



IRF22/4471

## Gateway determination report – PP-2022-4253

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Amendments to Ballina LEP 2012 Strategic Urban  
Growth Area Map

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Ballina Shire Council Planning Proposal version 1, December 2022
Ballina Shire Council Strategic Urban Growth Area Review, October 2022
Planning Proposal Application Form PP-2022-4253
Planning Proposal Submission Form PP-2022-4253

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Ballina Shire</b>
<b>PPA</b>	<b>Ballina Shire Council</b>
<b>NAME</b>	<b>Strategic Urban Growth Area Map amendments</b>
<b>NUMBER</b>	<b>PP-2022-4253</b>
<b>LEP TO BE AMENDED</b>	<b>Ballina LEP 2012</b>
<b>ADDRESS</b>	<b>Various properties across the LGA</b>
<b>DESCRIPTION</b>	<b>As above</b>
<b>RECEIVED</b>	<b>12/12/2022</b>
<b>FILE NO.</b>	<b>IRF22/4471</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

The planning proposal adequately outlines that the intended outcome is to amend the Ballina LEP 2012 Strategic Urban Growth Area (SUGA) map to implement Council's 2022 review of the Shire's existing SUGAs.

## 1.3 Explanation of provisions

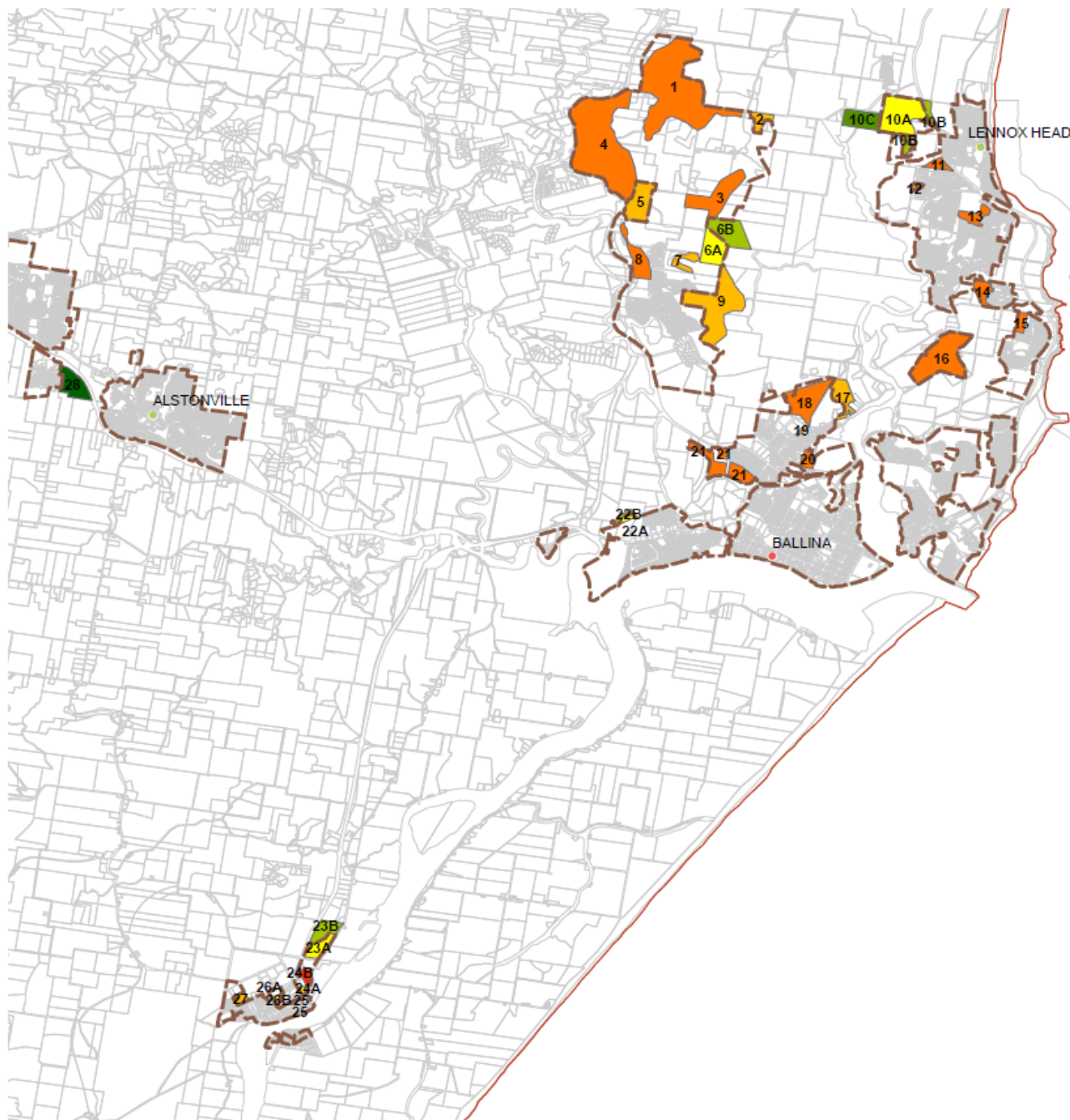
The planning proposal seeks to achieve the intended outcome by amending six existing Ballina LEP 2012 SUGA map sheets (003A, 005B, 005C, 005D, 006A & 006C) and by adding a new SUGA map sheet (001B). Map extracts showing the proposed changes are included in Part 4 of the planning proposal.

The planning proposal adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The planning proposal applies to 15 existing SUGAs and two proposed expansion areas across the Shire as shown on Figure 1 and shaded light orange, red and green. The shading generally reflects where SUGAs are proposed to be removed (light orange & red), reduced (light green) and expanded (dark green). Note: Dark orange shading reflects SUGAs that are retained and do not form part of this planning proposal.

All of the existing and proposed SUGAs are zoned rural lands that have been identified for investigation by Council for future urban potential. The existing SUGAs fall within UGAs mapped in the former NCRP 2036. The recently released NCRP 2041 UGAs have been amended to correspond with the Department's conditional approval dated 4 November 2022 of Council's 2022 SUGA review. The NCRP 2041 UGAs are shown as a dashed outline in Figure 1 below and have removed those lands identified by Council as no longer being suitable for inclusion with the SUGAs.



**Figure 1 Subject land (source: DPE Oct 2022)**

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Ballina LEP 2012 SUGA map sheets. The mapping shows the land to which clause 7.8 Strategic Urban Growth Area of Ballina LEP 2012 applies being 'Strategic Urban Growth Areas' and 'Land Adjoining Strategic

Urban Growth Areas'. More detailed constraint mapping is also contained in council's SUGA Review (Oct 2022) accompanying the planning proposal.

Council notes that suitable LEP maps will be prepared to meet the Department's technical mapping requirements prior to finalisation of the planning proposal.

Should the proposal proceed, the maps are considered to be suitable for community consultation subject to the removal of SUGA 12 and 28 which were not supported by the Department in granting its conditional approval of the SUGA review. It was considered these SUGAs required further preliminary investigation and consultation with agencies regarding flooding and State significant farmland matters before it could be determined whether the lands were suitable for inclusion.

## 1.6 Background

On 10 October 2022, Ballina Shire Council resolved to adopt a SUGA Review to remove nine SUGAs, refine six (which included an extension to one area), retain 11 and add a new site at the Russellton Industrial Estate, Alstonville, for potential future employment. Council also resolved that a planning proposal be prepared to amend the Ballina LEP 2012 SUGA maps to reflect these changes.

On 11 October 2022, Council submitted a request seeking amendments to the draft North Coast Regional Plan (NCRP) 2041 Ballina urban growth area (UGA) map to reflect the amended SUGAs. The Department's endorsement of the SUGAs Review was necessary to enable the proposed amendments to the draft Regional Plan.

On 4 November 2022, a conditional approval was issued to the SUGAs Review, excluding the proposed new site at Russellton Industrial Estate, Alstonville (SUGA No 28) and proposed extension to existing SUGA No 12 Ross Lane/The Coast Road, Lennox Head.

The Department's approval noted that further detailed investigations to determine the suitability and extent of these areas was necessary to address a range of issues, including important farmland and flooding, to ensure that any proposed development is consistent with relevant State and regional planning provisions. It was also noted that these areas could be re-considered in a future strategic review process by Council (for e.g. as part of a future Growth Management Strategy and/or LSPS Review) and submitted to the Department for review and approval.

Despite these areas being excluded by the Department's conditional approval of the SUGA review, they have been included in the current proposal. Not including these two areas within the planning proposal was discussed at the time of approving the SUGA review and was agreed to by Council staff. It is understood that Council staff have however reconsidered their position and determined that exclusion of the areas would be contrary to the current Council resolution relating to the proposal. Rather than seeking an amended resolution of Council to reflect the Department's conditional approval of the SUGA review, staff have submitted the proposal as originally prepared for Gateway determination. The proposal has not however provided sufficient additional supporting information as requested by the Department for the inclusion of these two areas. The Gateway determination has been appropriately conditioned to exclude these areas.

## 2 Need for the planning proposal

The planning proposal has been initiated by Council following a review of its existing 27 SUGAs to assess the extent to which they continue to represent areas of realistic urban potential having regard to current planning policy around various constraints such as, land fragmentation, steep slopes, biodiversity values, and natural hazards.

Where identified as a SUGA, clause 7.8 of Ballina LEP 2012 prevents rezoning or development for a use which would jeopardise the land's urban potential.

In undertaking the SUGA review, Council confirmed that there is the capacity for 5,000 additional lots in existing undeveloped residentially zoned land in The Shire. The Department's 2022 Population Projections estimate that the Ballina LGA will grow by approximately 8,000 residents to a total population of 53,582 by 2041. The Department's projections indicate that this growth will create an implied dwelling demand of an additional 5,352 dwellings by 2041.

It is also noted that the North Coast Regional Plan 2036, and the draft North Coast Regional 2041, require greater urban infill with 40% of new dwellings by 2036 being delivered in the form of medium density housing or on small lots less than 400m<sup>2</sup>. This will continue to lessen demand for all housing to be in greenfield areas. Ballina LGA therefore already has more than 20 years of zoned residential greenfield land which will continue to be supplemented as SUGA land is investigated and released.

Council's constraints analysis in the SUGA Review is sufficient to support the suitability of reducing or removing areas from across the Shire. It is also noted that the existing SUGAs contain 890 hectares of land for urban investigation. The proposed removal and refinements by Council only remove 200 hectares of land, resulting in almost 700 hectares remaining available for future urban investigation and growth. Conservatively, it is expected this quantity of land could provide for at least an additional 10,000 homes in addition to the existing vacant residential land that can provide for another 5,000 homes. No objection is raised to Council reducing the SUGAs to better reflect known and likely constraints as more than adequate land supply to meet demand will be available. This will also better identify realistic future release lands and to avoid unreasonable expectations for landowners.

Council's approach in amending LEP 2012 to remove and refine some of its existing SUGAs which are unsuitable due to constraints, is considered to be the best means for achieving the intended outcome of the proposal.

## 3 Strategic assessment

### 3.1 Regional Plan

The proposed removal and refinement of existing SUGAs is considered to be consistent with the overall intent of the NCRP 2021.

For the proposed new areas, SUGA No 28 Russellton Industrial Estate, Alstonville and expanded SUGA No 12 Ross Lane/The Coast Road, Lennox Head, the SUGA Review identifies these lands as subject to inundation by flooding (expanded SUGA No 12) and State significant farmland (SUGA No 28). More detailed investigations are considered necessary to determine the suitability and appropriate extent of these areas for consistency with regional plan *Objective 5 Manage and improve resilience to shocks and stresses, natural hazards and climate change* and *Objective 8 Support the productivity of agricultural land*.

Objective 5 acknowledges natural hazards that may impact land on the North Coast and aims to reduce the risk from such hazards. Considering the unprecedented flooding on the North Coast in February and March 2022, a detailed flood study, including an evacuation assessment, is considered necessary to determine the urban potential of the proposed expanded Lennox Head site prior to inclusion in the LEP SUGA maps.

Objective 8 recognises that agriculture is a key industry for the North Coast and promotes retention and management of the LGA's agricultural productive capacity by limiting incompatible land uses and fragmentation. It also notes that important farmland on the North Coast has been mapped to support long-term agricultural production and help avoid land use conflicts. A detailed assessment of agricultural capability and impact on surrounding land will be required to support the proposed Russellton Industrial Estate, Alstonville site, consistent with the regional plan. It is also noted that Department has already received a number of submissions from concerned residents in the

Alstonville and Wollongbar areas raising concerns regarding inclusion of the land in the SUGA review.

The regional plan's settlement planning principles confirm that any change to add or remove land from an UGA is to be undertaken as part of a local land use strategy or planning work by council, in consultation with the local community. Once adopted by the council and approved by the Department, the amendment will be reflected in the next review of the regional plan.

As council is yet to undertake a strategic review process to justify the new site at Russellton Industrial Estate, Alstonville (SUGA No 28) and proposed extension to existing SUGA No 12 Ross Lane/The Coast Road, Lennox Head, the inclusion of these areas in the planning proposal is not supported despite Council's statement that inclusion on the SUGA maps only identifies the land for further potential urban investigation. The land owner and community expectation of potential future urban development that could be created by such an inclusion in the absence of further supporting strategic work is not considered appropriate.

It is recommended that these areas be removed from the planning proposal consistent with the Department's conditional approval of the SUGA Review on 4 November 2022 which identified further strategic justification and planning work to support including these sites for urban potential. A condition to this effect is recommended in the Gateway determination.

Further, the planning proposal provides an assessment for consistency against the superseded Draft NCRP 2041. It is recommended that Part 3B Q3 of the proposal be amended to update the assessment against relevant aspects of the NCRP 2041, prior to public exhibition. A condition to this effect is recommended in the Gateway determination.

## 3.2 Local

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

**Table 3 Local strategic planning assessment**

Local Strategies	Justification
Ballina Shire Local Strategic Planning Statement 2020-2040 (LSPS)	<p>Subject to removal of SUGA No 28 and expanded SUGA No 12 from the planning proposal as discussed in section 3.1 of this report, the proposal is considered to be consistent with the themes and planning priorities of the LSPS and in particular:</p> <ul style="list-style-type: none"> <li>• Planning priority 11: Ballina Shire Council will provide leadership in mitigating and adapting to climate change</li> <li>• Planning priority 13: Ensure that the biodiversity values of the Shire are identified and where required protection strategies are implemented; and</li> <li>• Planning priority 14: Focus development to areas of least biodiversity sensitivity and least exposure to natural hazards such as flooding and bushfire risk.</li> </ul>
Ballina Shire Community Strategic Plan 2017-2027 (CSP)	<p>Subject to removal of SUGA No 28 and expanded SUGA No 12 from the planning proposal as discussed in section 3.1 of this report, the proposal aligns with focus area Healthy Environment and in particular the following priorities:</p> <ul style="list-style-type: none"> <li>• HE1.1 Our planning considers past and predicted changes to the environment</li> <li>• HE3.2 Minimise negative impacts on the natural environment</li> </ul>

### 3.3 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all relevant section 9.1 Directions except as discussed below:

**Table 4 Section 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	The proposal is considered to be consistent with the NCRP 2041 subject to the recommended removal of SUGAs 12 and 28 as discussed above.
4.3 Planning for Bushfire Protection	Unresolved	<p>This direction is relevant as the proposal affects or is in proximity to land mapped as bushfire prone land.</p> <p>The direction requires that council must consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway determination is issued. Until consultation has been undertaken, the direction remains unresolved.</p>

### 3.4 State environmental planning policies (SEPPs)

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

## 4 Site-specific assessment

### 4.1 Environmental

The planning proposal is considered likely to result in positive environmental effects by removing and reducing existing SUGAs that are unsuitable for future urban potential due to various constraints, including biodiversity values and natural hazards such as bushfire and flooding.

### 4.2 Social and economic

The proposal is not expected to create any adverse social or economic impacts as the sites being removed from the existing SUGAs have been determined to have no significant development potential due to the constraints which affect the land.

### 4.3 Infrastructure

There is no demand for public infrastructure arising from this planning proposal. Any proposed future rezoning and development of a SUGA will require an assessment of the availability and adequacy of service infrastructure needed to support a proposal.

## 5 Consultation

### 5.1 Community

Subject to removal of SUGA No 28 and expanded SUGA No 12 as recommended in this report, a public exhibition period of 10 working days is required consistent with the LEP Making Guideline for a basic planning proposal. Council proposes a community consultation period of 28 days.

An exhibition period of 10 working days has been recommended for the Gateway determination. However, there is no restriction to Council choosing a longer exhibition period than the mandated minimum 10 working days.

### 5.2 Agencies

The planning proposal does not specifically raise which agencies will be consulted.

It is recommended that the NSW RFS be consulted and be given 30 days to comment.

## 6 Timeframe

Council proposes a six (6) month timeframe to complete the LEP. This aligns with the LEP Making Guideline benchmark timeframe for a basic planning proposal and advice to this effect is recommended in the Gateway determination.

## 7 Local plan-making authority

The proposal does not identify whether council is seeking plan-making delegations.

Subject to removal of SUGA No 28 and expanded SUGA No 12, the proposal is not inconsistent with the State, regional and local planning framework, and is of local and low risk nature. It is therefore considered appropriate that council be authorised to be the local plan-making authority for this proposal.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions subject to the exclusion of SUGA No 28 Russellton Industrial Estate, Alstonville, and proposed expanded SUGA No 12 Ross Lane/The Coast Road, Lennox Head, for the following reasons:

- the proposal is consistent with the North Coast Regional Plan 2041 and the Department's conditional approval of Council's 2022 SUGA review;
- the proposal is consistent with the Ballina Shire Local Strategic Planning Statement
- the proposal is largely consistent with relevant section 9.1 Directions and SEPPs; and
- the proposed amendments are housekeeping changes.

As discussed in this report, the proposal is to be updated before consultation to:

- remove the proposed Russellton Industrial Estate, Alstonville and expanded Ross Lane/The Coast Road, Lennox Head sites, consistent with the Department's conditional approval of the SUGA Review on 4 November 2022 which identified further strategic justification and planning work to support including these sites for urban potential; and
- revise Part 3B Q3 to provide an assessment against the NCRP 2041.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unresolved and will require justification.
- Note that the timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated prior to community consultation to:
  - remove the proposed Russellton Industrial Estate, Alstonville and expanded Ross Lane/The Coast Road, Lennox Head sites, consistent with the Department's conditional approval of the SUGA Review on 4 November 2022 which identified further strategic justification and planning work to support including these sites for urban potential; and
  - revise Part 3B Q3 to provide an assessment against the NCRP 2041.
2. Consultation is required with the NSW Rural Fire Service.
3. The planning proposal should be made available for community consultation for a minimum of 10 working days.
4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



23/12/22

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(Signature)

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