



IRF24/2729

## Plan finalisation report – PP-2024-1344

---

Require development consent for horticulture in the  
RU1 Primary Production and RU2 Rural Landscape  
zones

January 2025

Published by NSW Department of Planning, Housing and Infrastructure

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

Title: Plan finalisation report – PP-2024-1344

Subtitle: Require development consent for horticulture in the RU1 Primary Production and RU2 Rural Landscape zones

---

© State of New South Wales through Department of Planning, Housing and Infrastructure 2025 You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Housing and Infrastructure as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing [November 24] and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Housing and Infrastructure), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

# Acknowledgment of Country

The Department of Planning, 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.

## Contents

<b>1</b>	<b>Introduction.....</b>	<b>2</b>
<b>1.1</b>	<b>Overview .....</b>	<b>2</b>
1.1.1	Name of draft LEP .....	2
1.1.2	Site description .....	2
1.1.3	Purpose of plan .....	2
1.1.4	State electorate and local member .....	2
1.1.5	Council resolution .....	3
<b>2</b>	<b>Gateway determination.....</b>	<b>3</b>
<b>3</b>	<b>Public exhibition .....</b>	<b>3</b>
<b>3.1</b>	<b>Submissions during exhibition .....</b>	<b>4</b>
3.1.1	Submissions supporting the proposal .....	4
3.1.2	Submissions objecting to and/or raising issues about the proposal.....	4
<b>3.2</b>	<b>Advice from key industries.....</b>	<b>10</b>
3.2.1	Berries Australia submission.....	10
3.2.2	NSW Farmers Submission.....	10
<b>3.3</b>	<b>Advice from key agencies.....</b>	<b>11</b>
3.3.1	EPA submission .....	11
3.3.2	DPIRD - Agriculture submission.....	11
<b>4</b>	<b>Department's assessment.....</b>	<b>13</b>
<b>4.1</b>	<b>Detailed assessment .....</b>	<b>14</b>
4.1.1	Consistency with section 9.1 Ministerial Directions .....	14
4.1.2	Economic impacts.....	15
<b>5</b>	<b>Recommendation.....</b>	<b>15</b>
	Attachments .....	16

# 1 Introduction

## 1.1 Overview

### 1.1.1 Name of draft LEP

Nambucca Local Environmental Plan 2010 (Amendment No. 36).

### 1.1.2 Site description

Table 1 Site description

Site Description	All land in the RU1 Primary Production and RU2 Rural Landscape zones
Type	LGA
Council / LGA	Nambucca Valley Council
LGA	Nambucca Valley

### 1.1.3 Purpose of plan

The purpose of the LEP amendment is to:

- require development consent for horticulture in the RU1 Primary Production and RU2 Rural Landscape zones;
- expand the current Schedule 2 Exempt development provisions applicable to horticulture in zone R5 Large Lot Residential to apply to zones RU1 and RU2; and
- include an additional control which prohibits structures as exempt development to support an exempt horticultural activity.

The existing Schedule 2 exemption is 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.*

### 1.1.4 State electorate and local member

The site falls within the Oxley state electorate. Mr Michael Kemp MP is the State Member.

The site falls within the Cowper federal electorate. Mr Pat Conaghan MP is the Federal Member.

Mr Michael Kemp MP wrote to Council on 25 September 2024, forwarding a submission from NSW Farmers (Nambucca Valley Branch) that objected to the proposed LEP amendment (**Attachment C** p.167-170). The key concerns raised in the submission related to the wide-ranging impacts of the proposal, inconsistencies with other government policies and the right to farm as well as the costs associated with development applications.

Mr Kemp notes that as the local State member, it is not within his jurisdiction to comment on Council LEP matters, but as a farmer he feels the letter raises some very valid points.

There are no donations or gifts to disclose, and a political donation disclosure is not required. There have been no meetings or communications with registered lobbyists with respect to this proposal.

### 1.1.5 Council resolution

Council initially considered finalisation of the proposal at its meeting on 14 November 2024 where it resolved:

*“That Council make the local environmental plan as outlined within the planning proposal contained within attachment 3 in accordance with section 3.36(2) of the Environmental Planning and Assessment Act 1979.”*

As Council is not the local plan-making authority, a subsequent resolution was made at the Council meeting on 19 December 2024 to confirm the planning proposal should be referred to the Minister for Planning and Public Spaces to make the LEP.

## 2 Gateway determination

The Gateway determination issued on 10 July 2024 (**Attachment B**) determined that the proposal should proceed subject to conditions.

It is considered that Council has not adequately met all of the Gateway determination conditions, in particular condition 1(c) and 1(d) which are critical in providing an evidence base to support and justify the proposal.

In this regard, condition 1(c) required additional information and analysis of existing and different types of horticulture operations across the Shire and the potential impact be included within the planning proposal prior to consultation. This was required to ensure that the impacts of the proposed changes, particularly on small scale horticulture activities could be considered and addressed.

While Council has updated the planning proposal to list some of the horticulture crops (such as bananas, macadamias, vegetables and flowers) within the local government area (LGA) in addition to the original cited blueberry industry, it has not included an appropriate analysis of the potential impacts of the proposal. It is noted that non-compliance with this condition was raised in submissions from the community and the Department of Primary Industries and Regional Development (DPIRD) – Agriculture.

Condition 1(d) required further information to be included within the proposal to explain how the existing exempt development standards for zone R5 would effectively address the issues the proposal is seeking to resolve.

The proposal has been updated to outline the reasoning for prohibiting structures to support the exempt activity, particularly with regard to wastewater impacts associated with greenhouses. However, no discussion has been included on the types of horticulture or operations that could occur under this provision or why these uses are considered to be low impact. Further, the control to prohibit structures which support exempt horticultural activities is not well explained and appears to potentially render the exempt provision in many circumstances unusable.

## 3 Public exhibition

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 20/08/2024 to 1/10/2024.

The report to the Council meeting on 14 November 2024 (**Attachment F**) includes a summary of the submissions received and a response. This report indicates 78 submissions were received from the community and 3 submissions from public authorities during the exhibition period.

It appears however there are only 67 public submissions attached to the Council report, which comprise of 20 objections and 47 submissions supporting the proposal (**Attachment C**).

No changes to the proposal have been made as a result of public exhibition.

## 3.1 Submissions during exhibition

### 3.1.1 Submissions supporting the proposal

The key issues raised in the submissions supporting the proposal are summarised in Table 2.

**Table 2 Summary of key supporting submissions and other comments**

Submission	Council response
Requiring DAs will reduce conflicts leading to a more cohesive community and less stress on neighbours	Agreed.
Buffer zones will enhance protection from chemical runoff, spray drift and other pollutants.  There will be better environmental protection for land and waterways.	Agreed. Buffer extent is to be determined through further community consultation and state agencies as part of a Development Control Plan (DCP) amendment.
Support the proposal but do not support any exemptions.	The intent of the exemptions is to not require a DA for types of horticulture considered to have less potential of impacts.
There should be a clear definition of structures which includes netting, wires and poles.	Structures are defined under the <i>Environmental Planning and Assessment Act 1979</i> and include netting, wires and poles.
The widespread use of netting, igloos, tunnels and greenhouses are not consistent with the rural character of Nambucca. While they may be a necessary commercial use in some types of horticulture all effort should be made to minimise their use.	Structures that aid production and processing of rural commodities are consistent with the character of rural zones. However, when they exceed exempt provisions, consideration should be given to how impact of scale can be minimised where possible and their location can be optimised to maximise agricultural land while minimising land use conflict.

### 3.1.2 Submissions objecting to and/or raising issues about the proposal

The key issues raised in the submissions objecting to the proposal are outlined in Table 3.

It is considered that the matters raised in submissions which do not support the proposal have not been adequately addressed by Council, particularly with regard to the level of analysis that has been undertaken to understand the likely impacts of the proposal raised by the community, horticulture industry and the Department of Primary Industries and Regional Development - Agriculture.

**Table 2 Summary of Key Issues**

Issue raised	Council response and Department assessment of adequacy of response
<p>Horticulture is one of the oldest activities and should be encouraged. It brings millions into the local economy</p>	<p>Council Response:</p> <p>The economic contributions are not disputed. Requiring a DA is no different to other rural land uses that have the potential to result in significant impacts.</p> <p>Department Comment:</p> <p>The horticultural types and the extent of horticulture activities occurring in the LGA has not been adequately addressed in the proposal and was a requirement of the Gateway determination. Further, there has been no analysis of the economic implications of the proposal undertaken or consideration of how the exempt provisions will facilitate horticulture in the RU1 and RU2 zones without detrimental impacts. As a consequence, it is considered that the potential impacts of the proposal have not been adequately detailed, understood or addressed.</p>
<p>The proposal is not consistent with the objectives of the rural zones that encourage primary production</p>	<p>Council Response:</p> <p>The proposal does not seek to negatively impact horticulture rather minimise land use conflicts and environmental impacts. This is considered to be consistent with the objectives.</p> <p>Department Comment:</p> <p>It is considered that further analysis is required to determine the impact of the proposed amendment to ensure the proposal does not compromise the objectives of the RU1 and RU2 zones, particularly in relation to maintaining sustainable primary industry production.</p>
<p>Council should withdraw the planning proposal and work collaboratively with NSW DPIRD and the NSW Local Land Services (LLS) to address land use conflicts through more targeted, effective and sustainable measures.</p>	<p>Council Response:</p> <p>It is intended to seek input from DPIRD – Agriculture and LLS in the establishment of best practice methods to be incorporated into Council's final DCP.</p> <p>Department Comment:</p> <p>DPIRD - Agriculture has raised a number of concerns about the proposal in their submission to Council. These are discussed in detail in section 3.2 of this report. Based on the information available at this time, broader strategic matters such as potentially considering the identification of appropriate and adequate locations where horticulture may or may not be possible without consent, or the potential use of a RU4 Primary Production Zone for horticulture in sensitive locations, cannot be addressed through a DCP guideline.</p>

Issue raised	Council response and Department assessment of adequacy of response
<p>No consultation or economic analysis has occurred</p>	<p>Council Response:</p> <p>Statutory public consultation has been carried out. The planning proposal seeks to ensure measures to mitigate impacts on the environment and surrounding amenity are implemented prior to commencement of horticulture activities. Given farmers should already be implementing such measures to mitigate these impacts during the design phase of their farm, there should be no adverse economic impacts associated with the proposal</p> <p>Department Comment:</p> <p>Council has provided evidence that public exhibition occurred for the required period and all agencies were consulted in accordance with the Gateway determination. However, no evidence has been provided that a robust analysis of the existing and different types of horticulture operations across the LGA and the impacts of the proposal has been undertaken as required by the Gateway determination to support and justify the proposal.</p>
<p>These regulations will be disadvantageous to investment in the area.</p>	<p>Council Response:</p> <p>Disagree. This is consistent with adjoining Kempsey LEP and greater thought will be given to farm design to maximise agricultural productivity while minimising impacts.</p> <p>Department Comment:</p> <p>It is acknowledged that the Kempsey LEP 2013 requires development consent for horticulture in the RU1 and RU2 zones. A Department review has however identified that the Kempsey LEP 2013 is the only LEP on the north coast which requires horticulture with consent. As there is no discussion provided in the planning proposal about the types of horticulture occurring within the Kempsey LGA or the impacts that have resulted from requiring consent, it is not possible to be satisfied that the circumstances are comparable to the Nambucca Valley and that there is merit in applying the approach of a neighbouring LGA.</p>
<p>Those who do not abide by the rules should be penalised rather than penalise the entire sector</p>	<p>Council Response:</p> <p>Preventative measures are more appropriate and effective than compliance and retrospective changes.</p> <p>Department Comment:</p> <p>The Gateway determination required that further information be provided to support and justify the proposal. As this information has not been included, it is not possible to be not satisfied that the potential impacts to the various horticultural industries occurring in the LGA has been adequately considered particularly noting the concerns raised by DPIRD.</p>



Issue raised	Council response and Department assessment of adequacy of response
<p>Those who do not abide by the rules should be penalised rather than penalise the entire sector</p>	<p>Council Response:</p> <p>Preventative measures are more appropriate and effective than compliance and retrospective changes.</p> <p>Department Comment:</p> <p>The Gateway determination was conditioned to require that further information be provided to support and justify the proposal. As this information has not been included, it is not possible to be satisfied that the potential impacts to the various horticultural industries occurring in the LGA has been adequately considered and impacts mitigated or the need to apply additional rules to the entire sector are reasonable and warranted.</p>
<p>Council should work with the industry rather than be influenced by vocal minority</p>	<p>Council Response:</p> <p>In 2017 industry representations were made to Council not to require DAs for horticulture in the rural zones to give them the opportunity to implement codes of practice and educational programs with growers. Over the period since, Council has been a part of workshop groups with multiple regulators from State and Local Government. The overwhelming majority agree requiring DAs is the only method available under the current legislation to ensure appropriate measures to stop impacts are in place before the commencement of operations.</p> <p>Department Comment:</p> <p>Although Council may have previously consulted with industry and that certain agencies are supportive of requiring development consent for horticulture, it is evident from the submissions made during the exhibition period that there are also a number of industry stakeholders and agencies that do not support the proposal and that their issues and concerns have not been adequately considered or addressed by the proposal.</p>
<p>The proposal will impact both established and new farms. The proposal to add controls to prohibit structures necessary for sustainable horticulture is a direct contradiction to government initiatives.</p>	<p>Council Response:</p> <p>DAs will not be required for existing farms. The new provisions would only apply to new farms or expansions to existing farms. The proposal does not prohibit the use of structures. It will just mean if the structures do not comply with the state-wide exempt provisions, a DA will be required before erection.</p> <p>Department Comment:</p> <p>It is noted that the proposed amendment is not intended to have retrospective operation.</p>

Issue raised	Council response and Department assessment of adequacy of response
<p>There is already robust legislation in place to oversee and regulate horticultural practices.</p>	<p>Council Response:</p> <p>There is no legislation in place which requires the implementation of buffers or measures to prevent water pollution before operation.</p> <p>Department Comment:</p> <p>It is acknowledged that 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. However, it is noted that the Protection of the Environment Operations (POEO) Act 1997 is the key piece of environment protection legislation intended to protect the environment and prevent pollution and does apply already to the horticulture industry.</p>
<p>The cost and time associated with obtaining a DA would make it financially unviable for many farms to continue or establish in the Nambucca Valley</p>	<p>Council Response:</p> <p>It is not considered that the cost of a DA would make a farm unviable. The same can be said for Councils average assessment timeframe of 41 days.</p> <p>Department Comment:</p> <p>It is recognised that there are costs associated with the preparation and lodgement of a DA and that these costs will vary depending on the type of development and the need for professional advice and for any additional works that may be required to satisfy development consent conditions imposed by Council (such as potentially requiring amenities for farm workers as flagged by Council in their submissions review).</p>
<p>How do you define 'inappropriate established farms'?</p>	<p>Council Response:</p> <p>Farms that are established without any water quality management systems or any consideration for land use conflict buffers, resulting in water pollution and significant amenity impacts on nearby dwellings.</p> <p>Department Comment:</p> <p>Even if a development does not need development consent under a council LEP, it may still need to achieve compliance with other legislation and farmers are responsible to ensure that their operations are established having regard to the potential social and environmental impacts of the project. Council has also not clarified why this principle is also not being applied to other land uses that could be argued may have similar impacts.</p>

Issue raised	Council response and Department assessment of adequacy of response
<p>The amendments affect the entirety of horticulture and not specific operators of concern</p>	<p>Council Response:</p> <p>It is not intended to target any particular form of horticulture.</p> <p>Department Comment:</p> <p>The definition of horticulture encompasses many industries including, the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products. To understand how the proposal would affect these various forms of horticulture, the Gateway required further information to be included in the proposal. As adequate further information has not been included, it is not possible to be satisfied that the potential impacts of the proposal have been appropriately considered and addressed.</p>
<p>The objectives and intended outcomes of the planning proposal are not clearly identified, did not provide critical analysis of the controls and contained vague assertions not supported by evidence.</p> <p>The lack of clarity regarding what is to be solved has made it challenging to determine what actions can actually be taken to manage any issues, real or perceived.</p>	<p>Council Response:</p> <p>The intended outcome of the planning proposal is to require DAs for horticulture in the Nambucca Valley, aside from those operations which meet the specified exempt criteria.</p> <p>The justification for this is to have a proactive regulatory approach which seeks to prevent environmental and amenity impacts rather than wait for the impacts to occur.</p> <p>It is considered that this is clear in the planning proposal, along with the evidence of these impacts identified by the EPA who are the lead investigation agency.</p> <p>Department Comment:</p> <p>The planning proposal is clear in its intent to require development consent for horticulture and the reasoning for this position. A more thorough local analysis of the horticultural operations and evidence of linked impacts has not however been provided to justify the proposal or allow for a more balanced formulation of the exempt provisions and proposed DCP controls.</p>
<p>Growers in the Nambucca region have to comply with a raft of supply chain obligations that require them to test their water quality and meet minimum residue limits. The growers are audited annually.</p>	<p>Council Response:</p> <p>Growers' audits don't require them to test wastewater before entering the environment.</p> <p>Department Comment:</p> <p>The advice from the EPA is noted that without appropriate controls established at development, there is a greater risk of water pollution from protected cropping forms of horticulture compared to banana and macadamia production. A more thorough local analysis of the horticultural operations and evidence of linked impacts has not however been provided to allow for a more balanced formulation of the exempt provisions and proposed DCP controls.</p>

## 3.2 Advice from key industry representatives

The submissions made by the horticultural industry have been broadly considered by Council as part of the submissions from the community. The key industry submissions from NSW Farmers and Berries Australia are discussed in detail below.

As noted in section 3.1.2 of this report, it is considered that Council has not adequately addressed the matters raised in submissions against the proposal or undertaken sufficient and robust analysis to identify the potential impacts of the proposal and justify the amendment.

### 3.2.1 Berries Australia submission

The submission from Berries Australia is contained in **Attachment C** (p. 227- 256) indicates it has significant concerns about the practical outcomes of the proposed amendment.

The submission:

- addresses the economic contribution of berries to the LGA, highlighting that berries are the most valuable agricultural commodity in northern NSW with 75% of Australia's blueberries and a significant proportion of raspberries and blackberries grown in the region;
- explains that netting and tunnel structures are both forms of protected cropping essential to protect crops from weather events and reduce pest and disease issues, noting netting is currently more prevalent in the Nambucca Valley;
- identifies that LLS, in conjunction with Berries Australia and DPIRD - Agriculture are working collaboratively to develop a best practice approach to water quality; and
- that there are 23 berry farmers operating in the Nambucca region, and 22 of these are associated with a co-op which supply to supermarkets and must comply with supply chain obligations such as regular water quality tests and annual 3rd party audits.

The concerns raised by Berries Australia in relation to the proposal are summarised as follows:

- the purpose of the Blueberry Code of Conduct has been misrepresented to provide legitimacy for the planning proposal;
- the planning proposal does not provide the best policy mechanism for mitigating conflicts, consider the on-the-ground outcomes that will be achieved or the impact on important farmland;
- the impacts of the amendments to the DCP are not sufficiently explored or analysed in the Council's exhibited material;
- the proposal in its current form is inconsistent with State, regional and local strategies and priorities and Focus Area 9.2 of the Ministerial Direction for Rural Land;
- critical analysis of the complexities of land use conflicts and where these may arise has not been provided;
- extensive application of vegetative buffers can be costly and have a compounding effect, eroding the productive land resource; and
- the DA process, and in particular notification of a DA, will complicate the establishment of berry farms.

### 3.2.2 NSW Farmers Submission

The submission from the NSW Farmers Nambucca Valley Branch under cover from Mr Michael Kemp MP is contained in **Attachment C** (p.167-170) to this report.

In summary, NSW Farmers advises it does not support the proposal, highlighting:

- the proposal affects a sector responsible for more than \$27 million and 56% of agricultural output from the Nambucca Valley;

- the proposal is a disproportionate response to alleged transgressions from a minority of operators;
- the purpose of the RU1 and RU2 zones is to facilitate agriculture in all its forms and therefore the proposal is inconsistent with the objectives of the zones;
- the proposal is contrary to Government programs which support innovation in protective cropping;
- the exempt provisions are impractical which will result in the need for a DA in all circumstances which is an impediment to establishment of horticultural activities; and
- Council should reconsider the proposal with greater advocacy amongst the farming groups, Government agencies and enterprises to ensure a proactive and productive outcome.

### 3.3 Advice from key agencies

In accordance with the Gateway determination, Council was required to consult with:

- NSW Rural Fire Service (RFS) who raised no concerns with the proposal;
- NSW Biodiversity, Conservation and Science (BCS) and NSW Environmental Protection Agency (EPA) who indicated their support the proposal;
- DPIRD – Agriculture who does not support the proposal in its current form; and
- LLS who did not make a submission.

All of the agency submissions are contained in **Attachment D** to this report.

The EPA also provided a submission to Council during its preparation of the proposal.

The key agency submissions from EPA and DPIRD – Agriculture are discussed in detail below.

#### 3.3.1 EPA submission

The EPA has identified that intensive plant horticulture is in its early stage of development in the LGA and that requiring a DA is a positive step forward to help address environmental and land use conflicts proactively.

The submission indicates that land use conflicts, such as spray drift, are an issue because farms have not implemented buffers. The submission also identifies that there are known water quality impacts within the nearby Coffs Harbour LGA which has well established intensive horticulture farms. The EPA has advised these issues could be more easily addressed through the DA process and would be less intrusive to farmers compared to regulatory compliance activities.

#### 3.3.2 DPIRD - Agriculture submission

DPIRD - Agriculture raised a number of concerns and has indicated it does not support the proposal in its current form. The submission:

- considers the conditions of the Gateway have not been adequately met, in particular 1(c), as no reasonable analysis of the impact of the proposal on horticulture operations across the Shire has been undertaken;
- is unable to support the proposal without a more comprehensive and balanced assessment of the implications of the proposal and recommends that this analysis is more appropriately undertaken firstly as part of a broader rural land use strategy;
- provides information on the economic value of horticulture to the region, noting the LGA's biophysical characteristics are ideal for horticultural production and will become increasingly important under a changing climate;
- identifies the proposal sets an undesirable precedent for agricultural industries in rural zones where the primary objective is to encourage sustainable primary production;

- notes the environmental and amenity concerns raised and provides examples of current non planning initiatives to manage these issues;
- explains Wollondilly Shire Council recently exhibited a planning proposal to provide exempt and complying pathways for horticulture as requiring development consent was seen as a barrier;
- identifies horticulture definition covers a range of fruits and vegetable crops;
- notes resourcing pressure placed on councils and government agencies;
- indicates that the regional economy is heavily dependent on horticulture, which could redirect future investment;
- identifies many land use conflict concerns are emotional and social based and can have more weighting than reasonably expected;
- nominates that other state level policies such as the Right to Farm Policy and North Coast Regional Plan 2041 advocate for agricultural development in rural areas and require due consideration; and
- requests to be involved in this matter on-going and can provide further guidance on development of a Rural Land Use Strategy or Development Controls.

A summary of Council's response to the DPRID - Agriculture submission is outlined in Table 4. It is considered that Council has not adequately addressed the matters raised in the submission.

**Table 4 – Summary of DPIRD - Agriculture submission**

Issue raised	Council response and Department assessment of adequacy of response
Gateway Condition 1(c) Analysis and assessment of impacts	<p>Council response:</p> <p>Condition 1(c) has been addressed on page 16 of the planning proposal. Providing further analysis is considered to be unreasonable and it is Council's position that any new farm or expansion of existing operations will require a DA based on best practice farming methods promoted by DPIRD and therefore there should not be any significant impact on horticultural operations across the LGA.</p> <p>Department Comment:</p> <p>It is noted that Council has listed some horticulture operations occurring in the LGA on page 16 of the planning proposal however, no analysis in relation to these activities has been undertaken. It is considered that Council has not satisfactorily addressed Gateway condition 1(c) and assessed the potential impact of the proposal.</p> <p>The statement that that there will be no significant impact because the DA assessment will be based on best practice, is not an assessment of the impacts, and it is noted that best practices will differ for each type of horticultural activity and the individual site. Many sites may not be able to achieve best practice due to topography, lot shape or other site characteristics.</p>

Issue raised	Council response and Department assessment of adequacy of response
Rural Land Use Strategy	<p>Council response:</p> <p>The proposal seeks to alter the existing reactive regulatory approach to a proactive approach. Undertaking a strategy to identify this is only a deferral on addressing the issue.</p> <p>Department Comment:</p> <p>While a Rural Land Use Strategy would be beneficial in providing greater strategic direction and analysis of the rural lands and uses within the LGA, it is agreed that a planning proposal to require development consent for horticulture can be achieved separate to a strategy if it is supported by appropriate evidence and analysis (which in this case has not been provided).</p>
Precedent in the rural zones	<p>Council response:</p> <p>A precedent has already been set in the neighbouring Kempsey LGA where development consent is required for horticultural in the rural zones.</p> <p>Department Comment:</p> <p>As discussed in section 3.1.2 of this report, Kempsey has taken a different approach to other councils on the north coast in relation to horticulture and no discussion or analysis is provided within the proposal on the types or extent of horticulture in the Kempsey LGA, how it is similar or different to Nambucca Valley, or the impact it has had on horticultural activities.</p> <p>The Standard Instrument LEP does not mandate that intensive plant agriculture is permitted with or without consent in the RU1 zone (horticulture is a form of intensive plant agriculture). However, it is considered that Council has not undertaken a sufficient and robust analysis to inform the likely impacts of the proposal to support and justify the LEP amendment or has provided a sufficient evidence base demonstrating the need for the change.</p>
Barrier to horticulture	<p>Council response:</p> <p>Wollondilly requires development consent in their LEP, and they are only introducing exempt and complying provision similar to this planning proposal.</p> <p>Department Comment:</p> <p>The Wollondilly planning proposal appears to have more nuanced exempt and complying provisions that will support small scale horticulture while requiring consent for larger enterprises. At the time of writing this report, the Wollondilly proposal has also not been finalised.</p>

## 4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to agency and public consultation.



The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional Plan and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal.

Tables 6 and 7 nominate whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

**Table 5 Summary of strategic assessment**

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

**Table 6 Summary of site-specific assessment**

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

## 4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

### 4.1.1 Consistency with section 9.1 Ministerial Directions

The Gateway determination assessment report (**Attachment E**) identified that the proposal was inconsistent with Directions 4.3 Planning for Bushfire Protection and 9.2 Rural Lands and that Council may need to obtain the agreement of the Secretary to comply with the requirements of these directions prior to the LEP being made.

#### Direction 4.3 Planning for Bushfire Protection

Council has consulted with the RFS in relation to the planning proposal. The RFS has raised no objection to the planning proposal proceeding (**Attachment D**).

It is considered that the inconsistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is justified as Council has received written advice from the RFS confirming that it raises no objection to the proposal proceeding.



## Direction 9.2 Rural Lands

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. Further detail about the potential impacts was required to be included in the proposal and consultation be undertaken with DPIRD - Agriculture before consistency with this Direction could be determined.

Council updated the planning proposal prior to consultation to list some horticulture uses in the LGA but have not provided any data or detailed analysis which outlines the potential impact of the proposal, particularly on small scale horticultural operations. Further, DPIRD - Agriculture has indicated in their submission to Council that the information and analysis undertaken is not adequate and they do not currently support the proposal.

A proposal may only be inconsistent with Direction 9.2 if the Planning Secretary or delegate can be satisfied that the inconsistencies are justified by an approved strategy which considers the objectives of the Direction or is of minor significance.

In this instance, the proposal is not justified by an approved strategy and any inconsistency must be of minor significance. The additional information provided in the planning proposal prior to exhibition does not adequately demonstrate that the proposal's inconsistency is of minor significance. As such, the inconsistency has not been resolved.

### 4.1.2 Industry impacts

A key consideration for the proposal is the impact the proposed changes may have on the horticultural industry in the Nambucca Valley and the need to balance this with the environmental impacts.

Condition 1(c) was imposed on the Gateway determination to require 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 impact of these changes, particularly on small scale horticultural operations were considered.

No data or analysis has been included in the proposal with regard to the current extent or economic contribution of horticulture within the LGA. The proposal is justified by Council on the basis that by requiring development consent and ensuring best practice farm development, land use conflicts and environmental impacts will be reduced and no economic or industry impact will occur as horticulturalists should already be adopting best farm practice. This is not considered to be a reasonable or practical assessment of the potential implications.

Condition 1(d) was imposed on the Gateway determination to require further information be included in the proposal to explain how the existing exempt development standards for zone R5 would effectively address the issues with associated farm structures Council is seeking to resolve.

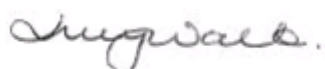
The purpose of the proposed exempt provisions has not been clearly explained in the updated proposal and it is not detailed how this provision would allow for small scale and low impact horticulture without the need for consent.

The submissions from DPIRD - Agriculture, Berries Australia and NSW Farmers indicates that horticulture plays a significant economic role within the rural areas of the LGA. A balanced assessment of the social, economic and environmental outcomes of the proposal cannot be completed without a greater evidence base that provides understanding and analysis of the current horticulture operations across the LGA and the impacts of this proposal.

## 5 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine not to make the draft LEP under clause 3.36(2)(b) of the Act because, the planning proposal:

- does not contain sufficient information to determine the potential impact of the amendment to support and justify any change;
- does not demonstrate that expansion of the exempt development controls to zones RU1 and RU2 will effectively address the issues Council seeks to resolve;
- does not adequately respond to the matters raised against the proposal; and
- is inconsistent with section 9.1 Ministerial Direction 9.2 Rural Lands.



07-01-2025

Lucy Walker  
Manager, Hunter and Northern Region  
Local Planning and Council Support



9/1/25

Craig Diss  
Director, Hunter and Northern Region  
Local Planning and Council Support

Assessment officer

Sam Tarrant  
Planning Officer, Hunter and Northern Region  
6643 6410

## Attachments

Attachment	Document
A	Planning proposal
B	Gateway determination
C	Public submissions
D	Agency submissions

Attachment	Document
E	Gateway determination report
F	Council post exhibition report
Council	Letter to Council advising of decision