



Nambucca Valley Council

**Planning Proposal
Nambucca Local Environmental Plan
Amendment No. 36**

Horticulture within Rural Zones

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Preliminary

This planning proposal has been drafted in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979*, and 'Local Environmental Plan Making Guideline' (DoP, 2023) for amendment to the Nambucca Local Environmental Plan 2010 (LEP). A gateway determination under Section 3.34 of the Act is requested.

Part 1 Objectives and Intended outcomes

The objectives and intended outcomes of this planning proposal are to:

- a) Require development consent for horticulture within the RU1 Primary Production and RU2 Rural Landscape zones (rural zones).
- b) Expand existing exemptions for horticulture within the R5 Large Lot Residential zone to the rural zones.
- c) Add an additional control to the existing exemptions which prohibits structures to support the exempt horticultural activity.

Part 2 Explanation of Provisions

The intended outcomes will be achieved by requiring development consent for 'horticulture' in the RU1 Primary Production and RU2 Rural Landscape zones.

It is also proposed to include the RU1 Primary Production and RU2 Rural Landscape zones in Schedule 2 of the LEP so that the specified forms of 'horticulture' become exempt development in the same manner that they currently are in the R5 Large Lot Residential zone.

The current exemptions for horticulture in Schedule 2 of the LEP are as follows:

Horticulture in Zone R5

- (1) *Must be on land in Zone R5 Large Lot Residential.*
- (2) *Must involve a crop with a productive duration of less than 12 months.*
- (3) *Must remove entire plant during harvest.*

In addition to this, it is proposed to add an additional control to the horticulture exemptions in Schedule 2 which prohibits structures to support the exempt horticultural activity.

Part 3 Justification of strategic and site-specific merit

Section A – Need for the Planning Proposal

The necessity for the above mentioned provisions being included within the LEP is due to the expansion of horticulture on the mid-north coast which has resulted in amenity and environmental impacts on surrounding areas as a result of inappropriate farm establishment.

The intent of the land use tables within the LEP is to specify what land uses are permissible without consent, with consent and which ones are prohibited. The purpose of this is to ensure land uses are appropriately located and operated so that they do not have any significant impacts on the natural, social or economic environments of the site they are located on or the surrounding area. For a land use to be permitted without development consent, Council should be satisfied that the land use will not result in any of these impacts, or can be regulated under other legislation if they are not carried out appropriately.

Providing an adequate land use conflict buffer between horticulture and adjoining properties is recognised as best practice by both the horticulture industry and the community as it can result in significant impacts on the natural, social and economic environments of surrounding land. However, there is not any statutory provision which requires buffers to be implemented between horticulture and surrounding land uses within the rural zones in the Nambucca Valley.

With appropriate buffers in place it is considered that horticulture can be appropriately carried out in the rural zones. However, given there are no other statutory instruments which can be used by local or state agencies to enforce appropriate buffers when not implemented, it is not considered appropriate for horticulture to be permitted without development consent in the rural zones.

Not only will the proposed LEP amendment assist with the implementation of land use conflict buffers, it can also assist with preventing environmental harm resulting from inappropriate farm establishment. Currently, regulation of environmental impacts such as water pollution is reactive to inappropriate farm establishment and operation, with considerable resources allocated by the NSW Government to provide education and retrospective assistance to farmers and undertake regulatory action. The requirement for development consent for horticulture would provide the opportunity for regulation to become proactive by ensuring farms are set out and established in accordance with best practices promoted by the industry themselves and state agencies such as NSW Local Land Services and the NSW Department of Primary Industries.

This position is supported by the NSW Environment Protection Authority (EPA) as outlined in their letter contained within attachment 1 of this planning proposal. The expansion of the horticulture industry in the Nambucca Valley is not dissimilar to other areas of the mid-north coast where it has rapidly expanded in recent times. The EPA are the regulatory authority for pesticide related issues associated with horticulture development, which includes the investigation and regulatory response to spray drift and water pollution complaints as well as ongoing monitoring.

The EPA have observed numerous instances of land use conflict arising from a lack of buffers between horticulture development and existing residential development and have identified that these conflicts could be avoided if minimum buffers were mandated through the development consent process.

In addition to this the EPA have observed water quality impacts resulting from horticulture developments. Most notably there are significant water quality impacts from well-established farms adjacent to numerous waterways in the Coffs Harbour LGA. In the Nambucca LGA, recent water quality monitoring found pesticides in waterways which have been traced back to a lack of appropriate measures to treat wastewater.

Currently there are many farms which contain greenhouses which do not have any controls to treat wastewater. Instead wastewater with excessive levels of nutrients and chemicals is being discharged via pipes into watercourses. In acknowledgment of this issue the NSW Local Land Services, in consultation with the EPA and local Councils; have engaged a consultant to design wastewater management systems for farmers to prevent water pollution from greenhouses. The cost of doing this and the regulatory work associated with identifying the source of pollution and enforcing implementation is being paid for by the NSW Government.

It is not considered that development which is resulting in such environmental and economic impacts should be permitted without development consent. As outlined above, local and state governments should be proactive in ensuring measures are implemented to prevent pollution before it occurs and that the cost of implementation is borne by the developer and not government agencies/NSW tax payers.

While some may view this as overburdening farmers, it is considered that if a farm is designed in accordance with best practice then there should be no reason development consent is not granted, while resulting in a decrease in environmental impacts and drain on the resources of regulatory agencies trying to get environmental pollution rectified.

This proposal is not seeking to create additional costs for the establishment of a horticulture development. Instead, it is proposing to ensure farms are established to meet best practice standards that are already set by the industry and relevant state agencies to meet statutory obligations. The proposal is just seeking to ensure each farm is established to those standards before operation to avoid the additional expenses for farmers associated with retrofitting farms with prevention measures, as well as fines and other statutory charges associated with pollution incidents. In addition to this it will reduce regulatory costs on government agencies.

It is considered that demonstrating that a farm will be established meeting best practice guidelines before the farm is established will be a more proactive approach to protecting the environment rather than react once an issue has evolved.

It is for this reason and for the inability to enforce land use conflict buffers that it is proposed to amend the LEP as outlined above. This position was supported by the NSW Independent Planning Commission in 2018 when considering a gateway determination review for an amendment to the Bellingen Local Environmental Plan 2010 which proposed to require development consent for horticulture within the rural zones of the Bellingen Valley. In that instance the Commission found that there is merit in managing the environmental impacts associated with horticulture, most notably having regard to the impacts on water quality and on surrounding land uses resulting from a lack of buffers.

Amenity Considerations

There are existing controls within clause 5.16 of the LEP and Part F of the Nambucca Development Control Plan 2010 (DCP) which require new dwellings to have a land use conflict buffer between the proposed dwelling and any surrounding rural zoned land which contains existing agriculture, or has the potential for a future agricultural use.

However, there is no ability for existing lawful dwellings in rural zones to be made to relocate or implement measures to mitigate rural land use conflict. It is these lawful residential uses which present the main land use conflict when a new horticultural development is established.

Assessment Controls

At present there are no development controls within the DCP which specify requirements a horticulture development would be required to meet prior to being granted development consent. This is because development consent is not currently required.

Without specifying requirements in the DCP, the determination of a development application would be left to the remaining matters for consideration contained within section 4.15(1) of the Environmental Planning & Assessment Act 1979. It is noted that such an approach is not dissimilar to the existing approach for horticulture developments within the neighbouring Kempsey LGA. This is due to the Kempsey Local Environmental Plan 2013 requiring development consent for horticulture in the same manner as this planning proposal intends and the Kempsey Development Control Plan 2013 not containing any specific development controls relating to horticulture.

If a gateway determination is received from the Minister, it is Nambucca Valley Councils intention to undertake an amendment to the DCP to include specific development controls for horticulture so that it is clear for both the industry and the wider community what is expected prior to consent being granted to a development application. This approach is preferred as it will provide a more consistent approach to the determination of development applications and will ensure more onerous requirements than the DCP controls cannot implemented as provided for by section 4.15(3A) of the Environmental Planning & Assessment Act 1979.

Prior to the inclusion of development controls within the DCP, the draft controls will be placed on public exhibition for consultation with the community, industry and relevant state agencies. It is Councils intention to work with all stakeholders to determine the most appropriate controls to be implemented into the DCP. The draft controls to be formulated will be primarily focused on the following:

- Water pollution – It is currently a requirement of all farmers to ensure their activities do not pollute waters under the Protection of the Environment Operations Act 1997. As outlined above, it is evident that there are many farms on the mid-north coast, including the Nambucca Valley; where measures have not been implemented to stop chemicals and excessive nutrients entering local waterways. The draft DCP controls will contain requirements for farmers to demonstrate as part of the development application what measures will be implemented to treat waste water and control surface water runoff. These requirements will not be new for farmers, the process will just ensure measures are in place prior to commencement as a proactive measure rather than the current reactive approach through compliance action. It is noted that farmers could continue to utilise funding provided by NSW Local Land Services (LLS) for the design and implementation of measures and will be able to benefit from the best practice wastewater management implementation currently being commissioned by LLS.
- Land Use Conflict Buffers – Conflicts between new horticulture development and surrounding sensitive receivers such as lawful dwellings is predominantly the result of an insufficient buffer between the horticultural activity and the receiver. The draft DCP controls will contain a requirement for a land use conflict buffer to be implemented. The extent of the land use conflict buffer will be determined after public consultation with relevant stakeholders

(community/industry/State Agencies) with the following to be considered as part of their development:

- The DCP currently has development controls which require a new dwelling to be located 150m from horticulture on surrounding land, or 80m where a 40m wide vegetated buffer is provided within that 80m buffer. This buffer requirement could be amended to include any new horticulture development to implement this buffer to surrounding sensitive receivers.
- The NSW Department of Primary Industries (DPI) has developed the *'Living and Working in Rural Areas, A handbook for managing land use conflict issues'*. This document recommends a minimum 200m buffer between horticulture and a surrounding dwelling and 50m from a property boundary.
- Despite the above handbook, DPI have previously advised Council that they are not supportive of set distances for land use conflict buffers, instead preferring each application to be the subject of a Land Use Conflict Risk Assessment (LUCRA) which identifies the potential land use conflicts having regard to the nature of the proposed horticultural activity and characteristics of the site and surrounding area. The potential issue with relying solely on this method is that finding a suitably qualified person to undertake this assessment could be difficult and costly for a farmer. In addition to this, it could lead to inconsistent determination outcomes of development applications which will provide uncertainty for both industry and the community.

As outlined above, without any development controls relating to horticulture being included within the DCP, the assessment of a development application would be merit based having regard to the remaining matters for consideration contained within section 4.15(1) of the Environmental Planning & Assessment Act 1979. With regards to land use conflict buffers, this would essentially result in it being determined based on a LUCRA.

As part of the consultation with stakeholders during the exhibition of the draft DCP controls, consideration will be given to a combination of both a numerical land use conflict buffer distance and LUCRA development controls being incorporated. This would give industry some certainty on minimum buffer distances which would be approved prior to proceeding to acquire land for the purposes of horticulture, while giving the community certainty that an appropriate buffer will be implemented as part of any development consent.

It would also give the farmer the opportunity to design the farm so that activities less likely to result in impacts such as spray drift are located closer to surrounding dwellings than activities that have a higher potential. This could include locating covered growing areas such as tunnels and greenhouses closer to dwellings than open air crops to minimise potential spray drift concerns. This would also enable a farmer to maximise the productive area of their land as the buffer areas for covered areas could be less.

- Visual Amenity – Protective horticulture (netting/tunnels/greenhouses) is a legitimate form of agriculture which increases crop yield and it is most suitably located in rural zones where the primary objectives are to encourage primary industry production. As such, it is acknowledged that protective horticulture is consistent with rural character in areas where horticulture is a predominant land use such as in the Nambucca Valley.

However, it is considered that the visual impact of protective horticulture on the rural landscape can be minimised through the use of dark netting and the implementation/retention of vegetation screening to assist the protected crops to blend with the existing rural landscape rather than stand out. The local blueberry industry has transitioned to black netting over crops which has minimised its appearance in the landscape compared to the former use of white netting.

The draft DCP controls will contain a requirement for measures to be implemented to minimise the visual impact of protected horticulture on the rural landscape through the use of dark coloured netting, landscape screening and where practical, selective location to minimise appearance from the surrounding area.

Exempt Development Provision

The exempt development standards were formulated by Council back in 2017 as part of a previous amendment to the LEP which made horticulture permissible with development consent in the R5 Large Lot Residential zone instead of being permitted without consent. The intent of the standards were to not impact on minor horticultural crops which present limited potential for land use conflict or pollution. This planning proposal seeks to make the existing exemptions applicable to the rural zones and not just the R5 zone. The reason for this is that it is considered to be illogical to have exemptions for horticulture in a residential zone and not in the rural zones. Given the exempt development standards are enabling some forms of horticulture to be carried out without development consent, it is not considered that their inclusion in the planning proposal will result in any negative impacts on horticultural activities and will ensure the issues this proposal is seeking to resolve will not be compromised.

This planning proposal also seeks to amend the exempt provisions by adding an additional control which prohibits structures to support the exempt horticultural activity. The reason for this additional control is that wastewater from greenhouses has been found to be problematic to deal with and is a major contributor to water pollution from horticultural operations. The inclusion of this provision would ensure that all horticultural operations which are located within buildings are the subject of development applications.

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

No.

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

Yes, it is considered that the proposed amendment to the Nambucca Local Environmental Plan 2010 is the best means of achieving the intended outcomes as they cannot be achieved without the planning proposal due to horticulture currently being listed as permitted without consent in the rural zones.

Section B – Relationship to strategic planning framework.

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

It is not considered that the proposed amendments to the LEP will be contrary to the North Coast Regional Plan 2041. The following is provided with regards to the objectives of the North Coast Regional Plan 2041:

Objective 1: Provide well located homes to meet demand

The proposed amendments relate to horticulture within the rural zones and will not impact the delivery of housing within residential zones.

Objective 2: Provide for more affordable and low cost housing

The proposed amendments will not impact the delivery of more affordable and low cost housing.

Objective 3: Protect regional biodiversity and areas of high environmental value

The proposed amendments will not result in any negative impacts on regional biodiversity and areas of high environmental value.

Objective 4: Understand, celebrate and integrate Aboriginal culture

The proposed amendments will not impact the conservation of Aboriginal culture.

Objective 5: Manage and improve resilience to shocks and stresses, natural hazards and climate change

The proposed amendments will not result in any increased exposure to significant threats from bushfire, floods or coastal hazards.

Objective 6: Create a circular economy

This objective is not considered relevant to the proposal.

Objective 7: Promote renewable energy opportunities

This objective is not considered relevant to the proposal.

Objective 8: Support the productivity of agricultural land

The proposal is considered consistent with this objective as the intent of the proposal is to minimise the land use conflict by implementing local planning controls which supports the horticulture industry identify potentially suitable locations for farm establishment to minimise land use incompatibility. Currently these controls are not in place which is leading to land use conflict within the Nambucca Valley. The proposal will be applying the agent of change principle for new horticulture developments in rural areas to ensure that they include measures to mitigate against any potential adverse impacts from other existing land uses in the vicinity.

Objective 9: Sustainably manage and conserve water resources

Establishing a farm for horticulture without following best practices can result in negative impacts on water quality. The proposed amendments will provide the opportunity for regulation to become proactive by ensuring farms are set out and established in accordance with best practices, rather than react once an issue has evolved.

Objective 10: Sustainably manage the productivity of our natural resources

The proposal is considered consistent with this objective for the same reasons outlined in objective 8 above.

Objective 11: Support cities and centres and coordinate the supply of well-located employment land

This objective is not considered relevant to the proposal.

Objective 12: Create a diverse visitor economy

This objective is not considered relevant to the proposal.

Objective 13: Champion Aboriginal self-determination

This objective is not considered relevant to the proposal.

Objective 14: Deliver new industries of the future

This objective is not considered relevant to the proposal.

Objective 15: Improve state and regional connectivity

This objective is not considered relevant to the proposal.

Objective 16: Increase active and public transport usage

This objective is not considered relevant to the proposal.

Objective 17: Utilise new transport technology

This objective is not considered relevant to the proposal.

Objective 18: Plan for sustainable communities

This objective is not considered relevant to the proposal.

Objective 19: Public spaces and green infrastructure support connected and healthy communities

This objective is not considered relevant to the proposal.

Objective 20: Celebrate local character

This objective is not considered relevant to the proposal.

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

Councils Local Strategic Planning Statement (LSPS) identifies that the LEP provides significant flexibility for agricultural uses in the rural zones and highlights the need for consideration to be given to potential land use conflicts and impacts on water quality generated by intensive rural uses such as horticulture.

This planning proposal has been prepared to mitigate land use conflicts and impacts on water quality associated with the existing flexibility in the LEP not enabling appropriate regulation of these matters. As such, the proposal is considered to be consistent with the LSPS.

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

There are no other relevant state or regional studies or strategies relevant to the planning proposal.

6 Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPP's)?

The proposed amendments are assessed against the State Environmental Planning Policies which apply to the Nambucca LGA in the below table:

SEPP	Complies	Comment
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Yes	The proposed amendments will not result in the clearing of any native vegetation or impact any koala habitat.
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	N/A	
State Environmental Planning Policy (Housing) 2021	N/A	
State Environmental Planning Policy (Industry and Employment) 2021	N/A	
State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development	N/A	
State Environmental Planning Policy (Planning Systems) 2021	N/A	
State Environmental Planning Policy (Primary Production) 2021	Yes	The proposed amendments will enable a proactive approach to ensuring farms are established in a manner which will minimise impacts on downstream water quality. This approach is considered to be consistent with this policy due to the priority oyster aquaculture areas within the Nambucca River.
State Environmental Planning Policy (Resilience and Hazards) 2021	Yes	The proposed amendments will not be contrary to the provisions of this policy.
State Environmental Planning Policy (Resources and Energy) 2021	Yes	The proposed amendments will not inhibit the establishment or operation of mining, petroleum production or extractive industries.
State Environmental Planning Policy (Sustainable Buildings) 2022	N/A	
State Environmental Planning Policy (Transport and Infrastructure) 2021	Yes	The proposed amendments will not facilitate any development which is contrary to this policy.

7 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?

Directions under Section 9.1 of the Environmental Planning and Assessment Act 1979 that are applicable to this planning proposal are addressed as follows:

Direction 1.1 - Implementation of Regional Plans

The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.

This direction applies to a relevant planning authority when preparing a planning proposal for land to which a Regional Plan has been released by the Minister for Planning and Public Spaces.

Direction:

1. Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.

Comment: As outlined earlier, this planning proposal is not considered to be contrary to any provision of the North Coast Regional Plan 2041.

Direction 1.3 - Approval and Referral Requirements

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

This direction applies to all relevant planning authorities when preparing a planning proposal.

Direction:

1. A planning proposal to which this direction applies must:
 - (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and
 - (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:
 - i. the appropriate Minister or public authority, and
 - ii. the Planning Secretary (or an officer of the Department nominated by the Secretary), prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&A Act, and
 - (c) not identify development as designated development unless the relevant planning authority:
 - i. can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the class of development is likely to have a significant impact on the environment, and
 - ii. has obtained the approval of the Planning Secretary (or an officer of the Department nominated by the Secretary) prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&A Act.

Comment: This planning proposal does not include provisions which are contrary to the above direction.

Direction 3.1 – Conservation Zones

The objective of this direction is to protect and conserve environmentally sensitive areas.

This direction applies to all relevant planning authorities when preparing a planning proposal.

Direction:

1. A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.
2. A planning proposal that applies to land within a conservation zone or land otherwise identified for environment conservation/protection purposes in a LEP must not reduce the conservation standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with Direction 9.3 (2) of “Rural Lands”.

Comment: This planning proposal does not impact any land within environmentally sensitive areas or conservation zones.

Direction 3.2 – Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

This direction applies to all relevant planning authorities when preparing a planning proposal.

Direction:

1. A planning proposal must contain provisions that facilitate the conservation of:
 - (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological,

architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,

(b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and

(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

Comment: This planning proposal will not impact the existing provision in the LEP which protects the conservation of the above.

Direction 3.5 – Recreation Vehicle Areas

The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.

This direction applies when Council prepares a planning proposal.

Direction:

1. The planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the *Recreation Vehicles Act 1983*):
 - (a) where the land is within an environmental protection zone,
 - (b) where the land comprises a beach or a dune adjacent to or adjoining a beach,
 - (c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration:
 - (i) the provisions of the guidelines entitled *Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September, 1985*, and
 - (ii) the provisions of the guidelines entitled *Recreation Vehicles Act, 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985*.

Comment: This planning proposal is not contrary to this direction as it does not enable land to be developed for the purpose of a recreation vehicle area.

Direction 4.1 Flooding

The objectives of this direction are to:

- (a) ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and
- (b) ensure that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land.

This direction applies to all relevant planning authorities that are responsible for flood prone land when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

Direction:

- (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.
- (2) A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Employment, Mixed Use, W4 Working Waterfront or Special Purpose Zones.
- (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.
- (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.
- (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 proposed provisions will not rezone land or permit additional development in flood affected areas.

Direction 4.2 – Coastal Management

The objective of this direction is to protect and manage coastal areas of NSW.

This direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016 - comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area - and as identified by chapter 3 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Direction:

1. A planning proposal must include provisions that give effect to and are consistent with:
 - (a) the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas;
 - (b) the NSW Coastal Management Manual and associated Toolkit;
 - (c) NSW Coastal Design Guidelines 2003; and
 - (d) any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land.
2. A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:
 - (a) within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2018; or
 - (b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:

- i. by or on behalf of the relevant planning authority and the planning proposal authority, or
 - ii. by or on behalf of a public authority and provided to the relevant planning authority and the planning proposal authority.
3. A planning proposal must not rezone land which would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area identified by chapter 3 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.
 4. A planning proposal for a local environmental plan may propose to amend the following maps, including increasing or decreasing the land within these maps, under the State Environmental Planning Policy (Coastal Management) 2018:
 - (a) Coastal wetlands and littoral rainforests area map;
 - (b) Coastal vulnerability area map;
 - (c) Coastal environment area map; and
 - (d) Coastal use area map.

Such a planning proposal must be supported by evidence in a relevant Coastal Management Program that has been certified by the Minister, or by a Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016.

Comment: This planning proposal is not contrary to the provisions of this direction as it is consistent with the Coastal Management Act, management manual, design guidelines, or coastal management program and does not include the amendment to any listed maps.

Direction 4.3 Planning for Bushfire Protection

The objectives of this direction are to:

- (a) 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) encourage sound management of bush fire prone areas.

This direction applies to all local government areas when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to, land mapped as bushfire prone land.

Direction:

1. In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of clause 4, Schedule 1 to the EP&A Act, and take into account any comments so made.
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 Asset Protection Zone (APZ).
3. A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:
 - (a) provide an Asset Protection Zone (APZ) incorporating at a minimum:
 - i. an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
 - ii. an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
 - (b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,

- (c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
- (d) contain provisions for adequate water supply for firefighting purposes,
- (e) minimise the perimeter of the area of land interfacing the hazard which may be developed,
- (f) introduce controls on the placement of combustible materials in the Inner Protection Area.

Comment: The planning proposal is not contrary to Planning for Bushfire Protection 2019 and consultation will occur with the RFS following receipt of a gateway determination.

Direction 4.4 – Remediation of Contaminated Land

The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

This direction applies when a planning proposal authority prepares a planning proposal that applies to:

- (a) Land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997,
- (b) Land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
- (c) The extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land:
 - i. in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - ii. on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

Direction:

(1) A planning proposal authority must not include in a particular zone (within the meaning of the local environmental plan) any land to which this direction applies if the inclusion of the land in that zone would permit a change of use of the land, unless:

- (a) the planning proposal authority has considered whether the land is contaminated, and
 - (b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and
 - (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose. In order to satisfy itself as to paragraph 1(c), the planning proposal authority may need to include certain provisions in the local environmental plan.
- (2) Before including any land to which this direction applies in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

Comment: This planning proposal does not alter the zoning of any land.

Direction 4.5 - Acid Sulfate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

This direction applies to all relevant planning authorities that are responsible for land having a probability of containing acid sulfate soils when preparing a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps held by the Department of Planning, Industry and Environment.

Direction:

1. The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.

2. When a relevant planning authority is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions must be consistent with:
 - (a) the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary, or
 - (b) other such provisions provided by the Planning Secretary that are consistent with the Acid Sulfate Soils Planning Guidelines.
3. A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Planning Secretary prior to undertaking community consultation in satisfaction of clause 4 of Schedule 1 to the Act.
4. Where provisions referred to under 2(a) and 2(b) above of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the planning proposal must contain provisions consistent with 2(a) and 2(b).

Comment: The planning proposal is considered to be consistent with this direction because it does not include any changes to the existing provisions within clause 7.1 of the LEP which regulates works in acid sulfate soils or intensification of development on land which has the probability of containing acid sulfate soils that would be contrary to that clause.

Direction 5.2 - Reserving Land for Public Purposes

The objectives of this direction are to:

- (a) facilitate the provision of public services and facilities by reserving land for public purposes, and
- (b) facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

This direction applies to all relevant planning authorities when preparing a planning proposal.

Direction:

1. A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Planning Secretary (or an officer of the Department nominated by the Secretary).
2. When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991, the relevant planning authority must:
 - (a) reserve the land in accordance with the request, and
 - (b) include the land in a zone appropriate to its intended future use or a zone advised by the Planning Secretary (or an officer of the Department nominated by the Secretary), and
 - (c) identify the relevant acquiring authority for the land.
3. When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning authority must:
 - (a) include the requested provisions, or
 - (b) take such other action as advised by the Planning Secretary (or an officer of the Department nominated by the Secretary) with respect to the use of the land before it is acquired.
4. When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request.

Comment: The planning proposal is not contrary to this direction as it does not impact any zonings or reservations for public land.

Direction 6.2 Caravan Parks and Manufactured Home Estates

The objectives of this direction are to:

- (a) provide for a variety of housing types, and
- (b) provide opportunities for caravan parks and manufactured home estates.

This direction applies to Council when it prepares a planning proposal.

Direction:

1. In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:
 - (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and
 - (b) retain the zonings of existing caravan parks, or in the case of a new principal LEP zone the land in accordance with an appropriate zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would facilitate the retention of the existing caravan park.
2. In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:
 - (a) take into account the categories of land set out in Schedule 6 of State Environmental Planning Policy (Housing) as to where MHEs should not be located,
 - (b) take into account the principles listed in clause 9 Schedule 5 of State Environmental Planning Policy (Housing) (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and
 - (c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the Community Land Development Act 1989 be permissible with consent.

Comment: The planning proposal will not impact the provision of caravan parks or MHEs within the LGA.

Direction 7.3 Commercial and Retail Development along the Pacific Highway, North Coast

The objectives for managing commercial and retail development along the Pacific Highway are to:

- (a) protect the Pacific Highway's function, that is to operate as the North Coast's primary inter- and intra-regional road traffic route,
- (b) prevent inappropriate development fronting the highway,
- (c) protect public expenditure invested in the Pacific Highway,
- (d) protect and improve highway safety and highway efficiency,
- (e) provide for the food, vehicle service and rest needs of travellers on the highway, and
- (f) reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns.

This direction applies when a relevant planning authority prepares a planning proposal for land within those council areas on the North Coast that the Pacific Highway traverses, being those council areas between Port Stephens Shire Council and Tweed Shire Council, inclusive, and that applies to land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.

Direction:

(1) A planning proposal that applies to land located on "within town" segments of the Pacific Highway must provide that:

- (a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway;
- (b) development with frontage to the Pacific Highway must consider impact the development has on the safety and efficiency of the highway; and
- (c) for the purposes of this paragraph, "within town" means areas which, prior to the draft local environmental plan, have an urban zone (e.g.: "village", "residential", "tourist", "commercial", "industrial", etc) and where the Pacific Highway speed limit is less than 80km/hour.

(2) A planning proposal that applies to land located on "out-of-town" segments of the Pacific Highway must provide that:

- (a) new commercial or retail development must not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this direction;
- (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and
- (c) for the purposes of this paragraph, “out-of-town” means areas which, prior to the draft local environmental plan, do not have an urban zone (e.g.: “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) or are in areas where the Pacific Highway speed limit is 80km/hour or greater.

(3) Notwithstanding the requirements of paragraphs (1) and (2), the establishment of highway service centres may be permitted at the localities listed in Table 1, provided that Roads and Maritime Services is satisfied that the highway service centre(s) can be safely and efficiently integrated into the Highway interchange(s) at those localities. For the purposes of this paragraph, a highway service centre has the same meaning as is contained in the Standard Instrument (Local Environmental Plans) Order 2006.

Comment: The planning proposal will not result in the establishment of new commercial or retail development or impact the safety and efficiency of the highway.

Direction 9.1 Rural Zones

The objective of this direction is to protect the agricultural production value of rural land.

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

Direction:

A planning proposal must not rezone land from a rural zone to a residential, employment, mixed use, SP4 Enterprise, SP5 Metropolitan Centre, W4 Working Waterfront, village or tourist zone.

Comment: The planning proposal will not rezone any land.

Direction 9.2 Rural Lands

The objectives of this direction are to:

- (a) protect the agricultural production value of rural land,
- (b) facilitate the orderly and economic use and development of rural lands for rural and related purposes,
- (c) assist in the proper management, development and protection of rural lands to promote the social, economic and environmental welfare of the State,
- (d) minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses,
- (e) encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land,
- (f) support the delivery of the actions outlined in the NSW Right to Farm Policy.

This direction applies when a relevant planning authority prepares a planning proposal for land outside the local government areas of lake Macquarie, Newcastle, Wollongong and LGAs in the Greater Sydney Region (as defined in the Greater Sydney Commission Act 2015) other than Wollondilly and Hawkesbury, that:

- (a) will affect land within an existing or proposed rural or conservation zone (including the alteration of any existing rural or conservation zone boundary) or
- (b) changes the existing minimum lot size on land within a rural or conservation zone.

Direction: A planning proposal must:

- (a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Planning Secretary, and any applicable local strategic planning statement
- (b) consider the significance of agriculture and primary production to the State and rural communities
- (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
- (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
- (e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities
- (f) support farmers in exercising their right to farm
- (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 use

- (h) consider State significant agricultural land identified in chapter 2 of the State Environmental Planning Policy (Primary Production) 2021 for the purpose of ensuring the ongoing viability of this land
- (i) consider the social, economic and environmental interests of the community.
- (2) A planning proposal that changes the existing minimum lot size on land within a rural or conservation zone must demonstrate that it:
- (a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses
- (b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains
- (c) where it is for rural residential purposes:
- i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres
 - ii. is necessary taking account of existing and future demand and supply of rural residential land.

Comment: The planning proposal is not considered to be contrary to this direction because it:

- Is consistent with the North Coast Regional Plan and Local Strategic Planning Statement as outlined above.
- Recognises the importance of the Nambucca Valleys water resources by implementing measures which facilitate a proactive approach to mitigating impacts on water quality rather than the existing reactionary regulatory approach.
- Will reduce the existing risk of land use conflict through the implementation of land use conflict buffers, which are not currently enforceable due to horticulture being permissible without development consent in the rural zones.
- Will support farmers in exercising their right to farm by ensuring their farms are established following best practice methods which will reduce potential regulatory action relating to breaches of legislation which impact operations. For example, minimising pollution incidents as defined by the Protection of the Environment Operations Act 1997.
- Provides a mechanism for farmers to establish their farm in a manner which maximises the productivity of their land while implementing appropriate measures to minimise potential impacts on the surrounding area.
- Considers the social, economic and environmental interests of the community by facilitating the establishment of horticulture developments in the rural zones in a manner which potential social, economic and environmental impacts on the relevant site and surrounding area are considered and addressed.

Currently there are many forms of horticulture being carried out in the Nambucca Valley. These include crops such as bananas, macadamias, berries, vegetables and flowers. The proposed LEP amendment will not have any impact on existing crops as the development consent requirements will only apply to new farms or expansion of crops or structures on an existing farm.

Section C – Environmental, social and 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?*

It is not considered that the proposal will have any adverse effects on threatened species, populations, communities or their habitats as the proposal will reduce potential impacts.

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

There will be no significant environmental impacts resulting from the planning proposal as the amendments will require consideration to be given to potential effects instead of permitting horticulture to proceed without any consideration.

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

The intent of the land use tables within the LEP is to specify what land uses are permissible without consent, with consent and which ones are prohibited. The purpose of this is to ensure land uses are appropriately located and operated so that they do not have any significant social or economic effects. For a land use to be permitted without development consent, Council should be satisfied that the land use will not result in any of these impacts, or they can be regulated under other legislation if they are not carried out appropriately.

Providing an adequate land use conflict buffer between horticulture and adjoining properties is recognised as best practice by both the industry and the community, as not providing one can result in significant social and economic effects. However, there is not any statutory provision which requires buffers to be implemented between horticulture and surrounding land uses within the rural zones in the Nambucca Valley.

In addition to this, inappropriate farm establishment could result in water quality impacts in the Nambucca River which has a large oyster aquaculture industry. It is considered that farms for horticulture could be established which minimise economic impacts on farmers while minimising social impacts on the surrounding community.

Section D – Infrastructure (Local, State and Commonwealth)

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

It is not considered that public utility infrastructure is required as part of the planning proposal.

Section E – State and Commonwealth Interests

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

Government authorities have not been formally involved in this planning proposal as it is yet to receive gateway approval. It is considered that the NSW Rural Fire Service, NSW Department of Primary Industries, NSW Local Land Services and the NSW Environment Protection Authority are the relevant public authorities who should be consulted.

Part 4 Maps

No map amendments are proposed.

Part 5 Community Consultation

It is intended to undertake community consultation by way of an advertisement in the local newspaper and Councils website. It is intended to advertise the planning proposal for 20 working days.

Part 6 Project Timeline

July 2024	Gateway determination issued by Department of Planning & Environment
August 2024	Public exhibition of planning proposal and consultation with government agencies
October 2024	Analysis of public submissions and agency responses Preparation of Council report
November 2024	Endorsed planning proposal submitted to Department of Planning and Environment for finalisation.



DOC24/417428-1

The General Manager
Nambucca Valley Council
PO Box 177
MACKSVILLE NSW 2447

29 May 2024

Attention: Daniel Walsh

Dear Mr Walsh

I am writing in response to your email of Friday 24 May 2024 requesting advice from NSW Environment Protection Authority (EPA) about the planning proposal to amend the Nambucca Local Environment Plan 2010 (NLEP). The EPA is supportive of Nambucca Valley Council's (Council) proposed amendments to the LEP and we provide the following advice that may address some of the issues raised within Department of Planning, Housing and Infrastructure (DPHI) letter in relation to this planning proposal.

Nambucca Valley Council Context

The intensive plant horticulture (IPH) industry is in its early stages of development in the Nambucca local government area (LGA). GA. From EPA's experience this industry has potential to rapidly expand, with often little consideration given to environmental and land use conflict concerns until issues have been raised by the EPA.

The EPA views the planning proposal to require development consent for IPH as a positive step forward in ensuring this industry implements best practice farm design which promotes the protection of the environment and human health. Addressing environmental and land use conflict retrospectively following development is challenging, expensive, leads to community complaint and increases the burden on a number government agencies responsible for regulatory this industry.

Land-Use Conflict

Primarily driven by a lack of buffers between IPH operation and neighbours (residential and agricultural). EPA is currently investigating pesticide spray drift from a blueberry growing operation in Valla with almost zero property boundary buffer, impacting on an organic macadamia growing operation. This and other situations like it in the Nambucca and Coffs LGA's could be avoided if minimum buffers were mandated via development consent. It would also save considerable state government resources when investigating these offences that are inherently complicated, and do not necessarily lead to behaviour change or improved environmental outcomes. Additionally, contrary to common belief, most pesticide product labels do not require that buffers be utilised when spraying.

Buffers are recommended in the Australian Blueberry Association's Code of Practice, for environmental protection and prevention of land use conflict. However, this is entirely voluntary and without development consent are not enforceable. It is our experience that few growers adopt environment protection recommendations as outlined within the Code of Practice.

The Living and Working in Rural Areas, A handbook for managing land use conflict issues (NSW DPI, 2007) (Handbook) also recommends the use of buffers to minimise the impact of different land uses on neighbours. For horticultural rural activities, the handbook recommends a minimum buffer of 200 metres from a dwelling and 50 metres from a property boundary.

The EPA supports the use of buffers as recommended by the Code of Practice and DPI's Handbook.

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Water Quality

There are known water quality impacts from well-established IPH's at numerous waterways located within the Coffs Harbour LGA, including at including Hearn's Lake, Bucca Creek, Double Crossing Creek and Darkum Creek.

In March 2024, EPA completed water quality monitoring in collaboration with Council for waterways located within the Nambucca area. During this monitoring program, the pesticide imidacloprid was detected at 2 of the 3 sampling sites. Imidacloprid is a common insecticide used in IPH activities and due to lack of data it does not yet have a national guideline limit. During our water monitoring programs within the Coffs Harbour LGA, we regularly detect imidacloprid and other pesticides immediately downstream of IPH operations that lack the appropriate controls that could be mandated by development consent conditions.

The risk to water quality from IPH activities could be reduced by implementing best practice farm design prior to establishment. From our experience, the implementation of controls to address environmental issues post development such as wastewater containment and treatment systems and enforcing Pesticide Management Plans and Prevention Notices, are challenging and expensive for the operator.

Different types of IPH activities have a greater impact on water quality than others. Protected cropping forms of IPH such as blueberry, raspberry and cucumber production, typically:

- require a 'run-to-waste' fertigation system
- known to generate pesticide and nutrient-laden wastewater
- have a greater reliance on storing and utilising bulk liquid chemical mixtures on site.

Without appropriate controls established at development, there is the real risk of water pollution from protected cropping forms of IPH compared to banana and macadamia production.

Impacts to growers

Compliance activities undertaken on IPH operations in both Nambucca Valley and Coffs Harbour LGAs have resulted in Prevention Notices issued to growers that require the retrofitting of wastewater containment and treatment systems to manage nutrient and pesticide run off.

During the last 6 months, the EPA has conducted 13 inspections of IPH operations in the Nambucca Valley and over 30 in Coffs Harbour LGA. In Nambucca Valley, the EPA has issued 3 clean up notices, a prevention notice and 5 advisory letters. Investigations are ongoing at 3 farms into alleged breaches of environmental legislation. In Coffs Harbour, where IPH is more established, in the last 6 months the EPA has issued, 7 prevention notices, 2 clean up notices, 2 penalty notices and 2 advisory letters with ongoing investigations at 6 farms.

These prevention and clean up notices are addressing pollution incidents after the fact, when adverse environmental impacts have occurred. They can also be onerous to the grower as they may be required to cease growing operations until appropriate measure have been installed to stop pollution occurring from the premises.

If you have any questions or concerns about this matter, please contact

Sincerely

Scott Hunter
Unit Head – Operations

Attachment 2 - Draft DCP Controls

F1.3.2 Buffers

Failure to ensure adequate setbacks between dwellings and rural land uses is likely to result in land use conflicts which can impact on rural production, local employment, and human health.

In addition to this, failure to provide appropriate setbacks to sensitive environmental receptors such as creeks, native vegetation, wetlands and reserves may result in detrimental impacts to the local environment.

The purpose of this section is to ensure appropriate setbacks are applied between rural land uses and sensitive receptors such as dwellings and the environment.

Objectives

- Minimise land use conflict primarily between dwellings and rural land uses.
- Ensure adequate land use and vegetation buffers are provided between rural land uses and dwellings.
- Protect natural resources and sensitive environmental receptors.
- Facilitate a reduced rural buffer by incorporating effective landscaped buffers which intercept spray drift and mitigate visual impacts.

Controls

- 1 A development must not result in the separation between any dwelling and other rural land use being contrary to the separation requirements outlined below in Table F1.

Table F1: Buffers between Dwellings and other Rural Land Uses		
Land Use	Separation Distance	Vegetation Buffer ¹
High Voltage Power Lines	20 metres	N/A
Grazing Land	30 metres 50 metres	10m minimum width None
Horticulture	80 metres 200 metres	40m minimum width None
Cattle dip site	200 metres	N/A
Cattle feed lots – less than 500 head Dairies – less than 500 head Intensive livestock Agriculture (other than cattle feed lots, piggeries and poultry farms) Piggeries – less than 200 pigs Poultry farms	300 metres	N/A
Sewage Treatment Plants	400 metres	N/A
Cattle feed lots – 500 head or more Dairies – 500 head or more Piggeries – 200 pigs or more Rural Industry (excluding abattoirs) Waste Management Facilities	500 metres	N/A
Abattoirs Extractive industry or mines	1000 metres	N/A

- 1 See Section F1.3.3 Vegetation Buffers for more information.

F1.3.3 Vegetation Buffers

Vegetation buffers may be used to reduce the total buffer distance required between dwellings and rural land uses. Vegetation buffers assist in the capture of airborne pesticide droplets through the creation of a vegetation filter. Research into the behaviour of pesticide spray drift has shown that vegetation buffers can prove effective barriers to spray drift where they meet the criteria outlined below. However, caution must be exercised when considering the appropriateness of a vegetation buffer. Vegetation buffers take time to establish, require on-going maintenance and are subject to storm and insect damage. Trees only have a limited life span. Therefore, vegetation buffers will not be appropriate in all circumstances.

Where vegetation buffers are proposed to satisfy the requirements of this Part, the following will be required:

- The buffer must contain random plantings of a variety of tree and shrub species of differing growth habits, at spacings of 4 to 5 metres.
- The vegetation needs to be established prior to release of the Subdivision Certificate (in the case of subdivision) or prior to commencement of other uses and erection of any buildings.
Note: An established buffer is one which contains vegetation that has reached maturity and satisfies the buffer objectives.
- The minimum width of a vegetation buffer is that of the canopy at maturity.
- Vegetation buffers are to be located such that they will not compromise asset protection zones required in accordance with "Planning for Bushfire Protection 2019".
- A detailed landscape plan is to be submitted with the development application.
- A variety of species is to be included with a variety of heights at maturity, including ground cover, shrubs, and small and large trees.
- Trees at least 10m in height at maturity are to be included.
- Tree rows should be planted at a maximum spacing of 10m, with rows of smaller plants between.
- Species with long, thin and rough foliage must be included where a rural land use involves chemical spraying, as these facilitate capture of spray droplets.
- A mixture of fast growing pioneer species and slower-growing, longer lived species should be used. The pioneer species will ensure that the buffer is effective as soon as possible. The longer lived species will over time replace the pioneer species.
- Suggested species are included in Table F2. Other suitable species may also be used.
- Council will require the inclusion of positive covenants on the title, under Section 88B of the Conveyancing Act, requiring maintenance of any planted vegetation buffers. Where existing native vegetation forms the proposed buffer, Council will require the inclusion of Section 88B restrictions- to-user on the title prohibiting the clearing of vegetation that comprises the buffer.

Table F2: Suggested Species for Vegetation Buffers

Species	Common Name	Preferred Habitat/Range *	Height at Maturity	Notes
Acacia fimbriata	Brisbane Wattle or Fringed Wattle	Riverbanks and shady gullies. Does not like sandy soils	4-8m	Pioneer species
Acacia floribunda	White Sally Wattle	Forested slopes, sheltered gullies, creek banks	Up to 8m	Pioneer species
Acacia melanoxylon	Sally Wattle or Blackwood	Common on various sites	15-30m	Pioneer species
Acmena Smithii	Lilly Pilly	Sheltered or shady eucalypt forests, rainforest margins, sheltered coastal areas	20m	Fast growing & long living
Casuarina glauca	Swamp She-oak	Open forests, woodlands, saltwater estuaries and rivers.	8-30m	Pioneer species
Allocasuarina littoralis	Black She-oak	Woodland/ Tall Heath	8-15m	Thrives in Sandy soils
Allocasuarina torulosa	Forest She-oak or Rose She-Oak	Moist open forests	8-30m	Pioneer species

Backhousia anisata	Aniseed Tree	Lowland subtropical rainforest in gullies	Generally 10-12m, exceptionally up to 45m	Long lived
Callistemon sp. (all Callistemon species including cultivars)	Bottlebrush	Various, widespread	Various – up to 20m	Pioneer species
Casuarina cunninghamiana	River She-oak	Freshwater stream, banks in open forests	12-35m	Pioneer species
Elaeocarpus reticulatus	Blueberry Ash	Sheltered forests, rainforest edges	2-3m	Fast growing & long living
Eucalyptus microcorys	Tallowwood	Wet forests or rainforest margins on moderately to highly fertile soils, often on slopes	60m	Fast growing & long living
Eucalyptus pilularis	Blackbutt	Wet sclerophyll or grassy coastal forests on lighter soils of medium fertility	65m	Fast growing & long living
Eucalyptus tereticornis	Forest Red Gum	Wet or dry forests or woodlands on soils of medium to high fertility	20-50m	Fast growing & long living
Jagera pseudorhus Leptospermum petersonii	Foam bark Lemon-scented Tea Tree	Wet forests and rainforest Coastal heath, forest fringes	Up to 15m 4m	Pioneer species Long lived
Leptospermum species	Tea Tree	Most habitats dependent on species	1-4m	Long lived
Lomandra species	Mat Rush	Widespread – open forest, rainforest margins, hind dunes, ridges, creek banks	Up to 1 metre	Pioneer species and Understorey
Melaleuca linariifolia	Fine-leaved Paperbark	Wet and swampy places near the coast, also on the coastal plateaux, often on shale	4-6 m	Long lived
Syncarpia glomulifera	Turpentine	Taller eucalypt forests	60m	Long lived

* **Note:** the Habitat and Range indicated here, is a general guide, and most of these species are suitable for planting in most vegetation areas within the Nambucca Valley.

F1.3.4 Buffers to sensitive Environmental Receptors

Council wishes to minimise the impact of development on sensitive natural resources such as the coastline, wetlands, watercourses, scenic backdrop areas, national parks and nature reserves. Accordingly, dwellings, dwelling envelopes and other rural land uses requiring consent should be set back from sensitive natural resources in accordance with Table F3.

Table F3: Buffers to Sensitive Natural Resources

Sensitive Natural Resource	Adjoining Land Use	Buffer
Coastline ¹	All uses requiring development consent	40 metres
Coastal wetlands ²	Dwellings	40 metres
	On-site effluent disposal systems ³	100 metres
	Uses in Table F1 that require development consent	50 metres
Other wetlands ⁴	All uses requiring development consent	40 metres
Watercourses	On-site effluent disposal systems ³	50 metres
Watercourses ^{1, 5}	All uses requiring development consent	40 metres
National parks and nature reserves	Dwellings	60 metres
	On-site effluent disposal systems ³	100 metres
	Uses in Table F1 that require development consent:	50metres

Visually Prominent Location ⁶	Dwelling	20m min ⁷
1	To minimise impacts and the need for approval under the Water Management Act 2000.	
2	State Environmental Planning Policy (Resilience and Hazards) 2021.	
3	Irrigation fields and the like.	
4	These include coastal wetlands not mapped under the above SEPP.	
5	Watercourses are shown as blue lines on topographic maps.	
6	Areas in a visually prominent location include ridgelines, hilltops etc.	
7	The applicant may be requested to provide a visual impact assessment demonstrating how the development will be unobtrusive in the landscape. Design features such as landscaping, colour schemes articulation, modulation etc may be used as methods to reduce the visual impact of a proposal on the landscape.	

Where a sensitive environmental receptor is located on or adjacent to a proposed development site, Council may require the establishment, conservation or rehabilitation of a vegetation buffer to that receptor. For example Council may require the restoration of a drainage line which traverses through a proposed large lot residential subdivision site.

F1.3.5 Horticulture

The following controls apply to a development application for horticulture:

1. A vegetation buffer to restrict potential chemical spray drift must be provided within a minimum 80 metre separation buffer from adjoining lots within residential or village zones and dwellings within rural or environmental protection zones. The vegetation buffer must have a minimum width of 40 metres and be designed in accordance with the criteria referred to in clause F1.3.3 of this DCP and contain species referred to in Table F2.

Variations to buffer distances will only be considered where it can be demonstrated that other physical barriers can be implemented which mitigate potential spray drift while protecting visual amenity.

2. A detailed landscape plan indicating the extent of the landscape buffer, the location and spacing of trees and shrubs and a list of tree and shrub species to be used must be submitted to Council prior to the commencement of any works. A landscape plan of any existing landscape buffer demonstrating how the buffer complies with the criteria referred to in clause F1.3.3 must be submitted with the development application.
3. All ancillary netting must be coloured black or dark green.
4. A water management plan prepared by a suitably qualified person which outlines measures that will be implemented to mitigate nutrient and chemical runoff from the development site must be submitted with any development application. It must be demonstrated that sufficient measures can be implemented to manage wastewater and surface water runoff to avoid water pollution, as well as a process for monitoring compliance for the life of the development.