



Planning,
Industry &
Environment

IRF21/2793

Gateway determination report – PP-2021-4191

Housekeeping Amendments to the Nambucca LEP
2010

July 21



Published by NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Gateway determination report – PP-2021-4191

Subtitle: Housekeeping Amendments

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal – Housekeeping Amendments (April 2021: File SF3052)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Nambucca
PPA	Nambucca Valley Council
NAME	Housekeeping Amendments 2021
NUMBER	PP-2021-4191
LEP TO BE AMENDED	Nambucca LEP 2010
ADDRESS	Nambucca LEP 2010 – Zones RU1, RU2, R5, E2, E3, E4 & B7
DESCRIPTION	See Above
RECEIVED	29/06/2021
FILE NO.	IRF21/ 2793
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- amend the landuse tables for the RU1, RU2, R5, E2, E3, E4 zones so that the group term 'residential accommodation' is permitted with development consent to ensure manufactured homes are a permissible land use within these zones where a dwelling house is permissible. The landuse table for these zones will also be amended to prohibit various related landuses (see Section 2 of this report);
- amend the wording of clause 4.2A(3) to include a reference to 'residential accommodation' so that the clause applies to all residential accommodation (including a manufactured homes) within the relevant zone and to include a reference to lawful residential accommodation so that the clause remains applicable to lots which have had unlawful residential accommodation commenced on them; and
- include 'Vehicle Sales or Hire Premises' as a land use that is permissible with development consent in the B7 Business Park Zone.

The planning proposal is considered to be the best means of achieving the objectives and intended outcomes.

1.3 Explanation of provisions

The planning proposal seeks to amend Nambucca LEP 2010 as follows:

Item 1

Amend the land use tables for Zones RU1 Primary Production, RU2 Rural Landscape, R5 Large Lot Residential, E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living so that the group term 'residential accommodation' is permitted with development consent and the following land uses are prohibited:

<u>RU1 Primary Production Zone</u> <ul style="list-style-type: none"> • attached dwellings • boarding houses • group homes • hostels • multi dwelling housing • residential flat buildings • semi-detached dwellings • seniors housing 	<u>RU2 Rural Landscape Zone</u> <ul style="list-style-type: none"> • attached dwellings • boarding houses • hostels • multi dwelling housing • residential flat buildings • rural workers' dwellings • semi-detached dwellings • seniors housing • shop top housing
<u>R5 Large Lot Residential Zone</u> <ul style="list-style-type: none"> • attached dwellings • boarding houses • hostels • multi dwelling housing • residential flat buildings • secondary dwellings • semi-detached dwellings • seniors housing 	<u>E2 Environmental Conservation</u> <ul style="list-style-type: none"> • attached dwellings • boarding houses • dual occupancies (detached) • group homes • hostels • multi dwelling housing • residential flat buildings • rural workers' dwellings • secondary dwellings • semi-detached dwellings • seniors housing • shop top housing
<u>E3 Environmental Management</u> <ul style="list-style-type: none"> • attached dwellings • boarding houses • dual occupancies (detached) • group homes • hostels • multi dwelling housing • residential flat buildings • rural workers' dwellings • secondary dwellings • semi-detached dwellings • seniors housing • shop top housing 	<u>E4 Environmental Living</u> <ul style="list-style-type: none"> • attached dwellings • boarding houses • group homes • hostels • multi dwelling housing • residential flat buildings • rural workers' dwellings • secondary dwellings • semi-detached dwellings • seniors housing • shop top housing

Item 2

Amend the wording of clause 4.2A(3) to include a reference to 'residential accommodation' so that the clause applies to all forms of residential accommodation within the relevant zone and lawful residential accommodation so that the clause remains applicable to allotments which have had unlawful residential accommodation commenced on them.

Item 3: Include ‘Vehicle Sales or Hire Premises’ as a land use that is permissible with development consent within the B7 Business Park Zone.

1.4 Site Description and surrounding area

The planning proposal applies to the following zones within the Nambucca LEP 2010:

- RU1 Primary Production;
- RU2 Rural Landscape;
- R5 Large Lot Residential;
- E2 Environmental Conservation;
- E3 Environmental Management;
- E4 Environmental Living; and
- B7 Business Park.

1.5 Mapping

The planning proposal relates to changes to the written instrument only. No changes will be made to the Nambucca LEP 2010 maps.

1.6 Need for the planning proposal

The planning proposal is not the result of any strategic study or report but Council’s desire to address what they believe are errors or anomalies in the Nambucca LEP 2010. The reasoning behind each individual item is addressed below.

Item 1

A manufactured home is defined by the Local Government Act 1993 as follows:

*“**manufactured home** means a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling—*

- (a) that comprises one or more major sections, and*
- (b) that is not a motor vehicle, trailer or other registrable vehicle within the meaning of the Road Transport Act 2013,*

and includes any associated structures that form part of the dwelling.”

The definition of a building in the Environmental Planning and Assessment Act 1979 (the Act) does not include a manufactured home or associated structure as defined above. Council’s interpretation of the relevant legislation is that approval is required pursuant to section 68 of the Local Government Act 1993 for the installation of the manufactured home and development consent is required under the Environmental Planning and Assessment Act 1979 for the use of the land.

In Council’s experience, development consent is typically granted for a manufactured home as a dwelling, and as part of that development consent, approval is also granted under section 68 of the Local Government Act 1993 for the installation of the manufactured home. However, Council identifies that a ‘dwelling’ is not a definition in the Nambucca LEP 2010.

The group term ‘residential accommodation’ is defined in the Nambucca LEP 2010 as follows:

*“**residential accommodation** means a building or place used predominantly as a place of residence, and includes any of the following:*

- (a) attached dwellings,*
- (b) boarding houses,*

- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks”

A ‘dwelling house’ is defined by the Nambucca LEP 2010 as follows:

“dwelling house means a building containing only one dwelling”.

It is Council’s position that a single manufactured home on a vacant lot does not fall within the definition of a ‘dwelling-house’ or any of the child terms of ‘residential accommodation’ because it is not a building under the Act. However, it is considered that a single manufactured home on a vacant lot which is to be used as a place of residence, falls within the parent term ‘residential accommodation’.

To support this reasoning, Council references the case of *Central Coast Council v Bhandari* [2020] NSWLEC 161 in which Council sought a declaration that a land owner was in breach of the Act for using the land for ‘residential accommodation’ by living in a caravan (a caravan being a moveable dwelling), on land in a zone in which ‘residential accommodation’ was prohibited under the Gosford LEP 2014.

The court found that unless the occupation of the caravan falls within the exemption provided by clause 77 (a) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005, its use for residential accommodation on the site is prohibited. Through the proposed amendment Council aim to clarify and enable the installation of one manufactured home on a vacant lot, with development consent.

However, in the case of *Joint Venture Pty Ltd v Mid-Coast Council* [2021] NSWLEC 1138 it was submitted that the development (manufactured homes) is best characterised as residential accommodation. Although the Court did not respond to that matter and instead held that it was permissible in an open zone via the innominate phrase. It is noted that Zones RU1, RU2 and R5 in the Nambucca LEP 2010 are open zones, but zones E2-E4 are closed.

The definition of a moveable dwelling under the Local Government Act 1993 includes a broad range of accommodation including a tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation. It also includes a manufactured home or any conveyance, structure or thing of a class or description prescribed by the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005.

It is possible that Council’s proposal may result in unintended consequences such as permitting other innominate uses caught within the broad definition of ‘residential accommodation’. None the less, it is recommended that Council be permitted to explore the proposed amendments, recognising that consultation will be required with Parliamentary Counsel (PC) at the drafting stage, and this will determine how the objectives and intended outcomes of the planning proposal will be delivered through an amendment to the Nambucca LEP 2010.

Item 2

Clause 4.2 A which is not a mandated clause under the Standard Instrument - Principal Local Environmental Plan, relates to the erection of dwelling houses and dual occupancies on land in certain rural and environmental protection zones.

Council have included a draft clause for consideration in the planning proposal. It is recommended that this clause be removed prior to exhibition to limit any confusion should the final draft of the clause be dissimilar, and this will be subject to drafting by PC.

It is considered that the intent of the clause is clearly articulated within the planning proposal. The purpose being:

- to align the clause with the change made to the landuse table detailed in Item 1;
- to ensure that a manufactured home or any other form of residential accommodation that is not prohibited in the zone cannot be installed on a lot that does not have dwelling permissibility; and
- to ensure that the clause applies to 'residential accommodation' even if the lot does not have dwelling permissibility, yet contains an existing dwelling house or dual occupancy that has been constructed without approval.

Item 3

Council considers that vehicle sales or hire premises would be not be contrary to the character of the zone, on the basis that land uses such as depots, garden centres, hardware and building supplies and industrial retail outlets are permissible within the B7 Business Park zone.

2 Strategic assessment

2.1 Regional Plan

It is considered that the planning proposal is not inconsistent with the Goals and Directions of the North Coast Regional Plan. In particular the planning proposal will assist in achieving the following:

Table 3 – Regional Plan Assessment

Local Strategies	Justification
Direction 23: Increase housing diversity and choice	The proposed amendment will assist in delivering housing diversity and choice within a wide range of zones. This increase in choice and diversity will also help to meet the needs of a changing population. The planning proposal is considered consistent with this Direction.
Direction 25: Deliver more opportunities for affordable housing.	The proposal will help to deliver more opportunities for affordable housing as well as a greater variety of housing types. The planning proposal is considered consistent with this Direction.

2.2 Local

Table 4 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>The planning proposal is considered to be consistent with the relevant Planning Goals of the LSPS. In particular, the planning proposal will assist in achieving the following Actions:</p> <p>Items 1 & 2</p> <p>PP3 – Housing</p> <ul style="list-style-type: none"> • Action 3.7 - Continue to support the delivery of a diverse range of housing types and markets. <p>Item 3</p> <p>PP1 – Community</p> <ul style="list-style-type: none"> • Action 1.4 - Review existing commercial zones to ensure they appropriately cater for commercial requirements, encourage commercial ventures to centralise and consolidate town centre activation. A secondary objective of this action is to maintain the existing character of surrounding residential neighbourhood's • Action 1.6 - Promote and advocate development controls which encourage investment or re-development in urban centres. Prepare fact sheets that identify locations where shop top housing is permissible and associated height limits and floor space ratios.
Community Strategic Plan (CSP)	<p>The planning proposal is considered to be consistent with the relevant Objectives and Strategies in the CSP. In particular, the planning proposal will assist in achieving the following:</p> <ul style="list-style-type: none"> • Objective - Our community values our natural environment and seeks a safe, liveable, sustainable built environment that is adaptive to change. • Strategy 2.1 Well planned Communities <ul style="list-style-type: none"> ○ Well Planned Communities - The Nambucca Valley aspires to be a community that minimises its environmental footprint and social costs while maximising the economic and social wellbeing of its residents. ○ Housing - Housing across the Nambucca Shire provides choice and is affordable

2.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 5 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.5 Rural Lands (Items 1 & 2)	No – Minor significance	<p>This Direction applies as the planning proposal will affect land within rural and environmental zones and is unable to satisfy all the requirements of the Direction.</p> <p>The inconsistency with this Direction is considered to be of minor significance as the planning proposal will only result in a simplified approval process for manufactured homes on land (within the relevant zones) where dwelling houses are currently permissible with consent and subject to certain standards under clause 4.2A(3)). The planning proposal is unlikely to lead to loss or fragmentation of agricultural land nor an increase in landuse conflict.</p>
2.1 Environmental Protection Zones (Items 1 & 2)	No – Minor significance	<p>This planning proposal is inconsistent with this Direction as it effects land mapped as containing Potential High Environmental Values and Important Farmland in the NCRP, Coastal Wetlands under SEPP (Coastal Management(2018) , Biophysical Strategic Agricultural land under SEPP (Mining, Petroleum Production and Extractive Industries) 2007 and Biodiversity Values as shown on the Biodiversity Values Map.</p> <p>The inconsistency with this Direction is considered to be of minor significance as the planning proposal will only result in a simplified approval process for manufactured homes on land (within the relevant zones) where dwelling houses are currently permissible with consent and subject to certain standards under clause 4.2A(3)). The proposed new provisions will not reduce the environmental protection standards that apply to the land.</p>
2.2 Coastal Management (All items)	No – Minor significance	<p>The planning proposal is inconsistent with this Direction as it effects land within the Coastal zone as well as land containing Coastal Wetlands and does not contain provisions which give effect to NSW Coastal policies.</p> <p>This inconsistency with this Direction is considered to be of minor significance as the planning proposal only seeks to allow manufactured homes to be permitted with consent on land where dwelling houses are</p>

		currently permissible and to include vehicle sales and hire premises within a suitable business zone. Site-specific issues relating to coastal management are also able to be considered at the development application stage if required.
4.3 Flood Prone Land (All items)	No – minor significance	<p>The planning proposal is inconsistent with this Direction as it may lead to an increase in development potential on flood prone land.</p> <p>The inconsistency is considered to be of minor significance as the Nambucca LEP 2010 contains suitable flood planning and risk management provisions to ensure that this matter can be appropriately considered and addressed at development application stage.</p>
4.4 Planning for Bushfire Protection (Items 1 & 2)	No	<p>The planning proposal is potentially inconsistent with this Direction because the land is bush fire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) following the issue of a Gateway determination and prior to community consultation. Consultation with the RFS is required following receipt of a Gateway determination and prior to undertaking community consultation. Until this consultation has occurred the inconsistency with the Direction is unresolved.</p>

2.4 State environmental planning policies (SEPPs)

The planning proposal is considered to be consistent with all relevant SEPPs.

3 Site-specific assessment

3.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 6 Environmental impact assessment

Environmental Impact	Assessment
Bushfire	<p>The planning proposal applies to a range of zones that have the potential to contain land mapped as bushfire prone. It is considered that the issue of bushfire risk is able to be adequately considered by Council as it would with any other development application for a dwelling.</p> <p>Consistency with Ministerial Direction 4.4 Planning for Bushfire Protection is unable to resolved however until consultation with the NSW RFS has occurred prior to community consultation. This forms a condition of this report.</p>

Acid Sulfate Soils	The planning proposal applies to a range of zones that have the potential to contain land mapped as containing acid sulfate soils. As manufactured homes are currently permitted in the zone however, albeit through a dual approval process, it is not considered that the outcome of the planning proposal will have a detrimental effect on such land. Council's LEP also contains adequate provisions for this issue to be further addressed at the development application stage.
Potential HEV land, Coastal Wetlands, BSAL and Important Farmland	The planning proposal applies to a range of mapped as containing Potential High Environmental Value under the NCRP, Coastal Wetlands under the Coastal Management Act, Biophysical Strategic Agricultural Land under the Mining, Petroleum Production and Extractive Industries SEPP (2007) and Important Farmland under the North Coast Regional Plan and as such the planning proposal may affect such land. As manufactured homes are currently permitted in the zone however, albeit through a dual approval process, it is not considered that the outcome of the planning proposal will have a detrimental effect on such land with such issues being able to be addressed at the development application stage if required.
Flooding	The planning proposal applies to a range of zones that have the potential to contain land subject to flooding. It is considered that adequate provisions exist under the LEP to enable Council to adequately consider this issue at the development application stage.

3.2 Social and economic

The planning proposal has the potential to provide positive social and economic outcomes through the delivery of more opportunities for affordable housing, greater variety of housing types as well as enabling greater diversity of landuse and economic opportunity within the B7 Business Park zone.

3.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 7 Infrastructure assessment

Infrastructure	Assessment
State	There will be no impact on State or regional infrastructure or the requirement for additional funding.
Local	Any local infrastructure upgrades will be determined at the development application stage.

4 Consultation

4.1 Community

Council proposes a community consultation period of 28 days. Given the local, low impact nature of the planning proposal however, it is considered that 14 days is an adequate period of time for community consultation. The exhibition period forms to the conditions of the Gateway determination but does not however preclude Council exhibiting for a longer period if they wish.

Council has nominated that community consultation will include an advertisement in the local newspaper and Council's website.

4.2 Agencies

The proposal does not specifically raise which agencies will be consulted. It is recommended the Council consult with the NSW Rural Fire Service (NSW RFS) and they be given 21 days to comment.

5 Timeframe

Council proposes a 4-month time frame to complete the LEP.

The Department however recommends a time frame of 6 months for completion drafting of the amendments of Items 1 and 2 may be complicated.

A condition to the above effect is recommended in the Gateway determination.

6 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

The Department recommends that Council be authorised to be the local plan-making authority for this proposal as it is generally consistent or justifiably inconsistent with the State, regional and local planning framework and deals only with matters of local significance.

It is considered appropriate that Council be provided authorisation to act as the local plan-making authority.

7 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- it is not inconsistent with the North Coast Regional Plan or Council's Local Strategic Planning Statement and will assist in delivering key Directions such as increasing housing diversity and choice and more opportunities for affordable housing;
- it will create positive social and economic benefits through the delivery of housing choice and affordability; and
- it will increase diversity and economic opportunity within the B7 Business Park zone whilst maintaining the objectives of the zone.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- Remove the draft clause for Item 2 in Part 2 *Explanation of Provisions*;
- Provide a discussion in Part 3, Section B *Relationship to Strategic Planning Framework* around the planning proposal's consistency with the Nambucca Local Strategic Planning Statement; and
- Update Part 6 *Project Timeline* to show the Gateway determination timeframe.

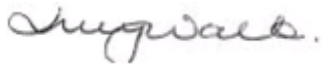
8 Recommendation

It is recommended the Director, as delegate of the Secretary:

1. **Agree** that any inconsistencies with section 9.1 Directions 1.5 Rural Lands, 2.1 Environment Protection Zones and 4.3 flood Prone Land are minor or justified; and
2. **Note** that the consistency with section 9.1 Directions 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended the Director as delegate of the Minister:

1. **note** the planning proposal (**Attachment A**);
2. **determine** the planning proposal should proceed subject to the following conditions:
 - a) Prior to community consultation, the planning proposal is to be amended to:
 - i. Remove the draft clause for Item 2 in Part 2 *Explanation of Provisions*;
 - ii. provide a discussion in Part 3, Section B *Relationship to Strategic Planning Framework* around the planning proposal's consistency with the Nambucca Local Strategic Planning Statement; and
 - iii. update Part 6 *Project Timeline* to show the Gateway determination timeframe.
 - b) Consultation is required with the NSW RFS.
 - c) The planning proposal should be made available for community consultation for a minimum of 14 days.
 - d) The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
 - e) Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



21/07/2021

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22/7/2021

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