



IRF23/498

## Gateway determination report – PP-2023-134

---

Ballina Heights Neighbourhood Commercial Centre  
Planning Proposal

February 23

Published by NSW Department of Planning and Environment

[dpie.nsw.gov.au](https://dpie.nsw.gov.au)

Title: Gateway determination report – PP-2023-134

Subtitle: Ballina Heights Neighbourhood Commercial Centre Planning Proposal

---

© State of New South Wales through Department of Planning and Environment 2023. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (February 23) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

# 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.

## Contents

<b>1</b>	<b>Planning Proposal .....</b>	<b>1</b>
1.1	Overview and objectives of planning proposal .....	1
1.2	Explanation of provisions .....	2
1.3	Site description and surrounding area.....	2
1.4	Mapping.....	4
<b>2</b>	<b>Need for the planning proposal .....</b>	<b>7</b>
<b>3</b>	<b>Strategic assessment .....</b>	<b>7</b>
3.1	Regional Plan .....	7
3.2	District Plan [If relevant] .....	<b>Error! Bookmark not defined.</b>
3.3	Local.....	9
3.4	Local planning panel (LPP) recommendation.....	<b>Error! Bookmark not defined.</b>
3.5	Section 9.1 Ministerial Directions .....	9
3.6	State environmental planning policies (SEPPs) .....	11
<b>4</b>	<b>Site-specific assessment .....</b>	<b>11</b>
4.1	Environmental.....	11
4.2	Social and economic.....	12
4.3	Infrastructure .....	12
<b>5</b>	<b>Consultation.....</b>	<b>12</b>
5.1	Community .....	12
5.2	Agencies.....	13
<b>6</b>	<b>Timeframe .....</b>	<b>13</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>13</b>
<b>8</b>	<b>Assessment Summary.....</b>	<b>13</b>
<b>9</b>	<b>Recommendation.....</b>	<b>14</b>

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

Relevant reports and plans
Ballina Heights Commercial Centre Planning Proposal
Ballina Heights Voluntary Planning Agreement
Ballina Commercial and Industrial Land Study

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Ballina</b>
<b>PPA</b>	<b>Ballina Shire Council</b>
<b>NAME</b>	<b>Ballina Heights Neighbourhood Commercial Centre Planning Proposal (18 Homes, loss of 2.2ha of commercial land)</b>
<b>NUMBER</b>	<b>PP-2023-134</b>
<b>LEP TO BE AMENDED</b>	<b>Ballina LEP 2012</b>
<b>ADDRESS</b>	<b>Ballina Heights Estate, Cumbalum</b>
<b>DESCRIPTION</b>	<b>Part of Lot 667 DP 1280013 and part of Lot 497 DP 1261230</b>
<b>RECEIVED</b>	<b>20/01/2023</b>
<b>FILE NO.</b>	<b>IRF23/498</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 contains objectives and intended outcomes that adequately explain the intent of the proposal. However, the planning proposal does refer to the B2 Local Centre zone as the B2 Neighbourhood Centre zone. It will be required to correct this typographical error prior to exhibition of the planning proposal.

The intended outcome of the planning proposal is to relocate the neighbourhood commercial centre within the Ballina Heights Estate at Cumbalum.

The objectives of the planning proposal to achieve the relocation are:

- Amend the Land Zone Map to apply a B2 Local Centre zone to part of Lot 667 DP 1280013 (which is currently zoned R3 Medium Density Residential)
- Amend the Land Zone Map to apply a R3 Medium Density Residential zone to part of Lot 497 DP 1261230 (which is currently zoned B2 Local Centre)
- Amend the Minimum Lot Size Map to align with the above zone changes, this includes a 450m<sup>2</sup> minimum lot size to the land to be zoned R3 Medium Density Residential and an 800m<sup>2</sup> minimum lot size standard to the land to be zoned B2 Local Centre

- Amend the Height of Buildings Map to align with the above zone changes, including an 8.5m building height standard to the land to be zoned R3 Medium Density and a 9m building height standard to the land to be zoned B2 Local Centre
- Amend the Floor Space Ratio Map to align with the above zone changes, including a FSR of 0.6:1 to the land to be zoned B2 Local Centre and remove the FSR to the land to be zoned R3 Medium Density (the standard of 0.5:1 will apply under the terms of Clause 4.4 of the Ballina LEP 2012).

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Ballina LEP 2012 per the changes below:

**Table 3 Current and proposed controls**

Control	Current	Proposed
Zone	B2 Local Centre R3 Medium Density Residential	R3 Medium Density Residential B2 Local Centre
Maximum height of the building	9m (B2 zone) 8.5 (R3 zone)	8.5 (R3 zone) 9m (B2 zone)
Floor space ratio	0.6:1 (B2 zone) 0 (R3 Zone)	0 (R3 Zone) 0.6:1 (B2 zone)
Minimum lot size	800m <sup>2</sup> (B2 zone) 450m <sup>2</sup> (R3 zone)	450m <sup>2</sup> (R3 zone) 800m <sup>2</sup> (B2 zone)
Number of dwellings	0	18 – Due to the increase in areas of the R3 zone there will be a net increase in dwellings
Number of jobs	N/A	No change – there will be a 2.2ha reduction in area of the B2 zone

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

It is noted that State Environmental Planning Policy Amendment (Land Use Zones) (No 2) 2022 will alter the business / employment land use zones across the LGA on 26 April 2023. For this planning proposal, it will in effect replace the B2 Local Centre with an E1 Local Centre zone. It is recommended that this future change be acknowledged in the planning proposal prior to exhibition and ultimately replaced once the change in zone name comes into effect.

## 1.4 Site description and surrounding area

Cumalum (Ballina Heights Urban Area) is located approximately 7km north west of Ballina and is an identified growth area for the Shire (Figure 1). The area has been under development since the early 2000s and comprises a mix of residential, business and open space zones. The Ballina Local Environmental Plan 2012 (BLEP 2012) provides a suite of land use zones and associated planning provisions to facilitate various forms of urban development in the area.

The two-subject part lots to this planning proposal are shown in Figure 2. Lot 667 DP 1280013 is the southern site and is on the corner of Ballina Heights Drive and Power Drive and is the proposed new site of the neighbourhood commercial centre. Lot 497 DP 1261230 is the northern site at the junction of Ballina Heights Drive and Unara Parkway. It is currently zoned B2 Local Centre and is proposed to be zoned part R3 Medium Density Residential and part B2 Local Centre.

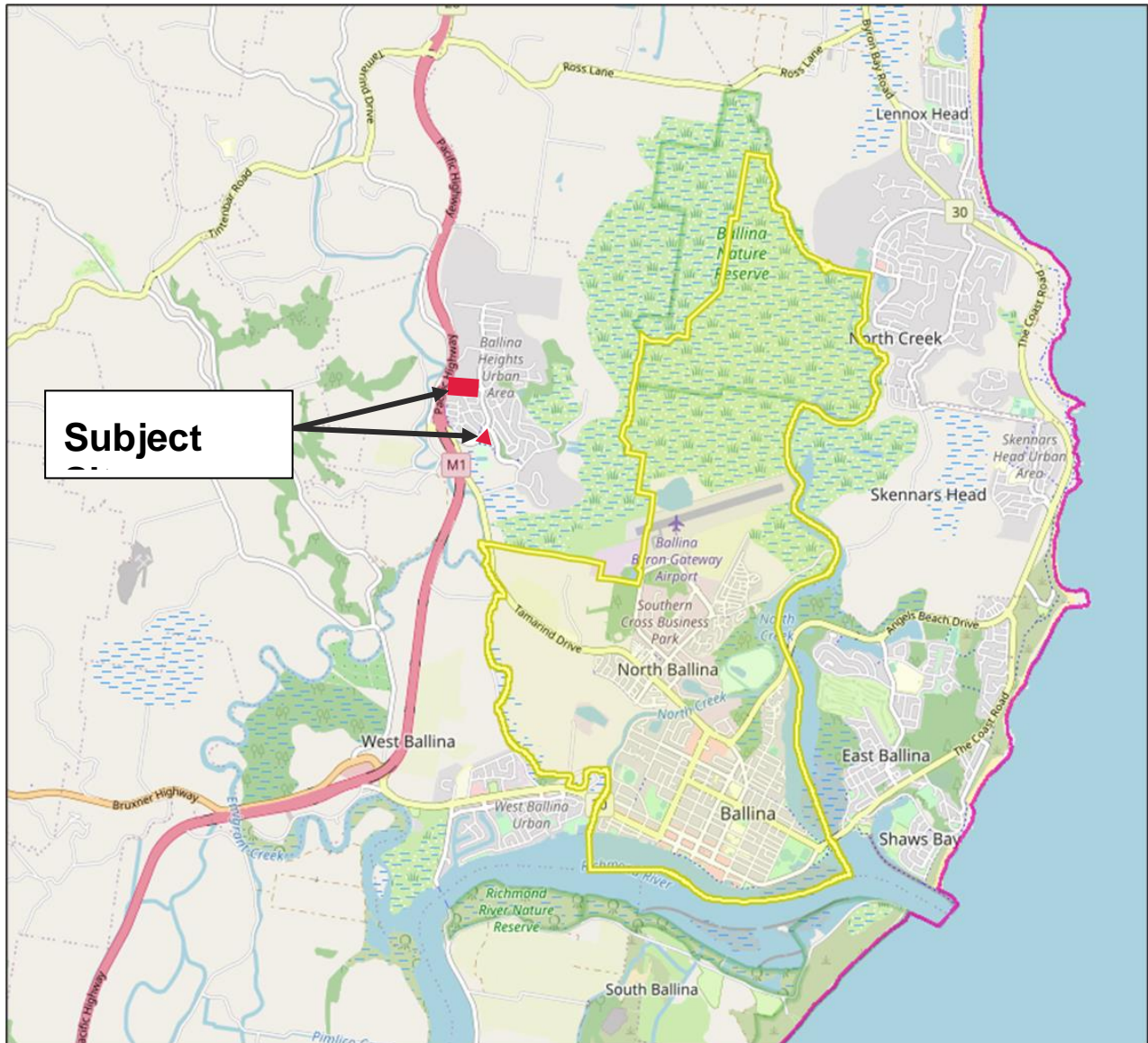


Figure 1 Subject site (source: DPE Northern Region Viewer)





**Figure 2 Site context (source: ePlanning Spatial Viewer)**

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Ballina LEP 2012 maps, which are suitable for community consultation. Should exhibition commence after 26 April 2023, it will however be necessary to update the zoning maps to incorporate the new employment zone changes.



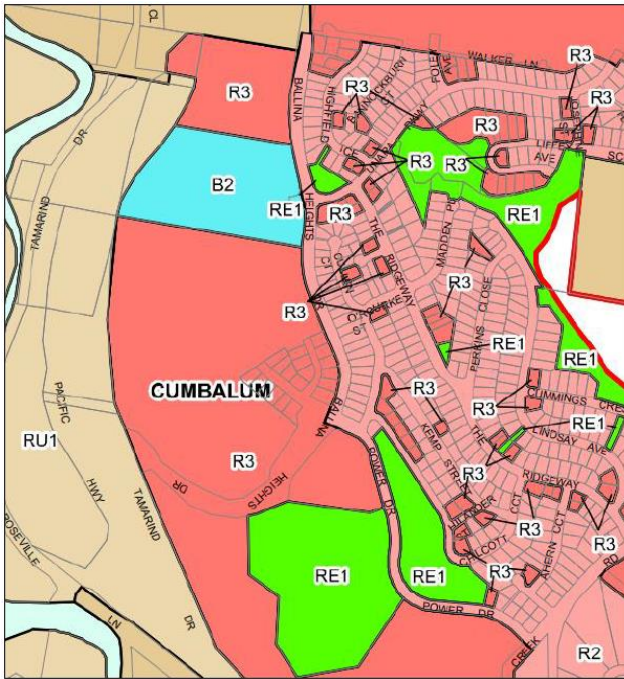


Figure 3 Current zoning map

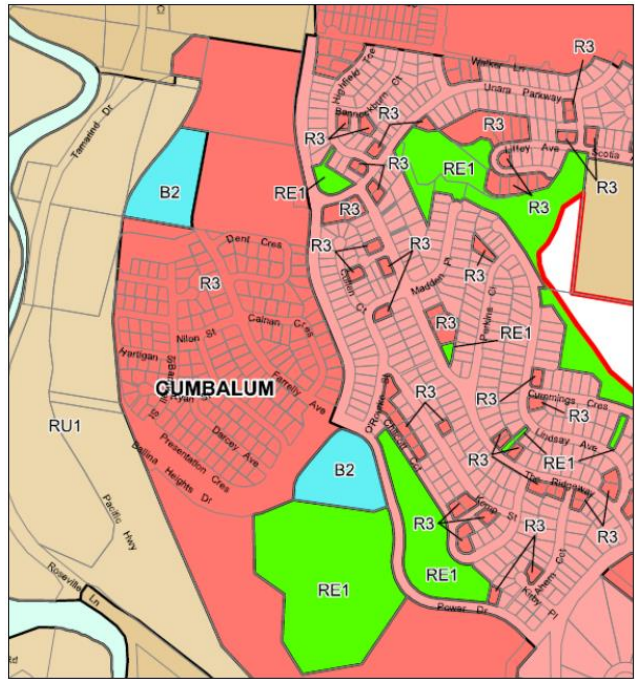


Figure 4 Proposed zoning map

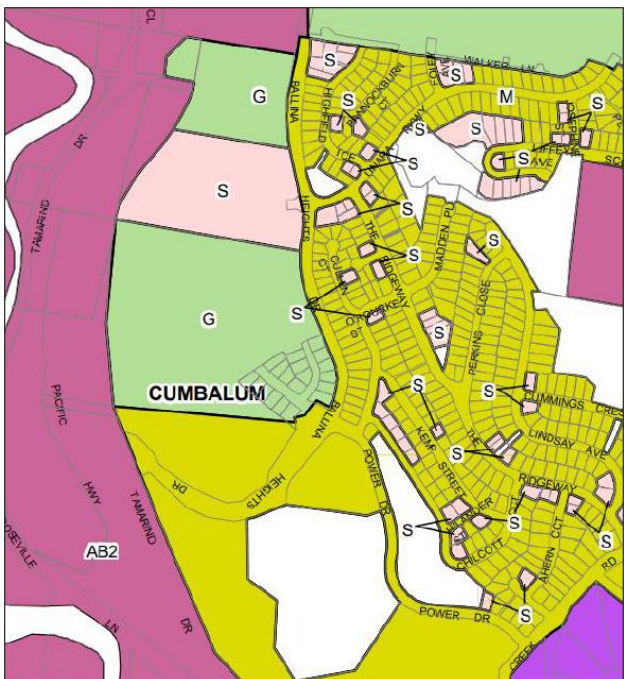


Figure 5 Current minimum lot size map

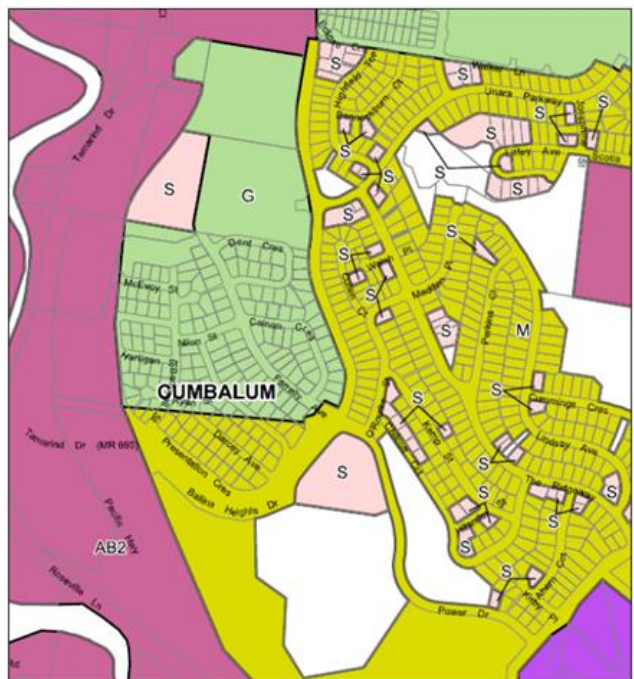


Figure 6 Proposed minimum lot size map



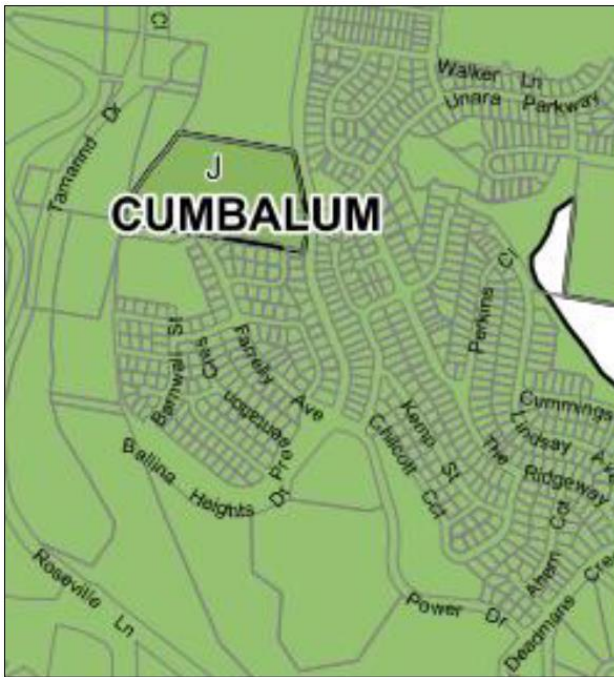


Figure 6 Current height of building map

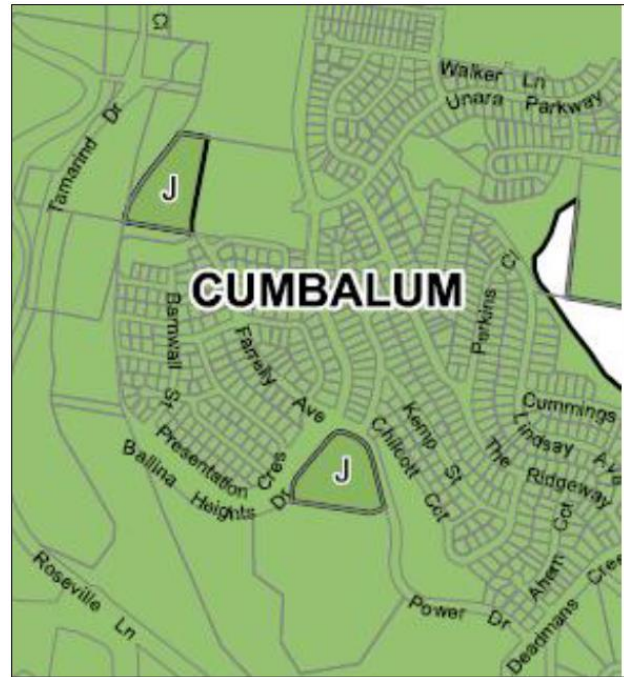


Figure 7 Proposed height of building map

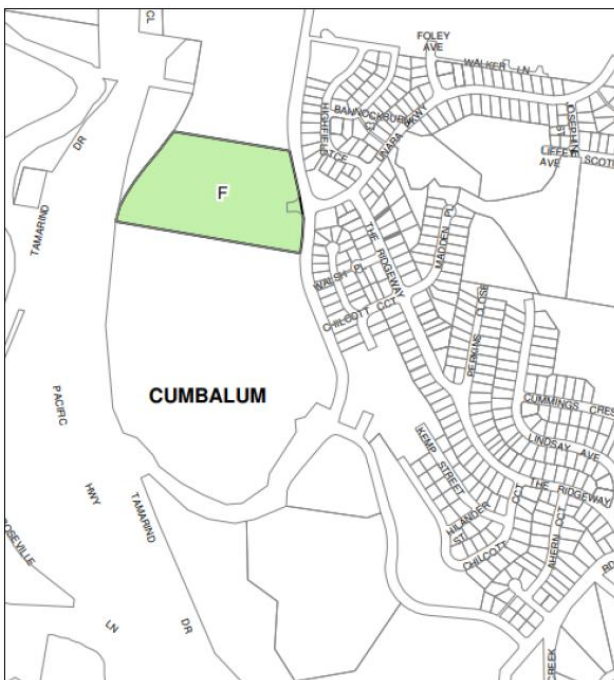


Figure 8 Current floor space ratio map



Figure 9 Proposed floor space ratio map

## 1.6 Background

The Cumbalum area has been developing for over 20 years. Despite the zoning of land for a neighbour commercial centre, there has been no delivery of any commercial development in the area. To expedite the delivery of a neighbourhood shopping precinct to serve the growing population, Council has been negotiating with the developers since 2019. An outcome of the negotiations was Council's resolution in March 2022 to prepare this planning proposal. A Voluntary

Planning Agreement (VPA) between the land owners, developers and Council has also been prepared and signed in January 2023. The purpose of the VPA is to ensure the development of the neighbourhood commercial centre proceeds prior to the subdivision of the residential land and commits the owner of the land to providing five affordable rental dwellings. A copy of the VPA has been provided to support this planning proposal.

This planning proposal relocates the neighbourhood commercial centre within Cumbalum to a site that provides a location:

- closer to the entrance to Cumbalum, via Ballina Heights Drive;
- adjacent to open space; and
- that is flatter terrain, simplifying the construction and development of the centre.

## 2 Need for the planning proposal

This planning proposal is not the outcome of any strategic planning process. The planning proposal is the result of Council's liaison with the developers regarding the timely provision of neighbourhood commercial facilities.

It is considered a LEP amendment is the most appropriate means of achieving the intended outcomes of this planning proposal. The associated VPA supports the objectives of the planning proposal with respect to the timely delivery of neighbourhood commercial facilities, affordable housing and further residential development in the locality.

Considerations regarding the location and amount of land required for this neighbourhood commercial centre is included in Council's Commercial and Employment Lands Study 2019. The study notes that based on their population projections, approximately 4,227 people will be living in the Cumbalum, Kinvara and Tintenbar area by 2036. The study concludes a centre between 2,000m<sup>2</sup> to 3,000m<sup>2</sup> of shop front space is required, and that a 1.7ha site should be sufficient in size to cater for this need. The proposed new site has an area of approximately 2.1ha

In addition, the Commercial and Employment Lands Study identifies the new site as a better location for the neighbourhood shopping centre as it is closer to the main entry point into the estate from Ballina.

## 3 Strategic assessment

### 3.1 Regional Plan

The planning proposal currently makes references to the North Coast Regional Plan 2036. It is recommended that this be updated prior to consultation.

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan 2041.

**Table 4 Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 1: Provide well located homes to meet demand	<p>The planning proposal will increase the area of land zoned R3 Medium Density Residential. Council indicates an additional 18 lots will result due to the zoning changes. These homes will be well located, adjoining exiting approved and zoned residential development.</p> <p>The proposal is consistent with this objective.</p>
Objective 2: Provide for more affordable and low cost housing	<p>The increase in area zoned R3 Medium Density Residential has the capability to provide additional housing and supply and thereby assist affordability. The VPA that supports this proposal include requirements for the provision of 5 affordable housing units to be provided.</p> <p>The proposal is consistent with this objective.</p>
Objective 11: Support cities and centres and coordinate the supply of well-located employment land	<p>The realignment of the B2 Local Centre zone is considered to have an overall neutral effect on the provision of employment land. The new site is well located on the entrance to the estate and able to service the surrounding residential areas. Council's Commercial and Employment Lands Study also demonstrates that adequate employment land will be available to serve expected demand to at least 2036.</p> <p>The proposal is consistent with this objective.</p>
Objective 16: Increase active and public transport usage	<p>The proposed new site provides some benefits to the community by being located on the entrance to Cumbalum. Public transport is available to Cumbalum but does not currently go past the new site. As the area is developed further, an extension to the bus route may be possible. Consultation with Transport for NSW is proposed. The proposed site also has limitations which may discourage residents walking to the future neighbourhood centre. These limitations include the site being in a less central location and downhill from residential dwellings with a difference in elevation of approximately 70m from the top of the ridgeline.</p> <p>The proposed new site results in the northern parts of the development precinct being a greater distance from neighbourhood shops. Council has advised they are liaising with the developers in the north of Cumbalum to investigate options for an improved development outcome for that part of the urban release area. This includes investigating the provision of a site for a small neighbourhood shop in the northern part of the precinct, which would service areas beyond the walkable catchment of a relocated Ballina Heights Neighbourhood Centre site. Neighbourhood shops are permissible in the R3 Medium Density Residential zone.</p> <p>Part of Lot 497 DP 1261230 will also retain a B2 zoning and future development of that site would alleviate issues with walking distances.</p> <p>It is considered that the proposal's inconsistency with this objective is minor given the ability for an alternative of a neighbourhood shop being a permissible land use in the northern part of the site.</p>



## 3.2 Local plans an endorse strategies

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 6 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement 2020	The planning proposal is generally consistent with the intent of the Ballina Shire LSPS 2020. In particular it reinforces the Ballina Shire Commercial and Industrial Hierarchy. It is also not inconsistent with the 14 Planning Priorities outlined in the LSPS.
Ballina Commercial and Employment Lands Study 2020	<p>The planning proposal is consistent with the Ballina Commercial and Employment Lands Study 2020. The study concludes a centre between 2,000m<sup>2</sup> to 3,000m<sup>2</sup> of shop front space is required and that a 1.7ha site should be sufficient size for a B2 zone. The proposed new site has an area of approximately 2.1ha</p> <p>In addition, the Study identifies the new site as a better location for the neighbourhood shopping centre as it is closer to the main entry point into the estate from Ballina and closer to the on/off ramps of the Pacific Motorway.</p>
Cumbalum Structure Plan 2006	The planning proposal is inconsistent with the Cumbalum Structure Plan 2006. However, the inconsistency is minor given the outcome will accelerate the development of the neighbourhood centre for the area.

## 3.3 Section 9.1 Ministerial Directions

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

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Inconsistent	<p>Justifiably inconsistent.</p> <p>The planning proposal is generally consistent with the Goals and Directions of the North Coast Regional Plan 2041, with the exception of Objective 16: Increase active and public transport usage, as discussed above</p> <p>The relocation of the neighbourhood commercial centre will result in a reduced walkable catchment to the neighbourhood commercial centre servicing the locality, potentially discouraging some walking and cycling to access local services.</p> <p>This inconsistency is considered minor as the proposal will expedite the provision of neighbourhood commercial facilities in Cumbalum and as part of Lot 497 DP 1261230 will retain a B2 zoning, potentially eliminating the reduced walkability catchment in the long term.</p>

4.1 Flooding	Not inconsistent	<p>The land is outside the flood planning level.</p> <p>The Ballina Local Environmental Plan 2012 includes provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual.</p> <p>The planning proposal relates to land within existing urban zones and does alter or impact upon relevant floodplain management considerations.</p>
4.2 Coastal Management	Inconsistent	<p>Justifiable inconsistent</p> <p>Approximately 100m<sup>2</sup> of the subject land is located within the coastal environmental area.</p> <p>The land is currently zoned for urban purposes.</p> <p>While the proposal does not include specific provisions relating to the Coastal Management Act, this is considered to be of minor significance as no adverse impact to coastal landforms or processes are anticipated from the proposal.</p>
4.3 Planning for Bushfire Protection	Unresolved	<p>This direction is relevant to the proposal as the application affects or is in proximity to land mapped as bushfire prone.</p> <p>The direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway determination is issued and before community consultation is undertaken. Until consultation has been undertaken, the direction remains unresolved.</p>
4.5 Acid Sulfate Soils	Inconsistent	<p>Justifiably inconsistent.</p> <p>The planning proposal applies to urban zoned land that have the potential to be affected by acid sulfate soils.</p> <p>The planning proposal is inconsistent with this direction as it enables intensification of land use on acid sulfate soils and the proposal is not supported by an acid sulfate soils study.</p> <p>The inconsistency is considered to be of minor significance as the Ballina LEP 2012 already contains suitable provisions to ensure that this matter can be appropriately considered and addressed as part of any future development application.</p>

5.1 Integrating Land Use and Transport	Inconsistent	<p>Justifiably inconsistent.</p> <p>As above, the relocation of the neighbourhood commercial centre will result in a reduced walkable catchment to the neighbourhood commercial centre servicing the locality, potentially discouraging walking and cycling to access local services.</p> <p>This inconsistency is considered minor as the proposal will expedite the provision of neighbourhood commercial facilities in Cumbalum and there are other identified business locations to the north within Cumbalum that in due course should service those areas.</p>
7.1 Business and Industrial Zones	Inconsistent	<p>Justifiably inconsistent.</p> <p>The relocation of the neighbourhood commercial centre will result in a reduction in area zoned for commercial purposes. The inconsistency is considered to be of minor significance on the basis of the Ballina Commercial and Employment Lands Study 2019 which indicates a commercial area of 1.7ha is suitable to service the commercial needs of the locality and due to the small net loss in overall employment land (2.2 ha).</p>

### 3.4 State environmental planning policies (SEPPs)

The planning proposal is broadly consistent with all relevant SEPPs.

## 4 Site-specific assessment

### 4.1 Environmental

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

**Table 9 Environmental impact assessment**

Environmental Impact	Assessment
Potential high environmental value land	The sites are within an urban growth area and are not mapped as having potential HEV.
Regionally Significant Farmland	The sites are within an urban growth area and are not mapped as being significant farmland.



Bushfire	The sites are designated as bushfire prone by the NSW Rural Fire Service. Section 9.1 direction 4.3 Planning for Bushfire Protection requires council to consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway determination is issued to ensure that this matter is capable of being addressed.
Flooding	The planning proposal does not rezone flood prone land or permit additional development within flood prone land.
Potential Contamination	No potential contamination of the existing lands has been identified.

## 4.2 Social and economic

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

**Table 10 Social and economic impact assessment**

Social and Economic Impact	Assessment
Social	<p>The proposed new site for the neighbourhood commercial centre will result in the northern parts of Cumbalum being a greater distance from the current zoned land. Council has advised they are liaising with the developers in the north of Cumbalum to investigate options for an improved development outcome for that part of the urban release area. This includes investigating the provision of a site for a small neighbourhood shop in the northern part of the precinct, which would service areas beyond the walkable catchment of a relocated Ballina Heights Neighbourhood Centre site. Neighbourhood shops are permissible in the R3 Medium Density Residential zone.</p> <p>In addition, a part of the current site on Lot 497 DP 1261230 will retain a B2 zoning that will potentially eliminate the reduced walkability catchment in the long term</p>
Economic	<p>The intent of relocating the B2 Local Centre zone is to facilitate the delivery of the development in a timely manner. The realignment of the B2 Local Centre zone is considered to have a neutral effect on the provision of employment land but an overall positive economic impact as the development will be delivered in a more timely manner.</p>

## 4.3 Infrastructure

The site is currently within the urban footprint of Cumbalum and is adequately served by road, sewer, water, transport, and other infrastructure services. Council has a Development Servicing Strategy for the area that is adequate to meet the need of the changes proposed by this planning proposal.

# 5 Consultation

## 5.1 Community

Council does not specify a community consultation period.

The Department's Local Environmental Plan Making Guidelines recommend a public exhibition period of 20 working days for a standard planning proposal. An exhibition period of 20 days has been included as a condition of the Gateway determination.

## 5.2 Agencies

Council has nominated the public agencies to be consulted about the planning proposal.

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

- Transport for NSW
- NSW Rural Fire Service
- The Civil Aviation Safety Authority (CASA) and the manager of the Ballina-Byron Gateway Airport.

## 6 Timeframe

Council proposes a 6 month time frame to complete the LEP.

It is recommended that a time frame of 6 months be granted to ensure it is completed in line with the Department's commitment to reduce processing times.

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

## 7 Local plan-making authority

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

As the planning proposal is of local significance it is recommended that Council be authorised to be the local plan-making authority for this proposal.

## 8 Assessment summary

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

- It will result in the more timely delivery of commercial/retail space within the Cumbalum community
- It will increase the number of affordable housing units in the area through the Voluntary Planning Agreement
- It will increase the amount of housing in the Cumbalum area.

As discussed in the previous sections 4 and 5, the proposal should be updated before consultation to:

- Correctly refer to the B2 Local Centre zone
- Include discussion on the implementation of the State Environmental Planning Policy Amendment (Land Use Zones) (No 2) 2022 that will alter land use zones and clauses within the Ballina LEP 2012 on 26 April 2023. For this planning proposal, it will in effect replace the B2 Local Centre zone with an E1 Local Centre zone. It is recommended that this future change to the zone name be acknowledged in the planning proposal and associated mapping prior to exhibition.
- Replace references and commentary on the North Coast Regional Plan 2036 with references and appropriate discussion on the North Coast Regional Plan 2041.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 1.1 Implementation of Regional Plans, 4.2 Coastal Management, 4.5 Acid Sulfate Soils, 5.1 Integrating Land Use and Transport 7.1 Business and Industrial Zones are minor or justified; and
- Note that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unresolved and will require justification.

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 exhibition to:
  - Correctly refer to the B2 Local Centre zone;
  - Include discussion on the implementation of the State Environmental Planning Policy Amendment (Land Use Zones) (No 2) 2022 that will alter land use zones and clauses within the Ballina LEP 2012 on 26 April 2023. The future change of the B2 Local Centre to E1 Local Centre is to be acknowledged in the planning proposal and associated mapping; and
  - Replace references and commentary on the North Coast Regional Plan 2036 with references and appropriate discussion on the North Coast Regional Plan 2041.
2. Consultation is required with the following public authorities:
  - Transport for NSW
  - NSW Rural Fire Service
  - The Civil Aviation Safety Authority.
3. The planning proposal should be made available for community consultation for a minimum of 20 days.
4. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



6 March 2023

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Craig Diss

Manager, Northern Region



17 March 2023

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Jeremy Gray

Director, Northern Region



Assessment officer

Jon Stone  
Senior Planning Officer, Local and Regional Planning  
Northern Region  
5778 1488