

PLANNING PROPOSAL 19

Amendment to Bellingen Shire Local Environmental Plan
2010

Version 3 (June 2022) – Public Exhibition Version

**Planning Proposal PP-2021-4811 – to review
permissible uses within the C4 Environmental Living
Zone**

Bellingen Shire
COUNCIL



Contents

INTRODUCTION	3
Background	3
Site Location & Context	5
Pre-lodgement.....	5
Council Resolution.....	6
Categorisation of Planning Proposal.....	7
Determination of Local Plan Making Authority	7
The Gateway Determination	7
Current Stage of the Planning Proposal process	8
PART 1 – OBJECTIVES & INTENDED OUTCOMES.....	9
Objective	9
Intended outcomes	9
PART 2 – EXPLANATION OF PROVISIONS.....	9
Intended Provisions	9
PART 3 – JUSTIFICATION OF STRATEGIC & SITE-SPECIFIC MERIT	13
Strategic merit	13
Section A – The need for the planning proposal.....	13
Section B – Relationship to the strategic planning framework	13
Site-specific merit	32
Section C – Environmental, social & economic impact.....	32
Section D – Infrastructure (Local, State & Commonwealth).....	33
Section E – State & Commonwealth Interests	33
PART 4 - MAPS	37
PART 5 – COMMUNITY CONSULTATION.....	38
Pre-lodgement consultation with stage agencies or authorities.....	38
Any additional consultation with agencies or other key stakeholders	38
Any community consultation undertaken	38
PART 6 – PROJECT TIMELINE	39
APPENDICES.....	40
Appendix A – Original and Amended Gateway Determination.....	41
Appendix B – State Agency Responses	44

INTRODUCTION

Background

Council resolved in 2017 to prepare Planning Proposal 12 to broaden the range of permissible uses within the E4 Environmental Living Zone. This zone occurs exclusively within the Thora & Kalang Valleys, and was implemented as part of the NSW Government Standard Instrument LEP process in 2010. Previously, land within the E4 – Environmental Living Zone was mostly zoned 1(a2) Secondary Agriculture under the provisions of Bellingen Local Environmental Plan 2003. The E4 Zone effectively restricted additional population generating development in view of isolation issues during natural disasters (eg: flood, fire).

Some dissatisfaction with the restrictive nature of the zone (particularly around secondary dwellings and some tourist & visitor accommodation) was expressed to Council around 2017, which prompted Council to seek feedback from the community on relaxing some of these restrictions. Having regard to the outcomes of that consultation, Council resolved to prepare Planning Proposal 12 in late 2017 to broaden the range of permissible uses within the zone. The land uses that were proposed to be permitted in the E4 Zone by Planning Proposal 12 are documented below.

- Secondary dwellings
- Attached dual occupancies
- Eco-tourist facilities
- Tourist & visitor accommodation (with the exception of backpacker's accommodation, hotel or motel accommodation and serviced apartments)
- Home businesses
- Rural Industries
- Farm buildings – to be included as a category of exempt development

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. In response to these concerns, Council commissioned a Bushfire Strategic Study (the Study) to further investigate bushfire risk and potentially provide further support for proceeding with the Planning Proposal. The finalisation of the Study, to a level of detail acceptable to Council and the NSW RFS, has only recently occurred with significant time delays attributable to factors such as the diversion of resources to the unprecedented 2019/20 fire season.

The final Study recommended that the Planning Proposal should not apply to more isolated locations in the west of the Kalang & Thora Valleys. The RFS have endorsed this position, however have also advised that further restrictions to the scope of the planning proposal (removing the potential for tourist and visitor related land uses) would be necessary for them to support the proposal.

The finalisation of Planning Proposal 12 within timeframes acceptable to the NSW Department of Planning Industry & Environment (DPIE) was not possible. Council accordingly advised the NSW DPIE on 30 March 2021 that it was formally withdrawing Planning Proposal 12.

Bellingen Shire Council resolved at its meeting of 28 April 2021 to prepare a new Planning Proposal 19 that was consistent with the findings of the Bushfire Strategic Study and the recommendations of the NSW RFS regarding this Study.

Council received a Gateway Determination from the NSW Department of Planning and Environment (DPE) in respect of this matter on 21 September 2021.

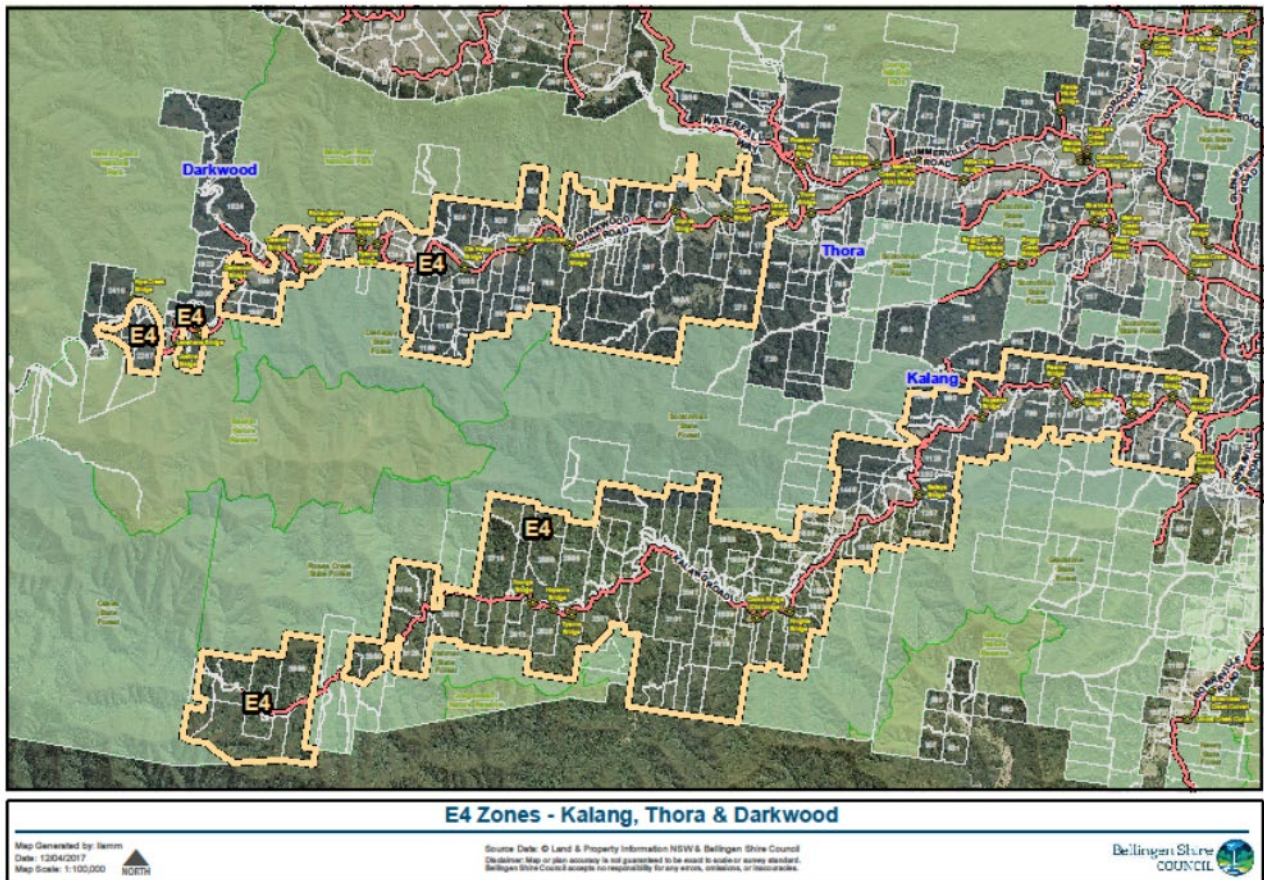
NSW Government Agencies were requested to provide comment on Planning Proposal 19 on 28 October 2021. Council received comments from the NSW RFS on 20 March 2022. In the process of review that follows receipt of agency comments and in considering any other changes that have arisen in the underlying suite of planning controls that underlie, and intersect, with those proposed by the planning proposal it was noted newly introduced size limitations on the erection of a secondary dwelling in a rural zone would not apply to land within the C4 Zone.

Council considered a report at its meeting of 27 April 2022 that proposed a mechanism to amend the planning proposal so that the same size limitations for secondary dwellings will apply within rural zones and the C4 Zone. Council resolved to support amending the planning proposal to this effect and a request for an alteration to the original Gateway Determination in respect of this matter was submitted to the DPE on 4 May 2022. Council received an alteration to the Gateway Determination from the DPE on 19 May 2022 and a copy of this is included, along with the original determination, as an Appendix to this proposal.

This version of the planning proposal has been prepared for the purposes of public exhibition.

Site Location & Context

The location of the C4 Zone is shown in the following image (note E4 zone is now known as the C4 Zone).



The C4 – Environmental Living Zone, occurs exclusively within the Thora and Kalang Valleys. The C4 zone is characterised by long and confined river valleys, with multiple low-level bridges that are subject to flooding and one principal road in and out. The valleys contain pockets of alluvial land that are mapped as Regionally Significant Farmland, however they are not characterised by large or intensive agricultural enterprises, valued instead for the high amenity of the natural environment and the opportunities to live in these areas.

Significant extents of the C4 Zone are mapped as having bushfire prone land, by the Bellingin Shire Bushfire Prone Lands Map.


Without exception, land within the C4 Zone has been allocated a minimum subdivision lot size of 200ha within the BLEP 2010.

Pre-lodgement

The context for this planning proposal has been adequately established via the progress that was made, and consultation that was undertaken, on the previous Planning Proposal 12. In this regard, there is no need to undertake any additional form of pre-lodgement investigation or consultation.

Council Resolution

The original Council resolution in respect of Planning Proposal 19 is included below.

MINUTES		ORDINARY MEETING OF COUNCIL - 28 APRIL 2021 28 April 2021	
Item	11.1		
Subject	Planning Proposals 12 & 19 - E4 (Environmental Living) Zone Permissible Uses Review		
Presented by	Daniel Bennett, Senior Strategic Planner		
RESOLVED (Cr Klipin / Cr Harrison)			
That Council:			
1. Notes the withdrawal of Planning Proposal 12 - E4 (Environmental Living) Zone Permissible Uses Review.			
2. Resolves to prepare a new Planning Proposal 19 - E4 (Environmental Living) Zone Permissible Uses Review.			
3. Resolves to request that the NSW Department of Planning Industry & Environment designates Council as the plan making authority in respect of this matter,			
4. Endorses the Engagement Strategy outlined in this report.			
UNANIMOUS			

The Council resolution in respect of Planning Proposal 19 that resolved to amend the planning proposal to provide a 100m size limit for a secondary dwelling is included below.

Item	14.2
Subject	Planning Proposal 19 - C4 (Environmental Living) Zone Permissible Uses Review
Presented by	Daniel Bennett, Senior Strategic Planner

RESOLVED (Cr King / Cr Brotherton)
That Council:

1 resolves to amend *Planning Proposal 19 - C4 (Environmental Living) Zone Permissible Uses Review* to apply the same maximum size limitations to a secondary dwelling erected within the C4 Zone as those which apply to a secondary dwelling erected within a Rural Zone.

2 forwards the amended planning proposal to the NSW Department of Planning & Environment pursuant to relevant provisions in the Environmental Planning & Assessment Act 1979.

UNANIMOUS

Categorisation of Planning Proposal

Having regard to the provisions of the NSW Government Local Environmental Plan Making Guideline December 2021, it is submitted that Planning Proposal 20 is appropriately categorised as a “Standard” Planning Proposal.

Standard

A standard planning proposal refers to any one or more of the following proposed LEP amendment types, including an amendment:

- To change the land use zone where the proposal is consistent with the objectives identified in the LEP for that proposed zone
- That relates to altering the principal development standards of the LEP
- That relates to the addition of a permissible land use or uses and/or any conditional arrangements under Schedule 1 Additional Permitted Uses of the LEP
- That is consistent with an endorsed District/Regional Strategic Plan and/or LSPS
- Relating to classification or reclassification of public land through the LEP

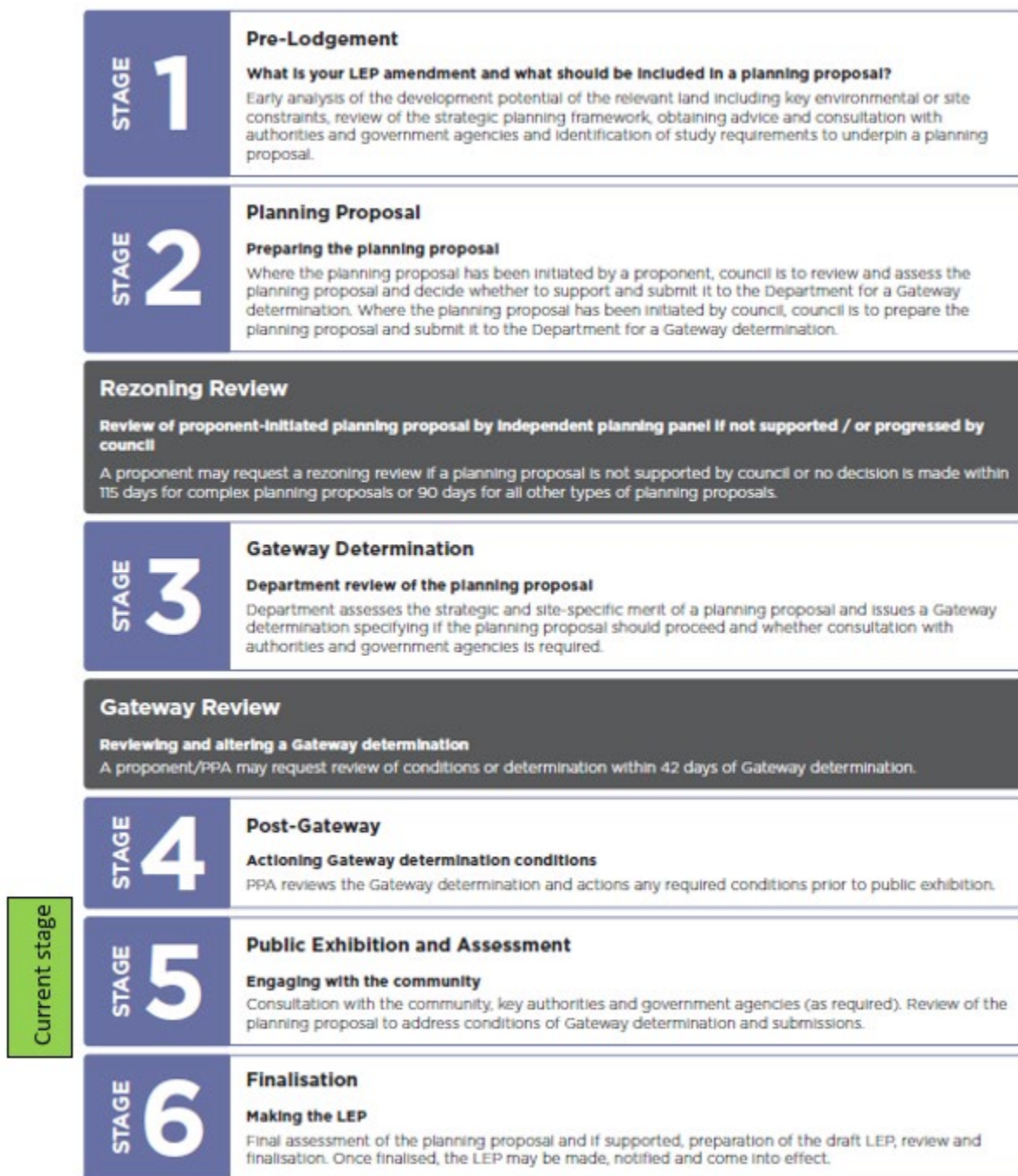
Determination of Local Plan Making Authority

It is appropriate that Council remains designated as the Local Plan Making Authority in respect of this matter, as was confirmed in the original Gateway Determination.

The Gateway Determination

The original Gateway Determination is included as Appendix A to this proposal.

Current Stage of the Planning Proposal process



PART 1 – OBJECTIVES & INTENDED OUTCOMES

Objective

To enable a wider variety of permissible land uses within certain areas within Zone C4 – Environmental Living.

Intended outcomes

- Provide additional opportunities for people to build secondary dwellings (with 100m size limit) and attached dual occupancies in eastern parts of the C4 Zone.
- Provide opportunities to establish rural industries in the entire C4 zone.
- Allow landowners within the C4 Zone to access the same exempt development provisions for farm buildings that apply in rural zones in the Shire.

PART 2 – EXPLANATION OF PROVISIONS

Intended Provisions

It is considered that the intended outcomes of Planning Proposal 19 can be achieved by inclusion of the following provisions in the BLEP 2010. It is important however to note that the final drafting for all proposed clauses will be subject to legal opinion and therefore the clauses as proposed below may not be reflected within the final LEP.

1 Insert the following uses in Item 3 (Permitted with consent) of the land use table for Zone C4 – Environmental Living.

Rural industry

2 Prepare an Additional Permitted Uses Map that defines the extent of land within Zone C4 – 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 C4 (Environmental Living) Zone

(1) This clause applies to certain land within the C4 (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.

(3) The total floor area of any secondary dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—

(i) 100 square metres,

(ii) 50% of the total floor area of the principal dwelling

(4) This clause does not apply to any land containing an existing and approved Multiple Occupancy or Rural Landsharing Community development, or any lot created as a result of the

community title subdivision of an existing and approved Multiple Occupancy or Rural Landsharing Community development.

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

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

The construction or installation of a farm building (other than a stock holding yard, grain silo or grain bunker) that is not used for habitable purposes is development specified for this code if it is—

- (a) constructed or installed on land in Zone C4, and
- (b) not constructed or installed on or in a heritage item or a draft heritage item or in an environmentally sensitive area, and
- (c) not constructed or installed on land shown on any relevant Procedures for Air Navigation Services—Aircraft Operations Map prepared by the operator of an aerodrome or airport operating within 2 kilometres of the proposed development and for which a PANS-OPS surface is identified that may compromise the effective and on-going operation of the relevant aerodrome or airport.

Note 1—

Farm building is defined in the Standard Instrument as a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.

Development standards

- (1) The following standards are specified for that development—
 - (a) the development must not be higher than—
 - (i) for a landholding that has an area of less than 10ha—7m above ground level (existing), and
 - (ii) for a landholding that has an area of 10ha or more—10m above ground level (existing),
 - (b) if the development is located on land that is identified for the purposes of an environmental planning instrument as “Land with scenic and landscape values” on a Scenic and Landscape Values Map or as “Scenic Protection Area” on a Scenic Protection Map or Scenic Protection Area Map—it must not be higher than 7m,
 - (c) if the development—
 - (i) is on a landholding that has an area of more than 4ha, and
 - (ii) is on a landholding in relation to which the natural ground at any point within 100m of the ridgeline of any hill is at least 20m lower than the ridgeline, and
 - (iii) is located within 100m of that ridgeline,

it must be sited on the landholding so that the highest point of the development is at least 5m below that ridgeline,

- (d) subject to paragraph (e), the footprint of a farm building must not exceed 200m²,
- (e) the footprint of all farm buildings (other than grain bunkers) on a landholding must not exceed the footprint shown in the following table—

Landholding area	Maximum footprint of all farm buildings (other than grain bunkers)
0–4ha	2.5% of the area of the landholding
>4ha–10ha	1,000m ²
>10ha	2,000m ²

- (f) the development must be located at least 20m from any road boundary and have a minimum setback from any other boundary as shown in the table to this paragraph—

Building footprint	Minimum setback from boundary
0–100m ²	10m
>100m ² –200m ²	50m

- (g) a farm building must be located at least 6m from any other farm building (including any farm building that is a stock holding yard, grain silo or grain bunker) on the landholding or on an adjoining landholding,

- (h) the development must be located at least 50m from a waterbody (natural),

- (i) the development must be designed by, and constructed in accordance with the specifications of, a professional engineer,

- (j) if the development is a shipping container, there must not be more than the following number of shipping containers per landholding—

- (i) for a landholding that has an area of less than 400ha—1,

- (ii) for a landholding that has an area of 400ha or more—5,

- (k) the development must not penetrate any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport operating within 2 kilometres of the proposed development and reported to the Civil Aviation Safety Authority,

- (l) despite clause 2.30(a), excavation for the purposes of structural supports may exceed a depth of 600mm, measured from ground level (existing), unless the land is identified for the purposes of an environmental planning instrument as Class 1–5 on an Acid Sulfate Soils Map.

(2) In this clause, **footprint** means the area of the ground surface occupied by a building, including the walls, footings and roofing of the building, and extending to the perimeter of the foundations and other means of structural support to the building, but does not include the area of access ramps, eaves and sunshade devices.

Note 1—

There are other existing legislative requirements relating to the clearance of power lines, substations and Obstacle Limitation Surfaces near airport flight paths.

Note 2—

The consent of the appropriate roads authority is required under section 138 of the [Roads Act 1993](#) for the carrying out of certain works in relation to roads, including the building of any crossover or creating road access.

PART 3 – JUSTIFICATION OF STRATEGIC & SITE-SPECIFIC MERIT

Strategic merit

Section A – The need for the planning proposal

1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

Council consulted with residents in the C4 Zone as part of a “Rural Lands Planning Policy Review” process in 2017. These outcomes of this review were reported to Council at the time, with general support existing for the broadening of permissible uses within the C4 Zone.

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

The use of an Additional Permitted Uses Map to define the extent of the C4 zone that is considered suitable for secondary dwellings or attached dual occupancy is considered to be the only viable mechanism to deliver upon the objectives of the planning proposal, and to comply with the requirements of the NSW RFS.

The only alternative that has been considered was to nominate an address that defines the western extent of the area considered to be suitable within the Schedule 1 Clause, however the undertaking of a permissible boundary adjustment application may have the effect of altering current addressing and / or legal descriptions, which would potentially complicate future interpretation of the instrument.

The inclusion of the proposed 100m² size limit size on secondary dwellings has been included within the proposed schedule amendment in preference to amending Clause 5.5 of the Standard Instrument LEP as it would be prohibitively complex to reflect that this is not a zone wide provision and applies only to that part of the zone referenced within the proposed schedule amendment.

Section B – Relationship to the strategic planning framework

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

A summary table documenting the proposals compliance with the North Coast Regional Plan (NCRP) is provided below.

North Coast Regional Plan – Statement of applicability to Planning Proposal 19			
Goal	Direction	Relevant (Yes/No)	Comment
Goal 1 – The most stunning environment in NSW			
	Direction 1 – Deliver environmentally sustainable growth	Yes	The planning proposal retains the environmental focus of the zone.
	Direction 2 – Enhance biodiversity, coastal and	Yes	

North Coast Regional Plan – Statement of applicability to Planning Proposal 19			
Goal	Direction	Relevant (Yes/No)	Comment
	aquatic habitats, and water catchments		
	Direction 3 – Manage natural hazards and climate change	Yes	<p>The planning proposal does not seek to significantly increase development pressure in the affected areas or significantly increase risk associated with natural hazards.</p> <p>Further consultation has occurred with key emergency services organisations, such as the NSW SES and RFS, regarding the susceptibility of these areas to risk and comments received have been addressed in this proposal.</p>
	Direction 4 – Promote renewable energy opportunities	No	
Goal 2 – A thriving, interconnected economy			
	Direction 5 – Strengthen communities of interest and cross regional relationships	No	
	Direction 6 – Develop successful centres of employment	No	
	Direction 7 – Coordinate the growth of regional cities	No	
	Direction 8 – Promote the growth of tourism	Yes	<p>The planning proposal will not facilitate eco-tourism or other small scale tourism developments, on the basis of advice received from the NSW RFS that this would not be supported.</p>

North Coast Regional Plan – Statement of applicability to Planning Proposal 19			
Goal	Direction	Relevant (Yes/No)	Comment
	Direction 9 – Strengthen regionally significant transport corridors	No	
	Direction 10 – Facilitate air, rail and public transport infrastructure	No	
	Direction 11 – Protect and enhance productive agricultural lands	Yes	It is considered that enabling a wider variety of small-scale ancillary uses in the zone will improve the likelihood of people remaining on the land and undertaking agricultural activities.
	Direction 12 – Grow agribusiness across the region	Yes	The planning proposal will make rural industries permissible with consent in the zone.
	Direction 13 – Sustainably manage natural resources	Yes	The planning proposal does not impact upon the existing permissibility of agriculture, or other natural resource extraction activities.
Goal 3 – Vibrant and engaged communities			
	Direction 14 – Provide great places to live and work	No	
	Direction 15 – Develop healthy, safe, socially engaged and well-connected communities	Yes	The planning proposal will allow for a limited potential increase in population in the C4 zones, and improved ability to provide for outcomes such as ageing in place via means such as secondary dwellings.
	Direction 16 – Collaborate and partner with Aboriginal communities	Yes	Council will engage with local aboriginal organisations and representatives as part of the public exhibition of planning proposal.

North Coast Regional Plan – Statement of applicability to Planning Proposal 19			
Goal	Direction	Relevant (Yes/No)	Comment
	Direction 17 – Increase the economic self-determination of Aboriginal communities	No	
	Direction 18 – Respect and protect the North Coast’s Aboriginal heritage	Yes	Council will give effect to any requests to protect aboriginal heritage arising from consultation.
	Direction 19 – Protect historic heritage	Yes	No amendments to existing heritage items are proposed.
	Direction 20 – Maintain the regions distinctive built character	No	
	Direction 21 – Coordinate local infrastructure delivery	Yes	Council has recently embarked upon a road and bridge infrastructure improvement program as part of a Special rate Variation. This will provide a suitable level of infrastructure for these areas.
Goal 4 – Great housing choices and lifestyle options			
	Direction 22 – Deliver greater housing supply	No	
	Direction 23 – Increase housing diversity and choice	Yes	The planning proposal will facilitate a more diverse range of housing opportunities in the C4 zone.
	Direction 24 – Deliver well planned rural residential housing areas	No	
	Direction 25 – Deliver more opportunities for affordable housing	Yes	The planning proposal will facilitate granny flat style development which is considered a potential source of affordable housing.

4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary, or another endorsed local strategy or strategic plan?

Although the completion of this Planning Proposal is not specifically provided for in the Bellingen Shire Local Strategic Planning Statement 2020-2040 (LSPS), the LSPS does address some of the factors underlying Council's decision to prepare it. For example, in discussing social matters that will influence planning over the life of the LSPS it is identified that *"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"*. The Planning Proposal will provide additional housing opportunities on rural properties further to this issue as identified in the LSPS.

The proposal to permit rural industries with development consent will also provide additional potential opportunities for business establishment within these areas, which is consistent with Planning Priorities 1 & 3, as reprinted below.

Planning Priority 1 – To support a vibrant and ecologically sustainable rural economy that is transitioning towards a regenerative model of rural land use.

Planning Priority 3 – To provide meaningful opportunities for local employment, sustainable business establishment and growth.

5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

Council is not aware of any inconsistency with any applicable State and regional studies or strategies.

6. Is the planning proposal consistent with applicable SEPPs?

State Environmental Planning Policy (SEPP)	Consistent? Yes / No / NA / See further comment
SEPP Biodiversity & Conservation (2021)	Yes – see further comment
SEPP Building Sustainability Index: BASIX (2004)	NA
SEPP Exempt & Complying Development Codes (2008)	See further comment
SEPP Housing (2021)	Yes
SEPP Industry & Employment (2021)	NA
SEPP 65 Design Quality of Residential Apartment Development	NA
SEPP Planning Systems (2021)	NA
SEPP Precincts – Regional (2021)	NA
SEPP Primary Production (2021)	No – see further comment
SEPP Resilience & Hazards (2021)	Yes -see further comment
SEPP Resources & Energy (2021)	Yes -see further comment
SEPP Transport & Infrastructure (2021)	NA

SEPP Biodiversity & Conservation (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. There is no core koala habitat mapped by this KPOM within the C4 Zone.

Notwithstanding this, parts of land within the C4 zone will contain koala habitat within the meaning of this SEPP. The Planning Proposal does not affect the operation of this SEPP in a development control sense.

The planning proposal will not permit a significantly greater level of clearing in the absence of additional provisions within Councils Development Control Plan to govern clearing activities in C zones throughout the Shire.

SEPP Exempt & Complying Development Codes (2008)

The proposal addresses the current lack of applicability of the farm buildings exemption within this SEPP to the C4 zone by proposing to instead insert a facilitative provision within Schedule 2 (Exempt Development) of the BLEP 2010. The C4 zone permits “extensive agriculture” without development consent and agricultural operations continue as an important land use within the zone. It is appropriate that the exempt development provisions that are accessible to other rural zones are also made available to landowners within the C4 zone.

SEPP Primary Production (2021)

The planning proposal is expected to have a positive impact on the ability of landowners to continue rural land uses. The ability to erect a second dwelling in the more cleared eastern parts of the zone that are more suited to agriculture provides options to rural landowners in terms of things like farm succession planning, or options to maintain or productively use land that current occupants may not be able to pursue for one reason or another (eg: age, other employment

etc..). Permitting rural industries with development consent will provide opportunities for value adding to primary products produced in the valleys and permitting farm buildings as exempt development will provide a reasonable opportunity for landowners that is provided elsewhere within the rural landscape within the Shire.

SEPP Resilience & Hazards (2021)

In general terms, the provisions of this SEPP are triggered in circumstances where there is a change in the use of land. It is possible that land the subject of Development Applications could trigger the need for assessment pursuant to this SEPP, however an analysis of the Council Contaminated Land Register reveals few properties in either valley that have been identified as potentially contaminated by virtue of their previous uses, suggesting that this will not be a significant issue.

SEPP Resources & Energy (2021)

A review of the Mineral Resource Area Map adopted as part of the BLEP 2010 confirms that there are no “Identified resource” areas, or “buffer zone” areas, as depicted on this map.

7. Is the planning proposal consistent with applicable Ministerial Directions (Section 9.1 Directions)?

Direction	Consistent? Yes / No / NA / See further comment
Focus Area 1: Planning Systems	
1.1 Implementation of Regional Plans	Yes
1.2 Development of Aboriginal Land Council land	NA
1.3 Approval and Referral Requirements	Yes
1.4 Site Specific Provisions	Yes
Focus Area 2: Design & Place	
Focus Area 3: Biodiversity & Conservation	
3.1 Conservation Zones	Yes – see further comment
3.2 Heritage Conservation	Yes
3.5 Recreation Vehicle Areas	Yes
Focus Area 4: Resilience and Hazards	
4.1 Flooding	Yes – see further comment
4.2 Coastal Management	NA
4.3 Planning for Bushfire Protection	No – see further comment

Direction	Consistent? Yes / No / NA / See further comment
4.4 Remediation of Contaminated Land	Yes -see further comment
4.5 Acid Sulfate Soils	Yes – see further comment
4.6 Mine Subsidence and Unstable Land	NA
Focus Area 5: Transport & Infrastructure	
5.1 Integrating Land Use & Transport	NA
5.2 Reserving Land for Public Purposes	NA
5.4 Shooting Ranges	NA
Focus Area 6: Housing	
6.1 Residential Zones	NA
6.2 Caravan Parks & Manufactured Home Estates	NA
Focus Area 7: Industry & Employment	
7.1 Business & Industrial Zones	NA
7.2 Reduction in non-hosted short term rental accommodation period	NA
7.3 Commercial & Retail Development	NA
Focus Area 8: Resources & Energy	
8.1 Mining, Petroleum Production & Extractive Industries	NA
Focus Area 9: Primary Production	
9.1 Rural Zones	Yes
9.2 Rural Lands	Yes – see further comment
9.3 Oyster Aquaculture	NA

3.1 Conservation Zones

Provision:

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

Comment:

The planning proposal facilitates the protection and conservation of environmentally sensitive areas by restricting special fire protection purpose developments that require additional asset protection zones, and by restricting additional housing opportunities to the lower parts of the E4 zone which are relatively cleared when compared to the upper parts of the valleys.

Provision:

(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 planning proposal does not modify any development standard that would reduce environmental protections. The planning proposal permits uses that are generally consistent with the objectives of the zone and that will (with the exception of the farm buildings exemption), require environmental assessment as part of a Development Application process.

Having regard to the above it is submitted that the planning proposal is consistent with this Direction.

4.1 Flooding

Many properties in the C4 zone will contain land that is flood prone. Council has adopted flood studies that designate 1% AEP & PMF flood levels along parts of each valley however 1%, PMF and “flood planning area” extents (1% plus freeboard) are not mapped.

The extent of each valley that is covered by an adopted flood study is depicted in the following two images.

UPPER BELLINGER RIVER
PRELIMINARY FLOOD ASSESSMENT

STUDY AREA

Woolah Creek
Long Creek
Dumbarton Creek
Rinkag Creek
Dumbarton Creek
Sugar Creek
Cude Creek
Kalam Creek
Bellinger Creek
Gleniffer Creek
Rinkag Creek
Rinkag Creek

Gleniffer
Bellinger
Koorowai
Repeta
Lwanga

TH6
TH76
S100 HIGHWAY

PACIFIC OCEAN

0 5 10 15 20
Kilometres

LEGEND

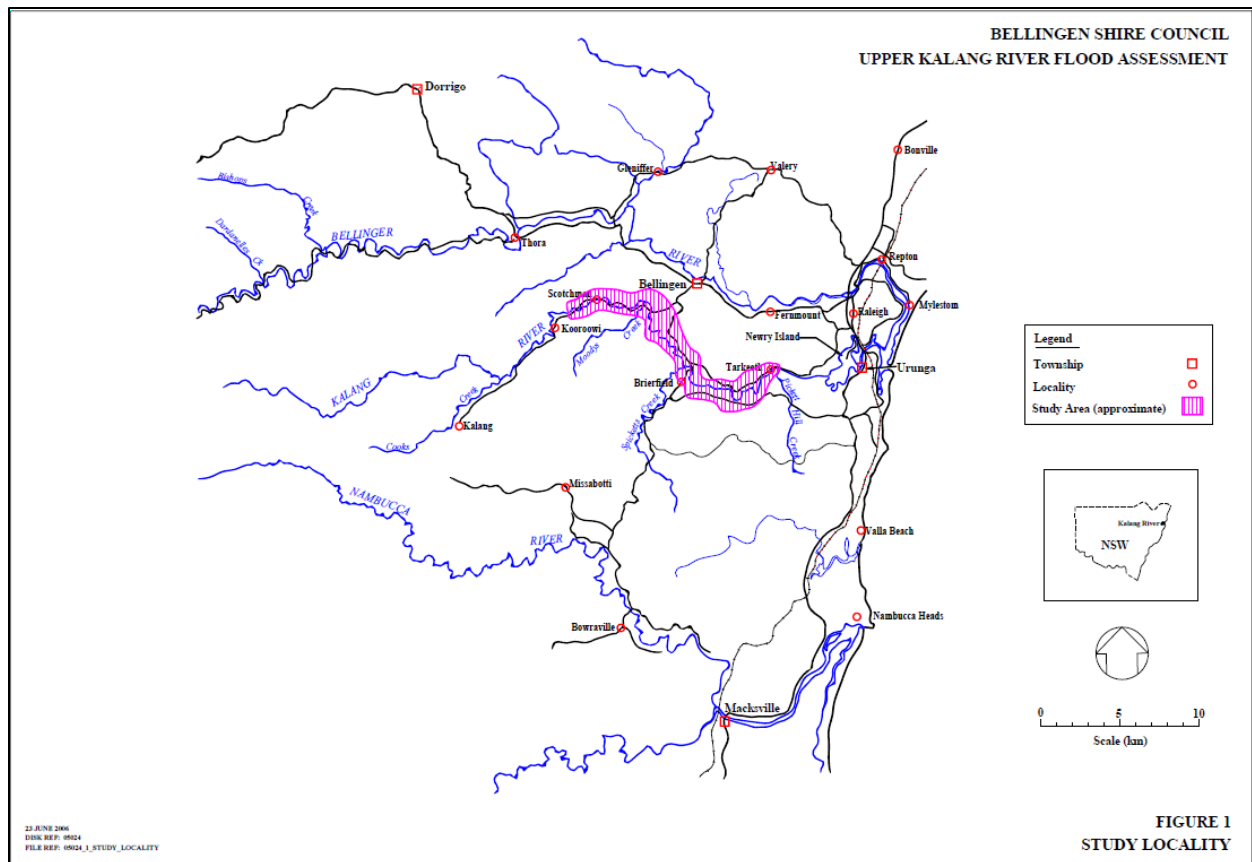
STUDY AREA
TOWN
LOCALITY
CATCHMENT BOUNDARY

Bellinger River
NSW

8 JUNE 2005
DRAK REP: 04612
FILE REP: 04612_1_LOCALITY

FIGURE 1
STUDY AREA

8 JUNE 2005
DISK REF: 04013
FILE REF: 04013_1_LOCALITY



Strategically, Council has also resolved through the adoption of the Bellingen Shire Local Strategic Planning Statement 2020-2040 to prepare an updated Shire Wide Floodplain Risk Management Plan, as well as to specifically commission updated flood mapping for the Upper Bellingher, Upper Kalang and Dorrigo areas. Clearly, Council acknowledges the need for careful and ongoing planning for flood risk in the Shire.

In terms of the specific requirements of Subclause (1) the following comments are provided.

Provision:

(1) A planning proposal must include provisions that give effect to and are consistent with:

- (a) the NSW Flood Prone Land Policy,*
- (b) the principles of the Floodplain Development Manual 2005,*
- (c) the Considering flooding in land use planning guideline 2021, and*
- (d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.*

Comment:

The NSW Government's Flood Prone Land Policy, set out in the NSW Floodplain Development Manual, supports the resilient development of flood-prone land. Flood-prone land, or the

floodplain, is defined in the manual as the land susceptible to flooding by the PMF event. The policy acknowledges that flood-prone land is a valuable resource that should not be sterilised by unnecessarily precluding its development. It outlines that each local council is responsible for managing the flood risk to reduce the risk to life, property damage and other impacts in their local government area.

The manual sets out key issues relating to managing risk to existing and future occupants of flood prone land that need consideration in land use planning.

These include the:

- safety of people including evacuation considerations
- management of flood risk, to reduce flood damage to public and private property and infrastructure
- management of the cumulative impacts of development
- management of the impacts of development on emergency services.

The NSW SES have provided comments to Council in respect of this Planning Proposal, and the former Planning Proposal 12 in 2018. They have identified the following principles as forming part of the flood prone land policy and as being of particular relevance for Council to consider.

Development needs to avoid an intolerable increase in risk to life, health or property of people living on the floodplain. (2018 response)

Zoning should not enable development that will result in an increase in risk to life, health or property of people living on the floodplain (2021 response)

Risk assessment should consider the full range of flooding, including events up to the Probable Maximum Flood (PMF) and not focus only on the 1% AEP flood.

Risk assessment should have regard to flood warning and evacuation demand on existing and future access/egress routes. Consideration should also be given to the impacts of localised flooding on evacuation routes.

In the context of future development, self-evacuation of the community should be achievable in a manner which is consistent with the NSW SES's principles for evacuation.

Future development must not conflict with the NSW SES's flood response and evacuation strategy for the existing community. These arrangements and strategies are contained in local flood plans and guided by the State Flood Plan.

Future development must not conflict with the NSW SES's flood response and evacuation strategy for the existing community.

Development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation.

Evacuation ensures people can be moved to a location where they are reliably separated from the risks associated with flooding, whereas an isolated community in a

flood will continue to require emergency services to maintain around the clock safety monitoring. In the worst case the NSW SES may be required to undertake dangerous and logistically difficult rescue operations.

Sheltering in buildings surrounded by floodwater presents a greater risk than a well-conducted evacuation. It should only be used where evacuation is not possible, or where evacuation from an at-risk area has failed. Where evacuation is not possible, the risks of sheltering needs to be adequately assessed to determine the tolerability of isolation, before any strategy of sheltering in place can be considered.

'Shelter in place' strategies increase the risk to emergency service personnel. Before attempting rescue, emergency service personnel will assess the risk to their own safety. There is therefore no guarantee that rescue will be available for residents who are effectively entrapped in a building during a flood.

Development strategies relying on an assumption that mass rescue may be possible where evacuation either fails or is not implemented are not acceptable to the NSW SES.

The NSW SES is opposed to the imposition of development consent conditions requiring private flood evacuation plans rather than the application of sound land use planning and flood risk management.

Having regard to the abovementioned matters, the following comments are provided.

A central premise of the NSW Flood Prone Land Policy is that *"flood-prone land is a valuable resource that should not be sterilised by unnecessarily precluding its development"*. The SES comments add some additional context to how this central policy aspiration is to be approached in land use planning considerations in noting that development needs to avoid an intolerable increase in risk to life, health or property of people living on the floodplain.

The planning proposal will provide the opportunity for a limited increase in population within the lower parts of the valleys. This will potentially increase the numbers of people that could be either isolated, or require evacuation, in these areas during flood events. It is not inconceivable that people that comprise the additional population will at some point in the future require assistance to deal with the impacts of flooding and it is not possible to conclude that there will be absolutely no increase in risk to life, health or property of people living on the floodplain in association with this planning proposal. It is however submitted that the impacts of the planning proposal in terms of flooding, isolation and evacuation are acceptable and tolerable for the following reasons.

- The planning proposal does not actually advocate for the development of flood prone land. This will remain subject to the development assessment framework that Council has in place via the provisions of Chapter 8 of the Bellingen Shire Development Control Plan 2017 and that requires new dwellings to be built at or above the General Flood Planning Level (GFPL).
- As previously documented, the Council has undertaken Flood Studies in both areas that nominate appropriate flood planning levels for the majority of the proposed area of application in the Kalang Valley, and for the entire extent of the proposed area of application in the Thora Valley. In relative terms, this amounts to a superior level of flood knowledge than that which can exist in other rural areas of the Shire where secondary

dwelling and attached dual occupancies are permitted with consent. In addition to this, Council's existing Local Strategic Planning Statement includes actions aimed at further increasing the knowledge base regarding flooding in the Upper Kalang & Thora valleys.

- The Bellingen Shire Local Flood Plan has been consulted to determine any specific evacuation strategies regarding flooding events in the Thora & Kalang Valleys (in Sections 2.3 and 2.10 of Volume 2 of the Plan respectively), however no specific strategies were identified, and therefore no specific conflicts with the provisions of this planning proposal exist. A general strategy for managing evacuation operations in the Shire is however specified in Section 3.18.1 of the Plan, and this is reprinted below.

3.18.1 When there is a risk to public safety, evacuation is the primary strategy.

Circumstances may include:

a. Evacuation of people when their homes or businesses are likely to flood.

b. Evacuation of people who are unsuited to living in isolated circumstances, due to flood water closing access.

c. Evacuation of people where essential energy and utility services are likely to fail, have failed or where buildings have been made uninhabitable.

d. Evacuation of people when their homes or business are at threat of collapse from coastal erosion.

- The lack of specific evacuation strategies in the Plan reflects the fundamental reality that people living in these areas typically do not, and possibly would not, seek to evacuate in the event of flooding and are relatively well adapted to the consequences of temporary isolation and / or loss of services. The nature of inundation is not typically one that endangers dwellings or that requires sheltering strategies in buildings surrounded by floodwaters. For example, in Section 2.3.11 of Volume 2 of the Plan (concerning Darkwood & Thora) it is stated that there are "no known properties" at risk of inundation and in Section 2.10.9 (concerning Rural Areas – including Kalang) it is stated that a small number of farmhouses can be inundated in larger events, however these are in the areas downstream of Bellingen, including in the Valery area.
- Permitting attached dual occupancies and secondary dwellings that must be maintained on the same property as the principal dwelling may actually increase the resilience of existing dwellings to deal with temporary isolation as they will effectively create a mini "community of support" on the same property, whereby resources and supplies etc. can be shared where necessary. This could in fact reduce reliance upon emergency services to provide things like food drops.
- The planning proposal will not result in a significant increase in the dwelling density of land. Based upon traffic generation calculations provided to inform the Bushfire Strategic Study, it is expected that the planning proposal could potentially result in an additional 14 dwellings in the Kalang Valley and 13 additional dwellings in the Thora Valley assuming 25% of existing dwellings (excluding Multiple Occupancy developments) avail themselves of the opportunity afforded by the planning proposal. This is not considered to represent a significant increase in dwelling density.
- There is a significant amount of work currently occurring within the Thora & Kalang Valleys that is focused towards building the resilience of these communities to deal with

natural hazards. This work is being undertaken in response to funding made available to Council as part of the Bushfire Recovery & Resilience Program and covers three key areas of managing risk, response and recovery and building resilience.

(<https://www.bellingen.nsw.gov.au/Community/Community-Resilience>)

- The proposal will be limited in the geographical extent of operation and the types of development permitted, when compared to the original Planning Proposal 12 that was referred to the SES. It is not a zone wide amendment and will not permit a significant increase in the development density of the land. Not permitting any form of tourist development will mean that the impacts will be restricted only to existing occupants who can plan for flooding, are familiar with the area, and will generally not require evacuation.
- It is expected that, over time, 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, however it is not considered that these are essential pre-requisites for supporting this proposal.
- Contemporary weather observation and forecasting systems increasingly provide significant forewarning of the potential for weather events that could cause flooding, allowing for residents to plan in advance of these events.

In terms of the specific requirements of Subclause (2) the following comments are provided.

Provision:

(2) A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Business, Industrial or Special Purpose Zones.

Comment:

The planning proposal does not rezone land.

In terms of the specific requirements of Subclause (3) the following comments are provided.

Provision:

(3) A planning proposal must not contain provisions that apply to the flood planning area which:

- (a) permit development in floodway areas,*
- (b) permit development that will result in significant flood impacts to other properties,*
- (c) permit development for the purposes of residential accommodation in high hazard areas,*
- (d) permit a significant increase in the development and/or dwelling density of that land,*
- (e) permit development for the purpose of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,*
- (f) permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent,*

(g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities, or

(h) permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.

Comment:

The planning proposal does not include any provisions that facilitate development within the flood planning area.

In terms of the specific requirements of Subclause (4) the following comments are provided.

Provision:

4) A planning proposal must not contain provisions that apply to areas between the flood planning area and probable maximum flood to which Special Flood Considerations apply which:

(a) permit development in floodway areas,

(b) permit development that will result in significant flood impacts to other properties,

(c) permit a significant increase in the dwelling density of that land,

(d) permit the development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,

(e) are likely to affect the safe occupation of and efficient evacuation of the lot, or

(f) are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities.

Comment:

The planning proposal does not include any provisions that facilitate development between the flood planning area and probable maximum flood and to which Special Flood Considerations would apply.

In terms of the specific requirements of Subclause (5) the following comments are provided.

Provision:

(5) For the purposes of preparing a planning proposal, the flood planning area must be consistent with the principles of the Floodplain Development Manual 2005 or as otherwise determined by a Floodplain Risk Management Study or Plan adopted by the relevant council.

Comment:

The planning proposal does not seek to define a flood planning area.

4.3 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.

The Direction also requires consultation 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.

Council referred this Planning Proposal to the RFS as part of the process of complying with the initial Gateway Determination issued in respect of this planning proposal and received confirmation that they had no objection to the planning proposal. The RFS comments are provided below.

Strategic Planning Instrument

Draft LEP – Planning Proposal

Planning Proposal 19 - E4 Zone Permissible Uses Review

I refer to your correspondence dated 26/10/2021 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and provides the following comments.

The NSW RFS has no objection to the Planning Proposal proceeding. Future land use activities covered by the Planning Proposal are to comply with *Planning for Bush Fire Protection* guidelines.

It is noted that these comments are cognisant of the significant investigations, consultation and negotiation undertaken previously in respect of bushfire issues. In this respect, Attachments 1 & 2 to this planning proposal include a copy of the Bushfire Strategic Study that was commissioned regarding the proposed changes to permissible uses in the C4 Zone, and the RFS response to this Study that provided support for the amended scope of this planning proposal.

Given the circumstances of this planning proposal it is requested that a variation to the requirements of this Direction is supported that does not require the further referral of this planning proposal to the RFS.

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

Provisions:

The objectives of this direction are:

(a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and

(b) to encourage sound management of bush fire prone areas.

(2) A planning proposal must:

(a) have regard to Planning for Bushfire Protection 2019,

- (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and*
- (c) ensure that bushfire hazard reduction is not prohibited within the APZ.*

Comment:

The Bushfire Strategic Study and the supporting comments from the RFS have been informed by relevant criteria within *Planning for Bushfire Protection 2019*. The Study, and the comments from the RFS, have been used to refine the planning proposal to a range of appropriate land uses that are not considered to be incompatible with the level of hazard that exists within particular parts of the landscape

4.4 Remediation of Contaminated Land

The planning proposal is a zone wide matter, and it is not possible or appropriate to investigate the extent to which individual properties within the zone may have been used for contaminating activities at this stage of the planning process.

Notwithstanding this, Councils' Contaminated Land Register reveals few properties in either valley that have been identified as potentially contaminated by virtue of their previous uses, suggesting that this will not be a significant issue when properly contemplated at the development assessment stage of the planning process.

9.2 Rural Lands

Provision:

A planning proposal to which clauses 3(a) or 3(b) apply must:

(a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Secretary of the Department of Planning and Environment, and any applicable local strategic planning statement

Comment:

See previous comment with respect to North Coast Regional Plan & Bellingen LSPS 2020-2040.

Provision:

(b) consider the significance of agriculture and primary production to the State and rural communities

Comment:

The planning proposal recognises the significance of agriculture and primary production to the State in that it provides improved opportunities for;

- rural housing
- value adding via rural industrial uses, and
- farm buildings to be erected without the need for obtaining development consent.

Provision:

(c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources

Comment:

The refinement of the planning proposal (in response to the outcomes of the Bushfire Strategic Study and the comments of the RFS) has removed the potential for tourist & visitor accommodation (which requires larger APZ's), and restricted additional housing opportunities to the lower more cleared parts of the C4 Zone.

It is considered that the revised planning proposal will not have a significant adverse impact upon environmental values or water resources.

Provision:

(d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions

Comment:

In general terms, the planning proposal has had regard to the constraints posed by different parts of the landscape and the range of uses that it seeks to permit are considered appropriate wherever they are to be permitted.

Provision:

(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities

Comment:

The planning proposal will promote opportunities for investment in rural areas.

Provision:

(f) support farmers in exercising their right to farm

Comment:

The planning proposal facilitates farming activities and ancillary land uses.

Provision:

(g) 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

Comment:

The planning proposal does not introduce any fundamentally incompatible land uses into the rural landscape. The proposal does not permit any further subdivision of land or fragmentation of rural landholdings.

Site-specific merit

Section C – Environmental, social & economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because 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.

It is possible that development pursued in respect of the planning proposal will impact upon the habitat of threatened species, however the refinement of the planning proposal to exclude tourist related development and the more intensively forested parts of the landscape from the proposal will reduce the likelihood of this occurring.

In addition, *Clause 7.5 Biodiversity* of the BLEP 2010 will also apply in the majority of instances, which will require development proposals to avoid, minimise or mitigate impact upon identified areas of significant value.

9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

The key environmental effects of the planning proposal relate to the potential clearing of vegetation associated with undertaking development to be permitted by the proposal. There may also be impacts related to waste generation associated with any new or upgraded On-site Sewage Management Systems that would be necessary to service additional dwellings, or waste generation that may be ancillary to the conduct of a rural industry. It is not possible at planning proposal stage to speculate as to the full range of impacts that may need to be considered at a Development Application stage, however it is noted that Council has clauses relating to Water (7.4) and Biodiversity (7.5) within BLEP 2010 that prescribe matters to be considered in the assessment of Development Applications that will assist with the management of any potential adverse impacts.

It is possible that works required to upgrade vehicular access, or clearing works that disturb the ground surface, could generate erosion if not properly managed, and that this would be to the detriment of water quality within adjoining watercourses. This can be adequately managed via appropriate conditions of development approval requiring the development and implementation of Soil & Erosion Sediment Control Plans.

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

The planning proposal is expected to have a positive impact on the ability of landowners to continue rural land uses. The ability to erect a second dwelling in the more cleared eastern parts of the zone that are more suited to agriculture provides options to rural landowners in terms of things like farm succession planning, or options to maintain or productively use land that current occupants may not be able to pursue for one reason or another (eg: age, other employment etc..).

Secondary dwellings provide important opportunities to maintain social connectivity with family members at various stages of life such as elderly parents, or young adults who may be finding it difficult to secure accommodation within the current private housing market.

Permitting rural industries with development consent will provide opportunities for value adding to primary products produced in the valleys and permitting farm buildings as exempt development will provide a reasonable opportunity for landowners that is provided elsewhere within the rural landscape within the Shire.

Overall, it is expected that the planning proposal will not have a range of positive social and economic impacts as discussed.

Section D – Infrastructure (Local, State & Commonwealth)

11. Is there adequate public infrastructure for the planning proposal?

The adequacy of public infrastructure has been carefully considered as part of the completion of the Bushfire Strategic Study, and further by the Rural Fire Service, in contemplating what is an acceptable level of development that can be permitted to occur within the C4 zone.

As also discussed herein, it is expected that over time, 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, however it is not considered that these are essential pre-requisites for supporting this proposal.

Section E – State & Commonwealth Interests

12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway Determination?

Council consulted with the following agencies / organisations prior to undertaking community consultation as per the requirements of the initial Gateway Determination.

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

Council did not receive any comments from the Bowraville & Nambucca Local Aboriginal Land Councils.

No state agencies provided a formal objection to the planning proposal. Advice received from the Regional Office of the NSW Department of Planning & Environment (DPE) has confirmed that unless comments received from a state agency explicitly state that they object to the planning proposal, then the matters raised within that referral are matters for consideration by Council only.

On this basis, there is no compulsion upon Council to resolve “any outstanding written objection” from a public authority before exercising any function as the Local Plan Making Authority.

The following comments are provided in response to state agency feedback on the planning proposal, and copies of responses received to date are also included as Appendices to this planning proposal.

NSW Rural Fire Service

The NSW RFS has considered the information submitted and provides the following comments.

The NSW RFS has no objection to the Planning Proposal proceeding. Future land use activities covered by the Planning Proposal are to comply with Planning for Bush Fire Protection guidelines.

Comment:

Noted.

Department of Planning, Industry and Environment (Biodiversity and Conservation Division)

Prior to exhibition the planning proposal should further justify permitting rural industries given the scenic and environmental values in the Thora & Kalang Valleys.

Comment:

Additional commentary has been provided in the section of this report describing site specific merits.

Council should amend the planning proposal to not allow farm buildings as exempt development on land mapped on the Natural Resources Sensitivity – Biodiversity Map contained in BLEP 2010.

Comment:

The Natural Resources Sensitivity – Biodiversity Map was not adopted by BLEP 2010 to act as a determinant of whether development could be considered as exempt development, but rather to prescribe matters for consideration when a DA is required. This would render the current planning proposal significantly different in scope to what was originally resolved by Council, and supported via the Gateway Determination, and is not supported.

Council should consider whether additional development control criteria should be included in the Bellingen Shire Development Control Plan 2017 (the DCP) to limit potential adverse impacts of permitting secondary dwellings and attached dual occupancies.

Comment:

Council will review development controls governing development in rural or conservation zone strategically as part of the completion of a Rural Lands Strategy for the Shire.

Council should review and update the Natural Resources Sensitivity – Biodiversity Map to ensure it covers all high environmental value lands in the Shire.

Comment:

This is a significant exercise for which Council does not have the resources to complete. The underlying data set for this map layer was originally supplied to Council by the NSW Government. Council will consider updating the map should the NSW Government undertake a review of this data.

Council should include provisions in the DCP to regulate clearing that is not otherwise authorized or regulated as a priority action.

Comment:

Council will give consideration to DCP clearing provisions in rural or conservation zone strategically as part of the completion of a Rural Lands Strategy for the Shire.

State Emergency Service

The original NSW SES response in relation to Planning Proposal 12, dated 06 June 2018, highlighted the matters the NSW SES consider the most important and this submission in relation to Planning Proposal 19 confirms that position on this matter.

Comment:

The original NSW SES Response identified, amongst other things, a concern that “rezoning E4 will potentially increase the number of persons isolated due to flooding, and therefore poses an unacceptable future risk to these communities and potentially increased burden to the emergency services.”

It is important to note that the SES responses from June 2018 and December 2021 do not provide formal objections to the planning proposal (as per the advice of the DPE discussed previously).

Whilst the concerns of the SES are acknowledged (noting that these were some of the original reasons for the introduction of the E4 Zone) for those reasons discussed in Part 3 Section B of this proposal (under Direction 4.1 Flooding) it is submitted that the planning proposal does not involve an intolerable increase in the level of risk applying to these communities.

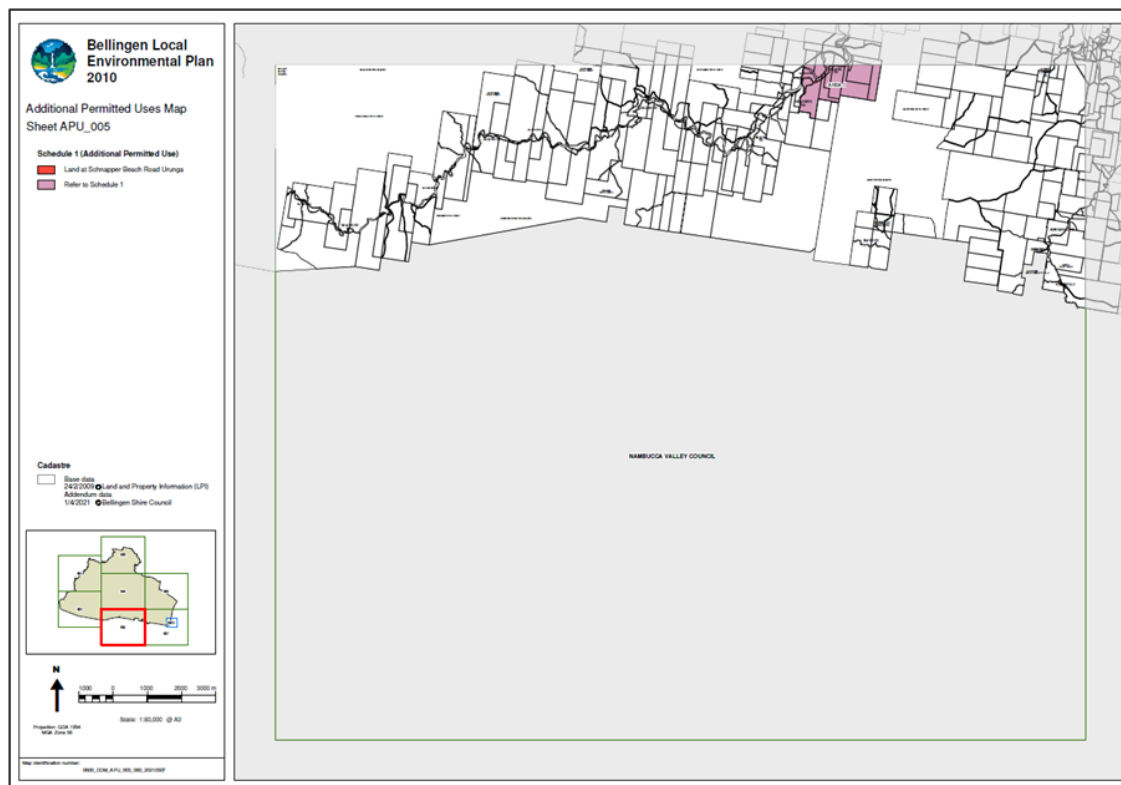
The consent authority will need to ensure that the planning proposal is considered against the relevant Ministerial Section 9.1 Directions, including 4.3 – Flood Prone Land and is consistent with the NSW Flood Prone Land Policy as set out in the NSW Floodplain Development Manual, 2005 (the Manual).

Attention is drawn to the following principals outlined in the Manual which are of importance to the NSW SES role as described above:

Comment:

A detailed analysis of the proposal against these criteria is provided in Part 3 Section B of this proposal (under Direction 4.1 Flooding).

Additional Permitted Uses Maps APU_004 & APU_005 – uploaded to NSW Planning Portal as separate files to this document. – copies below.



PART 5 – COMMUNITY CONSULTATION

Pre-lodgement consultation with stage agencies or authorities

As discussed in Section E.

Any additional consultation with agencies or other key stakeholders

It is submitted that the consultation with State Agencies that has been undertaken to date is adequate to inform the amended version of the planning proposal being submitted for an altered Gateway Determination and that Council should not be required to re-consult with agencies prior to placing the proposal on public exhibition.

Any community consultation undertaken

This version of the Planning Proposal has been prepared for the purpose of community consultation. Council will observe the community consultation requirements for strategic land use planning matters that are stipulated within the Bellingen Shire Community Participation Plan, relevant parts of the NSW Environmental Planning & Assessment Act 1979 (the Act), the NSW Environmental Planning & Assessment Regulation 2000 (the Regulation) and the specific requirements of any amended or new Gateway Determination.

Community consultation has involved the following.

28-day consultation period

Advertisement in local paper

Notification of C4 property owners and owners of adjoining land to C4 zoned properties.

Advertisement and provision of supporting documentation on Council' website.

Plain English Version

PART 6 – PROJECT TIMELINE

The amended timeframe proposed for the completion of this planning proposal is detailed below.

Stage	Timeframe / date
Consideration by Council	
Council decision (amended proposal)	27/4/2022
Gateway Determination	3/6/2022
Pre-exhibition & agency consultation	Not required
Public exhibition	2/6/22 – 1/7/22
Consideration of Submissions by Council	25/8/2022
Obtain PCO Opinion	23/9/2022
Gazettal of LEP Amendment	28/10/2022

APPENDICES

Appendix A – Original and Amended Gateway Determination



**Planning,
Industry &
Environment**

Gateway Determination

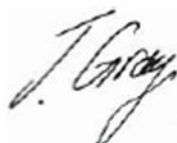
Planning proposal (Department Ref: PP-2021-4811): to review permissible uses within the E4 Environmental Living zone

I, the Director at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Bellingen Local Environmental Plan (LEP) 2010 to review permissible uses within the E4 Environmental Living zone should proceed subject to the following conditions:

1. Prior to agency or community consultation, the planning proposal is to be amended to:
 - (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.
2. 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
 - NSW State Emergency Services
 - Department of Planning, Industry and Environment (Biodiversity and Conservation Division)
 - Bowraville & Nambucca Local Aboriginal Land Councils
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
 5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
 6. The time frame for completing the LEP is to be **nine months** following the date of the Gateway determination.

Dated 21 day of September 2021.



Jeremy Gray
Director, Northern Region
Local and Regional Planning
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces



Department of Planning and Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: PP-2021-4811)

I, Director, Northern Region at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 21 September 2021 for the proposed amendment to the Bellingen Local Environmental Plan 2010 as follows:

1. Change the name of the planning proposal

from to review permissible uses within the E4 Environmental Living zone

to to review permissible uses within the C4 Environmental Living zone.
2. Delete:

"condition 6"

and replace with:

a new condition 6: "The time frame for completing the LEP is by 21 October 2022"

Dated 19 day of May 2022.

A handwritten signature in black ink, appearing to read "J. Gray".

Jeremy Gray
Director, Northern Region
Local and Regional Planning
Department of Planning and Environment

Delegate of the Minister for Planning

Appendix B – State Agency Responses



**Planning,
Industry &
Environment**

Our Ref: DOC21/905951
Your Ref: PP-2021-4811

General Manager
Bellingen Shire Council
PO Box 117
Bellingen NSW 2454

Attention: Mr Daniel Bennet

Dear Ms Jeremy

RE: Planning Proposal 19 – C4 (Environmental Living) Zone – Permissible Uses Review

Thank you for your referral via the NSW Planning Portal dated 14 October 2021 about the Planning Proposal for a permissible uses review of the C4 (Environmental Living) zone in the Bellingen Local Environmental Plan 2010 (BLEP 2010) seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment, Energy and Science Group of the Department of Planning, Industry and Environment. I appreciate the opportunity to provide input and apologise for the delay in responding.

We note the recent change to all 'E' zones now being labelled as conservation 'C' zones (more information available [here](#)). We have adopted this change in our letter by referencing the E4 Environmental Living zone as C4 Environmental Living.

We have reviewed the documents supplied and advise that the proposed additional uses with consent in the C4 zone and the inclusion of farm buildings as a form of exempt development in that zone have the potential to cause adverse impacts on biodiversity values and National Parks and Wildlife Service (NPWS) estate. These issues are discussed in detail in Attachment 1 to this letter.

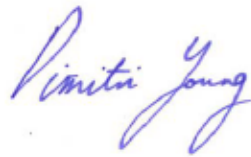
In summary, the BCD recommends that:

1. Prior to exhibiting the Planning Proposal the council should:
 - a. Provide further justification to demonstrate the compatibility of the *rural industry* land use with the scenic and environmental values in the Kalang and Darkwood/Thora valleys.
 - b. Amend the wording for the proposed provision to be inserted in Schedule 2 Exempt Development to state that farm buildings "are not exempt development if they are in an environmentally sensitive area, including but not limited to, land identified on the council's *Natural Resources Sensitivity – Biodiversity Map*."
2. The council should consider whether additional development control criteria could be included in its Development Control Plan 2017 to ensure any environmental impacts that could arise from the additional development enabled through the additional land uses (dual occupancy – attached and secondary dwelling) will be minimal.

3. The council should review the Natural Resources Sensitivity – Biodiversity Map and update it as required to ensure that it covers all high environmental value lands in the Shire.
4. The council should include additional provisions within its Development Control Plan 2017 to regulate clearing of native vegetation in conservation zones that is not otherwise authorised or regulated as a priority action.

If you have any questions about this advice, please do not hesitate to contact Ms Rachel Lonie, Senior Conservation Planning Officer, at rachel.lonie@environment.nsw.gov.au or 6650 7130.

Yours sincerely



23 December 2021

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Biodiversity and Conservation

Enclosure: Detailed BCD Comments – Planning Proposal 19 – C4 (Environmental Living) Zone - Permissible Uses Review

Attachment 1: Detailed BCD Comments – Planning Proposal 19 – C4 (Environmental Living) Zone - Permissible Uses Review

The Biodiversity and Conservation Division (BCD) of the Department of Planning, Industry and Environment has reviewed the Planning Proposal 19 – C4 (Environmental Living) Zone - Permissible Uses Review and associated documents and we provide the following comments.

The BCD provided advice on the previous Planning Proposal 12 - C4 Environmental Living Zone in a letter dated 28 February 2018. We note that planning proposal has been formally withdrawn and this new planning proposal has been informed by the findings of the Bushfire Strategic Study and the recommendations of the NSW Rural Fire Service (RFS).

The objectives of the proposal are to enable a wider variety of permissible land uses within certain areas within Zone C4 –Environmental Living in the Bellingen Local Environmental Plan 2010 (BLEP). An Additional Permitted Uses Map is proposed to define the extent of the C4 zone that is considered suitable for secondary dwellings or attached dual occupancy.

The C4 zone objectives in the BLEP 2010 are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for the continuation of low impact agricultural land uses on land with productive value.*
- *To restrict the cumulative impact of traffic generating development upon the local road systems.*
- *To restrict population numbers in areas isolated during flooding events.*

The proposed BLEP amendments would:

1. Enable *Rural industry* as a land-use permitted with consent in Zone C4 – Environmental Living.
2. Insert a clause in Schedule 1 Additional Permitted Uses to enable *Secondary dwellings* and *Dual occupancy (attached)* to be permitted with consent on land shown as Area 1 on the Additional Permitted Uses Map. The clause would not apply to any land containing an existing and approved Multiple Occupancy or Rural Landsharing Community development, or any lot created as a result of the community title subdivision of an existing and approved Multiple Occupancy or Rural Landsharing Community development.
3. Enable *Farm buildings* (other than stock holding yards, grain silos and grain bunkers) to be Exempt Development. The clause specifies this would not be allowed in an environmentally sensitive area.

1. Additional permissible uses

The 'rural industry' land-use has the potential for adverse environmental impacts as it permits the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:

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

We note this development would require council consent.

As we identified with the previous planning proposal, the need for this change is not justified in the Planning Proposal. Reference is made to Bellingen Shire Council consultation with residents in the Environmental Living Zone as part of a "Rural Lands Planning Policy Review" process in 2017. Reporting on this consultation is provided in the previous planning proposal (PP_12) report.

The BCD reviewed this previous report and concluded it does not appear the consultation process provides strong justification for the change. We note one comment that could be supportive stated the E4 zone *"just allow (sic) for transfer of land to tree changes – do more to encourage agriculture"*.

While we do not object to this proposal, we consider some further justification is required in the planning proposal report. This should explore the need for this change and the compatibility of the land uses that could be permitted with the scenic and environmental values of the C4 lands.

BCD Recommendation

1. The council should provide further justification to demonstrate the compatibility of rural industry land uses with the scenic and environmental values in the Kalang and Darkwood/Thora valleys.

2. Enable Secondary dwellings and Dual occupancy (attached) to be permitted with consent

The key recommendation of the *Bushfire Strategic Study – E4 Lands* (Eco Logical 2021) was to limit the extent of the area considered suitable for secondary dwellings or attached dual occupancy to the eastern, more cleared parts of the study area. The maximum extent was determined to be within 15 - 20 minutes travel time from the main access roads (Waterfall Way for the Thora Valley and Bowraville Road for the Kalang Valley). To achieve this, the two Additional Permitted Uses maps describe the application of the clause to the eastern parts of the Thora and Kalang valleys only.

The Department's report states the planning proposal, by providing potential for new development through this planning change, will likely increase the potential for land clearing, especially in relation to creating asset protection zones within the bushfire prone areas. In considering the likely impact, the council planning proposal report states:

"It is possible that development pursued in respect of the planning proposal will impact upon the habitat of threatened species, however the refinement of the planning proposal to exclude tourist related development and the more intensively forested parts of the landscape from the proposal will reduce the likelihood of this occurring. In addition, Clause 7.5 Biodiversity of the BLEP 2010 will also apply in the majority of instances, which will require development proposals to avoid, minimise or mitigate impact upon identified area of significant value."

We note that *secondary dwellings and dual occupancy (attached)* will be permitted with consent and the council will have the ability to assess environmental impacts including associated infrastructure, storm and wastewater management and any vegetation clearing. In addition, *Clause 7.5 Biodiversity* of the BLEP 2010 will also apply in the majority of instances, which will require development proposals to avoid, minimise or mitigate impact upon identified area of significant value.

Clause 7.5 Biodiversity in the BLEP applies to land identified as "sensitive land" on the Natural Resources Sensitivity – Biodiversity Map. It requires the consent authority to be satisfied that the development will be designed, sited and managed to avoid any adverse environmental impact. If the impact cannot be avoided, then the impacts should be minimised or offset.

Much of the C4 land in the Darkwood/Thora and Kalang valleys is included in the BLEP 2010 *Natural Resources Sensitivity – Biodiversity Map*. However, the map layer covers land that is now cleared of vegetation and therefore this provision does not appear to have been entirely effective in maintaining terrestrial biodiversity.

The report notes there is potential to introduce additional development control criteria that would need to be met to develop a new attached dual occupancy or secondary dwelling in the area of application. This can be further contemplated, having regard to the outcomes of any pre-exhibition consultation with the SES and other relevant stakeholders. We support this proposal and suggest the council considers whether additional development control criteria could be included to ensure environmental impacts that could arise from this additional development will be minimal.

BCD Recommendations

2. The council should consider whether additional development control criteria could be included in its Development Control Plan to ensure any environmental impacts that could arise from the additional development enabled through the additional land uses (dual occupancy – attached and secondary dwelling) will be minimal.
3. The council should review the Natural Resources Sensitivity – Biodiversity Map and update it as required to ensure that it covers all high environmental value lands in the Shire.

3. Addition of Farm Buildings in the C4 zone as exempt development

The Planning Proposal seeks to enable *farm buildings* (other than stock holding yards, grain silos and grain bunkers) to be exempt development. The clause specifies this would not be allowed in an environmentally sensitive area. There is no definition of an environmentally sensitive area.

As the BCD noted in our previous response for PP_12, an environmentally sensitive area is defined under Clause 3.3(2) in Part 3 *Exempt and complying development* in the BLEP 2010. The definition includes "*land identified in this or any other environmental planning instrument as being of high Aboriginal cultural heritage significance or high biodiversity significance*".

The BCD has previously recommended these areas of high biodiversity significance be identified as environmentally sensitive areas for the purposes of Clause 3.3(2) of the BLEP 2010.

We seek assurance that this provision will apply to land that is identified as "sensitive land" on the Natural Resources Sensitivity – Biodiversity Map. To make this explicit, it should be specified that farm building development is not exempt development if the development is located on land that is identified for the purposes of an environmental planning instrument as "sensitive land" on the Natural Resources Sensitivity – Biodiversity Map.

BCD Recommendation

4. The council should amend the wording for the proposed provision to be inserted in Schedule 2 Exempt Development to state that farm buildings "are not exempt development if they are in an environmentally sensitive area, including but not limited to, land identified on the council's *Natural Resources Sensitivity – Biodiversity Map*."

4. Regulation of native vegetation clearing

We note the council planning proposal report under consideration of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 states the planning proposal will not permit a significantly greater level of clearing in the absence of additional provisions within Council's Development Control Plan to govern clearing activities in E (now C) zones throughout the Shire.

The BCD recommended in our letter dated 2 July 2021 on draft Planning Proposal 17 that the council should adopt provisions within the Bellingen Development Control Plan 2017 to regulate clearing of native vegetation in conservation zones that is not otherwise authorised or regulated as a priority action. We reiterate this recommendation.



NSW RURAL FIRE SERVICE

Bellingen Shire Council
PO Box 117
BELLINGEN NSW 2454

Your reference: PP-2021-4811
Our reference: SPI20211027000183

ATTENTION: Daniel Bennett

Date: Wednesday 16 March 2022

Dear Sir/Madam,

Strategic Planning Instrument
Draft LEP – Planning Proposal
Planning Proposal 19 - E4 Zone Permissible Uses Review

I refer to your correspondence dated 26/10/2021 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and provides the following comments.

The NSW RFS has no objection to the Planning Proposal proceeding. Future land use activities covered by the Planning Proposal are to comply with *Planning for Bush Fire Protection* guidelines.

For any queries regarding this correspondence, please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely,

Timothy Carroll
Manager Planning & Environment Services
Built & Natural Environment

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555
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www.rfs.nsw.gov.au

Our Ref: ID 1496
Your Ref: PP-2021-4811

08 December 2021

Daniel Bennett
Bellingen Shire Council
33 Hyde Street
Bellingen NSW2454

Dear Mr Bennett,

**PLANNING PROPOSAL 19 FOR AMENDMENT TO BELLINGEN SHIRE LOCAL ENVIRONMENTAL
PLAN 2010 - E4 (ENVIRONMENTAL LIVING) ZONE – PERMISSIBLE USES REVIEW**

Thank you for the opportunity to provide comment on the Planning Proposal 19 for Amendment to Bellingen Shire Local Environmental Plan 2010 - E4 (Environmental Living) Zone – Permissible Uses Review.

The NSW State Emergency Service (NSW SES) is the agency responsible for dealing with floods, storms and tsunami in NSW. This role includes, planning for, responding to and coordinating the initial recovery from floods. As such, the NSW SES has an interest in the public safety aspects of the development of flood prone land, particularly the potential for changes to land use to either exacerbate existing flood risk or create new flood risk for communities in NSW.

The original NSW SES response in relation to Planning Proposal 12, dated 06 June 2018, highlighted the matters the NSW SES consider the most important and this submission in relation to Planning Proposal 19 confirms that position on this matter.

The consent authority will need to ensure that the planning proposal is considered against the relevant Ministerial Section 9.1 Directions, including 4.3 – Flood Prone Land and is consistent with the NSW Flood Prone Land Policy as set out in the NSW Floodplain Development Manual, 2005 (the Manual). Attention is drawn to the following principals outlined in the Manual which are of importance to the NSW SES role as described above:


- Zoning should not enable development that will result in an increase in risk to life, health or property of people living on the floodplain.
- Risk assessment should consider the full range of flooding, including events up to the Probable Maximum Flood (PMF) and not focus only on the 1% AEP flood.
- Risk assessment should have regard to flood warning and evacuation demand on existing and future access/egress routes. Consideration should also be given to the impacts of localised flooding on evacuation routes.

- In the context of future development, self-evacuation of the community should be achievable in a manner which is consistent with the NSW SES's principles for evacuation.
- Future development must not conflict with the NSW SES's flood response and evacuation strategy for the existing community.
- Evacuation must not require people to drive or walk through flood water.
- Development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation.
- Development strategies relying on an assumption that mass rescue may be possible where evacuation either fails or is not implemented are not acceptable to the NSW SES.
- The NSW SES is opposed to the imposition of development consent conditions requiring private flood evacuation plans rather than the application of sound land use planning and flood risk management.

Due entirely to the need to meet priorities dictated by legislated responsibilities, the NSW SES is not able to assess any detailed development proposal or to work with developer's consultants in preparing any such proposal.

Please feel free to contact me via email at rra@ses.nsw.gov.au should you wish to discuss any of the matters raised in this correspondence.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Kuster', is positioned above the printed name.

Nicholas Kuster
Manager Emergency Planning
NSW State Emergency Service

6 June 2018

The General Manager
Bellingen Shire Council
PO Box 117
BELLINGEN NSW 2454



Dear Sir/Madam

Bellingen Shire Council E4 (Environmental Living) Zone Permissible Uses Review

Thank you for the request for comment from the NSW State Emergency Service (NSW SES) on the above proposal, and we apologise for the delayed response.

The NSW SES is the legislated combat agency for floods, storms and tsunamis in NSW. This role includes planning for, responding to, and coordinating the initial recovery from floods. The NSW SES has a strategic interest in the public safety aspects of the development of flood prone land, in particular, the potential for changes to land use to either exacerbate existing flood risk or create new flood risk for communities in NSW.

NSW SES supports development that is appropriate taking into account the flood risk to the community, and development that ensures community safety during floods. This includes ensuring there is sufficient time and road capacity for a community to safely evacuate to a safer area out of the floodplain where and when necessary.

NSW SES recommends that the general emergency management principles (Attachment 1) are considered during any proposal for development or review of zoning that incorporates flood prone land.

Council's proposed amendment to Planning Zone E4 may potentially increase the number of persons isolated in areas zoned E4 due to flooding. We note from the supplied maps that many areas subject to the E4 zoning review are adjacent to riparian areas, in particular the Bellinger River. As much of the land classified E4 is situated adjacent to the Bellinger River riparian corridor, areas such as Thora, Darkwood and communities upstream of Bellingen are already subject to significant periods of isolation due to riverine floods. Rezoning E4 will potentially increase the number of persons isolated due to flooding, and therefore poses an unacceptable future risk to these communities and potentially increased burden to the emergency services.

Please contact Nicholas Kuster on (02) 4251 6409 or Michael Stubbs on (02) 66416900 for more information.

Yours sincerely,

Ailsa Schofield
Acting Manager – Emergency Risk Management
NSW State Emergency Service



STATE HEADQUARTERS

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ABN: 88 712 649 015

Attachment 1: General emergency management principles

The NSW SES considers the following emergency management principles to be of particular importance in undertaking an adequate flood risk assessment, although this list is not to be considered exhaustive:

- Development needs to avoid an *intolerable* increase in risk to life, health or property of people living on the floodplain.
- Risk assessment needs to consider the full range of flooding; including events up to the PMF and not focus only on the 1% AEP flood (see Floodplain Development Manual section 2.4, page 7). This would assist in developing the classification of communities to assist with emergency management planning.
- Risk assessment needs to pay particular regard to flood warning and evacuation demand on existing and future access/egress routes. Consideration needs to be given to the impacts of localised flooding on evacuation routes.
- In the context of future development, self-evacuation of the community needs to be achievable in a manner which is consistent with the NSW SES's principles for evacuation.
- Future development must not conflict with the NSW SES's flood response and evacuation strategy for the existing community. The arrangements and strategies are contained in local flood plans and guided by the State Flood Plan.
- Evacuation must not require people to drive or walk through floodwater.
- Development strategies relying on deliberate isolation or sheltering in buildings surrounded by floodwater are not equivalent, in risk management terms, to evacuation.
 - o Evacuation ensures people can be moved to a location where they are reliably separated from the risks associated with flooding, whereas an isolated community in a flood will continue to require emergency services to maintain around the clock safety monitoring. In the worst case the NSW SES may be required to undertake dangerous and logistically difficult rescue operations.
 - o Sheltering in buildings surrounded by floodwater presents a greater risk than a well-conducted evacuation. It should only be used where evacuation is not possible, or where evacuation from an at-risk area has failed. Where evacuation is not possible, the risks of sheltering needs to be adequately assessed to determine the tolerability of isolation, before any strategy of sheltering in place can be considered.
 - o 'Shelter in place' strategies increase the risk to emergency service personnel. Before attempting rescue, emergency service personnel will assess the risk to their own safety. There is therefore no guarantee that rescue will be available for residents who are effectively entrapped in a building during a flood.

- Development strategies relying on an assumption that mass rescue may be possible where evacuation either fails or is not implemented are not acceptable to the NSW SES.
- The NSW SES is opposed to the imposition of development consent conditions requiring private flood evacuation plans rather than the application of sound land use planning and flood risk management.