

# PLANNING PROPOSAL 18

Amendment to Bellingen Shire Local Environmental Plan 2010  
Version 3 (October 2021) - Public Exhibition Version

## Housekeeping Amendment

Bellingen Shire  
COUNCIL



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## Introduction

Planning Proposal 18 (Housekeeping Amendment ) proposes a series of minor amendments to the Bellingen Local Environmental Plan 2010 (BLEP 2010) that are designed to reflect changes in circumstance, rectify unintended consequences of the operation of BLEP 2010 and to implement actions contained within endorsed strategies of Council.

The 4 matters covered by this amendment are;

1. Rezone land recently acquired by the Bellingen Showground from RU1 Primary Production to RE1 Public Recreation to reflect its future intended use (the RE1 Rezoning proposal)
2. Rectify a provision within BLEP 2010 that unintentionally frustrates certain subdivisions that involve land within the W1 Natural Waterway and W2 – Recreational Waterway Zone (the Subdivision proposal)
3. Rezone a constrained portion of flood liable land in Urunga from R1 General Residential to E3 – Environmental Management at the request of the landowner (the E3 Rezoning proposal).
4. Introduce a Schedule 1 amendment to permit the approval of a dwelling on a parcel of rural land at Darkwood (the Schedule 1 proposal).

A Gateway Determination was issued in respect of Planning Proposal 18 on 28 May 2021.

Consultation with relevant NSW Government Agencies has occurred and comments received have been taken into consideration and addressed in Part 3 (Section D) of this document.

## Acronyms

The following acronyms have been used throughout this report:

BLEP	Bellingen Local Environmental Plan 2010
Council	Bellingen Shire Council
DPIE	The NSW Department of Planning, Industry and Environment
E3	Environmental Management Zone
EPA Act	Environmental Planning and Assessment Act 1979
LGA	Local Government Area
m	Metres
Minister	NSW Minister for the Department of Planning, Industry and Environment
NSW	New South Wales
PoM	Plan of Management: Bellingen Showground
RE1	Zone RE1 Public Recreation under BLEP 2010
RU1	Zone RU1 Primary Production under BLEP 2010
Section 9.1 Directions	Section 9.1 Directions by the Minister under the EPA Act (formerly Section 117 Directions)
SEPP	State Environmental Planning Policy
W1	Natural Waterway Zone
W2	Recreational Waterway Zone

**Table 1 Acronyms Used**

# Site Context and Location

## 1.1 Location

The location of the various components of the planning proposal is depicted in the following series of maps.

### RE1 Rezoning proposal



Figure 1 Location of the RE1 Zone Rezoning Proposal

### Subdivision proposal

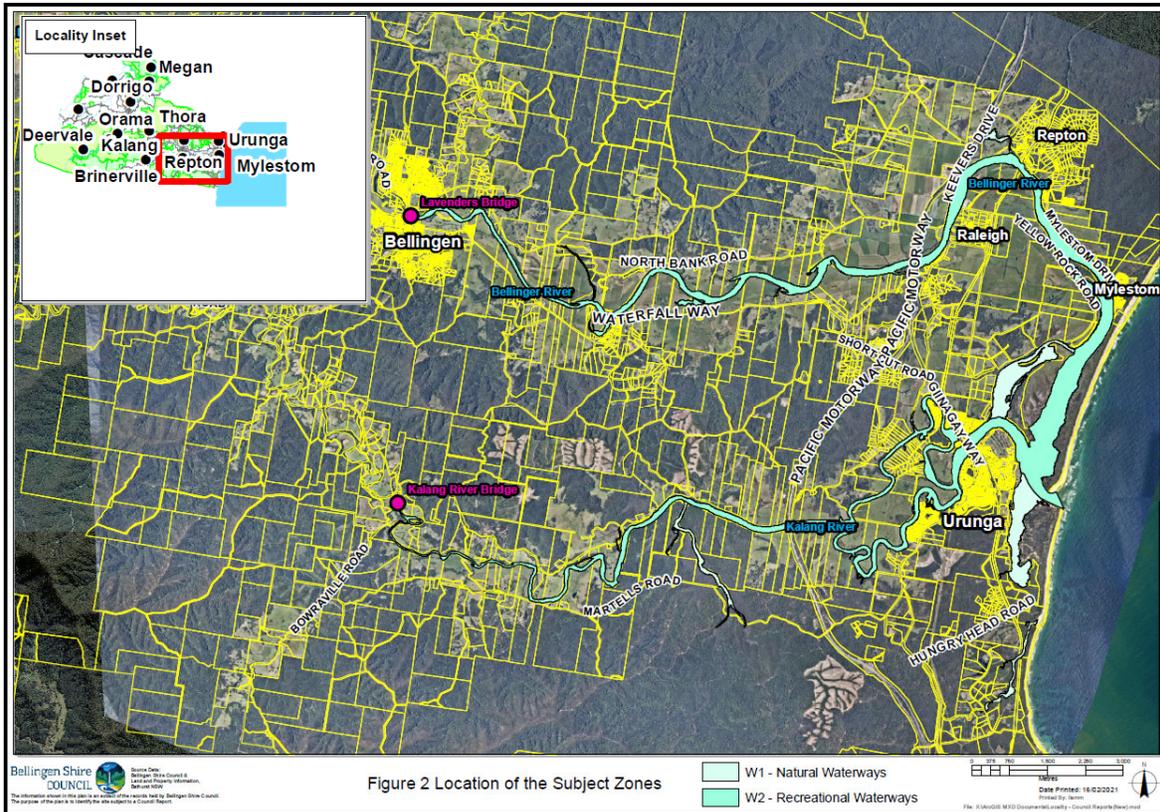


Figure 2 Location of the Waterway Zones the subject of the Subdivision Proposal.

E3 Rezoning proposal



Figure 3 – Location of the E3 Rezoning Proposal

## Schedule 1 proposal

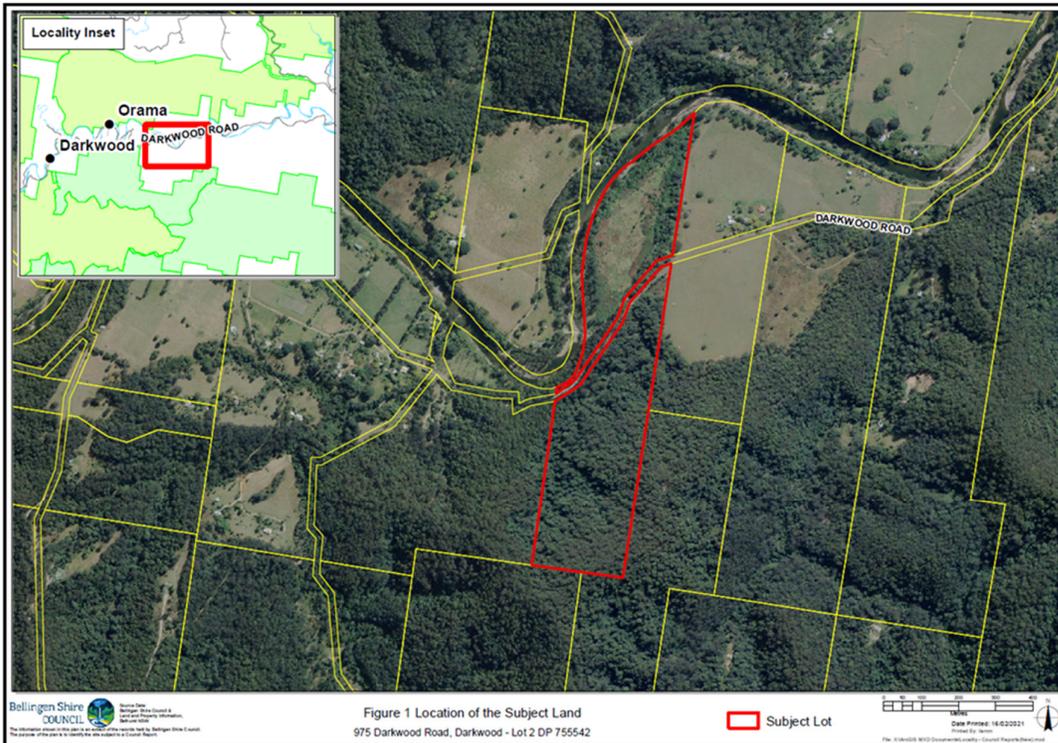


Figure 4 – Location of the Schedule 1 Proposal

## 1.2 Description of the Subject Site and Surrounding Land

### RE1 Rezoning proposal

Lot 421 DP 1230181, Wheatley Street, Bellingren is situated to the north of the Bellingren River within the Bellingren township (Figure 1). Approximately 600m from the Post Office by road and bordering the eastern boundary of the Bellingren Showground, the subject land has frontage to Black Street in the southwest and Wheatley Street in the north, has an area of 6.859 hectares and a total frontage of 213.01m along William Street and 20.115m along Black Street. It is irregular in shape and has a variable depth.

The site is relatively level and low-lying in the southwest but rises from the alluvial floodplain to some 37m AHD in the northeast. Drainage is to the southeast, with a drainage depression broadly following the base of the ridge from around 6m AHD in the northwest to around 4m AHD in the southeast.

The low-lying portion of the land is cleared to pasture and contains sporadic regrowth that is predominately weed species, inclusive of privet and camphor laurel. Apart from the overhead electricity conductors, the ridge line is a densely timbered forest comprising exotic and remnant native vegetation.

The site is developed with boundary and internal paddock fencing, including post and wire fencing and, to the showground, steel mesh fencing. A set of relocatable steel fenced yards in proximity to the showground serve as a corral.

Overhead electrical conductors span the northern portion of the property and rising sewer mains traverse the south of the land generally from the termination of Black Street to the sewage treatment plant in the east.

Surrounding land comprises the showground to the west, detached residential development to the north of Wheatley Street and again to the southwest, and a peri-urban lot to the east utilised as the “community gardens” and developed with a detached dwelling house. Further to the east is situated Council’s sewage treatment plant.

### **Subdivision proposal**

The distribution of the W1 and W2 zones broadly aligns with the tidal influence of the Bellinger and Kalang Rivers (Figure 2). The W1 zone generally covers areas with significant estuarine macrophyte communities, and as such occasionally extends to the topographic extent of the highest astronomical tide level which includes things like salt marsh communities.

Geographically bound by Lavenders Bridge and the Kalang River Bridge in the west (for the Bellinger and Kalang Rivers respectively) and the Tasman Sea in the east, the Zone traverses these river systems and their respective confluences with Hydes Creek (Bellinger), and Boggy Creek and Pine Creek (Kalang).

The W1 and W2 zones are most commonly adjoined by land within rural zones, however occasionally they adjoin land with development potential including the R1 and R5 zones.

### **E3 Rezoning proposal**

Lot 12 DP 732665, 21 Newry Street, Urunga, is a triangular section of land owned by the NSW Land & Housing Corporation (Figure 3). The majority of the land is flood prone land and it is likely to contain the “Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions endangered ecological community (EEC). It adjoins the North Coast Railway Line and is in close proximity to the CBD area of Urunga. It is currently undeveloped, however the northern most portion of the land is cleared and mowed.

### **Schedule 1 proposal**

Lot 2 DP 755542, 975 Darkwood Road, Darkwood is a 24.68ha parcel of land within the E4 – Environmental Living Zone that straddles both sides of Darkwood Rd and adjoins the Bellinger River (Figure 4). The northern portion of the land is relatively cleared and flat, with large portions likely to be prone to flooding from the adjoining Bellinger River in a 1% Annual Exceedance Probability Flood event. The southern portion of the land is relatively heavily vegetated, containing portions of land that are mapped on the State-wide Biodiversity Conservation Values Map. The entirety of the southern portion is mapped as Bushfire Prone Land, and the majority of the northern portion is also mapped as bushfire prone. Preliminary investigations have located a potential dwelling site to the immediate south of Darkwood Road that is relatively unconstrained.

## **Part 1 – Intended Outcomes**

The objectives of the proposal are as follows.

*To integrate Lot 421 DP 1230181 into the Bellingen showground estate and to align the future intended use of the land with the general purpose of the RE1 Public Recreation Zone.*

*To promote suitable land uses and development by expanding the opportunity to subdivide lots in certain split zones.*

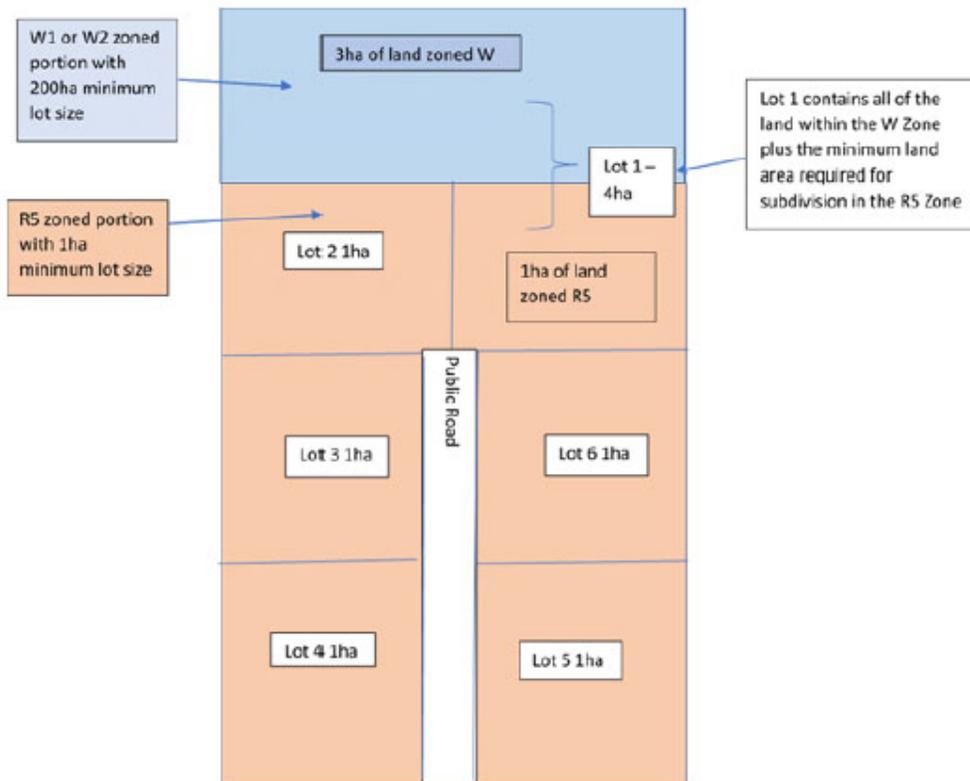
*To rezone land in a manner that is commensurate with the extent of constraint posed by its physical characteristics.*

*To afford the opportunity to build a dwelling on rural land that is consistent with previous policy decisions made by Council.*

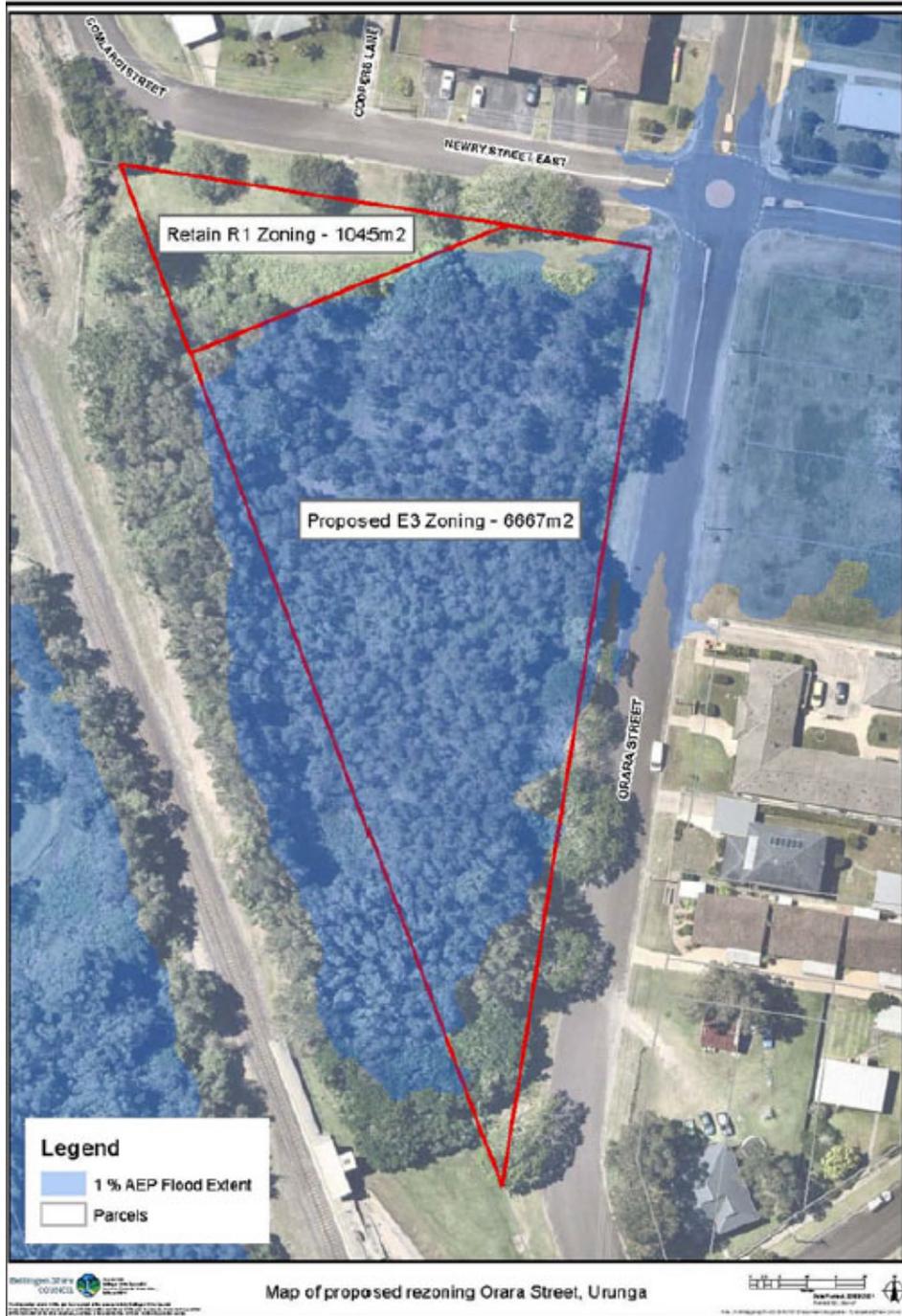
## Part 2 – Explanation of Provisions

The proposed outcomes will be achieved by:

- Amending the BLEP 2010 Land Zoning Map Sheet LZN\_006B to rezone Zone Lot 421 DP 1230181 from RU1 Primary Production to Zone RE1 Public Recreation.
- Amending clause 4.1AC *Exceptions to minimum subdivision lots sizes for certain split zones* of the BLEP to include Zone W1 Natural Waterways and Zone W2 Recreational Waterways as a Zone to which this clause applies. This will facilitate subdivisions of the nature shown in the illustration below.



- Amending the BLEP 2010 Land Zoning Map Sheet LZN\_007C to rezone part of Lot 12 DP 732665 from R1 General Residential to Zone E3 Environmental Management. The area of land proposed to be rezoned as E3 and the area to be retained as R1 is further shown in the illustration below.



- Inserting an additional Item within *Schedule 1 Additional permitted uses* of the BLEP 2010 to permit the erection of a dwelling on Lot 2 DP 755542, 975 Darkwood Road, Darkwood.

## Part 3 – Justification

### Section A – Need for the Planning Proposal

#### 1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, strategic study or report?

##### RE1 Rezoning proposal

The proposal is not the result of a strategic study, rather a response to the delivery of a priority strategic action under the Bellingen Showground Trust Plan of Management that targeted the acquisition of the relevant land to allow for the expansion of the Bellingen Showground complex.

The proposal would facilitate the development of Lot 421 DP 1230181 for its intended public purpose and with the same development controls as the adjoining Bellingen Showground.

##### Subdivision proposal

The proposal is not the result of a strategic study but has been identified through the practical application of the BLEP. It would facilitate the development of land in accordance with relevant release strategies by furthering the subdivision potential and Zone objectives of residential, business or industrial land where it is otherwise fettered by land that is Zone W1 Natural Waterways or Zone W2 Recreational Waterways.

##### E3 Rezoning proposal

The proposal is supported within Section 4.2 – Planning Proposals of the endorsed Bellingen Shire Local Housing Strategy.

##### Schedule 1 proposal

The proposal is supported within Section 4.2 – Planning Proposals of the endorsed Bellingen Shire Local Housing Strategy.

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

It is submitted that the Planning Proposal is the best means available to Council to achieve the intended outcomes.

##### RE1 Rezoning proposal

The rezoning proposal is intended to align the purpose of Lot 421 DP 1230181 with the appropriate zone, inclusive of objectives and land uses. The appropriate zoning of land to reflect its use is the cornerstone of the NSW planning system and other options such as amending the POM or including a Schedule 1 amendment do not deliver the planning outcome afforded by simply selecting an appropriate zone for the land.

### **Subdivision proposal**

The subdivision proposal seeks to promote suitable land uses and development by expanding the range of split zones available to clause 4.1AC of the BLEP through the insertion of Zones W1 Natural Waterways and W2 Recreational Waterways into the clause. The only alternative to this proposal involves the meticulous designation of bespoke minimum lot sizes in each instance where there is a split zoning that this clause anticipates. This is not justifiable when Clause 4.1AC can facilitate an appropriate comparable outcome with far less complexity.

### **E3 Rezoning proposal**

The land use constraints that are evident on the subject land could potentially be addressed through the development consent process, with those parts of the land subject to flooding and the potential EEC reserved from further development, or made subject to natural resource sensitivity overlays that would prescribe development control provisions.

In this instance though, the rezoning is being proactively sought by the current landowner to mitigate against the possibility of a future landowner pursuing development outcomes on the constrained portions of the land and an appropriate zoning is considered the preferable outcome in the circumstances given that it will more effectively preclude against intensive forms of development occurring.

### **Schedule 1 proposal**

The only alternative to achieve to the use of Schedule 1 to facilitate the erection of a dwelling on the subject land would be to amend Clause 4.2A of the BLEP 2010 to prescribe the relevant circumstance as one of the criteria that delivers a dwelling entitlement to a property within a rural or environmental protection zone.

In the circumstances, it is considered preferable that Council does not further add to the complexity of Clause 4.2A by introducing additional criteria and definitions pertaining to “de-facto concessional allotments”. Schedule 1 has been used by Council to facilitate these types of outcomes since the original gazettal of BLEP 2010 and this is consistent with previous approaches.

## **Section B – Relationship to Strategic Planning Framework**

- 3. 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)?**

### Strategic Merit considerations

**Will it;**

**Give effect to the relevant regional plan outside of the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment;**

The Planning Proposal is consistent with the North Coast Regional 2036 as follows:

Component	Comment
RE1 Rezoning proposal	Direction 14 aspires to create great places to live and that Councils will work with their community to co-ordinate community facility improvements. The planning proposal is consistent with this direction.
Subdivision proposal	The current framing of Clause 4.1AC inadvertently frustrates subdivision outcomes. The planning proposal rectifies this issue, consistent with Directions 22 (Deliver greater housing supply) and 24 of the NCRP.
E3 Rezoning proposal	The designation of an E3 zone on constrained land is consistent with Action 2.1 that aims to focus development to areas of least biodiversity significance.
Schedule 1 proposal	The Schedule 1 proposal is supported within the LHS. The Regional Plan encourages the development and implementation of local growth management strategies.

**Give effect to a relevant local strategic planning statement or strategy that has been endorsed by the Department or required as part of a regional or district plan or local strategic planning statement; or**

Yes – see comment on LSPS in response to Question 4 within this report.

**Respond to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing strategic plans.**

Site-specific merit considerations

**Does the proposal have site-specific merit, having regard to the following?**

**• the natural environment (including known significant environmental values, resources or hazards) and**

Component	Comment
RE1 Rezoning proposal	The site is subject to flooding, as is the rest of the Showground precinct, however this is capable of being addressed through the Plan of Management that applies to the precinct.
Subdivision proposal	The proposed framing of Clause 4.1AC will not impact adversely upon the waterway zones, noting that it does not permit their further subdivision or development.
E3 Rezoning proposal	The designation of an E3 zone is appropriate given the extent of environmental constraint on the land.
Schedule 1 proposal	The subject land is capable of accommodating a rural dwelling without significant adverse environmental impacts.

**• the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and**

Component	Comment
RE1 Rezoning proposal	The subject land has been used in association with the Showground for many years. The land is buffered to the east by the Bellingen Sewerage Treatment Plant, however it also adjoins residential land along Black Street. There is no significant history of complaint regarding Showground activities and adverse impacts upon adjoining residences, however it is possible that this could occasionally arise. It is not considered that this should prevent the planning proposal proceeding, however the Showground Operators may need to enter into further discussions with affected owners from time to time to discuss operational measures that will limit adverse impacts.
Subdivision proposal	The proposed framing of Clause 4.1AC will not significantly alter the existing or proposed uses of land.
E3 Rezoning proposal	The designation of an E3 zone will limit the development of the subject site which is desirable from the perspective of flood management in the locality, the constraint posed by the adjoining railway line, and retention of local biodiversity.
Schedule 1 proposal	The subject land is not adjoined by any existing use that appears to be incompatible with the use of the land for a dwelling.

- the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Component	Comment
RE1 Rezoning proposal	The Showground precinct has good access to necessary services and infrastructure.
Subdivision proposal	No change proposed in terms of existing levels of access.
E3 Rezoning proposal	Adequate services and infrastructure will remain available to the part of the land retained as Zone R1 General Residential.
Schedule 1 proposal	The subject land has adequate access to the services and infrastructure necessary to support the erection of a dwelling.

**4. Will the Planning Proposal give effect to a Council's endorsed Local Strategic Planning Statement, or another endorsed local strategy or strategic plan?**

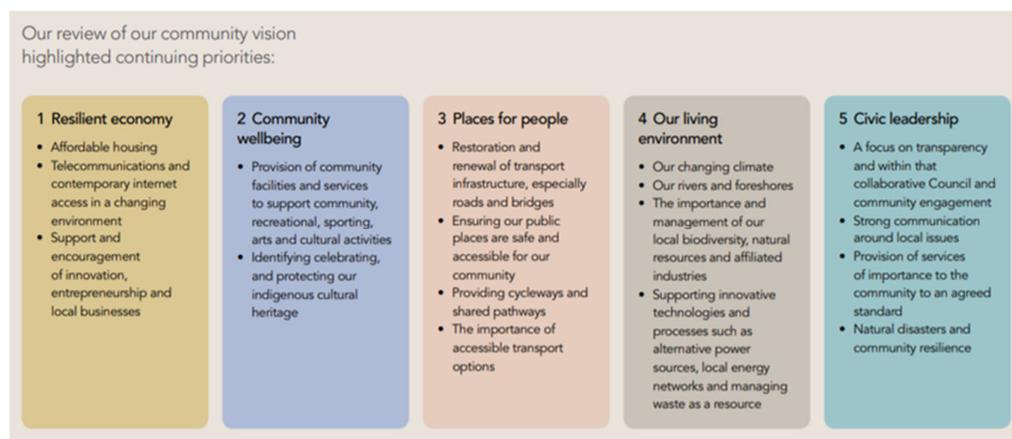
**Q4(a) Compliance with Bellingen Shire Local Strategic Planning Statement (LSPS)**

The completion of this planning proposal is not expressly provided for in the LSPS, however it will support local employment opportunities consistent with Planning Priority 3 (*To provide meaningful opportunities for local employment, sustainable business establishment and growth*) and encourage biodiversity conservation consistent with Planning Priority 8 (*Biodiversity conservation occurs at a landscape scale, using a variety of mechanisms across different land tenure*).

It is not contrary to any of the planning priorities or actions contained within the LSPS.

#### Q4(b) Bellingen Shire Community Strategic Plan 2027

The key aspirations expressed within the Community Strategic Vision 2027 are detailed in the extract below.



The planning proposal is consistent with the CSV in that it supports the provision of community facilities and protects local biodiversity.

#### 5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is considered consistent with applicable State Environmental Planning Policies (as shown in Table 2), namely:

**Table 2 Compliance with State Environmental Planning Policies (SEPPs)**

SEPPs (as of 23 April 2021)	Applicable	Consistent
<i>State Environmental Planning Policy (Aboriginal Land) 2019</i>	No	NA
<i>State Environmental Planning Policy (Activation Precincts) 2020</i>	No	NA
<i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i>	No	NA
<i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>	No	NA
<i>State Environmental Planning Policy (Coastal Management) 2018</i>	Yes	Yes
<i>State Environmental Planning Policy (Concurrences and Consents) 2018</i>	No	NA

<b>SEPPs (as of 23 April 2021)</b>	<b>Applicable</b>	<b>Consistent</b>
<i>State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</i>	No	NA
<i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>	No	NA
<i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i>	No	NA
<i>State Environmental Planning Policy (Infrastructure) 2007</i>	No	No
<i>State Environmental Planning Policy (Koala Habitat Protection) 2020</i>	Yes	Yes
<i>State Environmental Planning Policy (Koala Habitat Protection) 2021</i>	Yes	Yes
<i>State Environmental Planning Policy (Major Infrastructure Corridors) 2020</i>	No	NA
<i>State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007</i>	Yes	Yes
<i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>	Yes	Yes
<i>State Environmental Planning Policy No 21—Caravan Parks</i>	No	NA
<i>State Environmental Planning Policy No 33—Hazardous and Offensive Development</i>	No	NA
<i>State Environmental Planning Policy No 36—Manufactured Home Estates</i>	No	NA
<i>State Environmental Planning Policy No 50—Canal Estate Development</i>	No	NA
<i>State Environmental Planning Policy No 55—Remediation of Land</i>	Yes	Yes
<i>State Environmental Planning Policy No 64—Advertising and Signage</i>	No	NA
<i>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</i>	No	NA
<i>State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)</i>	No	NA
<i>State Environmental Planning Policy (Primary Production and Rural Development) 2019</i>	Yes	Yes
<i>State Environmental Planning Policy (State and Regional Development) 2011</i>	No	NA
<i>State Environmental Planning Policy (State Significant Precincts) 2005</i>	No	NA
<i>State Environmental Planning Policy (Urban Renewal) 2010</i>	No	NA

Commentary;

*State Environmental Planning Policy (Coastal Management) 2018*

<b>Component</b>	<b>Comment</b>
RE1 Rezoning proposal	The subject land is partially within a “Coastal Use Area” within the meaning of this SEPP. The rezoning is not inconsistent with the desired outcomes for development in this area.
Subdivision proposal	Waterway Zones are entirely within the area of application for this SEPP. The proposal does not facilitate any development within a waterway zone and is therefore acceptable.
E3 Rezoning proposal	The land is within the coastal zone. The proposal will limit the development of the land in recognition of constraint and is therefore acceptable.
Schedule 1 proposal	Not applicable

*State Environmental Planning Policy (Koala Habitat Protection) 2020 & 2021*

Bellingen Shire Council has prepared a Comprehensive Koala Plan of Management for the Coastal area of Bellingen Shire. This KPOM maps core koala habitat in those areas of the Shire with the most records of koala occurrence.

<b>Component</b>	<b>Comment</b>
RE1 Rezoning proposal	The land contains habitat mapped as “core koala habitat” by the KPOM. The proposed rezoning will not significantly alter the risk of this habitat being impacted upon.
Subdivision proposal	Land within a waterway zone will occasionally contain areas of koala habitat however the planning proposal will not facilitate development that would result in the removal of this habitat.
E3 Rezoning proposal	The land is under 1ha and not subject to a POM or Koala SEPP provisions.
Schedule 1 proposal	Development of the land will require assessment in accordance with the Koala SEPP 2021.

*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*

A review of the Mineral Resource Area Map adopted as part of the BLEP 2010 has confirmed that the planning proposal will not adversely impact upon an “Identified resource” area, or a “buffer zone”, as depicted on this map.

*State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

The RE1 Rezoning proposal will bring the subject land within the scope of this SEPP and the existing Chapter 6 of the Bellingen Shire Development Control Plan 2017 (Preservation of trees & Vegetation in Urban Areas).

Whilst the E3 Rezoning proposal will improve the ability of Council to restrict permissible development on the land, it will expose the land to the operation of this SEPP and the clearing activities that are permissible without approval. This is because Chapter 6 of the Bellingen Shire Development Control Plan 2017 (Preservation of trees & Vegetation in Urban Areas) does not yet cover land within an E3 Zone. It is however expected that the limiting of development potential on the land will reduce the incentive for clearing.

The planning proposal will not alter the relationship between this SEPP and the Subdivision proposal or the Schedule 1 proposal.

*State Environmental Planning Policy No 55—Remediation of Land*

A review of Councils Contaminated Lands Register has identified that none of the selected land parcels have records of being used for purposes that are potentially contaminating.

Accordingly, it is unlikely that the provisions of SEPP 55 will limit the development of land included as part of this planning proposal.

*State Environmental Planning Policy (Primary Production and Rural Development) 2019*

The Planning Proposal will not significantly impact upon the orderly economic use and development of lands for primary production. The Schedule 1 proposal does not adjoin any intensive form of agriculture and the erection of a dwelling on the subject land is entirely consistent with the prevailing pattern of development within the E4 zone.

**6. Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?**

The Planning Proposal is consistent with applicable Ministerial Directions (as shown in Table 3) including:

**Table 3 Compliance with Ministerial Directions**

<b>Directions (as of 23 April 2021)</b>		<b>Applicable</b>	<b>Consistent</b>
<b>1</b>	<b>Employment and Resources</b>		
1.1	Business and Industrial Zones	No	
1.2	Rural Zones	Yes	Yes – see comment
1.3	Mining, Petroleum Production and Extractive Industries	No	
1.4	Oyster Aquaculture	No	See comment
1.5	Rural Lands	Yes	Yes -see further comment
<b>2</b>	<b>Environment and Heritage</b>		
2.1	Environment Protection Zones	Yes	Yes -see further comment
2.2	Coastal Management	Yes	Yes -see further comment
2.3	Heritage Conservation	Yes	Yes
2.4	Recreation Vehicle Areas	Yes	Yes
2.6	Remediation of Contaminated Land	Yes	Yes -see further comment
<b>3</b>	<b>Housing, Infrastructure and Urban Development</b>		
3.1	Residential Zones	Yes	No -see further comment justifying
3.2	Caravan Parks and Manufactured Home Estates	No	
3.3	Home Occupations	No	
3.4	Integrating Land Use and Transport	No	
3.5	Development Near Regulated Airports and Defence Airfields	No	
3.6	Shooting Ranges	No	

<b>Directions (as of 23 April 2021)</b>		<b>Applicable</b>	<b>Consistent</b>
3.7	Reduction in non-hosted short term rental accommodation period	No	
<b>4</b>	<b>Hazard and Risk</b>		
4.1	Acid Sulfate Soils	Yes	Yes -see further comment
4.2	Mine Subsidence and Unstable Land	No	
4.3	Flood Prone Land	Yes	Yes -see further comment
4.4	Planning for Bushfire Protection	Yes	Yes -see further comment
<b>5</b>	<b>Regional Planning</b>		
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	No	
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	
5.10	Implementation of Regional Plans	Yes	Yes
5.11	Development of Aboriginal Land Council land	No	
<b>6</b>	<b>Local Plan Making</b>		
6.1	Approval and Referral Requirements	Yes	Yes
6.2	Reserving Land for Public Purposes	Yes	Yes
6.3	Site Specific Provisions	No	Yes

#### Commentary - Direction 1.2 – Rural Zones

The RE1 Rezoning proposal component of the planning proposal will affect land within an existing rural zone, however it does not propose to rezone to a residential, business, industrial, village or tourist zone and is therefore acceptable in terms of this Direction.

#### Commentary – Direction 1.4 - Oyster Aquaculture

Although the Subdivision proposal component of the planning proposal will affect land within waterway zones that may currently accommodate Priority Oyster Aquaculture Areas, it does not endorse any further development or subdivision of land zoned as waterway, which will continue to remain in single ownership.

Accordingly, it is submitted that the planning proposal will not have any adverse impacts on Priority Oyster Aquaculture Areas or promote incompatible uses of land adjoining these areas.

#### Commentary - Direction 1.5 – Rural Lands

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone. Compliance with the requirements of Direction 1.5 is demonstrated as follows.

<b>Component</b>	<b>Comment</b>
RE1 Rezoning proposal	The rezoning of land currently zoned RU1 to RE1 is considered to be broadly acceptable in the circumstances noting that it will facilitate the ongoing successful operation of events such as Agricultural Shows, that celebrate the contribution of the rural areas and communities to the cultural and economic fabric of the Shire.
E3 Rezoning proposal	The rezoning of land within the centre of Urunga to E3 will have no adverse impacts upon agriculture or primary production and is consistent with the Direction in that it

Component	Comment
	identifies and protects environmental values. It also implements the Bellinghen Local Housing Strategy, which endorses this proposal in Section 4.2.
Schedule 1 proposal	The Schedule 1 proposal does not adjoin any intensive form of agriculture and the erection of a dwelling on the subject land is entirely consistent with the prevailing pattern of development within the E4 zone. It also implements the Bellinghen Local Housing Strategy, which endorses this proposal in Section 4.2.

#### Comment – Direction 2.1 – Environment Protection Zones

*(4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.*

Comment:

The E3 Rezoning proposal is specifically aimed towards the protection and conservation of an environmentally sensitive area.

*(5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).*

Comment:

The Schedule 1 proposal involves the allocation of a dwelling entitlement to a land parcel within the E4 Zone. This is not considered to intrinsically constitute a reduction in the environmental protection standards applying to the land, noting that the management of rural land parcels is often aided by the ability for on-site residential occupation and the ability to control things like noxious or environmental weeds. Irrespective of this, the Schedule 1 proposal has been justified by an adopted Local Housing Strategy and is therefore acceptable in terms of the requirements of this Direction.

Whilst the E3 Rezoning proposal will improve the ability of Council to restrict permissible development on the land, it will expose the land to the operation of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and the clearing activities that are permissible without approval. This is because Chapter 6 of the Bellinghen Shire Development Control Plan 2017 (Preservation of trees & Vegetation in Urban Areas) does not yet cover land within an E3 Zone. It is however expected that the limiting of development potential on the land will reduce the incentive for clearing and irrespective of this, this proposal has been justified by an adopted Local Housing Strategy and is therefore acceptable in terms of the requirements of this Direction.

The Subdivision proposal will not weaken any existing level of environmental protection applying to the land and is therefore acceptable in terms of the requirements of this Direction.

#### Commentary – Direction 2.2 – Coastal Management

The RE1 Rezoning proposal covers land that is within the Coastal Use Area within the meaning of *State Environmental Planning Policy (Coastal Management) 2018*. Because the Subdivision proposal covers land within waterway zones it occasionally also coincides with land identified as coastal wetlands.

The planning proposal does not propose rezoning of land that would enable increased development or more intensive land use within a coastal wetland area and is considered acceptable in terms of this Direction.

Commentary – Direction 2.6 – Remediation of Contaminated Land

A review of Councils Contaminated Lands Register has identified that none of the selected land parcels involved in the RE1 Rezoning proposal, the Schedule 1 proposal or the E3 Rezoning proposal are recorded as potentially being contaminated by virtue of previous land uses. The Subdivision proposal does not propose any change to zoning permissions that would increase the likelihood of development occurring on land that it relates to and the E3 rezoning proposal will in fact limit development potential.

It is considered that the proposal is consistent with the terms of this Direction.

Commentary – Direction 3.1 - Residential Zones

The E3 Rezoning proposal will reduce the permissible residential density of the land, contrary to the requirements of Clause 5(a) of this Direction.

The inconsistency is justified pursuant to Clause 6(a) given that it implements the Bellingen Local Housing Strategy which endorses this proposal in Section 4.2. It is also justified pursuant to Clause 6(d) as it is of minor significance, noting that potential for a dwelling will remain on the land to be retained as R1 and the E3 zoning relates to the part of the land that is constrained in terms of redevelopment potential.

Commentary – Direction 4.1 – Acid Sulfate Soils

<b>Component</b>	<b>Comment</b>
RE1 Rezoning proposal	The subject land is within a Class 5 Acid Sulfate Soil area within the meaning of Clause 7.1 of the BLEP 2010. It is unlikely that the planning proposal will facilitate an intensification of land uses that would trigger the provisions of this Clause for Class 5 land.
Subdivision proposal	Land within a waterway zone has a high probability of containing acid sulfate soils however the planning proposal will not intensify development within the zone and is therefore acceptable.
E3 Rezoning proposal	The subject land is within a Class 5 Acid Sulfate Soil area within the meaning of Clause 7.1 of the BLEP 2010. The planning proposal will not facilitate an intensification of land uses that would trigger the provisions of this Clause for Class 5 land.
Schedule 1 proposal	The land is not mapped as containing potential acid sulfate soils.

Commentary – Direction 4.3 – Flood Prone Land

This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

<b>Component</b>	<b>Comment</b>
RE1 Rezoning proposal	The cleared part of the land is entirely flood prone. The planning proposal does not propose to rezone land to a

<b>Component</b>	<b>Comment</b>
	<p>Residential, Business, Industrial, Special Use or Special Purpose Zone within the meaning of this Direction.</p> <p>The RE1 zoning does not include specific provisions that will permit the development of flood liable land, however it will mean that a range of uses will become permissible with consent within the RE1 Zone. It is not considered that this is contrary to the intent of this Direction, and it is noted that many of the permissible land uses within the RU1 zone.</p>
Subdivision proposal	Land within a waterway zone will be flood liable, without exception, however the planning proposal will not intensify development within the zone and is therefore acceptable.
E3 Rezoning proposal	The planning proposal restricts the development potential of flood liable land and is accordingly consistent with this Direction.
Schedule 1 proposal	<p>The planning proposal does not propose to rezone the land to a Residential, Business, Industrial, Special Use or Special Purpose Zone within the meaning of this Direction.</p> <p>The planning proposal will facilitate the erection of a dwelling on land that is partly subject to flooding. Council has a flood study that applies in the locality and that documents a General Flood Planning Level to be observed for new development. Preliminary investigations reveal that a suitable location for a dwelling exists on the southern side of Darkwood Road that would be above the General Flood Planning Level. The erection of a dwelling in this location would not constitute a significant increase in development potential, would not result in significant flood impacts to other properties and would not significantly increase government spending to mitigate.</p>

#### Commentary – Direction 4.4 - Planning for Bushfire Protection

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to, land mapped as bushfire prone land.

Council acknowledges that it will be required to consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination, and prior to undertaking community consultation, and take into account any comments so made.

Having regard to the requirements of this Direction, the following comments are provided.

<b>Component</b>	<b>Comment</b>
RE1 Rezoning proposal	The land is not mapped as bushfire prone land.
Subdivision proposal	Land within a waterway zone will occasionally include land that is mapped as bushfire prone land, however the planning proposal will not facilitate development on this land.
E3 Rezoning proposal	The land is not mapped as bushfire prone land.
Schedule 1 proposal	The land is mapped as bushfire prone land. Preliminary investigations into a potential dwelling site have identified

Component	Comment
	<p data-bbox="570 212 1276 394">an area of land that on the immediate high and southern side of Darkwood Road that would be suitable for the erection of a dwelling. This part of the land is within a "buffer zone" as per the Bellingen Shire Bushfire Prone Lands Map and adjoins an expanse of cleared area to the north and east.</p> <p data-bbox="570 432 1305 678">Having regard to the requirements of Direction 4.4 it is considered that an option exists on the land for the erection of a dwelling on the land that would be capable of complying with Planning for Bushfire Protection 2019, would not necessitate the placement of dwelling in an inappropriate and hazardous location and would not be prevented from undertaking hazard reduction within any APZ.</p> <p data-bbox="570 716 1300 835">The planning proposal does not include the erection of dwelling and additional consideration in terms of the provisions of Clause 6 of Direction 4.4 is not required at this stage of the planning process.</p>

## **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?**

The proposal does not affect the application of section 1.7 of the *Environmental Planning and Assessment Act 1979* in the planning process. The provisions of Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994* will apply to any development application.

In general terms, the planning proposal does not act to facilitate development that would have an increased likelihood of adverse impact upon threatened species, populations or ecological communities, or their habitats.

### **8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?**

As previously documented, the land the subject of the RE1 Rezoning Proposal has been used in association with the Showground for many years. The land is buffered to the east by the Bellingen Sewerage Treatment Plant, however it also adjoins residential land along Black Street.

There is no significant history of complaint regarding Showground activities and adverse impacts upon adjoining residences, however it is possible that this could occasionally arise. It is not considered that this should prevent the planning proposal proceeding, however the Showground Operators may need to enter into further discussions with affected owners from time to time to discuss operational measures that will limit adverse impacts.

The remaining elements of the planning proposal are considered unlikely to result in any significant environmental effects.

### **9. Has the Planning Proposal adequately addressed any social and economic effects?**

The RE1 Rezoning Proposal will facilitate the ongoing successful operation of events such as Agricultural Shows and music events. Supporting these activities helps to celebrate the contribution of rural areas, and the artistic community, to the social, cultural and economic fabric of the Shire.

## Section D – State and Commonwealth Interests

### 10. Is there adequate public infrastructure for the planning proposal?

Adequate public infrastructure exists to support all elements of the planning proposal.

### 11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Comments received from State public authorities are discussed below.

It is noted that the planning proposal was also referred to the Coffs Harbour & District Local Aboriginal Land Council & the Bowraville Local Aboriginal Land Council as per the requirements of the Gateway Determination however no response has been received from either of those organisations at the time of placing this planning proposal on public exhibition.

#### NSW Department of Primary Industries – Fisheries

- No objection to Items 1,3 & 4 of the planning proposal.
- Not supportive of Item 2 (Subdivision Proposal - Waterway Zones) because it may, in some instances, result in the intensification of land use adjacent to W1 and W2 zones which may result in unintended direct and indirect impacts to key fish habitat and water quality.
- Examples of activities that may be associated with land use intensification adjacent to fish habitat (such as subdivision) include the construction of new river bank revetment structures, demand for and installation of domestic foreshore structures such as boat ramps and pontoons, installation of additional stormwater infrastructure and clearing of riparian vegetation for views and waterway access.
- Water quality can be impacted by runoff from new development sites and increased freshwater inflows due to additional impervious surfaces.
- If the amendment is adopted, DPI Fisheries recommend introduction of additional planning mechanisms that will ensure subdivision proposals utilising the new provisions will be required to include appropriate riparian buffer zones to minimise the impact of adjacent development on waterways.

#### Comment:

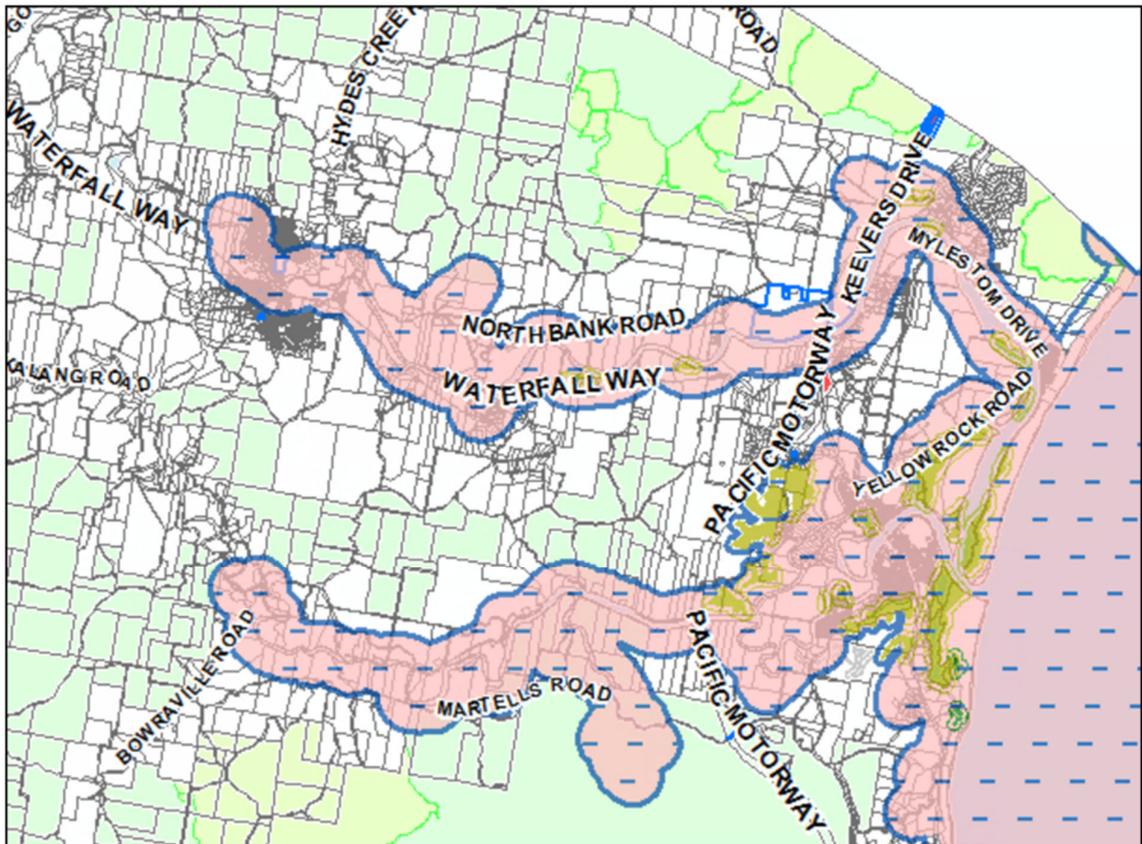
Council notes the potential adverse impacts that can arise from development adjacent to waterways however it is important to emphasise that the LEP amendment would not in effect increase the number of properties having direct access to the watercourse because all of the W zoned land needs to be retained in one ownership, as it currently is. In the lower reaches of the Bellinger & Kalang Rivers, it is also relevant to note that riparian zones are also frequently on floodplains that cannot be developed for housing purposes or new roads because of development restrictions in *Chapter 8 – Flood & Riverine Processes* of the Bellingen Shire Development Control Plan 2017.

In the circumstances, the impacts of long standing agricultural practices such as cattle grazing are considered to be of potentially greater impact in the riparian zones. The proposal does not facilitate multiple properties adjoining the riparian corridor and given the reduced lot size of the residue lot, it is considered less likely that cattle grazing will be viable on the land which may provide opportunities for recovery. Most land that would be affected is not connected to the reticulated water supply, meaning that runoff from impervious surfaces such as roofs will also usually be collected for potable water supply, and *Chapter 12 -Stormwater* of the Bellingen Shire Development Control Plan 2017 requires that new roads associated with residential or

large lot residential subdivision involving new roads must provide Level 3 Treatment for both stormwater quality and quantity, which is the highest level of treatment.

Additional existing development controls that work towards preservation of riparian zones and control of water quality include as follows;

- Clause 3.6.1 (1 & 2) of the Bellinghen Shire Development Control Plan 2017 requires that new subdivisions in R1 and R5 zones avoid creating additional riparian rights and fencing within riparian zones by incorporating the length of the riparian corridor into a single allotment, or as common property within a Community Title Subdivision.
- All of the land within a Waterway Zone is also mapped as being within a “Coastal Environment Area” within the meaning of SEPP Coastal Management (2018). An extract of this mapping is provided below, in addition to Clause 13 of this SEPP that prescribes a range of development controls to limit impact upon riparian zones



### **13 Development on land within the coastal environment area**

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- (b) coastal environmental values and natural coastal processes,
- (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (f) Aboriginal cultural heritage, practices and places,
- (g) the use of the surf zone.
- (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—
  - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).

- Clause 7.4 – Water of BLEP 2010 requires as follows.

#### **7.4 Water**

- (1) The objective of this clause is to maintain the hydrological functions of riparian land waterways and aquifers, including protecting—
  - (a) water quality, and
  - (b) natural water flows, and
  - (c) the stability of the bed and banks of waterways.
- (2) This clause applies to the following land—
  - (a) land identified as “Watercourses-tidal” or “Waterway” on the [Natural Resources Sensitivity—Water Map](#),
  - (b) land within 50 metres of land in Zone W1 Natural Waterways or W2 Recreational Waterways,
  - (c) land within 50 metres of the bank or shore (measured horizontally from the top of the bank or shore) of any waterway identified on the [Natural Resources Sensitivity—Water Map](#).
- (3) Before determining a development application for land to which this clause applies, the consent authority must consider any adverse impact from the proposed development on the following—
  - (a) the water quality of receiving waters,
  - (b) the natural flow regime,
  - (c) the natural flow paths of waterways,
  - (d) the stability of the bed, shore and banks of waterways.
- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—
  - (a) the development is designed, sited and will be managed to avoid any adverse environmental impact, or
  - (b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Having regard to these factors, it is considered that adequate safeguards are already built into the planning proposal, or otherwise contained within a wide range of existing planning documents to adequately mitigate against potential adverse impacts.

**For the RE1 Proposal;**

- Zone core koala habitat as E2 Environmental Conservation and engage Ecologist to ground truth vegetation and consider appropriate zones for all vegetated areas.
- Provide a minimum lot size to ensure not subdivided.

Comment:

Council has had principle regard to the provisions of Planning Practice Note PM-09-002 in proposing an RE1- Public Recreation Zone for the entirety of the property which, relevantly , includes the following guidance.

From Practice Note PM-09-002

*Q. Is the E2 zone suitable for public open space land that has high conservation value?*

*A. Public open space principally used for public recreation purposes should be zoned RE1 Public Recreation, as this zone includes the protection of the natural environment among its core objectives.*

In these circumstances, it is considered unnecessary to engage an ecologist to inform a zoning response that is contrary to the Practice Note.

A 200ha minimum lot size provision will continue to apply to the subject land, preventing further subdivision.

**For the Waterways Zone (the Subdivision proposal)**

- Planning proposal should include additional explanatory detail.

Comment:

An additional map has been included in Part 2 that illustrates how the proposal would work.

**For the E3 proposal**

- Ecologist should be engaged to ground truth vegetation, E2 zoning should be applied, and proposal amended to explain how High Environmental Value (HEV) land will be protected.
- Minimum lot size should be stipulated to prevent subdivision
- Planning proposal should include a map to show extent of native vegetation and a map showing proposed zone change at an appropriate scale.

Comment:

The request to engage an ecologist adds unnecessary complexity and cost to what is essentially a voluntary move by the landowner to impose additional environmental restrictions on the development of their land parcel. There are existing provisions within the Bellingen Shire Development Control Plan 2017 that will, in combination with the proposed E3 Zoning of the land limit further development or subdivision of the vegetated part of the land and any adverse impacts can be appropriately considered at DA stage rather than at this stage of the planning process.

An additional map has been included in Part 2 of this Planning Proposal that shows the areas of land affected by the proposed zone change.

- No objection.
- Note that future dwelling on 975 Darkwood Rd will need to meet certain pre-requisites in terms of radiant heat exposure and distance from Darkwood Rd and that this may necessitate management of native vegetation.

Comment:  
Noted.

NSW Department of Primary Industries – Agriculture

- No objection to proposed amendments.
- DPI Agriculture generally does not support the creation of new dwelling eligibilities in rural areas due to the potential for adverse impacts on, and the increased risk of land use conflict with, agricultural land uses, especially where the proposed dwelling is located on or adjoining land mapped as significant farmland.
- The land at 975 Darkwood Road, Darkwood, both contains and is adjacent to land mapped as regionally significant farmland under the Mid North Coast Farmland Mapping Project 2008 and this land is also mapped as biophysical strategic agricultural land (BSAL) in State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.
- I note, however, that the eligibility of 975 Darkwood Road for a dwelling has been considered through the strategic planning process and this approach is supported. Council should still ensure that any development application for a dwelling house on the land addresses any potential impacts on agricultural land uses in the vicinity and also includes measures to mitigate any potential impact from nearby agricultural land uses on the proposed dwelling so as not to increase the potential for future land use conflict.

Comment:  
Noted.

## **Part 4 – Maps**

The planning proposal will involve the preparation of two new maps, as per below.

**The following map sheets are revoked:**

### **Land Zoning Map**

LZN\_006B 0600\_COM\_LZN\_006B\_020\_20160817

LZN\_007C 0600\_COM\_LZN\_007C\_020\_20130724

**The following map sheets are adopted:**

### **Land Zoning Map**

LZN\_006B 0600\_COM\_LZN\_006B\_020\_20210401

LZN\_007C 0600\_COM\_LZN\_007C\_020\_20210401

Copies of the new maps are included as Attachments to this planning proposal.

## Part 5 – Community Consultation

The community consultation requirements for strategic land use planning matters are stipulated within the Bellingen Shire Community Participation Plan, relevant parts of the NSW Environmental Planning & Assessment Act 1979 (the Act) and the NSW Environmental Planning & Assessment Regulation 2000 (the Regulation).

Having regard to the Bellingen Shire Community Participation Plan, the following consultation activities are appropriate for a housekeeping LEP Amendment.

- \* 28-day consultation period
- \* Advertisement in local paper
- \* Advertisement and provision of supporting documentation on "Create" website
- \* Notify owners of land affected by the RE1 Rezoning Proposal, the E3 rezoning proposal and the Schedule 1 Proposal.
- \* Notify adjoining owners of land affected by the RE1 Rezoning Proposal, the E3 rezoning proposal and the Schedule 1 Proposal.
- \* Plain English Version

The consultation requirements that have been confirmed within the Gateway Determination issued by the DPIE in respect of the proposal are detailed below.

*Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:*

*(a) the planning proposal must be made publicly available for a minimum of 28 days; and*

*(b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment, 2018).*

3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

- NSW Rural Fire Service
- Coffs Harbour & District Local Aboriginal Land Council
- Bowraville Local Aboriginal Land Council
- Department of Planning, Industry and Environment - Division of Biodiversity and Conservation
- Department of Primary Industries - Agriculture
- Department of Primary Industries – Fisheries NSW

*Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.*

It is also necessary for Council to consider whether it wishes to be the plan making authority for this planning proposal. This essentially means that the final decision as to whether the plan should proceed is made by the Council, rather than the NSW Government.

The NSW Department of Planning Industry & Environment have designated Council as the plan making authority in respect of this matter as part of the Gateway Determination issued by the DPIE in respect of the proposal.

## Part 6 – Project Timeline

Table 2 Project Timeline (Revised October 2021)

<b>Task</b>	<b>Anticipated timeframe for completion</b>
Referral to Department of Planning and Industry for Gateway determination	29/4/2021
Date of Gateway Determination	28/5/2021
Complete technical information	Not anticipated
Government agency consultation (pre-exhibition)	30/7/ 2021
Public exhibition period	14/10/2021 – 12/11/2021
Consideration of submissions	17/12/2021
Report to Council to make the Plan	19/1/2022
Submit Planning Proposal to PCO for LEP drafting and publication	25/02/2022

## Attachment 1 – Maps