



# Gateway determination report – PP-2024-1344

Require consent for horticulture in rural zones

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure 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
Planning Proposal June 2024
Council Report 11 April 2024
Council Minutes 11 April 2024

# 1 Planning proposal

## 1.1 Overview

Table 2 Planning proposal details

LGA	Nambucca Valley
PPA	Nambucca Valley Council
NAME	Require consent for horticulture in the RU1 Primary Production and RU2 Rural Landscape zones
NUMBER	PP-2024-1344
LEP TO BE AMENDED	Nambucca Local Environmental Plan 2010
DESCRIPTION	RU1 Primary Production and RU2 Rural Landscape
RECEIVED	27/06/2024
FILE NO.	IRF24/1482
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

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

The objectives of the planning proposal are to:

- require development consent for horticulture in zones RU1 Primary Production and RU2 Rural Landscape;
- expand the existing local exempt development provisions for horticulture in zone R5 Large Lot Residential to the RU1 and RU2 zones; and
- add an additional local exempt development control which prohibits structures to support an exempt horticultural activity.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

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

- a) amend the Land Use Tables for zones RU1 and RU2 to make horticulture permitted with consent; and

- b) expand Schedule 2 Horticulture in Zone R5 to apply to the rural zones and include an additional control which prohibits structures as exempt development to support a horticultural activity.

Horticulture is a type of intensive plant agriculture by definition. It is mandatory under the Standard Instrument Principal Local Environment Plan that intensive plant agriculture be permitted in the RU1 zone. This allows individual councils to determine whether the land use is permitted with or without consent in their LGA. The Standard Instrument does not include any mandatory provisions related to intensive plant agriculture in the RU2 zone.

The explanation of provisions included within the planning proposal states that horticulture is to be relocated from '2 Permitted without consent' to '3 Permitted with consent' in the Land Use Tables for zones RU1 and RU2. Due to the current structure of the Land Use Tables, it is anticipated that horticulture need only be deleted from "2 Permitted without consent" to give effect to the proposal. However, in recognition that Parliamentary Counsel Office will determine precisely how the objectives and intended outcomes of the planning proposal are implemented at the legal drafting stage, it is recommended the explanation provided by Council in relation to the proposed changes to the Land Use Tables is simplified.

With regard to b), the proposed exempt development provisions exclude a wide range of current horticulture activities, such as bananas and macadamias. Further information should be provided to detail how this provision will effectively address the issues Council seeks to resolve.

In addition, the planning proposal does not explicitly outline the reason for the additional control which proposes to prohibit structures as exempt development. While it is assumed it is in response to protected cropping (i.e. netting, tunnels and greenhouses) which can be associated with greater water quality impacts and amenity concerns, it is recommended that further detail in relation to this proposed control is included within the planning proposal for context prior to consultation.

Conditions have been included on the Gateway determination to address these matters.

## 1.4 Site description and surrounding area

The planning proposal applies to all RU1 and RU2 zoned land within the local government area (LGA).

## 1.5 Mapping

The planning proposal does not seek to change any maps within the Nambucca LEP 2010.

# 2 Background

In 2017, Council amended the Nambucca LEP 2010 to change horticulture from permitted without consent to permitted with consent in zone R5. As part of this amendment a provision was inserted into Schedule 2 to allow horticulture with a productive duration of less than 12 months to be undertaken as exempt development. The intent of the provision was to enable minor horticultural crops with limited potential for land use conflict or environmental pollution to continue.

# 3 Need for the planning proposal

The planning proposal is not the result of a strategy, study or report. It is a local response to the expansion of the horticulture industry in the Nambucca Valley. The proposal indicates horticulture is causing amenity and environmental impacts on surrounding areas due to inappropriate farm establishment and that requiring development consent will allow Council to better manage land use conflict buffers and regulation of environmental impacts, particularly water quality runoff.

The planning proposal outlines the current environmental impacts associated with horticultural activities across the mid-north coast and identifies the manner in which these impacts are presently being addressed is generating additional expenses for farmers due to the need to retrofit their farms with prevention measures. The planning proposal aims to ensure that environmental impacts are considered upfront and farms are established in accordance with best practice guidelines.

Council anticipates the proposed expansion of the exempt development controls in Schedule 2 will enable horticultural crops with limited potential for land use conflict or pollution to continue without the need for approval.

It is considered that the planning proposal provides a satisfactory justification on the need for the LEP amendment.

## 4 Strategic assessment

### 4.1 Regional Plan

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 8: Support the productivity of agricultural land	<p>This objective acknowledges the importance of agriculture to the region as well as threats from incompatible land uses and land use conflicts. It is stated in this part that horticulture is growing rapidly on smaller holdings across the North Coast and that local planning controls can help support these industries by identifying potentially suitable locations for intensive plant agriculture to minimise land use incompatibility and prevent ad hoc fragmentation of land.</p> <p>Clause 5.16 of Nambucca LEP 2010 and Part F of the Nambucca Valley Development Control Plan (DCP) provide consideration for buffers for new dwellings in the rural zones to minimise land use conflicts and support agricultural pursuits.</p> <p>This planning proposal will still allow for horticulture to occur in the rural zones while enabling environmental impacts to be assessed and mitigated. Council has indicated an intent to update the DCP to provide assessment controls for horticulture should this planning proposal progress. Consideration of potential controls is provided within the planning proposal.</p> <p>It is considered that the planning proposal is not inconsistent with the intent of this objective. Notwithstanding, it is recommended that consultation is undertaken with the Department of Primary Industries (DPI) Agriculture to confirm the suitability of the proposal.</p>
Objective 9: Sustainably manage and conserve water resources	<p>This objective supports the consideration of water quality and supply in strategic planning. The location of development should mitigate risks to water sources and the environment while minimising negative effects on broader catchments.</p> <p>The planning proposal is accompanied by a letter from NSW Environmental Protection Authority (EPA) which outlines water quality issues associated with intensive horticulture. The planning proposal will allow for consideration of water quality impacts before a farm is established as part of the development assessment</p>

process. The EPA letter states that without appropriate controls established at development, there is a real risk of water pollution from protected cropping farms compared to banana and macadamia production.

It is considered that this planning proposal will have a positive impact on water quality and is consistent with this objective.

## 4.2 Local

The proposal is consistent with the following local plans and endorsed strategies as outlined in the table below (noting that Nambucca Valley does not currently have a local rural land use strategy):

**Table 6 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement (LSPS) 2020	<p>The LSPS sets out the 20-year vision for land use in the LGA. It identifies that the rural zones provide significant flexibility for agricultural uses, without the need for development consent in most instances. It does, however, recognise that intensive rural uses require consideration of potential land use conflicts, impacts on water quality and infrastructure demand.</p> <p>The LSPS emphasises the importance of being able to adapt to changes occurring in the LGA including changes in agriculture, such as increasing, intensive production of blueberries and the need to monitor changes in the rural sector, including growth in blueberry farming and any related impacts.</p> <p>The LSPS contains a number of priorities and goals that align with the proposal, including:</p> <ul style="list-style-type: none"><li>• supporting rural industry, protecting rural land from fragmentation and minimising land use conflicts;</li><li>• supporting and encouraging industries that are environmentally sustainable and proactive in responding to climate change and other environmental challenges; and</li><li>• protecting and improving water quality along the coastline, estuaries and upper catchments of the Nambucca Valley.</li></ul> <p>It is considered that this planning proposal is not inconsistent with the Nambucca LSPS.</p>

## 4.3 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all relevant section 9.1 Directions, with the exceptions discussed below:

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
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4.3 Planning for Bushfire Protection	Inconsistent	<p>The planning proposal is potentially inconsistent with this direction as it applies across entire zones and therefore incorporates bushfire prone land.</p> <p>The direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service after a Gateway determination is issued and before community consultation is undertaken. Until consultation has been undertaken, the direction remains unresolved</p>
9.2 Rural Lands	Inconsistent	<p>The planning proposal is inconsistent with this Direction as it will affect land within an existing rural zone and does not satisfy all of the stated objectives such as supporting farmers in exercising their right to farm.</p> <p>Further detail about the scale of the industry should be included in the proposal as discussed in section 5 of this report and consultation be undertaken with DPI Agriculture before consistency with this Direction can be determined</p>

## 4.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with relevant SEPPs.

## 5 Site-specific assessment

### 5.1 Environmental

The planning proposal states that horticulture operations are causing negative impacts on the environment, particularly in waterways. The EPA has advised that recent monitoring undertaken in the Nambucca Valley confirms a pesticide was detected at 2 sampling locations, and that intensive plant horticulture such as blueberries, raspberries and cucumbers can have a significant impact on water quality due to:

- the use of 'run to waste' fertigation systems;
- generation of pesticide and nutrient-laden wastewater; and
- reliance on storing and utilising bulk liquid chemical mixtures on site.

The proposal advocates that the risk of water quality impacts can be reduced by implementing best practice farm design at establishment through a development application process. EPA note that addressing these issues post development is challenging and expensive for the farm operator.

### 5.2 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
Land Use Conflicts	<p>Providing adequate land use conflict buffers between horticulture and adjoining properties is recognised as best practice by the industry and community. There is currently no statutory requirement for the implementation of buffers between horticulture and other land uses within the rural zones in the Nambucca Valley.</p> <p>Clause 5.16 of Nambucca LEP 2010 and Part F of the DCP provide consideration for buffers for new dwellings in the rural zones to minimise land use conflicts with agriculture land uses.</p> <p>Requiring development consent for horticulture will allow for consideration of buffers. Council intends to provide updated DCP provisions to this effect.</p>
Economic	<p>Horticulture makes a significant economic contribution to the LGA. The DPI Agriculture AgTrack dashboard indicates that Nambucca Valley is ranked number 3 in NSW for gross value of bananas, 4 for macadamias, 4 for berry fruit and 5 for cucumbers with fruits and nuts having a gross value of \$23.5 million in 2020/21. These are all forms of horticulture that will in the future require development consent.</p> <p>The planning proposal does not provide an indication of the number of existing farms in the LGA. It is recommended that additional information be included in the proposal, including an analysis of existing and different types of horticulture operations across the shire to ensure the economic impact of these changes, particularly on small scale horticultural operations is considered. It is recommended that prior to consultation, Council include these details in the planning proposal.</p> <p>While the planning proposal does not prohibit horticulture, the requirement for development consent will be an additional cost to new horticultural operations that do not satisfy the local criteria for exemption.</p> <p>It is noted that the Schedule 2 will allow some low impact horticulture to continue as exempt development. Council has advised the exempt development standards were introduced in 2017 as part of a previous amendment to the LEP which made horticulture permissible with development consent in the R5 zone. The intent of the standards was to enable minor horticultural crops which presented limited potential for land use conflict or pollution to continue without the need for approval. Council advises that addressing impacts after farm establishment can be onerous on the grower and may require them to pause operations until appropriate measures have been installed.</p> <p>Review of a similar planning proposal seeking to regulate the blueberry industry in the Bellingen LGA in 2018 by the Independent Planning Commission found that there is merit in managing the environmental impacts associated with horticulture.</p> <p>The potential economic impacts and the need to address the environmental impacts associated with horticulture need to be balanced and can be further identified and investigated through community consultation with farmers.</p> <p>Consultation with NSW Department of Primary Industries is also recommended</p>

## 5.3 Infrastructure

The planning proposal does not have any impacts on existing or proposed infrastructure.

## 6 Consultation

### 6.1 Community

Council proposes a community consultation period of 20 working days.

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

### 6.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- NSW Rural Fire Service
- NSW Department of Primary Industries
- NSW Local Land Services
- NSW Environmental Protection Authority
- NSW Biodiversity, Conservation and Science

## 7 Timeframe

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

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard.

An LEP completion date of six months from the date of the gateway determination is recommended and in line with the Department's commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 8 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

Allowing the proposal to proceed to consultation will provide the community and horticultural industry the opportunity to review and comment on the proposal to better clarify and determine the appropriateness of the proposed changes.

Given the proposal will likely be controversial amongst sections of the community and may also have wider implications to nearby LGAs and a significant industry for the local north coast economy, it is recommended that Council not be authorised to be the local plan-making authority. This will allow the Department can undertake a final, impartial review of the proposal and any submissions made prior to finalisation.

## 9 Assessment summary

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

- the proposal is not inconsistent with the North Coast Regional Plan 2041 or Nambucca Valley Local Strategic Planning Statement; and
- the proposal seeks to manage environmental impacts associated with horticulture.

## 10 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Directions 4.3 Planning for Bushfire Protection and 9.2 Rural Lands are 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. Prior to consultation, the planning proposal is to be updated to:
  - a. outline the reason for the additional control which prohibits structures as exempt development;
  - b. in Part 2 Explanation of Provisions simplify the description of the proposed changes to the RU1 and RU2 Land Use Tables;
  - c. include additional information and analysis of existing and different types of horticulture operations across the shire that will be impacted by the proposal; and
  - d. include further information to explain how the existing exempt development standards for Zone R5 will effectively address the issues Council is seeking to resolve.
2. Consultation is required with the following public authorities:
  - NSW Rural Fire Service
  - NSW Department of Primary Industries
  - NSW Local Land Services
  - NSW Environmental Protection Authority
  - NSW Biodiversity, Conservation and Science
3. The planning proposal should be made available for community consultation for a minimum of 20 working days
4. Given the nature of the planning proposal, it is recommended that the Gateway does not authorise council to be the local plan-making authority and that an LEP completion date of six months be included on the Gateway.
5. The timeframe for the LEP to be completed is on or before six months from the date of the Gateway determination.



08-07-2024

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(Signature)

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(Date)

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