



Planning,
Industry &
Environment

IRF21/3368

Gateway determination report – PP-2021-4811

Review permissible uses within the E4 Environmental
Living zone

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal 19 - E4 Environmental Living zone – Permissible Uses Review
North Coast Regional Plan 2036
Bellingen Shire Local Strategic Planning Statement 2020-2040
Bellingen Shire Local Housing Strategy 2020-2040
Bellingen Shire Community Strategic Vision 2027
Bellingen Shire Council Bushfire Strategic Study – E4 Lands (9 Feb 2021)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Bellingen
PPA	Bellingen Shire Council
NAME	Review permissible uses within Zone E4 Environmental Living
NUMBER	PP-2021-4811
LEP TO BE AMENDED	Bellingen Local Environmental Plan 2010
ADDRESS	Zone E4 Environmental Living
FILE NO.	IRF21/3368
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 objective of the planning proposal is to enable a wider variety of land uses within Zone E4 Environmental Living, specifically:

- rural industries to be permitted with consent;
- secondary dwellings and dual occupancy (attached) to be permitted with consent in certain areas; and
- farm buildings as exempt development.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Bellingen LEP 2010 per the changes below:

1. Insert the following land uses in Item 3 (Permitted with consent) of the land use table for Zone E4 – Environmental Living.

Rural industry

2. Prepare an Additional Permitted Uses Map that defines the extent of land within Zone E4 – Environmental Living that is considered suitable to permit "secondary dwellings" and "dual occupancy (attached)".
3. Insert the following clause in Schedule 1 Additional Permitted Uses.

13 Use of certain land within Zone E4 (Environmental Living) Zone

- (1) This clause applies to certain land within the E4 (Environmental Living) Zone being the land shown as Area 1 on the Additional Permitted Uses Map.

- (2) Development for the purpose of a 'Secondary dwelling' and 'Dual occupancy (attached)' is permitted with consent.

4. Insert the following item in Schedule 2 Exempt Development.

Farm buildings (other than stock holding yards, grain silos and grain bunkers)

- (1) This clause applies to land within Zone E4 (Environmental Living) Zone.
- (2) Notwithstanding the provisions of Clause 2.31(a) State Environmental Planning Policy (Exempt & Complying Development Codes) 2008, farm buildings (other than stock holding yards, grain silos and grain bunkers) are exempt development, if they comply with the provisions of Part 2 - Division 1 - Subdivision 16 of State Environmental Planning Policy (Exempt & Complying Development Codes) 2008.

It should be noted that the final wording of the proposed clauses will be determined by Legal Services Branch and Parliamentary Counsel (PCO) at the legal drafting stage, and any clauses included in the planning proposal are examples used to highlight the intended outcomes.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved. However, it is recommended that as a condition of the Gateway determination that some content is updated prior to agency and community consultation, including:

- the proposed exempt development standards should be contained within Schedule 2. Therefore references to the Codes SEPP will need to be removed and the proposed development standards incorporated within the planning proposal;
- the planning proposal on page 8 proposes to insert clause 11 in Schedule 1. This will need to be amended prior to public consultation to clause 13, as clauses 11 and 12 already exist in Schedule 1;
- a statement should be included acknowledging that final drafting for all proposed clauses will be subject to legal opinion to recognise that the clauses as proposed may not be as reflected within the final LEP;
- it should be clarified that the proposed amendments to facilitate dual occupancy (attached) and secondary dwellings nominated on the Additional Permitted Uses map will not apply to multiple occupancies (PP-2021-2828); and
- it should be identified that there is an E4 Environmental Living Zone proposed for Endeavour Drive, Bellingen (PP-2021-3459).

In relation to dot points 3 and 4, this proposal has a relationship with two current proposals for which Gateway determinations have recently been issued:

- PP-2021-2828 which aims to allow existing multiple occupancies to be subdivided by Community title. The majority of existing multiple occupancies are located in the existing E4 zone where dual occupancy (attached) and secondary dwellings are proposed as additional permitted uses; and
- PP-2021-3459 which seeks to rezone land in Endeavour Drive, Bellingen to E4. This proposal proposes that rural industries and farm buildings be permitted across the E4 zone. As such, this amendment would apply to any land rezoned to E4 by subsequent LEP amendments, and may include Endeavour Drive.

1.4 Site description and surrounding area

The E4 Environmental Living zone is presently limited to the Thora and Kalang Valleys in the Bellingen LGA. The Bellingen River in the Thora Valley and Kalang River in the Kalang Valley are subject to flooding and isolation due to low lying bridges with one road in and out of the valleys. The valleys have areas of regionally significant farmland along the respective rivers. The areas are noted for their natural environment and are surrounded by state forests and national park (Figure 1).

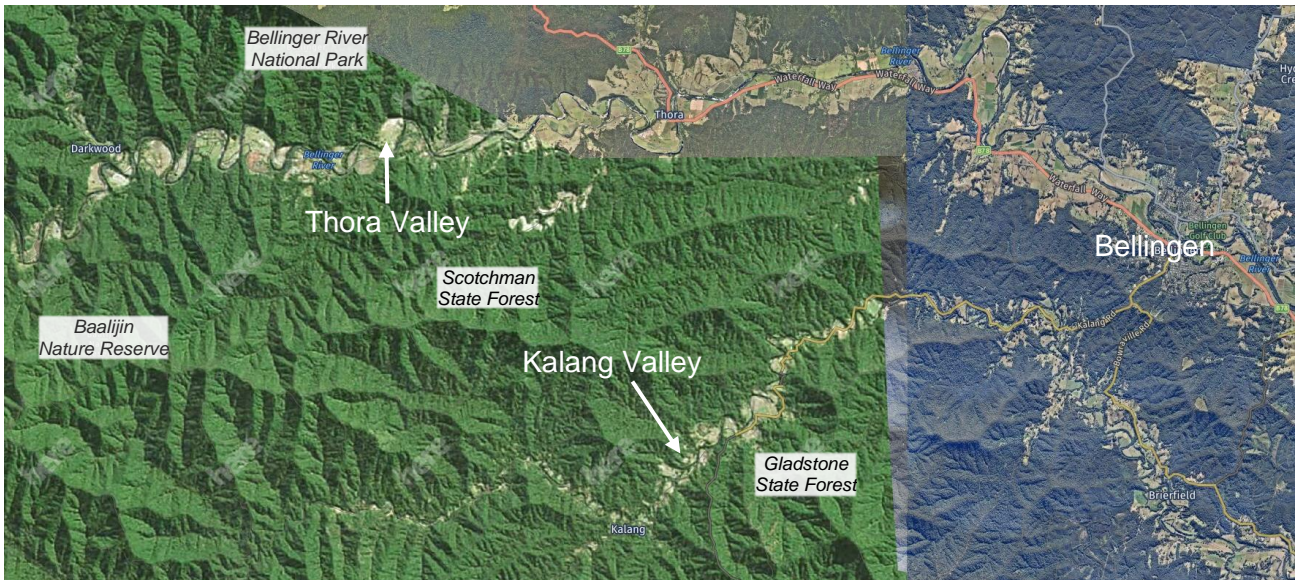


Figure 1 – Site Location
(Source – Near Map)

1.5 Existing Planning Controls

The Thora and Kalang Valleys are zoned E4 Environmental Living (Figure 2) and have without exception a 200ha minimum lot size. The valleys are identified on the Bellingen LEP Natural Resources Sensitivity Map (Figure 3); are surrounded by bushfire prone land (Figure 4); have areas of regionally significant farmland (Figure 5); potential high environmental value land (Figure 6); and Biodiversity Value mapped areas (Figure 7).

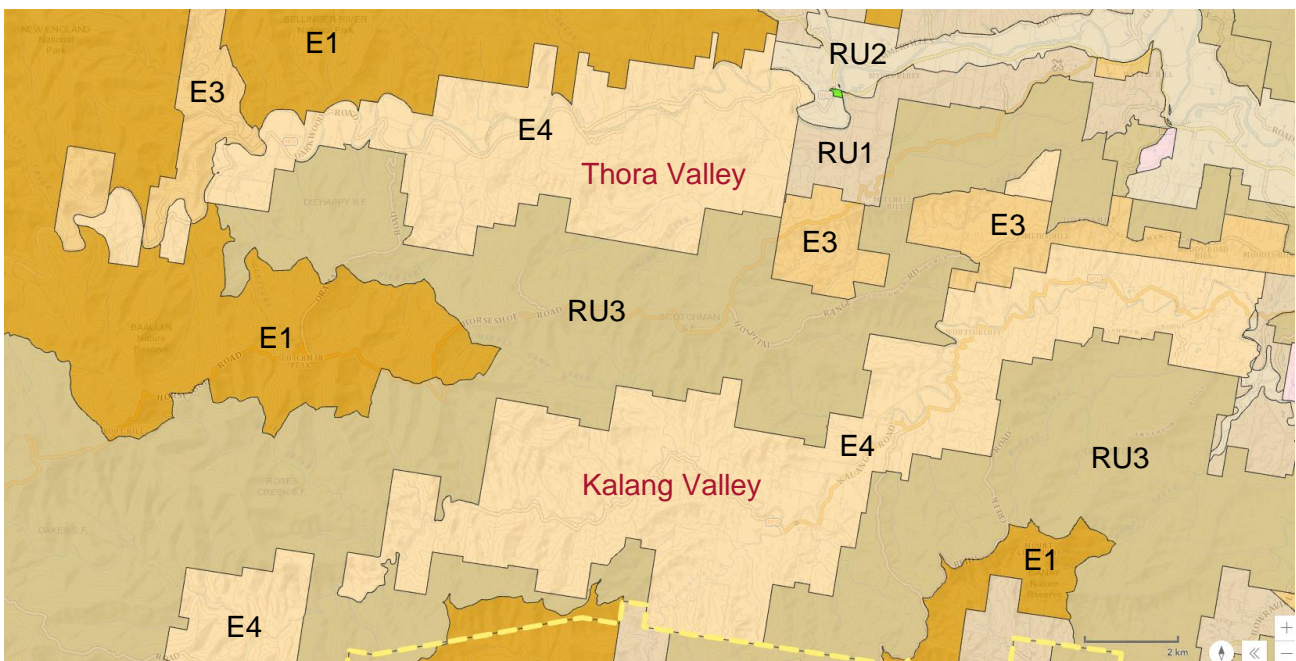


Figure 2 – E4 Environmental Living Zones, Thora and Kalang Valleys
(Source – ePlanning Spatial Viewer)

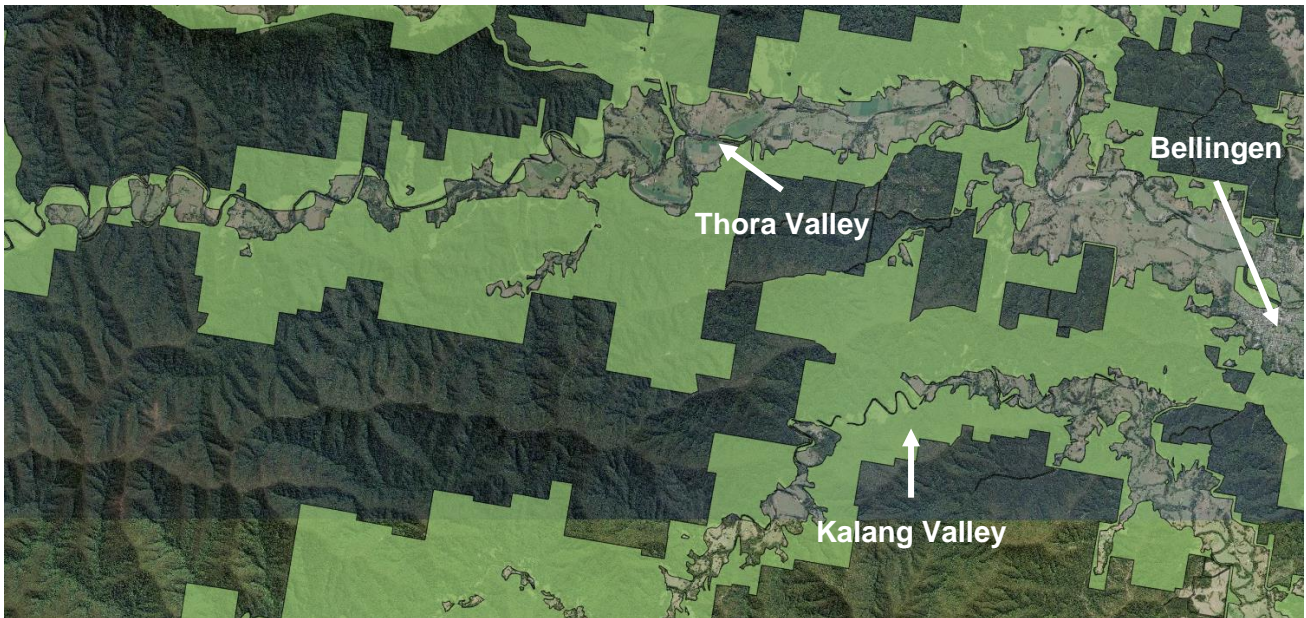


Figure 3 – Natural Resources Sensitivity – Biodiversity Map, Thora and Kalang Valleys
(Source – Bellingen LEP 2010)

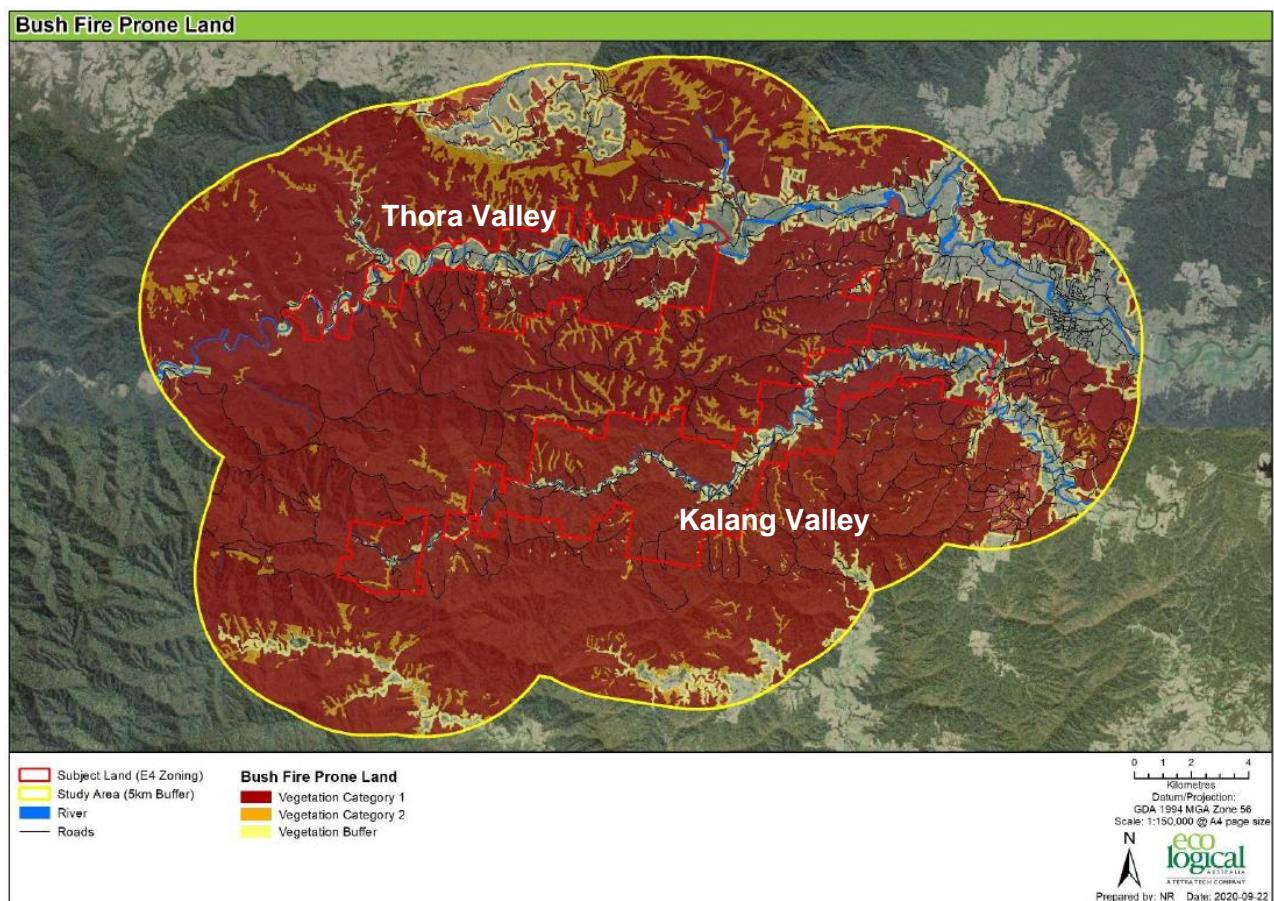


Figure 4 – Bushfire Prone Land, Thora and Kalang Valleys
(Source – Bellingen Shire Council Bushfire Strategic Study – E4 Lands)

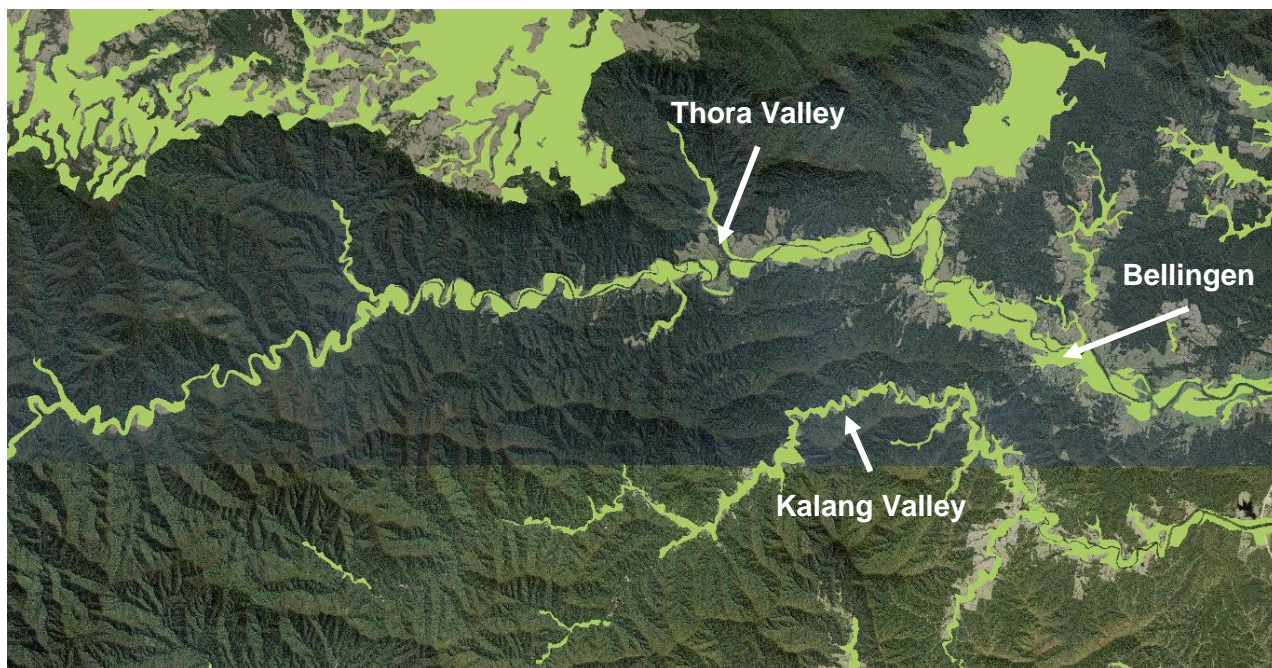


Figure 5 – Regionally Significant Farmland, Thora and Kalang Valleys
(Source – NCRP 2036)

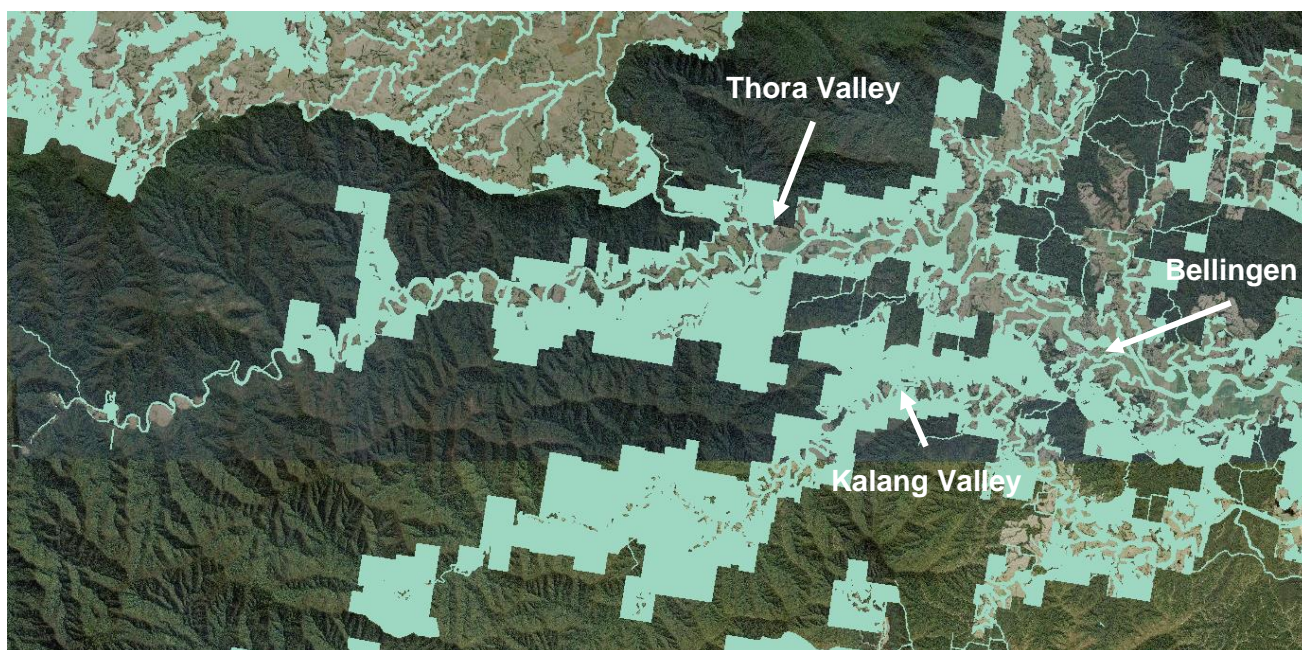


Figure 6 – Potential High Environmental Land, Thora and Kalang Valleys
(Source – NCRP 2036)

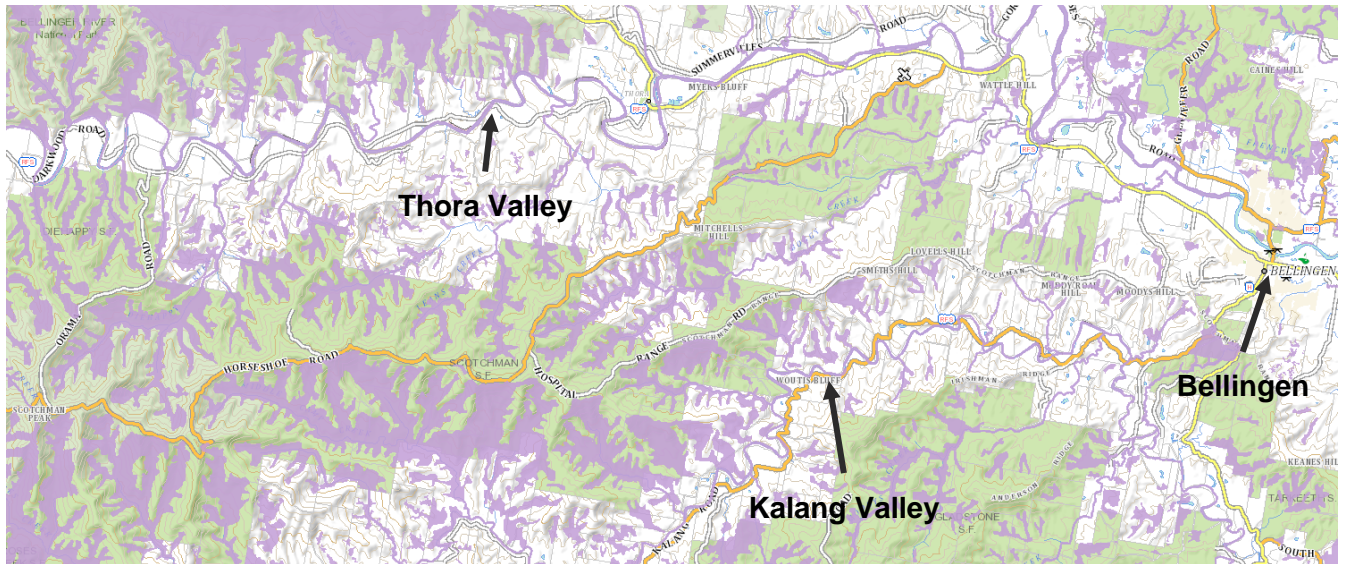


Figure 7 – State-wide Biodiversity Conservation Values Map, Thora and Kalang Valleys
(Source – Biodiversity Values Map and Threshold Tool (<https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>))

1.6 Mapping

The planning proposal includes mapping showing the proposed changes to the Additional Permitted Uses maps (Figure 8 & Figure 9), which are suitable for community consultation. Maps consistent with the Standard Technical Requirements will also need to be prepared before the making of the LEP amendment.

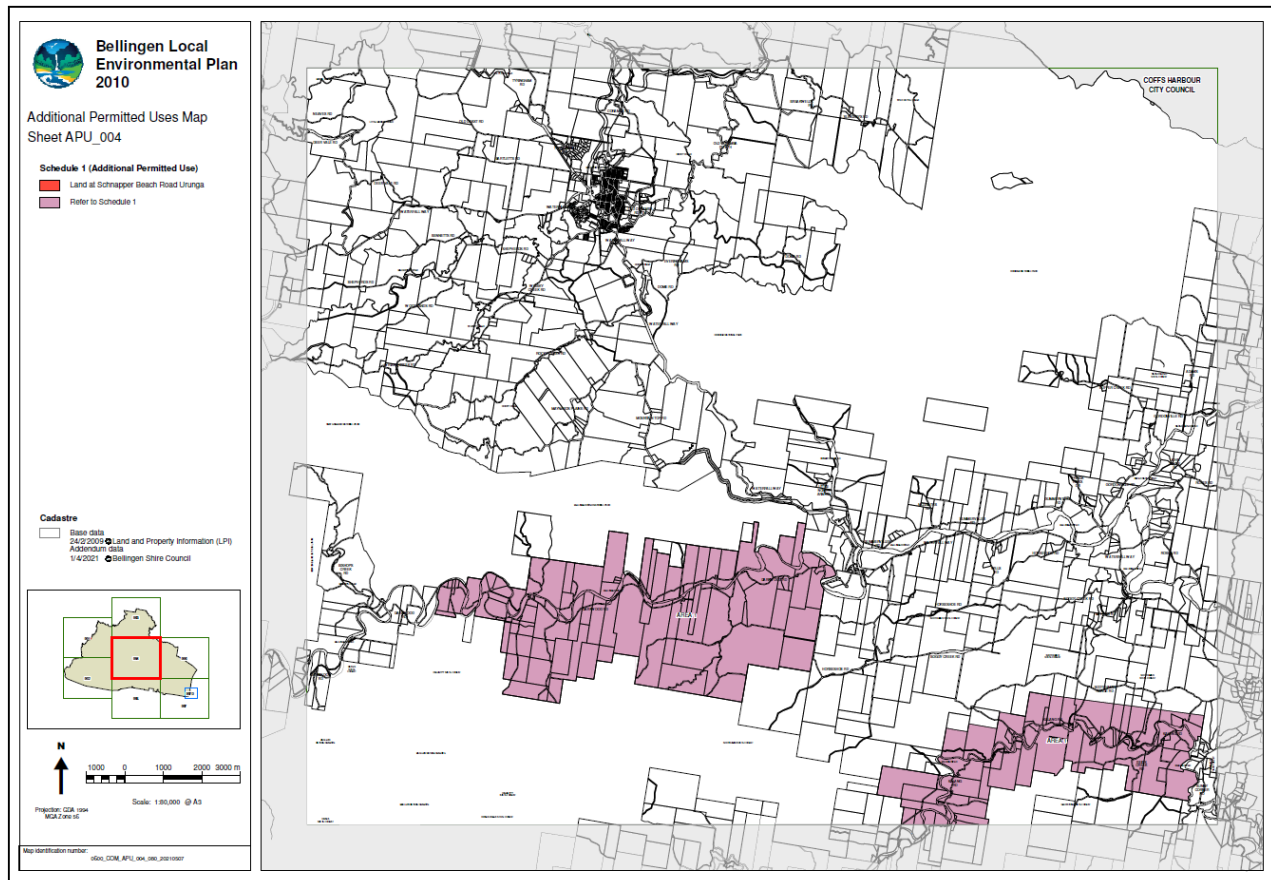


Figure 8 – Proposed Additional Permitted Uses Map
(Source – Planning Proposal)



Figure 9 – Proposed Additional Permitted Uses Map
(Source – Planning Proposal)

1.7 Background

Council originally lodged a planning proposal (12) in 2017 to broaden the range of permissible uses within the E4 Environmental Living Zone.

Council was required to consult with the NSW State Emergency Service (SES) and the NSW Rural Fire Service (RFS), both of whom expressed concern with the isolation of these areas during natural hazards, and the possible adverse impacts of allowing more development in these areas.

Council commissioned a Bushfire Strategic Study (**Attachment D**) to further investigate bushfire risk and potentially provide further support for proceeding with the planning proposal. The Study recommended the planning proposal should not apply to more isolated locations in the west of the Kalang and Thora Valleys. The RFS agreed to this, however, advised the potential for tourist and visitor related land uses should also be removed for them to support the proposal (**Attachment E**).

The planning proposal (12) was formally withdrawn by Council in March 2021 to allow for further investigation and consultation.

Council resolved on 28 April 2021 to prepare the current planning proposal (19), consistent with the findings of the Study and the recommendations of the RFS.

Following withdrawal of the original planning proposal (12), two Gateway determinations were issued which interact with this proposal. The first is PP 2021-2828 which permits the subdivision of existing multiple occupancies by Community title. The second is PP-2021-3439 which seeks to rezone land in Endeavour Drive, Bellingen to zone E4.

The majority of existing multiple occupancies are located within the E4 zone in the Thora and Kalang Valleys. As such, they are within the APU map where it is proposed to permit dual occupancy (attached) and secondary dwellings.

Further, currently the E4 zone is limited to the Thora and Kalang Valleys. However, the Endeavour Drive proposal seeks to introduce an additional area of zone E4. The proposed provisions in relation to rural industries and farm buildings relate to the E4 zone as a whole, and as a consequence will apply to any future land zoned E4.

The relationship between these proposals has been discussed with Council who has advised that they wish to proceed with the proposal as submitted. They have indicated that the number of dwellings in multiple occupancy subdivisions will be controlled through the development consent and Community Management Plan. They have also advised that they consider that there is minimal risk of adverse outcomes for the Endeavour Drive planning proposal as a consequence of rural industries and/or farm buildings.

It is recommended that the planning proposal is updated to clarify that the proposal does not apply to multiple occupancies on the APU map and it is identified that there is a proposed E4 zone in Endeavor Drive, which is the subject of a separate planning proposal.

2 Need for the planning proposal

The planning proposal is a result of Council undertaking a Rural Lands Planning Policy Review process in 2017. Community consultation revealed that landowners in the E4 zone considered the land uses were restrictive when compared with 'permissible with consent' development in other rural zones. As discussed above, Council commissioned a Bushfire Strategic Study after consultation with RFS and SES.

The Study recommended any increase in development should be limited to the eastern more cleared areas approximately a maximum 15 -20 minutes travel time from main access roads (Waterfall Way for the Thora Valley and Bowraville Road for the Kalang Valley).

- For the Thora Valley, Richardson's bridge is approximately 20 minutes to Waterfall Way.
- For the Kalang Valley, Woutis Bluff (Holbert's Fire Trail intersection with Kalang Road) is approximately 15 minutes from Bowraville Road and Kalang road intersection, with the Rickerby's Road – Kalang Road intersection being approximately 5 minutes additional travel time beyond Woutis Bluff.

The RFS has also provided comments in regard to the original planning proposal (12) as follows:

- No objection is raised to the proposal to permit (with development consent) dual occupancy (attached) and secondary dwellings in the eastern portion of the Kalang Valley and Thora Valley, as described in the revised Bush Fire Strategic Study.
- The proposal to permit tourist and visitor accommodation, and eco-tourist facility (with development consent) in Zone E4 is not supported.
- The proposal to prohibit backpacker accommodation, hotel or motel accommodation and serviced apartments in Zone E4 is supported.
- No objection is raised to the proposal to permit rural industries with development consent or to include farm buildings as a category of exempt development in Schedule 2 – Exempt Development, of Bellingen Local Environmental Plan 2010, when carried out within Zone E4.

Council has considered the recommendations of the Study and feedback from the RFS when preparing the current planning proposal (19).

Council have proposed to utilise an Additional Permitted Uses map to define the extent of the E4 zone where it is considered suitable to permit secondary dwellings and dual occupancy (attached) within the eastern portion of the Kalang Valley and Thora Valley. This proposed amendment is considered to be the best means for achieving this objective and satisfying agency concerns.

Council considered an alternative approach could be nominating an address to define the extent; however, this was considered flawed if a boundary adjustment was undertaken, altering current addressing and/or legal property descriptions.

It is also considered that the planning proposal is the best way to allow 'rural industry' as permissible with consent in the E4 zone. It will permit this form of development on land which is currently used for commercial rural and agricultural purposes, consistent with other rural land in the LGA. The proposed land use cannot be developed unless it is made permissible in the LEP land use table for the E4 zone.

It is considered the planning proposal is an appropriate means for allowing 'farm buildings' as exempt development in the E4 Environmental Living zone. However, as discussed in section 3.1 of this report, the exempt development standards relating to farm buildings will need to be nominated within Schedule 2. Therefore, it is recommended that a condition is imposed on the Gateway determination to require that references to the Codes SEPP be removed and the proposed exempt development standards included.

An alternative option to the planning proposal would be for Council to rezone the E4 Environmental Living zone to an appropriate rural zone. If Council was to consider rezoning however, it would need to be informed by strategic justification, either a rural lands strategy or a growth management strategy. Council has however sought to processed with permitting limited additional land uses in the short term.

It is noted that Council adopted the E4 zone when preparing the Bellingen LEP 2010 to restrict additional population generating development in view of isolation issues during natural disasters. Since adopting the E4 zone Council have commenced an infrastructure renewal program for maintenance of rural roads and bridges. The local communities are also considered by Council to be very resilient during flooding events and Council has considerable local knowledge regarding flooding in these areas. The introduction of restrictions via an additional permitted use on locations within the E4 zone where potential increased development will be considered; and the additional proposed clauses allowing for rural industry and farm buildings; is an appropriate solution at this point compared to rezoning.

It is considered the planning proposal is the best means for achieving the objectives and intended outcomes.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan 2036 (NCRP).

Table 3 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 2: Enhance biodiversity, coastal and aquatic habitats, and water catchments	<p>The proposal is not inconsistent with this Direction. The Direction advocates for development to be appropriately located to limit any adverse impact on the region's biodiversity and water catchments, and implement the 'avoid, minimise, offset' hierarchy to biodiversity, including areas of high environmental value. The NCRP identifies areas of potential High Environmental Value (HEV) which help protect important natural assets, maintain diversity and habitat for flora and fauna, including the region's koala population.</p> <p>Both the Thora and Kalang Valleys have potential HEV areas identified (Figure 6); and are identified on the Natural Resources Sensitivity – Biodiversity Map (NRSB) in the Bellingen LEP (Figure 3). The NRSB Map is supported by Clause 7.5 Biodiversity in the Bellingen LEP to maintain terrestrial and aquatic biodiversity and development consent must avoid, minimise, or mitigate impact upon identified areas.</p>

Regional Plan Objectives	Justification
	<p>Both valleys are surrounded by State Forest and National Parks and contain portions of land that are mapped on the State-wide Biodiversity Conservation Values Map (Figure 7).</p> <p>The objectives of the E4 Environmental Living zone align with the Direction by providing for low-impact residential development in areas with special ecological, scientific or aesthetic values without causing adverse effects on those values; providing for the continuation of low impact agricultural land uses with productive value; whilst restricting the cumulative impact of traffic generating development on the local road systems and limit population numbers in areas isolated during flooding events.</p> <p>The planning proposal by allowing the identified APU E4 zone also providing potential for new development via secondary dwellings and dual occupancy (attached); will likely increase the potential for land clearing, especially in relation to creating asset protection zones within the bushfire prone areas.</p> <p>It is therefore recommended that consultation is undertaken with the Department of Planning, Industry and Environment, Biodiversity and Conservation Division (BCD) to confirm the suitability of the planning proposal.</p>
Direction 3: Manage natural hazards and climate change	<p>The planning proposal is not inconsistent with this Direction as it does not seek to significantly increase development pressure in the identified areas or significantly increase the risk with natural hazards, however, as the areas are known for flooding and are bushfire prone the risks have been mitigated as follows.</p> <p><u>Infrastructure</u></p> <p>Council have advised of their infrastructure renewal program for the maintenance of rural roads and bridges has addressed some of the original planning proposal concerns regarding increased traffic generation and the capacity of local infrastructure to accommodate any increases and the ability for egress and/or ingress of residents or emergency services.</p> <p><u>Flooding</u></p> <p>Council has a high level of knowledge of flooding in the areas. Their advice also states that the communities in these areas are quite resilient compared to other areas of the LGA and it is considered that allowing additional dwellings could improve flood resilience by creating a mini 'community of support'.</p> <p>Council has committed via their LSPS Action 9.1 to Update Shire wide Floodplain Risk Management Plan (immediate term) and Action 9.1a to Commission updated flood mapping for the Upper Bellingier, Upper Kalang and Dorrigo areas (short term).</p> <p><u>Bushfire</u></p> <p>Consultation with RFS and the recommendations from the Bushfire Hazard Study have indicated that additional dwellings should be limited to the eastern more cleared areas of the E4 zone. This is considered an appropriate response to manage this hazard.</p>

Regional Plan Objectives	Justification
	<p>Further consultation will be undertaken with the NSW Rural Fire Service and the NSW State Emergency Services. Consultation should also be undertaken with BCD in relation to flooding.</p>
<p>Direction 11: Protect and enhance productive agricultural lands</p>	<p>The planning proposal is not inconsistent with this Direction. Whilst the E4 zones are not zoned rural, they do contain Regionally Significant Farmland (Figure 5) identified in the Mid North Coast Farmland Mapping Project (2008) (MNCFMP) which is identified in the NCRP. The intent of the planning proposal is to allow rural industry to be permissible with consent and farm buildings as exempt development if they comply with the provisions of Part 2 - Division 1 - Subdivision 16 of the Codes SEPP, aligning with other rural zones in the LGA. It is considered this is encouraging the agricultural use of these areas.</p> <p>The planning proposal is also seeking secondary dwellings and dual occupancy (attached) to be permitted with consent in the identified APU E4 zone. These areas also contain pockets of Regionally Significant Farmland identified in the MNCFMP. The Direction requires that the interim important farmland variation criteria contained in Appendix B of the NCRP is considered and justified.</p> <p><u><i>Appendix B Important Farmland Interim Variation Criteria</i></u></p> <p><u><i>Agricultural capability:</i></u> The planning proposal applies to areas that are typically used for agricultural purposes. It is noted that most of the E4 Environmental Living zone was previously zoned 1(a2) Secondary Agriculture under the Bellingen LEP 2003. The intent of the planning proposal is to enable a wider variety of small-scale ancillary uses in the zone to improve the likelihood of people remaining on the land and undertaking agricultural activities.</p> <p><u><i>Land use conflict:</i></u> The planning proposal is unlikely to increase the likelihood of conflict and does not impact on current or future agricultural activities in the locality.</p> <p><u><i>Infrastructure:</i></u> There will be no impact on State or regional infrastructure or the requirement for additional funding. Council acknowledges the single road in and out of the valleys and the low lying bridges are an issue during flooding and bushfire events. Council will seek opportunities through relevant Grant programs or other means to progressively improve road infrastructure in these localities through bridge raising / replacement actions and other road geometry improvements. The planning proposal is anticipated by Council to only facilitate a modest increase in development within the identified APU E4 zone.</p> <p><u><i>Environment and heritage:</i></u> These matters are discussed in section 4 of this report. It is recommended that consultation is undertaken with BCD and the Local Aboriginal Land Council to confirm the suitability of the proposal.</p> <p><u><i>Avoiding risk:</i></u> The risks are discussed in section 4 of this report. It is recommended that consultation is undertaken with the RFS and BCD to confirm the suitability of the proposal.</p>

Regional Plan Objectives	Justification
Direction 12: Grow agribusiness across the region	The planning proposal is consistent with this Direction as it is introducing 'rural industry' as a land use permitted with consent and farm buildings as exempt development within the E4 zone, encouraging the use of rural land including the Regionally Significant Farmland for continued agricultural use and potential agribusiness opportunities.
Direction 15: Develop healthy, safe, socially engaged and well connected communities	The planning proposal is consistent with this Direction as it will allow for additional dwelling opportunities that can allow for ageing in place via the secondary dwelling or dual occupancy (attached) permitted with consent in the identified APU E4 zones. This helps support well connected communities and social connectivity with families at various stages of life, whether that be young adults or elderly parents wanting to remain on the family farm.
Direction 23: Increase housing diversity and choice	The planning proposal is consistent with this Direction as it will support greater diversity in the housing choices in the identified APU E4 zones. The planning proposal advises there is potential for an additional 14 dwellings in the Kalang Valley and 13 additional dwellings in the Thora Valley assuming 25% of the existing dwellings (excluding MOs) take up the opportunity.
Direction 25: Deliver more opportunities for affordable housing	The planning proposal is consistent with this Direction as it will support affordable housing choices in the identified APU E4 zones.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 4 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	<p>The addition of 'rural industry' as permissible with consent, and the inclusion of 'farm buildings' to the E4 zone, helps to promote the LSPS's vision to productively utilise regionally significant farmland, whereby opportunities for local employment are potentially provided. This is relevant to:</p> <p><i>PP1 To support a vibrant and ecologically sustainable rural economy that is transitioning towards a regenerative model of rural land use.</i></p> <p><i>PP3 To provide meaningful opportunities for local employment, sustainable business establishment and growth.</i></p> <p>The LSPS notes that '<i>Issues of succession planning for ageing farmers is another matter that will require attention, with many either not wanting to leave the farm or the area, but not having appropriate housing choices to meet their needs</i>'.</p> <p>Whilst there is no specific action in the LSPS that considers this statement, the planning proposal, by permitting with consent secondary dwellings and dual occupancy (attached), has the potential to deliver</p>

Local Strategies	Justification
	affordable housing options providing opportunities for succession planning for ageing in place.
Bellingen Shire Local Housing Strategy 2020-2040 (LHS)	The planning proposal is not inconsistent with the LHS, conditionally approved by the Department on 15 April 2020.
Bellingen Shire Community Strategic Vision 2027 (CSV)	The planning proposal is not inconsistent with the Community Strategic Vision and aligns with their identified priorities.

3.3 Section 9.1 Ministerial Directions

The planning proposal is consistent with relevant section 9.1 Directions except for the following as discussed below:

Table 5 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.5 Rural Lands	No – Justifiably Inconsistent	<p>The proposal is inconsistent with this Direction as it affects land that is within an environmental protection zone and is unable to satisfy all the requirements of the direction. Regionally Significant Farmland is identified within the E4 zone.</p> <p>As discussed above in Section 3.1 and 3.2, the planning proposal is not inconsistent with the NCRP or other local plans or strategies. Community concerns were raised during the 2017 Rural Lands Planning Policy Review about the restrictive nature of the E4 zone. These areas were previously zoned as secondary agriculture areas under the previous Bellingen LEP 2003.</p> <p>The planning proposal proposes to allow rural Industries as permitted with consent and farm buildings as exempt development to align the current E4 zone with other rural zones in the LGA. Council consider that these additional land uses will enhance the opportunities for agricultural endeavours to be continued by farmers in exercising their right to farm, noting there are areas of Regionally Significant Farmland; and promoting opportunities for investment in productive, diversified, innovative and sustainable rural economic activities.</p> <p>The planning proposal also proposes to allow secondary dwellings and dual occupancy (attached) to be permitted with consent in certain areas within the zone, being the eastern portions of the valleys, typically the more cleared areas. These additional land uses also align with the land uses permitted in the other rural zones.</p> <p>As discussed in Table 3, initial analysis by Council details potential for a modest number of new developments. Any additional dwelling will require a development application and assessment having consideration to the Bellingen LEP, ensuring that:</p> <ul style="list-style-type: none"> a secondary dwelling is limited in size to 60m² or 25% of the total floor area of the principal dwelling;

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<ul style="list-style-type: none"> environmental values are identified and protected including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources; consideration of the natural and physical constraints of the land including but not limited to, topography, size, location, water availability and ground and soil conditions; and prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land uses. <p>The inconsistency with this Direction is considered to be of minor significance.</p>
2.1 Environment Protection Zones	No – Justifiably Inconsistent	<p>The proposal is inconsistent with this Direction as it affects land within an environmental protection zone or otherwise identified for environment protection purposes.</p> <p>As discussed in Table 3, initial analysis by Council details potential for a modest increase of new developments by permitting secondary dwellings and dual occupancy (attached). Permitting this development does not reduce the current environmental standards associated with the E4 zone as any new development will require development consent, where potential impacts can be assessed at the development application stage. As noted above in Direction 1.5, the size limits of secondary dwellings and the requirement for dual occupancies to be attached will potentially limit the attractiveness of these forms of housing and any potential interest for new development.</p> <p>The planning proposal also seeks to broaden with consent the permissible land uses by including rural industry. As previously discussed, the E4 zone was used to limit land uses in this zone due to the isolated, flood prone and bushfire prone nature of the valleys. Given that rural and agricultural land uses exist within this area, and there are areas of regionally significant farmland, it is considered that making rural industries permissible with consent is appropriate. It will be necessary for rural industries to obtain development consent and therefore flooding, bushfire and road constraints can be addressed at the development application stage.</p> <p>The planning proposal is also seeking to make farm buildings exempt development. Clause 3.1(5) of the Bellingen LEP 2010 provides that development cannot be exempt development if it requires clearing that would otherwise require a permit or approval. Having regard to the development standards contained in the Codes SEPP, the proposed exempt development provisions will also include environmental considerations.</p> <p>The Bellingen LEP contains provisions to protect environmentally sensitive areas. Both valleys are identified on the NRSB Map in the Bellingen LEP (Figure 3) and are supported by Clause 7.4 Water and Clause 7.5 Biodiversity.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		It is considered the planning proposal does not reduce the current environmental standards associated with the E4 zone and the inconsistency within this Direction is considered to be of minor significance; however, it is recommended that consultation is undertaken with the Division of Biodiversity and Conservation (BCD) as there is land that is likely to contain native vegetation and biodiversity values.
2.3 Heritage Conservation	No – Justifiably Inconsistent	The planning proposal is inconsistent with this Direction as it provides that a planning proposal must contain provisions which facilitate the conservation of heritage and Aboriginal cultural significance. The proposal will permit additional land uses with consent and enable some farm buildings to be developed as exempt development. Although the proposal does not specifically facilitate the protection of matters of heritage significance, it does not reduce the protection afforded by the current framework. As such, the inconsistency is considered to be of minor significance. It is recommended that consultation is undertaken with the Aboriginal Land Council to confirm the suitability of the proposal.
4.3 Flooding	No – Inconsistent	<p>The proposal is inconsistent with this Direction as it affects land that is known to be flood prone.</p> <p>The planning proposal has the potential to increase development by allowing for:</p> <ul style="list-style-type: none"> • secondary dwellings and/or dual occupancies (attached) to the identified APU E4 zones; • rural industries with consent within the entire E4 zone; and • farm buildings as exempt development within the entire E4 zone. <p>Council has committed via their LSPS Action 9.1 to Update Shire wide Floodplain Risk Management Plan (immediate term) and Action 9.1a to Commission updated flood mapping for the Upper Bellinger, Upper Kalang and Dorriggo areas (short term). Council advised in the planning proposal that Flood Studies (2005) in both areas have been undertaken that nominate appropriate flood planning levels for the majority of the proposed area of application in the Kalang Valley (Figure 10), and for the entire extent of the proposed area of application in the Thora Valley (Figure 11).</p> <p>Both valleys have the potential to be isolated during flooding events. Council have acknowledged their commitment to upgrade infrastructure over time by either raising or replacing low lying bridges. Council have also advised in the planning proposal there is an investigation into alternative routes to help ingress and egress during emergency conditions.</p> <p>The Bellinger LEP 2010 contains provisions via Clause 5.21 Flood planning, and Council's DCP, that allow for assessment at the development application stage.</p> <p>In relation to farm building as exempt development in the E4 zone, the Direction states that a planning proposal must not contain provisions that apply to the flood planning area which permit</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>development to be carried out <i>except for</i> the purposes of exempt development or agriculture. It is noted that these buildings could potentially be located on flood prone land, however, are not habitable and will not result in an increased population isolated in a flood event.</p> <p>Until this consultation has occurred with the SES and BCD, the inconsistency with the Direction is unresolved.</p>
4.4 Planning for Bushfire Protection	No – Inconsistent	<p>The planning proposal is inconsistent with this Direction as it affects land that is identified as being bushfire 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. Until this consultation has occurred the inconsistency with the Direction is unresolved.</p>

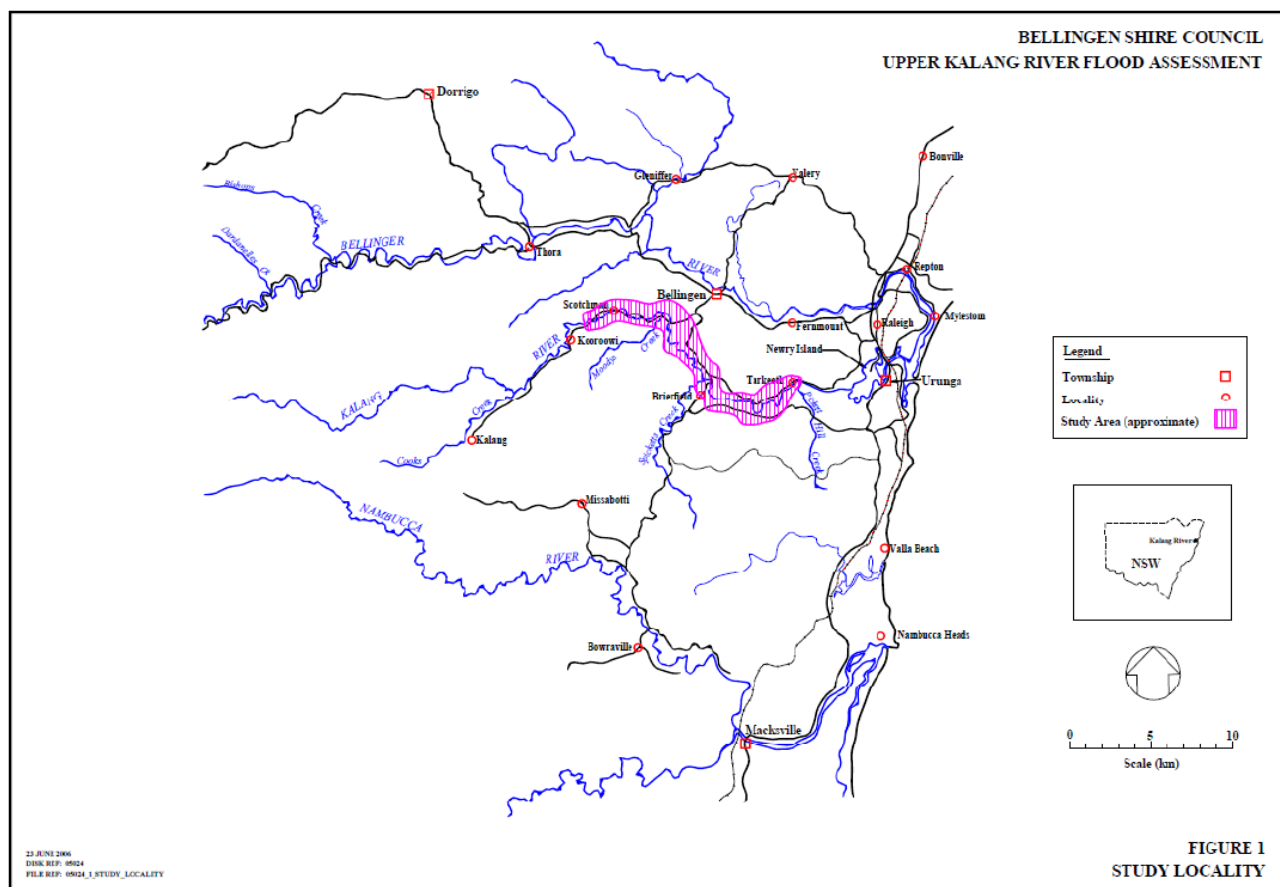


Figure 10 – Upper Kalang River Flood Study Area
(Source – Planning Proposal)

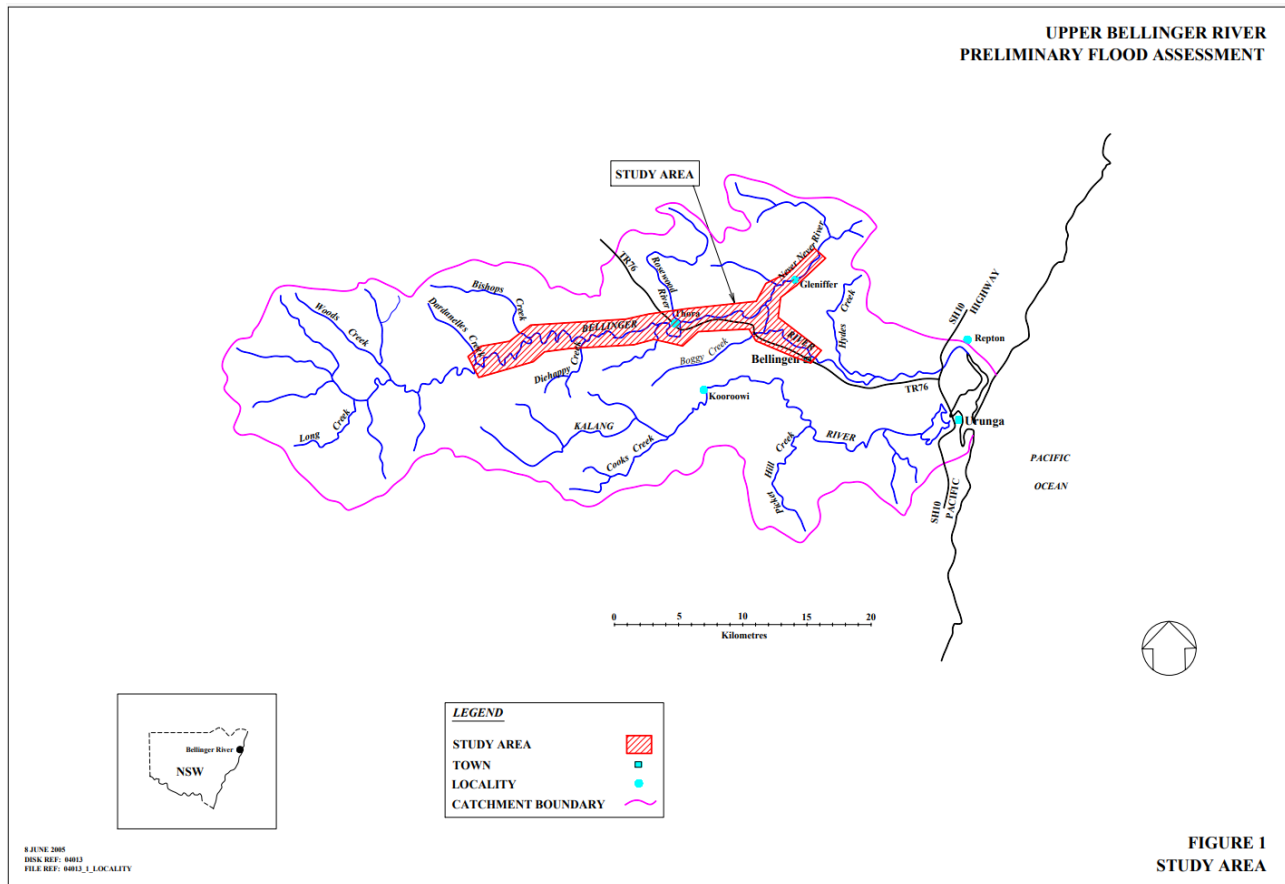


Figure 11 – Upper Bellinger River Flood Study Area
(Source – Planning Proposal)

3.4 State environmental planning policies (SEPPs)

Table 6 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Primary Production and Rural Development SEPP 2019	Various lots identified in the proposal are mapped as having Regionally Significant Farmland.	No – Justifiably Inconsistent	<p>The E4 Zone has areas of mapped Regionally Significant Farmland (Figure 5). The intent of the planning proposal is to allow rural industry to be permissible with consent and farm buildings as exempt development, aligning with other rural zones in the LGA. It is considered this is encouraging low impact agricultural use of these areas.</p> <p>The planning proposal also proposes to allow an increase in development potential via secondary dwellings and dual occupancy (attached) within the identified APU E4 zone. As discussed above under Direction 2.1 the size limits of secondary dwellings and the requirement for dual occupancies to be attached will potentially limit the attractiveness of these forms of housing and any potential interest for new development; however, it will offer</p>

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
			<p>affordable housing options to support well connected communities.</p> <p>As discussed above in Section 3.1 and 3.2, the planning proposal is not inconsistent with the NCRP or other local plans or strategies.</p>
Koala Habitat Protection SEPP 2021	This SEPP applies as Bellingen LGA is listed in Schedule 1 of the SEPP.	Consistent	<p>Bellingen Shire Council has a Comprehensive Koala Plan of Management (KPoM) mapping core Koala habitat and preferred Koala habitat.</p> <p>The planning proposal acknowledges the KPoM has no mapped core koala habitat in the E4 zone, however, there is the likelihood that there will be koala habitat within the meaning of SEPP.</p> <p>Future development will require assessment in accordance with the Koala SEPP and Bellingen KPoM.</p> <p>The planning proposal is considered to be consistent with the SEPP.</p>
SEPP Vegetation in Non-Rural Areas 2017	This SEPP applies as the planning proposal has land identified in Clause 5 of the SEPP; E4 Environmental Living	No – Justifiably Inconsistent	<p>It is recognised that there is potential for land clearing of native vegetation as part of any future development.</p> <p>Clause 8 of the SEPP refers to the <i>Local Land Services Act 2013 (LLS Act)</i> section 60O, whereby clearing is authorised by a development consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>The <i>LLS Act</i> Schedule 5A Part 3 sets out authorised clearing of native vegetation for rural infrastructure such as permanent boundary fences, permanent internal fences, roads, tracks or pipelines, sheds, tanks, dams, stockyards, bores, pumps, water points or windmills.</p> <p>Council is in the process of preparing a new Rural Lands Strategy which will consider appropriate policy positions in relation to clearing activities in environmental zones.</p> <p>The planning proposal does not enable land clearing without further consideration, and the SEPP will need to be considered at the development application stage.</p>

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP Exempt and Complying Development Codes 2008	Part 2, Division 1, Subdivision 16 - Farm Buildings (other than stock holding yards, grain silos and grain bunkers)	Consistent	<p>The planning proposal is seeking to include farm buildings in Schedule 2 Exempt Development of the Bellingen LEP 2010.</p> <p>The SEPP does not permit farm buildings in the E4 zone as exempt development; only in the RU1, RU2, RU3, RU4 or RU6 zones. The proposed new clause in Schedule 2 of the Bellingen LEP 2010 is presently worded to reference the Codes SEPP. As discussed in the report, Schedule 2 will need to incorporate the proposed exempt provisions, rather than to rely on a reference to the Code SEPP.</p>

4 Site-specific assessment

4.1 Environmental

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

Table 7 Environmental impact assessment

Environmental Impact	Assessment
Environmental Protection Zones	As discussed under Direction 2.1 Environmental Protection Zones, the planning proposal does not reduce the current environmental standards associated with the E4 zone and the Bellingen LEP contains provisions to protect environmentally sensitive areas relating to Water (Clause 7.4) and Biodiversity (Clause 7.5).
Regionally Significant Farmland	As discussed under Direction 1.5 Rural Lands, the planning proposal is seeking to permit with consent rural industry and farm buildings as exempt development enhancing the opportunities for agricultural endeavours to be continued by farmers in exercising their right to farm; and promoting opportunities for investment in productive, diversified, innovative and sustainable rural economic activities.
Koalas	<p>As discussed above in Table 6, Bellingen has a Comprehensive KPOM that maps core Koala habitat.</p> <p>Bellingen LGA is listed in the Schedule 1 Koala SEPP 2021 and any future development will have to address the provisions of the SEPP and Bellingen KPOM at the development application stage.</p>

Flooding & Bushfire

Both flooding and bushfire have been discussed above under the relevant Directions.

The Department of Planning, Industry and Environment released in July 2021 updated guidance to support better management of flood risk beyond the 1% annual exceedance probability to help ensure best management practices in managing and mitigating severe to extreme flood events and building better resilience into communities.

The Bellingen LEP 2010 Clause 5.21 reflects the new considerations and the objectives of minimising flood risk; allowing development on land that is compatible with the flood function and behaviour on land; avoiding adverse or cumulative impacts; and enabling the safe occupation and efficient evacuation of people.

Council also has a comprehensive knowledge of flooding events in the Thora and Kalang Valleys and have relevant studies that nominate flood planning levels for the upper Bellingen and upper Kalang Rivers. Council's DCP Chapter 8 Flood & Riverine Processes contain relevant assessment guidelines to allow for adequate assessment at the development application stage.

The planning proposal is supported by a Bushfire Strategic Study for E4 Lands. A large portion of the E4 land is bushfire prone and sits within a wider landscape of bushfire prone land. The Study acknowledges that the fire history indicates the probability of a future landscape-wide fire or major fire attack is likely. The Study recommends the eastern portion of the E4 zone where existing cleared land would facilitate APZ's without extensive vegetation clearing. The RFS has previously been consulted on the Study and has provided comments in relation to the earlier planning proposal (12) where it raised no objection:

- to permit (with development consent) dual occupancy (attached) and secondary dwellings in the eastern portion of the Kalang Valley and Thora Valley, as described in the revised Bush Fire Strategic Study; and
- to permit rural industries with development consent or to include farm buildings as a category of exempt development in Schedule 2 – Exempt Development, of Bellingen Local Environmental Plan 2010, when carried out within Zone E4.

Council has refined the current planning proposal in light of the Study recommendations and comments from the RFS, however, as discussed above under Direction 4.4, it is a requirement that the RFS again be consulted in relation to the current planning proposal (19).

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 8 Social and economic impact assessment

Social and Economic Impact	Assessment
Community	There are positive impacts for the isolated communities of the Thora and Kalang Valleys where maintaining social connections and community resilience can be strengthened by permitting secondary dwelling opportunities and attached dual occupancies. The addition of housing choice in the E4 zone is also considered to create positive impacts, although the size limitations on secondary dwellings and dual occupancies being attached is not expected to

	<p>create a significant increase in the local population thereby limiting any negative impact on the local community or required infrastructure.</p> <p>Including rural industries as permitted with consent will also offer opportunities afforded other rural landscape areas within the LGA. This may allow agricultural enterprises to strengthen, providing further economic abilities for families to stay on the land and increase the community resilience within the valleys.</p>
Economic	<p>There are positive impacts for the Bellingen LGA and the local communities of Thora and Kalang Valleys by permitting the rural industry land use, supporting the agricultural sector via employment opportunities and potential value adding to farm gate enterprises.</p>

4.3 Infrastructure

There will be no impact on State or regional infrastructure or the requirement for additional funding.

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 9 Infrastructure assessment

Infrastructure	Assessment
Roads & Bridges	<p>Both valleys, due to their topography and isolation, only have one road in and out, low lying bridges that become inundated during flooding, and Darkwood Road bridges having various load limitations. This limits the abilities for emergency services to access the areas in times of crisis.</p> <p>Council has developed a renewed program for maintenance of rural roads and bridges that has addressed some of the original planning proposal's (12) concerns regarding increased traffic generation in these areas, and the capacity of local infrastructure to accommodate any increases. The size limitations relating to new secondary dwellings and dual occupancy (attached) is not expected to increase the population to any great extent, consequently any extra traffic movements on the road networks will have limited impacts. Council have also acknowledged a proposal to seek 'alternative route' opportunities as well as opportunities through relevant Grant programs or other means to progressively improve road infrastructure in these localities through bridge raising / replacement actions and other road geometry improvements.</p> <p>The planning proposal has limited any new dwelling opportunities to the mapped APU E4 zone. Local infrastructure upgrades, including bushfire safety and access and further place-based investigation will be required to identify site specific requirements at the development application stage.</p>

5 Consultation

5.1 Community

Council proposes a community consultation period of **28** days.

The exhibition period proposed is considered appropriate and forms part of the conditions of the Gateway determination.

5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- NSW Rural Fire Service
- NSW State Emergency Services
- Department of Planning, Industry and Environment (Biodiversity and Conservation Division)
- Bowraville & Nambucca Local Aboriginal Land Councils

6 Timeframe

Council proposes a **nine** month time frame to complete the LEP.

The Department recommends a time frame of **nine** months to ensure it is completed in line with its commitment to reduce processing times.

7 Local plan-making authority

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

As the proposal deals only with matters of local significance the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

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

- The proposal is not inconsistent with the North Coast Regional Plan;
- The proposal will facilitate the additional land use of a rural industry permitted with consent and farm buildings as exempt development, aligning the E4 zone to better align with other rural areas in the Bellingen LGA, providing for positive economic opportunities; and
- The proposal will facilitate secondary dwellings and dual occupancy (attached) with consent as an additional permitted use within identified E4 areas, providing diversity of housing options in the E4 zone.

9 Recommendation

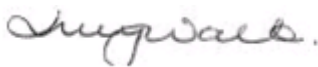
It is recommended the Director, as delegate of the Secretary:

1. **agree** that any inconsistencies with section 9.1 Directions 1.5 Rural Lands; 2.1 Environmental Protection Zones and 2.3 Heritage Conservation are minor or justified; and
2. **note** that the consistency with section 9.1 Directions 4.3 Flooding and 4.4 Planning for Bushfire Protection are unresolved and will require justification.

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

1. **note** the planning proposal (**Attachment A**);
2. **determine** that the planning proposal should proceed subject to the following conditions:
 - (a) on page 8, update reference to clause 11 in Schedule 1 to refer to clause 13;
 - (b) remove references to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 as part of the proposed Schedule 2 amendment and incorporate the proposed development standards for exempt development;

- (c) include a statement acknowledging that final drafting for all proposed clauses will be subject to legal opinion and recognise that the clauses as proposed may not be as reflected within the final LEP;
 - (d) clarify that the proposed amendments to facilitate dual occupancy (attached) and secondary dwellings nominated on the Additional Permitted Uses map will not apply to multiple occupancies (PP-2021-2828); and
 - (e) identify that an E4 Environmental Living Zone, which is the subject of a separate planning proposal (PP-2021-3459), is proposed for Endeavour Drive, Bellingen.
- Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - NSW State Emergency Services
 - Department of Planning, Industry and Environment (Biodiversity and Conservation Division)
 - Bowraville & Nambucca Local Aboriginal Land Councils
 - The planning proposal should be made available for community consultation for a minimum of 28 days.
 - The timeframe for completing the LEP is to be nine months from the date of the Gateway determination.
 - Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



20/09/2021

(Signature)

(Date)

Lucy Walker
Specialist Planning Officer, Local and Regional Planning
Northern Region



21/9/2021

(Signature)

(Date)

Jeremy Gray
Director, Northern Region
Local and Regional Planning

Assessment officer

Helen Willis
Acting Planner, Local and Regional Planning
Northern Region

Attachment	
Attachment A	Planning Proposal
Attachment B	Gateway Determination
Attachment C	Letter to Council
Attachment D	Bellingen Shire Council Bushfire Strategic Study – E4 Lands (9 Feb 2021)
Attachment E	NSW Rural Fire Service letter dated 23 March 2021