRACT NEW BUSINESS AND VISITORS	
PE1.1	Promote our area as an attractive place to visit and live	Enhanced experiences for residents and visitors Increased population and visitation growth
PE1.2	Provide opportunities for new business	Economy expands over time
PE1.3	Encourage diversification and enhance image of the local economy	Increased resilience of the local economy
PE2	MY BUSINESS CAN GROW AND DIVERSIFY	
PE2.1	Enhance transport and other business networks	Increased business opportunities and growth
PE2.2	Facilitate a range of Council business activities to support economic development	Council contributes to the local economy Council understands the business environment Viable commercial portfolio
PE2.3	Provide efficient and cost effective regulatory environment for doing business	Easier to do business Enhance business relationships
PE3	IMPROVE LIVEABILITY IN THE SHIRE	
PE3.1	Support residential development that delivers services close to home	Lower cost of living
PE3.2	Facilitate and provide affordable infrastructure	More affordable housing
PE3.3	Improve connectivity within the shire	Reduced transport costs

Ballina Shire Economic Development Strategy 2018 (EDS)

The planning proposal is consistent with the Ballina Shire Economic Development Strategy (EDS).

The EDS outlines Council's strategy for supporting economic development in the shire. The objectives of the Strategy are as follows:

- Support the development of a strong entrepreneurial culture
- Build confidence through leadership
- Attract key anchor industries and talent
- Provide proactive community engagement and communication

The planning proposal seeks to advance the objectives of the EDS as well as directly giving effect to the following strategic action:

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'.

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The proposal is considered to be generally consistent with applicable State Environmental Planning Policies (SEPPs).

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

No. A number of inconsistencies, considered to be of minor significance, have been identified. A Section 9.1 Direction checklist for this planning proposal is provided at Appendix 2.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The planning proposal does not give rise to any direct adverse impacts on critical habitat or threatened species, population or ecological communities, or their habitats.

Detailed assessment of any subsequent development applications will include consideration of ecological and biodiversity issues so as to ensure that there are unlikely to be any adverse outcomes.

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no other significant environmental impacts identified as a result of the proposed rezoning.

Q9 Has the planning proposal adequately addressed any social and economic effects?

The social and economic outcomes resulting from the proposed rezoning are considered to be generally positive. The diversification of on-farm tourist activity should provide for improved economic opportunity, employment and associated social wellbeing.

Potential negative impacts associated with land use conflict and rural amenity are addressed largely through the application of appropriate development standards limiting the scale and intensity of the land uses enabled by the proposal.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

The proposal is not considered to generate any significant increase in demand for public infrastructure above that generated by development already permitted within the RU1 and RU2 zones.

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation will be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the LEP amendment.

5. Mapping

No mapping is proposed to support this planning proposal.

6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*.

7. Timeline

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	September 2019
Government Agency Consultation	October 2019
Public Exhibition Period	November 2019
Public Hearing	N/A
Submissions Assessment	December 2019
RPA Assessment of Planning Proposal and Exhibition Outcomes	December 2019
Submission of Endorsed LEP to DP&I for Finalisation	January 2020
RPA Decision to Make the LEP Amendment (if delegated)	#
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	#

Council is not seeking delegation with respect to this matter

8. Appendices

Appendix 1 – Draft Development Control Plan provisions



Ballina Shire Development Control Plan 2012
CHAPTER 7 - RURAL LIVING AND ACTIVITY



Ballina Shire Development Control Plan 2012

PROPOSED AMENDMENTS TO

Chapter 7 – Rural Living and Activity

&

**Chapter 2 – General and Environmental
Considerations**



people • place • prosperity



Ballina Shire Development Control Plan 2012 CHAPTER 7 - RURAL LIVING AND ACTIVITY

3.4 Rural Industry

3.4.1 Application

Applies to:	
Location/s:	Zones RU1, RU2, E2, E3, W1 and W2.
Development Type/s:	<i>Rural Industry.</i>

3.4.2 Planning Objectives

- Ensure siting and physical form of rural industries is compatible with the character and environmental values of the locality;
- Ensure that *rural industries* are designed so to ensure acceptable levels of amenity for occupants of adjacent premises; and
- Ensure that safe and adequate infrastructure is available to the premises.

3.4.3 Development Controls

- Buildings and other structures associated with the operation of the *rural industry* are to be designed so as to be:
 - sympathetic to the visual amenity of the area;
 - appropriately screened by vegetation where visible from adjoining properties or public areas such as parks, reserves, roads or other public viewing locations; and
- Where there is potential for the proposed *rural industry* to generate noise and/or odour impacts, a noise and/or odour impact assessment must be carried out by a suitably experienced and qualified person(s) and provided with the development application.
- Where a rural industry includes an industrial retail outlet:
 - The retail activity is to be contained within, or attached to, or within curtilage of, a building utilised for the rural industry;
 - Visitor parking and pedestrian access is to be physically separated from loading/unloading facilities in a manner that maintains public safety;
 - Where food items are sold in an industrial retail outlet this must not comprise a food and drink premises.



Notes:

Industrial retail outlets in rural zones are subject to **Clause XX** of the BLEP 2012 that set the *maximum gross floor area* allowed for the use.

Applicants are to include details regarding tastings and tours where such activities are proposed in association with *industrial retail outlets*.





3.8 Roads, Vehicular Access and Parking

3.8.1 Application

Applies to:	
Location/s:	Zones RU1, RU2, E1, E2, E3, W1 and W2.
Development Type/s:	All development within the above zones except subdivision.



Notes:

Road, vehicle access and parking requirements for land uses in urban zones and in relation to urban subdivision are contained within chapters 3, 4, 5 & 6.

3.8.2 Planning Objectives

- Provide adequate on site car parking for all types of rural development;
- Ensure car parking is designed in accordance with relevant standards and has adequate space and provision for vehicular turning areas to ensure all vehicles can enter and leave the site in a forward direction;
- Ensure access to the site has the capacity to cope with likely traffic loads including heavy vehicles;
- Ensure site accesses have adequate sight distances and are designed to ensure that all vehicles are able to safely enter and exit the site to maintain the safety and integrity of the road network; and
- Minimise disturbance to landform.

3.8.3 Development Controls

- Where a proposed development has the potential to generate significant additional traffic and require substantial car parking, a traffic study will be required;
- External vehicular access must:
 - not compromise the safety and efficiency of the road network;
 - be suitable for use by emergency service vehicles;
 - be suitable for traversing in all weather conditions.
- External road access is generally to be sealed for the following land uses:
 - *Tourist and visitor accommodation;*
 - *Recreation facilities (major and outdoor);*
 - *Restaurants or cafes;*
 - *Intensive livestock agriculture;*
 - *Aquaculture;*
 - *Rural industries and industrial retail outlets;*
 - *Mining and extractive industries;*





Ballina Shire Development Control Plan 2012 CHAPTER 7 - RURAL LIVING AND ACTIVITY

- *Passenger transport facilities*; and
- *Vehicle repair stations*.

Council may consider an alternate solutions subject to consideration and mitigation of potential impacts (such as those relating to safety and dust) and where consistency with Council's adopted maintenance strategies is achieved;

iv. Internal vehicular access must:

- be suitable for the access of emergency service vehicles;
- be of all weather dust free construction and be suitable for traversing by standard 2 wheel drive vehicles;
- be sealed in sections where grade exceeds 12%;
- not exceed a grade of 25%; and

v. A suitable and safe connection must be provided between the existing road network and any proposed internal vehicular access infrastructure;

vi. A development application must address any potential environmental impacts caused by vehicular accesses (both internal and external) including erosion and sedimentation, dust, noise, traffic generation, amenity and visual impacts and vegetation removal with appropriate mitigation measures identified;



Note:

Council does not generally require external access roads to be sealed for primary industries or for low key traffic generators such as *home industries*, *home occupations*, rural *dwelling*s, *dual occupancies* etc. However, as each application is assessed on its merits, there may be circumstances where these generally exempted land uses will require road upgrading (i.e. all-weather, sealed access) to ensure local road safety and efficiency or to minimise dust disturbance and nuisance to other land uses along the route.

The requirement for sealing of external road access involves application of a bitumen seal as a minimum.

Where Council assesses an alternate approach to sealing below the minimum bitumen seal, matters including safety, dust impacts, noise impacts, traffic type and volume and Council's maintenance programs and requirements will be considered.



Note:

Council does not generally require internal access roads to be sealed in rural areas. However there may be instances and circumstances where sealing will be required, particularly for larger developments, development involving heavy vehicles, development on sloping sites or where proposed road access in close proximity to an adjoining dwelling.





Ballina Shire Development Control Plan 2012 CHAPTER 7 - RURAL LIVING AND ACTIVITY

Other government agencies, including the Rural Fire Service, may apply additional internal access requirements over and above those required by Council.

vii. Development must comply with the following on site vehicle parking requirements:

- Adequate on site car parking must be available to accommodate all users of the site including residents, visitors or employees.
- On site car parking for a proposed land use must comply with the applicable car parking requirements specified in any other chapter of this DCP.



Notes:

Requirements will also be considered with reference to the following documents in relation to external and internal roads and parking requirements:

- RTA - Guide to Traffic Generating Developments;
- Austroads – Guide to Traffic Engineering Practice ;
- Australian Standard for parking facilities;
- Australian Standard for disabled parking facilities;
- BSC Policy C11 - Contributions for Dust Sealing of Roads; and
- Northern Rivers Local Government Design and Construction Manuals.





Ballina Shire Development Control Plan 2012 CHAPTER 2 – GENERAL AND ENVIRONMENTAL CONSIDERATIONS

3.19 Car Parking and Access

3.19.3 Development Controls

Table 2.3 – General Car Parking Requirements	
Land Use	Car Parking
<i>Industrial Retail Outlets</i>	4 spaces per 50m ²



Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 Direction Checklist Planning Proposal – Farm Gate Retail Activity on Rural land	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Consistent. The planning proposal does not seek to change the zoning of any business or commercial land.
1.2 Rural Zones	Consistent. The planning proposal does not seek to change the zoning of any rural land or affect provisions relating to the density of rural land.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Consistent. The planning proposal seeks to ' <i>promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities</i> ' in a manner consistent with the Direction. The planning proposal will give effect to this Direction through the provision for small-scale agri-based tourism activity in conjunction with value adding (rural industry) associated with primary production. In making the activity subject to Clause 7.9 (Rural and nature-based tourism development) of the BLEP 2012, the planning proposal seeks to limit the scale and intensity of the activity so that it complements rather than competes with other legitimate rural activities and environmental values. As a direct implementation of an Economic Development Strategy action, the planning proposal reflects the consideration of the social, economic and environmental interests of the community.
2. Environment and Heritage	
2.1 Environmental Protection Zones	Consistent. The planning proposal does not involve the development of land identified as being of environmental significance.
2.2 Coastal Protection	Consistent. The planning proposal does not involve the rezoning of land affected by SEPP (Coastal Management) 2018 or land affected by a current or future coastal hazard and is not in conflict with the planning principles established under the NSW Coastal Policy, the Coastal Design Guidelines and the NSW Coastline Management Manual.
2.3 Heritage Conservation	Consistent. The <i>Ballina Local Environmental Plan 2012</i> contains existing provisions for the protection of cultural and environmental heritage. The planning proposal does not otherwise impact on heritage matters.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Does not apply to planning proposal.

Section 9.1 Direction Checklist	
Planning Proposal – Farm Gate Retail Activity on Rural land	
Direction No.	Compliance of Planning Proposal
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to planning proposal.
3.3 Home Occupations	Does not apply to planning proposal.
3.4 Integrated Land Use and Transport	Consistent. The planning proposal does not create, alter or remove a zone or provision in relation to urban land.
3.5 Development Near Licensed Aerodromes	Consistent. The planning proposal does not affect land zoned for urban purposes or alter building height standards.
3.6 Shooting Ranges	Does not apply to planning proposal.
3.7 Reduction in non-hosted short term rental accommodation period	Does not apply to Ballina Shire.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Justifiably Inconsistent. The land the subject of the planning proposal includes lands identified as being affected by potential acid sulfate soils. Clause 7.1 of the Ballina LEP 2012 includes provisions addressing this matter in relation to future development applications.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Justifiably Inconsistent. The land the subject of the planning proposal includes land identified as being flood prone. Clause 7.3 of the Ballina LEP 2012 includes provisions addressing this matter in relation to future development applications.
4.4 Planning for Bushfire Protection	Consistent. Some RU1 and or RU2 zoned land is situated on Bushfire Prone Land. As a consequence the NSW Rural Fire Service will be consulted as part of the planning proposal post Gateway determination.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Does not apply to Ballina Shire.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Consistent. This planning proposal does not propose to rezone land mapped as farmland of State or Regional Significance.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.

Section 9.1 Direction Checklist	
Planning Proposal – Farm Gate Retail Activity on Rural land	
Direction No.	Compliance of Planning Proposal
5.8 Second Sydney Airport: Badgerys Creek	Revoked.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.
5.10 Implementation of Regional Plans	Consistent. The planning proposal is consistent with the North Coast Regional Plan 2016.
5.11 Development of Aboriginal Land Council land	Does not apply to planning proposal.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.
6.3 Site Specific Provisions	Consistent. The planning proposal does not relate to a specific development proposal to be carried out nor does it contain or refer to drawings that show details of the development proposal.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to Ballina Shire.
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan.	Does not apply to Ballina Shire.
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Does not apply to Ballina Shire.
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.9 Implementation of Bayside West Precincts 2036 Plan	Does not apply to Ballina Shire.

Section 9.1 Direction Checklist	
Planning Proposal – Farm Gate Retail Activity on Rural land	
Direction No.	Compliance of Planning Proposal
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	Does not apply to Ballina Shire.

Appendix 3 – Council Resolutions

8.3 **LEP Amendment - Farm Gate Retail Activity on Rural Land**

250719/8 RESOLVED

(Cr Nathan Willis/Cr Sharon Cadwallader)

1. That Council prepare a planning proposal to introduce provisions into the Ballina Local Environmental Plan 2012 to enable 'industrial retail outlet' as permissible with development consent on land within the RU1 Primary Production zone and RU2 Rural Landscape zone.
2. That the planning proposal include 'industrial retail outlet' as a land use subject to clause 7.9 of the Ballina Local Environmental Plan 2012.
3. That the planning proposal introduce floor space area controls to apply to industrial retail outlets located on rural land consistent with the parameters outlined in this report.
4. That the planning proposal be forwarded to the Department of Planning, Industry and Environment for a Gateway determination.
5. That the Department of Planning, Industry and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
6. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
7. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.
8. That Council prepare complimentary amendments to the Ballina Shire Development Control Plan 2012 and include provisions to clarify the scope of activities considered to be ancillary to agriculture.
9. That the draft amendments to the Ballina Shire Development Control Plan 2012 be reported to Council for further consideration prior to proceeding with the public exhibition of the amendments.

FOR VOTE - All Councillors voted unanimously.

8.3 LEP Amendment - Farm Gate Retail Activity on Rural Land

8.3 LEP Amendment - Farm Gate Retail Activity on Rural Land

Delivery Program Strategic Planning

Objective To present the Council with options regarding providing for retail in association with rural industry.

Background

Council's Economic Development Strategy (2018) includes the following action (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.

The above action seeks to support the growth of a regional food brand and responds to interest from rural landholders, particularly those engaged in value-adding around food/agricultural products grown on the land, in terms of boosting brand recognition and diversifying on-farm income.

In addition, the Alstonville Strategic Plan includes the following strategic action:

Develop policies that promote a vibrant and productive rural hinterland. Encourage primary production including the development of related income streams such as road side stalls, farmers markets, farm trails, farm stay accommodation and similar rural tourism activities.

In determining the level of commercial activity that is appropriate in rural areas in response to the above actions, consideration has been given to the following:

- Identifying the range and scale of activity that complements rather than competes with on-farm primary production to avoid the potential for additional commercial uses to "crowd-out" the productive use of agricultural land.
- Seek to ensure that commercial activities do not conflict with other legitimate rural activities.
- Ensure that appropriate levels of infrastructure are provided or available so as to minimise the impact of on-farm retail activities on other users of that infrastructure or on Council asset maintenance.

A range of commercial activities are currently permissible in the Shire's rural zones.

Those uses that relate broadly to "tourism" include those outlined in the following table.

Relevant definitions are provided in the body of this report.

8.3 LEP Amendment - Farm Gate Retail Activity on Rural Land

Table 1: Permissibility of tourism related uses in Ballina Shire's rural zones

Tourism-related land uses	RU1 Primary Production zone	RU2 Rural Landscape zone
Camping grounds	x	✓
Caravan parks	x	✓
Cellar door premises*	✓	✓
Environmental facilities	✓	✓
Function centres	x	✓
Information and education facilities	✓	✓
Markets	✓	✓
Kiosks	x	✓
Recreation facilities (major)	x	✓
Recreation facilities (outdoor)	x	✓
Restaurants or cafes	x	✓
Roadside stalls	✓	✓
Tourist and visitor accommodation**	✓	✓

*Cellar door premises, while permissible in both the RU1 and RU2 zones, is a standard instrument definition that applies only with respect to retail sales in association with wine-making.

**Some forms of tourist and visitor accommodation (including backpacker's accommodation, hotel and motel accommodation and serviced apartments) are prohibited in the rural zones.

A form of tourist activity that is increasing in popularity (for visitors and rural landholders alike) that is not addressed by the above land uses is that of farm and food tourism.

This involves visiting working farms and on-farm production facilities, including also the tasting and retail sale of goods produced on the farm.

In the case of food-related value adding, the retail sale of goods produced on a site presents potential tourist and brand marketing opportunities for rural producers, as well as provide opportunities to diversify on-farm income.

At a collective level, such activities also have the potential to enhance 'tourist drive' experiences and thus contribute to broader tourism and economic development outcomes for the Shire and the region.

Currently, the sale of fresh produce and "handcrafted goods" produced on farm is enabled through provisions relating to roadside stalls (including recently introduced provision for small-scale roadside stalls as exempt development).

The definition for roadside stalls, however, limit the location of such retail activity to 'a place or temporary structure'.

8.3 LEP Amendment - Farm Gate Retail Activity on Rural Land

Consequently, the roadside stall provisions do not adequately cater to the form of “farm gate retail” activity that enables visitors to stop and leave their vehicle to view, sample and purchase farm products.

Further, the roadside stall provisions do not adequately cater to the range or scale of on-farm value adding occurring in the region.

Examples of products produced within agricultural produce industries in the region include (but are not limited to):

- Coffee roasting
- Macadamia processing
- Tea packaging and processing
- Fermented products and preserves
- Confectionary manufacturing and
- Gin distilling, beer brewing and the like.

Certain uses, such as those listed above, may be more amenable to incorporating a ‘farm gate retail’ offering as a part of their production facility compared with other facilities that fall within the rural industry definition (as outlined in the body of this report).

Notwithstanding, the potential for other value-added agricultural produce industries (and/or rural industries more generally) that might also seek retail opportunities cannot be discounted.

As a consequence of the above, the provision for farm gate retail uses will need to give due consideration to limiting the scale and intensity of such uses in order to minimise the potential for adverse impacts to arise in association with such uses, particularly in terms of impacting agricultural production, infrastructure delivery and rural amenity.

This report seeks to advance the above actions through presenting options for allowing limited retail activities in rural areas in association with rural industry.

Key Issues

- Economic development
- Rural activity and industry
- Ongoing agricultural production and rural amenity
- Infrastructure delivery

Information

Currently ‘rural industries’ are permissible in the RU1 and RU2 zones of the Ballina LEP 2012.

Rural industry is defined as follows:

rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:

- (a) *agricultural produce industries,*

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- (b) *livestock processing industries,*
- (c) *composting facilities and works (including the production of mushroom substrate),*
- (d) *sawmill or log processing works,*
- (e) *stock and sale yards,*
- (f) *the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*

The definition of 'agricultural produce industry' is as follows:

agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

The definition of rural industry does not provide for the sale of goods manufactured from the site on which the rural industry is located.

Such retail opportunities can be provided, however, in association with industry or rural industry uses where 'industrial retail outlet' is a permissible land use within the zone. Currently, industrial retail outlets are only permissible within the IN1 Industry zone of the Ballina LEP 2012. The use is defined as follows:

industrial retail outlet means a building or place that:

- (a) *is used in conjunction with an industry (other than an artisan food and drink industry) or rural industry, and*
 - (b) *is situated on the land on which the industry or rural industry is located, and*
 - (c) *is used for the display or sale (whether by retail or wholesale) of only those goods that have been manufactured on the land on which the industry or rural industry is located,*
- but does not include a warehouse or distribution centre.*

In addition, the Department of Planning and Environment has recently introduced a new definition into the Standard Instrument LEP of 'artisan food and drink industry' and which is a mandatory permissible land use in the IN1 Industry zone.

The use is defined as follows:

artisan food and drink industry means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following:

- (a) *a retail area for the sale of the products,*
- (b) *a restaurant or cafe,*
- (c) *facilities for holding tastings, tours or workshops.*

Whilst nominally the 'artisan food and drink industry' definition provides opportunities for a range of additional tourist activities in association with food and drink manufacture, enabling the use in the RU1 Primary Production zone may be problematic as it would enable restaurants/café's within the RU1 zone where such use is currently not permissible.

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Further, by providing for the holding of 'workshops' the use may facilitate function centre type activities which may not be appropriate in the RU1 zone.

In terms of other related on-farm tourist activities (such as farm tours and facilities for tastings) on rural land, such uses may be considered ancillary if undertaken in association with an approved industrial retail outlet.

It is recommended, however, that in association with any changes the Council may support with respect to the main subject of this report, that Council introduce development control provisions relating to such ancillary activities to provide clarity regarding the intensity and scale of such uses.

Controlling the scale and intensity of farm gate retail

In order to control the scale and intensity of retail activity undertaken via this approach, if the approach is supported, it is recommended that two further adjustments be made to the LEP, as set out below.

Clause 5.4 sets out specific numeric development controls in relation to particular land uses. With respect to industrial retail premises the current floor space controls apply (relating currently only to the IN1 zone).

5.4 Controls relating to miscellaneous permissible uses

(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.*

It is suggested that the above floor area controls would be excessive if applied to industrial retail outlets in rural zones.

Consequently, it is recommended that should the above approach be supported, that Council introduce a local development standard provision in the BLEP 2012 that would apply tighter floor space limitations on industrial retail outlets in rural zones.

It is recommended these development standards have the following effect (detailed legal drafting to be undertaken by the Parliamentary Counsel):

(#) Industrial retail outlets in rural zones

If development for the purposes of an industrial retail outlet is permitted under this Plan on land zoned RU1 or RU2, the retail floor area must not exceed:

- (a) 10% of the gross floor area of the industry or rural industry located on the same land as the retail outlet, or*
- (b) 100 square metres,*
- whichever is the lesser.*

If Council supports this approach staff would give further consideration to the appropriate floor space controls in consultation with industry as part of the public exhibition of the planning proposal.

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Clause 7.9 of the Ballina LEP 2012 applies to rural and nature based tourism development within the RU1 and RU2 zones. The clause is provided as Attachment 1 to this report.

The clause seeks to enable rural and nature based tourism development in Ballina Shire that is generally low impact and of a small scale. In this regard, the clause requires that:

- (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.*

If Council supports the listing of 'industrial retail outlet' as permissible in the RU1 and RU2 zones, it is recommended that the use also be inserted into clause 7.9(6) in order to make such development subject to the development standards relating to small-scale low-impact rural development.

The above approach would allow the retail sale of goods manufactured on the site, including products made from inputs not grown on the property.

The goods sold would, however, be limited to those manufactured on the land.

Other uses that producers/landholders might wish to have in association with such tourist activity (other than ancillary activities such as tastings and tours), such as cafes and restaurants are not enabled by the above approach beyond what is otherwise separately defined and permissible in the respective zone (refer to Table 1).

In summary, the proposed change would enable a modest retail area associated with industry or rural industry for the sale of products manufactured on the land and ancillary land uses such as tastings and tours).

The LEP amendment has been designed to enable the intended outcome within the confines of the Standard LEP Instrument and particularly its definitions.

Land subject to the Ballina LEP 1987

The above approach only addresses land zoned under the terms of the *Ballina Local Environmental Plan 2012*.

As previously indicated to Council, amendment of the Ballina LEP 1987 to cover deferred matter areas is likely to be difficult and may result in a variety of unrelated matters presenting.

The structure of the 1987 LEP and its definitions are also different meaning that any change to the 1987 plan would have need to be specifically tailored.

8.3 LEP Amendment - Farm Gate Retail Activity on Rural Land

Under the recommendation below, provision for retail activities on land subject to the 1987 LEP would remain unchanged. Where land under the 1987 LEP is ultimately included into the 2012 plan, the provision of the 2012 plan would take effect.

Sustainability Considerations

- **Environment**

No significant environmental impacts are anticipated in association with the land use planning amendments outlined in this report. Impacts associated with individual land use proposals would be considered through the development assessment process.

- **Social**

The provision of on-farm tourism in the manner outlined in this report may contribute to the “food culture” of the Shire. The potential for adverse social impacts (particularly traffic) should be mitigated by the relatively modest scale of uses provided for by the land use planning amendments outlined in this report.

- **Economic**

The provision of on-farm tourism in the manner outlined in this report may contribute to the economic development of the Shire.

Legal / Resource / Financial Implications

The land use planning amendments outlined in this report would enable the lodgment of development applications for farm based retail activity in association with rural industry. Such applications would be assessed and determined in the usual way.

No major legal, resource or financial implications are anticipated in association with the land use planning amendments outlined in this report.

Consultation

Subject to the Council's endorsement of the approach outlined in this report, a draft planning proposal and draft development control plan amendments package would be prepared.

Following Council endorsement of this package and the receipt of affirmative Gateway determination, this material would be placed on public exhibition to seek community and stakeholder feedback.

Options

The following options are presented for the Council's consideration:

1. Council could resolve to prepare a planning proposal to amend the Ballina LEP 2012 to facilitate farm gate retail activities as outlined in the body of this report.

This option would involve the following:

8.3 LEP Amendment - Farm Gate Retail Activity on Rural Land

- Council preparing a planning proposal to amend the *Ballina Local Environmental Plan 2012* to achieve the following:
 - Enable 'industrial retail outlet' as permissible with development consent on land within the RU1 Primary Production zone and RU2 Rural Landscape zone;
 - Include 'industrial retail outlet' as a land use subject to clause 7.9;
 - Include floor space area controls to apply to industrial retail outlets located on rural land through a special clause consistent with the following:
 - (#) **Industrial retail outlets in rural zones**
 - If development for the purposes of an industrial retail outlet is permitted under this Plan on land zoned RU1 or RU2, the retail floor area must not exceed:*
 - (a) *10% of the gross floor area of the industry or rural industry located on the same land as the retail outlet, or*
 - (b) *100 square metres,*
 - whichever is the lesser.*

It is recommended that Council proceeds to lodge the planning proposal with the Department of Planning, Industry and Environment (DPIE) for Gateway determination and then proceed to public exhibition. Council would receive further reporting on the planning proposal following public exhibition.

Council also needs to determine whether to exercise its delegated plan making functions for this LEP amendment. Given the general nature of the amendment in relation to rural land across the Shire, it is recommended that Council seeks agreement from the DPIE to exercise the plan making delegation in this instance.

Under this approach, complimentary amendments to the Ballina Shire Development Control Plan 2012, including provisions to clarify the scope of activities considered to be ancillary to agriculture, would be prepared.

The DCP amendments would be the subject of separate reporting to Council for review and endorsement prior to public exhibition.

It is proposed that the DCP amendment would be reported to Council following the Gateway determination of the planning proposal so any matters arising from that process can be incorporated into the DCP provisions.

This option is recommended on the basis of the potential economic and social benefits associated with providing for limited retail activity in rural areas, where such activity is associated with rural based value-adding.

2. Council could resolve to note this report.

This option would involve staff taking no further action on this matter. This option is not recommended on the basis of the potential positive outcomes associated with option one.

3. Council could resolve to receive a briefing on the subject of this report.

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This option is not recommended. However it is presented should the Council wish to receive further information regarding the subject of this report before making a decision on progress of the matter.

There will be further opportunities for Council to consider this matter prior to the finalisation of any changes to the LEP and DCP.

RECOMMENDATIONS

1. That Council prepare a planning proposal to introduce provisions into the Ballina Local Environmental Plan 2012 to enable 'industrial retail outlet' as permissible with development consent on land within the RU1 Primary Production zone and RU2 Rural Landscape zone.
2. That the planning proposal include 'industrial retail outlet' as a land use subject to clause 7.9 of the Ballina Local Environmental Plan 2012.
3. That the planning proposal introduce floor space area controls to apply to industrial retail outlets located on rural land consistent with the parameters outlined in this report.
4. That the planning proposal be forwarded to the Department of Planning, Industry and Environment for a Gateway determination.
5. That the Department of Planning, Industry and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
6. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
7. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.
8. That Council prepare complimentary amendments to the Ballina Shire Development Control Plan 2012 and include provisions to clarify the scope of activities considered to be ancillary to agriculture.
9. That the draft amendments to the Ballina Shire Development Control Plan 2012 be reported to Council for further consideration prior to proceeding with the public exhibition of the amendments.

Attachment(s)

1. Ballina Local Environmental Plan 2012 Clause 7.9 Rural and nature-based tourism development

Appendix 4 – Gateway Determination

A copy of the Gateway determination will be included here.