



*Planning Proposal 24/002*

# » *General Amendments 2024*

Ballina Local Environmental Plan 2012

July 2024 (V2 Gateway) 24/52183

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shire council



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# 1. Introduction

## Summary

This planning proposal seeks to amend the Ballina Local Environmental Plan (LEP) 2012 to address a range of minor or routine planning issues and improve the interpretation and accuracy of the plan. The amendment relates to a number of separate issues, as summarised in Table 1 below.

Further discussion on each item is provided in Section 3 of this planning proposal.

**Table 1: Summary of Proposed LEP Amendments**

Item	Location	Affects	Details
1	Heritage Wall, Cumbalum	Map: HER_005B HER_005D	Amend reference to Heritage Item I97 within Part 1 of Schedule 5 to the LEP to update the relevant property description.  Update Heritage Map sheets to show the item on the correct property.
2	Lennox Head and Alstonville Village Centres	CI 7.13 Map: New Active Frontages Maps	Amend clause 7.13 to replicate active frontage provisions that apply in Ballina CBD to the Lennox Head and Alstonville village centres to promote ground floor uses that attract pedestrian traffic.
3	Shire-wide	CI 4.3A	Amend clause 4.3A - Exceptions to height of buildings to address sites where existing ground levels are higher than the level shown on the Building Height Allowance Map, providing that the maximum height of a building to which this clause applies is measured from the higher of either the existing ground level or the minimum level (AHD) permitted for that land on the map.
4	Shire-wide	CI 7.9	Amend clause 7.9 - Rural and nature-based tourism development to include a reference to agritourism.
5	Shire-wide	E1 Zone	Remove <i>dwelling houses</i> and <i>secondary dwellings</i> from the list of land uses permitted with development consent and include them in the list of prohibited uses.
6	Tintenbar	Map: DWE_005B	Remove land at Tintenbar from the Dwelling Opportunities Reinstatement Map.

Item	Location	Affects	Details
7	Avalon Estate, 17 Millbrook Terrace, Wollongbar (Lot 129 DP 1276352)	Map: LZN_001B LSZ_001B HOB_001 LAP-001	<p>Rezone the parts of the lot that are currently “deferred matter” to C3 Environmental Management. A small portion of R3 Medium Density zoned land on the western boundary of the lot is also proposed to be zoned C3.</p> <p>This would provide for the subdivision of the land to include one lot containing all of the area zoned C3 Environmental Management, which would then have a dwelling entitlement.</p> <p>Subsequent map amendments proposed to:</p> <ul style="list-style-type: none"> <li>show land as included on Land Application Map;</li> <li>apply a 40ha minimum lot size to the rezoned part of the site;</li> <li>apply an 8.5m maximum building height to the rezoned part of the site.</li> </ul>
8.	Shire-wide	CI 4.1B CI 7.17 Sch 1 – Items 1A, 8 & 12	<p>Align LEP provisions to SEPP (Housing) 2021 in relation to dual occupancy development.</p> <p>SEPP (Housing) 2021 was recently amended to provide that dual occupancy development is now permitted with development consent in Zone R2 Low Density Residential across the State.</p> <p>Amendment relate to strata subdivision of dual occupancy and removal of redundant provisions from the LEP.</p>
9	20 & 22 River Drive, East Wardell	Map: LZN_003A LSZ_003A	Rezone the properties from RU2 Rural Landscape to R2 Low Density Residential and apply a minimum lot size of 1,200m <sup>2</sup> , consistent with adjoining residential area.
10	Lot 10 DP 12997404 Ascot Place, Ballina	Maps: LZN_006C LSZ_006C	Amend the E4 General Industrial zone boundary and the minimum lot size map to align with property boundary.
11	Shire-wide	CI 4.2B	Amend wording in clause to clarify intent and application of provision relates changes in lot boundaries in rural and conservation zones.
12	Shire-wide	Various zones	Prohibit <i>advertising structures</i> in all zones. Business and building identification signs would continue to be permitted.

## Council Resolutions

The Planning Proposal was reported to Council’s Ordinary Meeting of 25 July 2024. At the Meeting, Council resolved:

1. That Council endorses, for Gateway determination, the amendments to Ballina Local Environmental Plan 2012 outlined in the planning proposal contained in Attachment 1 (BSCPP 24/002).

2. *That Council submits the planning proposal contained in Attachment 1 to the NSW Department of Planning, Housing and Infrastructure for review and Gateway determination.*
3. *That upon an affirmative Gateway determination being received from the Department, the procedural steps associated with progression of the planning proposal, including public exhibition, be undertaken.*
4. *That the Department of Planning, Housing and Infrastructure be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.*
5. *That Council receive a further report on the proposal following the completion of the public exhibition of the planning proposal.*
6. *That as part of the current review of residential development controls in the Ballina Shire Development Control Plan 2012, lot sizes for dual occupancy development be examined having regard for State Government housing policy.*

## **Gateway Determination**



## 2. Planning Proposal

Section 3.33(2) of the *Environmental Planning and Assessment Act 1979* (the Act) outlines requirements that must be provided for when preparing PPs. The following sections provide details of the Planning Proposal (PP) as it relates to Section 3.33(2) of the Act.

### Part 1 – Objectives and intended outcomes

The objective of this planning proposal is to amend Ballina LEP 2012 to address a number of minor or routine ‘housekeeping’ matters, as summarised in Table 1 above, to clarify and adjust a number of aspects of BLEP 2012, as further detailed below.

The intended outcomes are to ensure the BLEP 2012 functions efficiently and that its provisions are up to date and reflect the community’s expectations.

### Part 2 – Explanation of provisions

The amendments contained in this planning proposal are detailed below.

The exact wording of the proposed amendments will be determined in conjunction with the NSW Parliamentary Counsel’s Office.

#### Item 1: Heritage Wall Cumbalum

##### Issue and Justification

Heritage item I97 relates to a dry-stone wall located on land at Cumbalum. The listing within Part 1 of Schedule 5 of BLEP 2012 describes the location of the wall as “Albert Sheather Lane” and Lot 2 DP 1171927.

The location of the item is shown in the current LEP Heritage Map in Figure 1 below:



**Figure 1: Current LEP Heritage Map**

The property has subsequently been subdivided as part of the Banyan Hill development, such that the dry-stone wall is now located on a residue lot, known as Lot 363 DP 1273203.

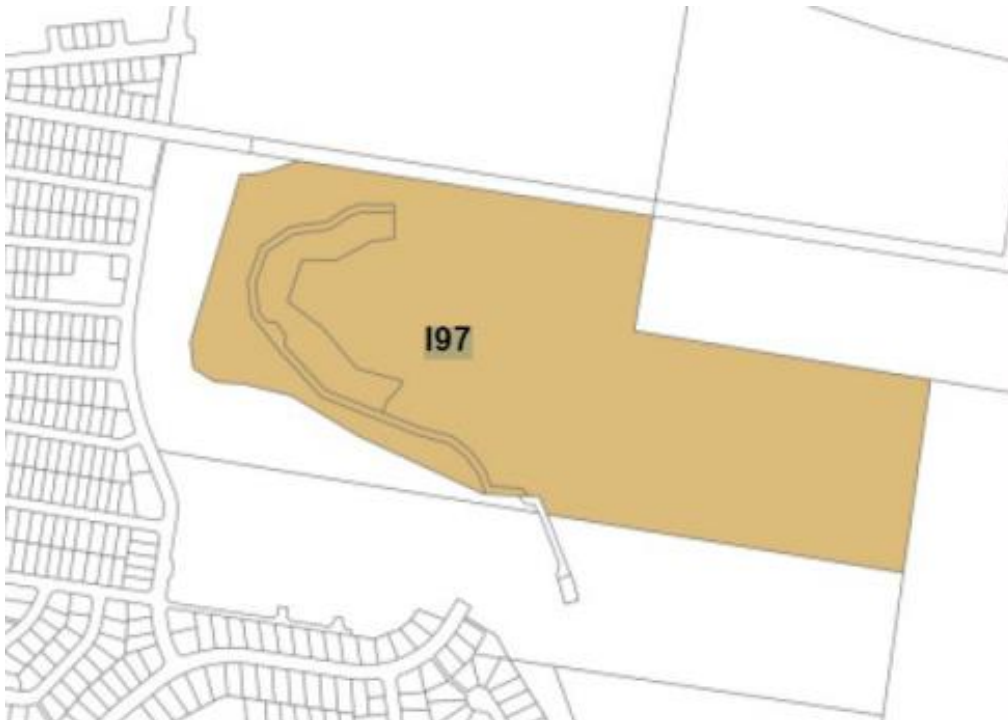
The current listing and the current mapping, therefore, do not identify the correct property.

*Proposed Amendment*

It is proposed that the wording for Item I97 be amended within Part 1 of Schedule 5 to read:

*Cumbalum Dry stone wall Albert Sheather Lane Part Lot 363 DP 1273203 Local I97*

It is also necessary to amend LEP Maps HER\_005B and HER\_005D to show the heritage listing in relation to the land shown below in Figure 2:



**Figure 2: Proposed Heritage Map Amendment**

**Item 2: Lennox Head and Alstonville Village Centre – Active Frontages**

*Issue and Justification*

Clause 7.13 of the LEP relates to land located within the Ballina Central Business District that is identified as “Active Frontage” on the *Active Frontages Map*. The objective of the clause is to promote uses of the land that attract pedestrian traffic at street level by requiring certain nominated land uses at ground level within those sites.

The Lennox Head and Alstonville Village Centres are zoned E1 Local Centre and the objective of promoting pedestrian traffic within these centres is also relevant in ensuring the continued viability and vibrancy of these centres.

There are a number of permissible uses within the E1 zone which could hinder this objective, including uses such as boarding houses, amusement centres, group homes, service stations and others.



Proposed Amendment

It is proposed to amend the wording of clause 7.13 part (1) to read (changes in red):

- (a) *The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street, park and waterfront frontages in **E1 Local Centre and E2 Commercial Centre**.*

It is also proposed to create two new Active Frontages Map sheets – AFR\_002A and AFR\_005D identifying all of the land within the relevant village centres that is zoned E1 Local Centre as “Active Frontage”.



**Figure 3: Proposed Active Frontage Map – Alstonville**



**Figure 4: Proposed Active Frontage Map – Lennox Head**

### Item 3: Clause 4.3A Exceptions to height of buildings

#### Issue and Justification

The clause aligns building height and flood planning provisions by providing that, where land is identified on the *Building Height Allowance Map*, the maximum height of buildings is measured from the AHD level shown on that map rather than from existing ground level.

The *Building Height Allowance Map* relates to flood prone land and recognises that floor levels for new buildings need to be raised to achieve the relevant flood planning levels, which are the AHD levels identified in the Map.

In most cases, the relevant flood planning level is higher than the existing ground level but there are a small number of sites that have been shown to have an existing ground level that is higher than the AHD level shown in the *Building Height Allowance Map*.

In those cases, the current wording of clause 4.3A (3) means that the maximum building height must be measured from a level that is lower than the existing ground level.

#### Proposed Amendment

It is proposed to amend the wording of clause 4.3A part (3) to read (changes in red):

- (3) *The maximum height of a building on land to which this clause applies is to be measured from the minimum level AHD permitted for that land on the Building Height Allowance Map or from existing ground level where the existing level is higher than the minimum shown on the Map.*

### Item 4: Clause 7.9 Rural and nature-based tourism development – Agritourism

#### Issue and Justification

Recent State Government amendments introduced a new definition of *agritourism*, with associated provisions around *farm gate premises* and *farm experience premises*. Agritourism is a type of *agriculture* and not a type of *tourist and visitor accommodation*.

Clause 7.9 applies to “tourism development” on land in zones RU1 Primary Production, RU2 Rural Landscape and C3 Environmental Management. Tourism development is defined in the clause to include a wide range of land uses that all involve visitors / customers attending the site. The definition does not include *agritourism*.

The clause specifies matters for consideration for such uses that relate to the potential for amenity impacts, access issues or impacts on agricultural production.

*Farm gate premises* and *farm experience premises* are similar to the other uses currently listed in that they rely on visitors / customers attending the site. The considerations specified in clause 7.9 are relevant to these land uses.

#### Proposed Amendment

It is proposed to amend clause 7.9 by adding the following to the definition of **tourism development** in part (6) of the clause:

- (l) *agritourism*

## Item 5: Dwellings in E1 Zone

### Issue and Justification

Dwelling houses and secondary dwellings are currently listed as permitted with consent in the E1 Local Centre Zone. There are a number of areas within Ballina Shire zoned E1 Local Centre, including the Village Centres of Lennox Head, Wollongbar, Alstonville and Wardell.

These areas are intended to provide for the retail and business needs of their local areas. Development within these centres for dwelling houses is inconsistent with the objectives of the E1 zone, in that it will not encourage investment in local commercial development that generates employment opportunities and economic growth.

### Proposed Amendment

It is proposed to amend the development table to the E1 Local Centre Zone to remove *Dwelling houses* and *secondary dwellings* as uses permitted with consent and add them to the list of prohibited land uses.

## Item 6: Hill Street Tintenbar – Dwelling Entitlement

### Issue and Justification

Council's *Dwelling Opportunity Reinstatement Map* identifies land where Council records indicate historic dwelling entitlements exist. In a number of cases, the properties mapped constitute historic groups of lot holdings and clarify that a single dwelling entitlement exists over a group of lots.

As shown in the map extract below, land at Hill Street Tintenbar is shown on that map, coloured in purple with the letter C:



**Figure 5: Extract from Current Dwelling Opportunity Reinstatement Map**

The identified group of lots was previously in a single ownership. In recent years, several of these individual lots have been sold and so the group of lots has been split up in ownership terms. This means that the dwelling opportunity is now difficult to exercise and there is an

equity issue in terms of which landholder receives the one entitlement applying to the group of lots.

**Proposed Amendment**

It is proposed to amend the *Dwelling Opportunity Reinstatement Map* to remove the Tintenbar properties, as shown in Figure 6.

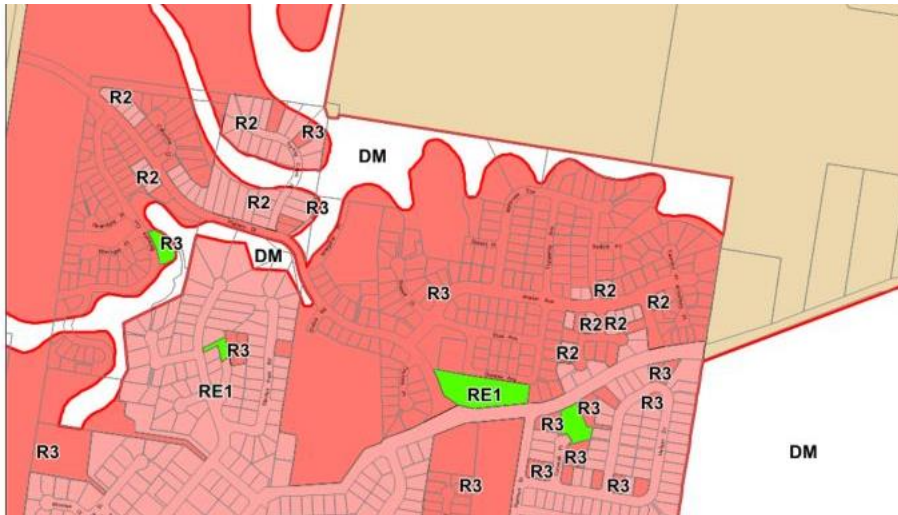


**Figure 6: Proposed Dwelling Opportunity Reinstatement Map**

**Item 7: Avalon Estate, Wollongbar**

**Issue and Justification**

The current zoning of the final stage of the Avalon Estate (Lot 129 DP 1276352) is shown in Figure 7.



**Figure 7: Current Zoning Avalon Estate**

A portion of Lot 129 is 'deferred area' under BLEP 2012, retaining a zoning of 7(d) Environmental Protection (Scenic/Escarpment) under BLEP 1987.

A development application has been lodged for a subdivision of the property. Because of the wording of clause 11B of BLEP 1987 (Exceptions to minimum lot size for split zones), one of the resulting lots must contain all of the land zoned 7(d) and no other land.

In this case, the 7(d) lot would have an area of approximately 2.8ha, which is permitted under the provisions of BLEP 1987. However, the lot would not have a dwelling entitlement, as there are no provisions of clause 12 of BLEP 1987, which provides an entitlement for a lot less than the minimum area required (40ha) when created in accordance with clause 11B.

In addition, the wording of Clause 11B is such that the small area of land zoned R3 Medium Density under BLEP 2012, located on the western boundary of the lot, would need to be incorporated into another lot within that zone, resulting in a split lot, as access to that portion of land is not available.

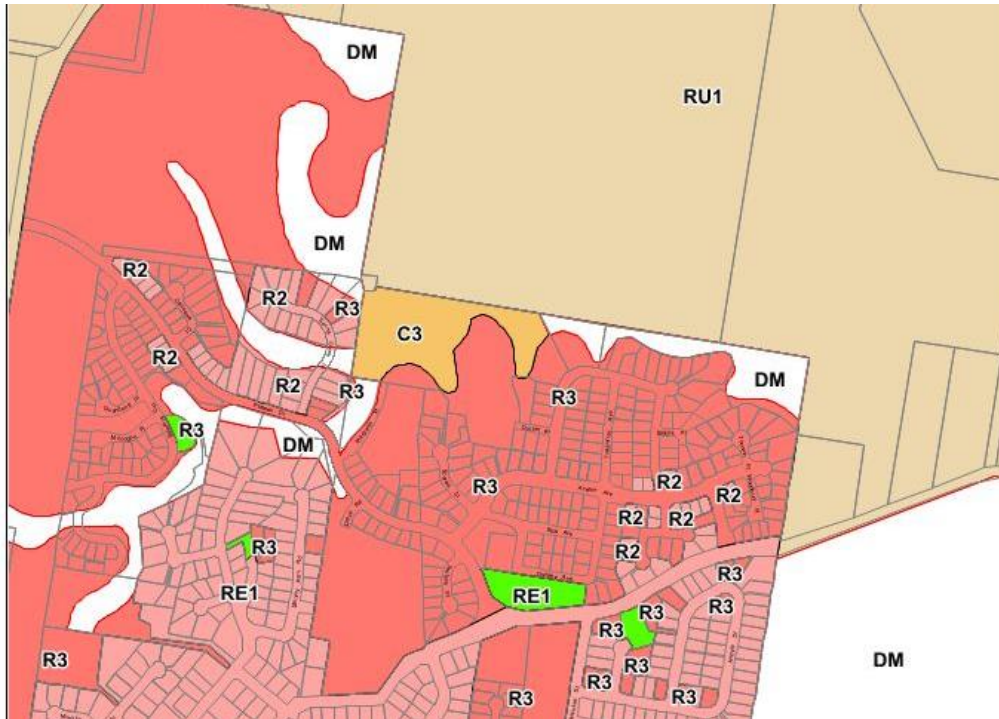
#### Proposed Amendment

Rather than amend the clauses of BLEP 1987, it is proposed to rezone the deferred area within Lot 129 to C3 Environmental Management under BLEP 2012. The small, isolated section of land currently zoned R3 Medium Density Residential on the western boundary is also proposed to be included in the C3 zone. These parts of the site satisfy the criteria in the ministerial direction for zoning land C.

Under the provisions of clause 4.2C of LEP 2012, all of this land would still need to be contained within a single lot. However, that lot would have a dwelling entitlement by way of clause 4.2A as it would be "a lot created under this Plan" (cl 4.2A(3)(b)). This would then allow the owner of that lot to reside on the land to manage the area zoned C3 Environmental Management.

The landowner has verbally advised they support this proposed zone change.





**Figure 8: Proposed Zoning Avalon Estate**

## **Item 8: Dual Occupancy Development**

### Issue and Justification

State Environmental Planning Policy (Housing) 2021 has recently been amended by the State Government, with the effect that development for the purposes of dual occupancies and semi-detached dwellings is now permitted with development consent in the R2 Low Density Residential zone across the whole of the State with some exclusions notably land that is bush fire prone, flood prone or in a coastal vulnerability area.

Historically, dual occupancy development has been prohibited in the R2 zone in Ballina Shire, apart from a few exceptions as discussed below.

The provisions of a State Environmental Planning Policy take precedent over the LEP and there are therefore a number of current provisions of BLEP 2012 that are now no longer relevant or may inhibit the desired outcomes to increase housing supply.

### *Clause 4.1B Minimum subdivision lot size for certain strata plan schemes in certain zones*

The effect of this clause is to apply the minimum lot size that is applicable to a land subdivision to a strata subdivision in the nominated zones, which are primarily rural and environmental protection zones, but also include the R2 Low Density Residential Zone.

Now that dual occupancy development is permitted in the R2 zone, the current clause would act to prevent strata subdivision of any approved dual occupancies, unless the individual strata lots have an area of around 600m<sup>2</sup> (the minimum subdivision lot size in most R2 areas).

This will act as a disincentive to such development.

Merit applications around the suitability of a site for dual occupancy development are undertaken with the development application to construct the building(s). The ownership of



the individual dwellings (as achieved through a strata subdivision) has no practical implications for the property or the locality.

Of note is that although new dual occupancies are not permitted in some areas because of exclusions under the State policy (e.g. Ballina Island because of flooding), the change to clause 4.1B below would allow strata subdivision of historically constructed dwellings (where it is not currently permitted in R2 zones). This is likely to result in a substantial financial gain for owners of such properties if strata subdivision is undertaken.

Proposed Amendment

It is proposed to delete reference to zone R2 Low Density Residential from part 2 of clause 4.1B.

The effect of this amendment would be to enable consideration of a strata subdivision of a lawfully approved dual occupancy development without regard to the area of the individual strata lots. This aligns with the recently introduced State policy.

*Clause 7.17 Use of certain land at Wollongbar*

This clause provides that, for land within the R2 Low Density Residential zone at Wollongbar, dual occupancy development is permitted with consent on lots that have an area of 900m<sup>2</sup> or more. The applicable area is identified as “Area O” on the Additional Permitted Uses Map.

Part 3 of the clause also specifies that consent cannot be granted to a dual occupancy on land in bush fire attack level-4 or the flame zone.

Now that dual occupancy development is permitted in all R2 Low Density zones, this clause is superfluous.

The requirement for a lot size of 900m<sup>2</sup> remains in Chapter 4 of the Ballina DCP 2014 and is not overwritten by the Housing SEPP. It can, therefore, continue to be enforced.

The changes to the Housing SEPP specifically exclude development on bush fire prone land and this therefore continues the restriction within the current part 3.

Proposed Amendment

Given that the clause is now superfluous, it is proposed to delete clause 7.17. It is also proposed to amend the Addition Permitted Uses Map to remove the area identified as “Area O”.

*Schedule 1 Item 1A: Use of certain land at 1 Libby Lane and 200 North Creek Road, Lennox Head*

This clause provides that dual occupancy development is permitted with consent on the land, identified as “Area D” on the Additional Permitted Uses Map. It further specifies that Clause 4.1B does not apply to a strata subdivision at the site.

Proposed Amendment

As above, this provision is now superfluous. It is proposed to delete Item 1A and amend the Additional Permitted Uses Map to remove “Area D”.

*Schedule 1 Item 8: Use of certain land at Alstonville*

This clause provides that, for land within the R2 Low Density Residential zone at Alstonville, dual occupancy development is permitted with consent on lots that have an area of 900m<sup>2</sup> or more. The applicable area is identified as “Area L” on the Additional Permitted Uses Map.

Proposed Amendment

As above, this provision is now superfluous. It is proposed to delete Item 8 and amend the Additional Permitted Uses Map to remove “Area L”.

*Schedule 1 Item 12: Use of certain land at Wardell*

This clause provides that, for land within the R2 Low Density Residential zone at Wardell, dual occupancy development is permitted with consent. The applicable area is identified as “Area M” on the Additional Permitted Uses Map.

Proposed Amendment

As above, this provision is now superfluous. It is proposed to delete Item 12 and amend the Additional Permitted Uses Map to remove “Area M”.

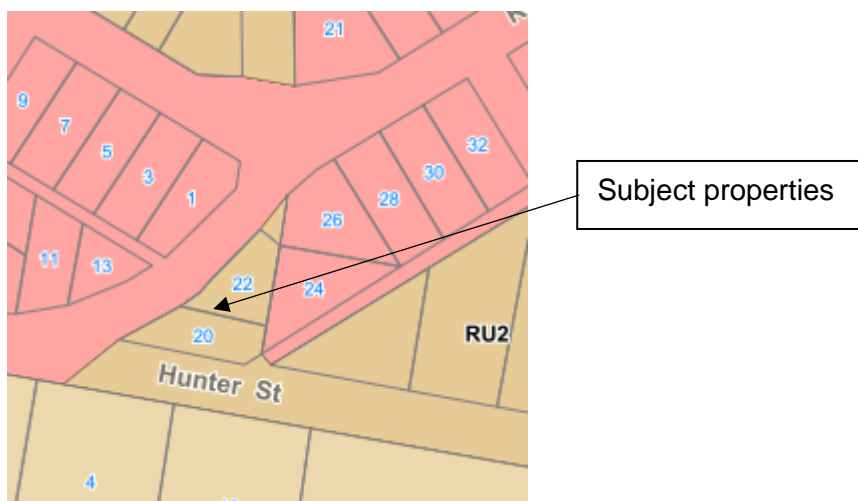
**Item 9: River Street, East Wardell**

Issue and Justification

Properties at 20 and 22 River Street East Wardell are currently zoned RU2 Rural Landscape, as shown in Figure 9.

20 River Drive (Lot 13 DP 789203) has an area of 917.6m<sup>2</sup>. 22 River Drive (Lot 14 DP 789203) has an area of 687.4m<sup>2</sup>.

The lots are currently vacant, and Council has previously determined that each enjoys a dwelling entitlement under the provisions of the LEP.



**Figure 9: Current Zoning River Street East Wardell**

Given the rural zoning of the lots, future applications for dwellings on the properties would be assessed in terms of compliance with DCP 2012 Chapter 7 Rural Living and Activity, rather than Chapter 4 Residential and Tourist Development. Compliance with certain provisions of Chapter 7, notably building lines, would not be possible on these lots.

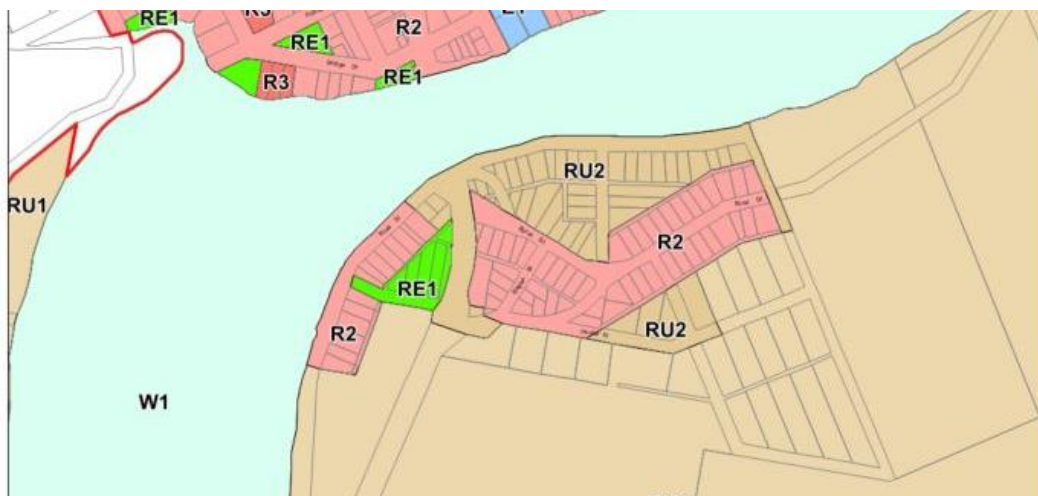
The lots are bounded to the east and west by lots of a similar size, which are zoned R2 Low Density Residential. There is reticulated water and sewerage services available to the lots as well as electricity and telecommunications.

Council records do not clearly indicate why these lots remained zoned RU2 on gazettal of BLEP 2012.

It is considered that the lots are no different to those in the adjoining residentially zoned area and that they are suitable for development for residential purposes. The land is subject to flooding, but the provisions of Council's DCP relating to flood affected urban lots would adequately address that risk.

#### Proposed Amendment

It is proposed that the properties be zoned R2 Low Density residential, as shown in Figure 10.



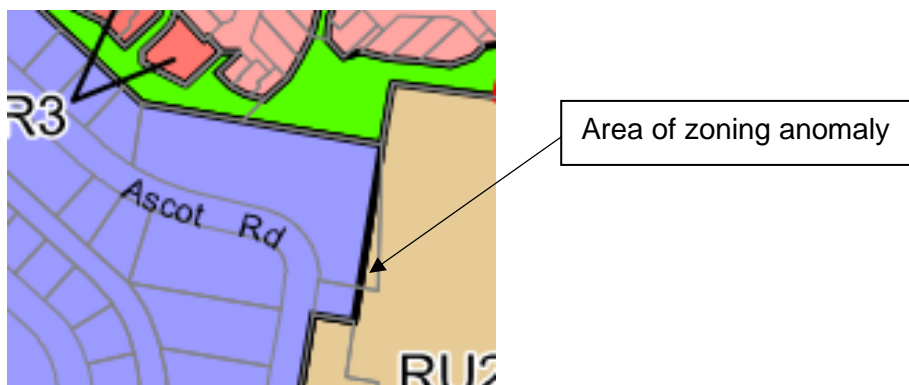
**Figure 10: Proposed Zoning River Street East Wardell**

#### **Item 10: Ascot Road, Ballina**

##### Issue and Justification

The subject land, Lot 10 DP 1297404, is situated within a largely developed urban area that is characterised by industrial uses (Southern Cross Industrial Estate) to the south and west, residential uses to the north and cleared grassland to the east.

As shown in Figure 11, the bulk of the site is zoned E4 General Industry, apart from a small portion in the south-east, which is zoned RU2 Rural Landscape.

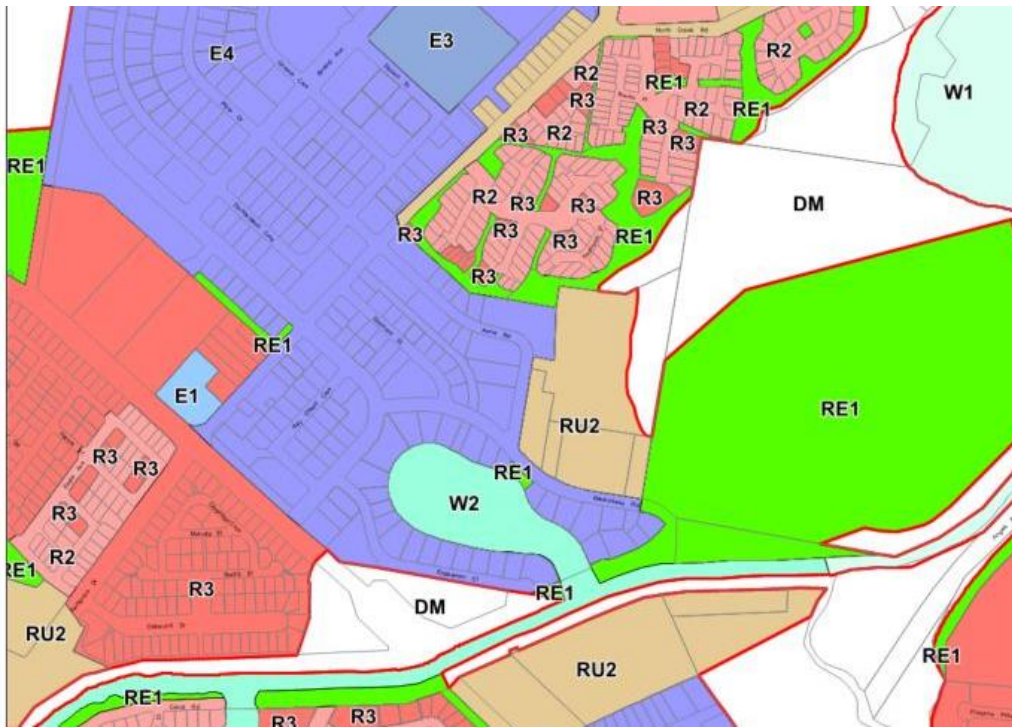


**Figure 11: Ascot Road – Existing Zoning**

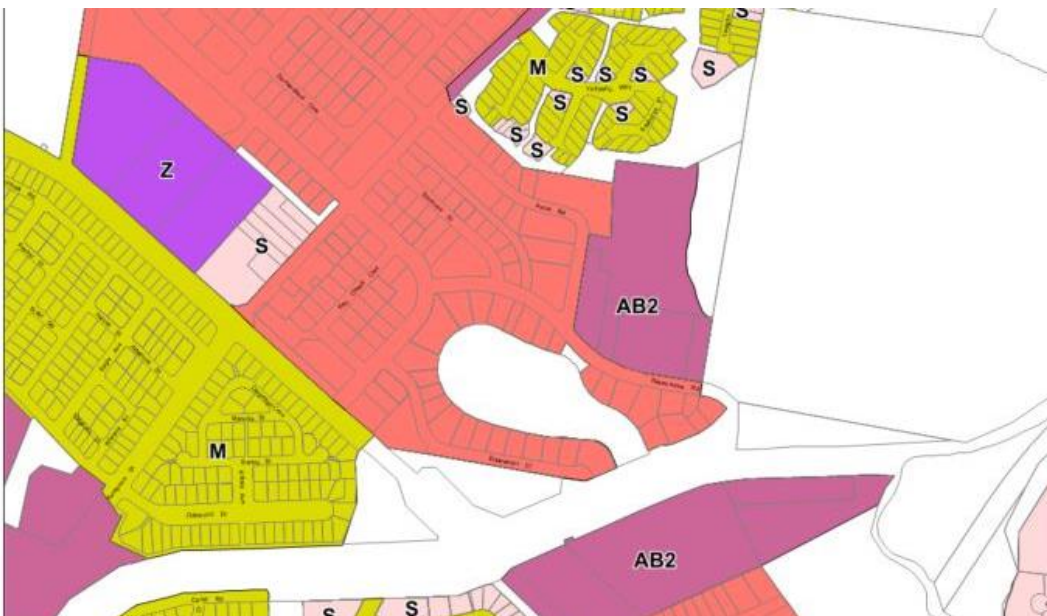
The zone boundary appears to be an anomaly, in that it does not follow the eastern boundary of the property. The same mapping anomaly is within the Lot Size Map.

**Proposed Amendment**

It is recommended that relevant BLEP 2012 Map Sheets for zoning and lot size be amended to correct the mapping anomaly by aligning with the property boundary.



**Figure 12: Ascot Road – Proposed Zoning**



**Figure 13: Ascot Road – Proposed Lot Size**



## Item 11: Clause 4.2B Boundary Adjustment

### Issue and Justification

Clause 4.2B provides exemptions to minimum subdivision lot size for lot boundary adjustments relating to land in a rural zone.

Following receipt of legal advice it is evident that there is some ambiguity in the operation of the clause associated with use of boundary adjustment and subdivision of land terminology.

Improved wording can be applied to achieve the intended outcomes of the clause which are:

- to maintain Council's historic approach to what constitutes a 'boundary adjustment',
- to be specific about changes to boundaries rather than any form of subdivision,
- to enable a wide range of scenarios to be considered,
- to not enable additional dwellings or lots, and
- to not enable erosion of agricultural or environmental land values.

It is also noted that the clause only relates to rural zones at present, and does not apply to boundary adjustments that may be beneficial in the C2 Environmental Conservation or C3 Environmental Management zones.

The current wording of the clause is:

### **4.2B Exceptions to minimum subdivision lot size for lot boundary adjustments**

- (1) *The objective of this clause is to permit lot boundary adjustments in rural zones that will provide improved agricultural or environmental outcomes without creating additional opportunities for the erection of dwellings.*
- (2) *Development consent may be granted for the subdivision of land in a rural zone to create lots of a size that are less than the minimum size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that—*
  - (a) *the subdivision will not result in the creation of an additional lot or the opportunity for additional dwelling entitlements, or both, on any of the lots, and*
  - (b) *the subdivision will not adversely impact on the long-term agricultural production potential or environmental characteristics of the lots and the surrounding locality.*

### Proposed Amendment

To remedy the existing deficiencies in the clause, it is proposed to amend clause 4.2B to read (changes in red):

### **4.2B Exceptions to minimum subdivision lot size for lot boundary *changes***

- (1) *The objective of this clause is to permit **the boundary between two or more lots to be altered in certain circumstances to enable improved** agricultural or environmental outcomes without creating additional opportunities for the erection of dwellings.*
- (2) *This clause applies to land in the following zones;*
  - (a) *Zone RU1 Primary Production,*
  - (b) *Zone RU2 Rural Landscape,*
  - (c) *Zone C2 Environmental Conservation,*
  - (d) *Zone C3 Environmental Management.*

- (3) *Development consent may be granted for the subdivision of land **to change the boundaries of adjoining lots** to create lots of a size that are less than the minimum size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that—*
- (a) *the subdivision will not result in the creation of an additional lot or the opportunity for additional dwelling entitlements, or both, on any of the lots, and*
  - (b) *the subdivision will not adversely impact on the long-term agricultural production potential or environmental characteristics of the lots and the surrounding locality.*

## Item 12: Advertising Structures

### Issue and Justification

In BLEP 2012, signage is defined as follows:

*means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following—*

- (a) *an advertising structure,*
- (b) *a building identification sign,*
- (c) *a business identification sign,*

*but does not include a traffic sign or traffic control facilities.*

Advertising structures can take the form of billboards or pylon signs, usually containing advertisements that do not relate to the property upon which they are erected.

There are no development controls or standards in the LEP that relate to advertising structures.

The Ballina Development Control Plan 2012 does contain controls on advertising structures, notably the following:

<b>Pole or Pylon Sign</b>	<ul style="list-style-type: none"> <li>a) Must be located wholly on private land; and</li> <li>b) Maximum advertising area of 8m<sup>2</sup>; and</li> <li>c) Maximum height 7.5m to the top of the sign, above the natural ground level; and</li> <li>d) Keep within the established heights of similar types of signs in the locality; and</li> <li>e) Must be accompanied by an engineering report indicating that the proposed structure is structurally sound.</li> </ul>
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Council's experience, however, is that it is difficult to apply and enforce these provisions and this has been most recently evident in a Land and Environment case involving a proposed advertising sign on Bangalow Road in Ballina.

Advertising structures are currently permitted with consent in the following zones:

- E1 Local Centre
- E2 Commercial Centre



- E3 Productivity Support
- MU1 Mixed Use
- RE1 Public Recreation
- W2 Recreational Waterways

The other forms of *signage*, building identification signs and business identification signs, are permitted with consent in the zones listed above and all other zones.

*Proposed Amendment*

Third party advertising on structures that does not relate to the business being carried out on the land upon which the structure is erected is an outdated form of advertising.

It is recommended that *advertising structures* be prohibited in all zones in BLEP 2012.

This would still allow other forms of *signage*, particularly building identification signs and business identification signs, to be permitted with consent across the Shire.

## Part 3 – Justification

### Section A – Need for the planning proposal

**Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?**

No. The amendments are changes resulting from Council's periodic and general review of the function and operation of the LEP.

**Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Yes. A planning proposal is the appropriate mechanism for achieving the proposed changes to the Ballina LEP 2012.

### Section B – Relationship to strategic planning framework

**Q3 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)?**

The *North Coast Regional Plan 2041* is the current strategic planning document applicable to the Ballina Shire. It provides the regional framework for the consideration of policy development and the overall vision of the future.

The planning proposal is generally consistent with the objectives and actions set out in the Regional Plan as they seek to ensure the efficient operation of the Ballina LEP 2012.

**Q4 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?**

*Ballina Shire Council Community Strategic Plan 2022-2032 (CSP)*

The planning proposal is consistent with the elements and specified outcomes contained within Council's CSP as its objectives align with the principles of good governance and ensuring that planning instruments are operating optimally.

*Ballina Shire Local Strategic Planning Statement 2020-2040 (LSPS)*

The planning proposal is consistent with the themes and planning priorities contained within the LSPS as the proposed amendments will achieve a more functional local environmental plan that will better serve the community's needs.

**Q5 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.

**Q6 Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?**

The planning proposal is generally consistent with applicable State Environmental Planning Policies.

**Q7 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 Directions)?**

Yes. A number of section 9.1 Directions are relevant to the planning proposal. A section 9.1 Direction checklist is provided at Appendix 3.

**Section C – Environmental, social and economic impact**

**Q8 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?**

There is no likelihood of any adverse impacts on critical habitat or threatened species.

Application of the C2 Environmental Management zone to land within Avalon Estate Wollongbar (Item 7 above) will update the 1987 LEP zoning to the current C zoning and enable a future dwelling, recognising the need for ongoing management of environmental works undertaken on the land.

**Q9 Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?**

There are no environmental effects resulting from this planning proposal.

As above, application of the C2 Environmental Management zone to land within Avalon Estate Wollongbar (Item 7 above) will update the zoning to the current C zoning and enable a future dwelling, recognising the need for ongoing management of environmental works undertaken on the land.

**Q10 Has the planning proposal adequately addressed any social and economic effects?**

The planning proposal is considered likely to achieve positive social and economic effects by:

- maintaining the vibrancy and viability of the Lennox Head and Alstonville village centres through the active frontages provision;
- ensuring that agritourism uses in the rural areas of the Shire remain low scale and minimal impact;
- providing for the orderly subdivision of land at Wollongbar to ensure the ongoing management of deferred land; and
- enabling the strata subdivision of dual occupancies now permitted with consent in the R2 zone.

**Section D – Infrastructure (Local, State and Commonwealth)**

**Q11 Is there adequate public infrastructure for the planning proposal?**

There is no demand for public infrastructure arising from this planning proposal.

## Section E – State and Commonwealth Interests

### Q12 What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

Consultation will be undertaken with relevant agencies as required by the Gateway determination.

## Part 4 – Mapping

The following map sheets of the BLEP 2012 are proposed to be amended as outlined in response to Part 2, as part of this PP:

- Land Zoning Map – Sheets LZN\_001B, LZN\_003A, LZN\_006C
- Lot Size Map – Sheets LSZ\_001B, LSZ\_003A, LSZ\_006C
- Heritage Map – Sheets HER\_005B, HER\_005D
- Active Frontages Map – New Sheets AFR\_002A, AFR\_005D
- Dwelling Opportunities Reinstatement Map – Sheet DWE\_005B
- Height of Buildings Map – Sheet HOB\_001
- Land Application Map – Sheet LAP\_001
- Additional Permitted Uses Map – Sheet APU\_006C

Thumbnails of these maps are shown able. The formal LEP maps will be finalised following Gateway determination.

## Part 5 – Community Consultation

This proposal will be exhibited in accordance with the Gateway determination, the terms of the *Environmental Planning and Assessment Act 1979* and Council's Community Participation Plan 2019.

## Part 6 – Timeline

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	August 2024
Government Agency Consultation	September 2024
Public Exhibition Period	September 2024
Public Hearing	N/A
Submissions Assessment	October 2024
Local Plan Making Authority (LPMA) Assessment of Planning Proposal and Exhibition Outcomes	October 2024
Submission of Endorsed LEP to DPIE for Finalisation	October 2024
PPA Decision to Make the LEP Amendment (if delegated) #	November 2024
Forwarding of LEP Amendment to DPIE for Notification (if delegated)	November 2024

# Appendices

## Appendix 1 – Council Reports

### 8.3 Planning Proposal - General Amendments - Ballina LEP 2012

<b>Section</b>	Strategic Planning
<b>Objective</b>	To outline proposed amendments to the Ballina Local Environmental Plan 2012 arising from a periodic review of the plan.

#### Background

Council regularly undertakes reviews of the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) to identify minor improvements that can be made and ensure that the plan is operating efficiently.

This review seeks to make a range of low impact, but timely, amendments to the Ballina LEP 2012, as detailed within this report and in the attached planning proposal (Attachment 1).

The purpose of this report is to seek direction from Council on the progression of a planning proposal to undertake the identified changes to the LEP.

#### Key Issues

- Function and operation of Ballina Local Environmental Plan 2012
- Minor adjustments to the content of the LEP

#### Discussion

This planning proposal seeks to amend the Ballina Local Environmental Plan (LEP) 2012 to address a range of routine or minor planning issues, improve the interpretation and operation of the plan and ensure the plan is contemporary.

The amendment relates to several issues, as summarised in Table 1.

**Table 1: Summary of Proposed LEP Amendments**

Item	Location	Affects	Details
1	Heritage Wall, Cumbalum	Map: HER_005B HER_005D	Amend reference to Heritage Item I97 within Part 1 of Schedule 5 to the LEP to update the relevant property description. Update Heritage Map sheets to show the item on the correct property.
2	Lennox Head and Alstonville Village Centres	CI 7.13 Map: New Active Frontages Maps	Amend clause 7.13 to replicate active frontage provisions that apply in Ballina CBD to the Lennox Head and Alstonville village centres to promote ground floor uses that attract pedestrian traffic.



Item	Location	Affects	Details
3	Shire-wide	CI 4.3A	Amend clause 4.3A - Exceptions to height of buildings to address sites where existing ground levels are higher than the level shown on the Building Height Allowance Map, providing that the maximum height of a building to which this clause applies is measured from the higher of either the existing ground level or the minimum level (AHD) permitted for that land on the map.
4	Shire-wide	CI 7.9	Amend clause 7.9 - Rural and nature-based tourism development to include a reference to agritourism.
5	Shire-wide	E1 Zone	Remove <i>dwelling houses</i> and <i>secondary dwellings</i> from the list of land uses permitted with development consent and include them in the list of prohibited uses.
6	Tintenbar	Map: DWE_005B	Remove land at Tintenbar from the Dwelling Opportunities Reinstatement Map.
7	Avalon Estate, 17 Millbrook Terrace, Wollongbar (Lot 129 DP 1276352)	Map: LZN_001B LSZ_001B HOB_001 LAP-001	<p>Rezone the parts of the lot that are currently “deferred matter” to C3 Environmental Management. A small portion of R3 Medium Density zoned land on the western boundary of the lot is also proposed to be zoned C3.</p> <p>This would provide for the subdivision of the land to include one lot containing all of the area zoned C3 Environmental Management, which would then have a dwelling entitlement.</p> <p>Subsequent map amendments proposed to:</p> <ul style="list-style-type: none"> <li>• show land as included on Land Application Map;</li> <li>• apply a 40ha minimum lot size to the rezoned part of the site;</li> <li>• apply an 8.5m maximum building height to the rezoned part of the site.</li> </ul>
8.	Shire-wide	CI 4.1B CI 7.17 Sch 1 – Items 1A, 8 & 12	<p>Align LEP provisions to SEPP (Housing) 2021 in relation to dual occupancy development.</p> <p>SEPP (Housing) 2021 was recently amended to provide that dual occupancy development is now permitted with development consent in Zone R2 Low Density Residential across the State.</p> <p>Amendment relate to strata subdivision of dual occupancy and removal of redundant provisions from the LEP.</p>
9	20 & 22 River Drive, East Wardell	Map: LZN_003A LSZ_003A	Rezone the properties from RU2 Rural Landscape to R2 Low Density Residential and apply a minimum lot size of 1,200m <sup>2</sup> , consistent with adjoining residential area.

Item	Location	Affects	Details
10	Lot 10 DP 12997404 Ascot Place, Ballina	Maps: LZN_006C LSZ_006C	Amend the E4 General Industrial zone boundary and the minimum lot size map to align with property boundary.
11	Shire-wide	CI 4.2B	Amend wording in clause to clarify intent and application of provision relates changes in lot boundaries in rural and conservation zones.
12	Shire-wide	Various zones	Prohibit <i>advertising structures</i> in all zones. Business and building identification signs would continue to be permitted.

### Item 1: Heritage Wall Cumbalum

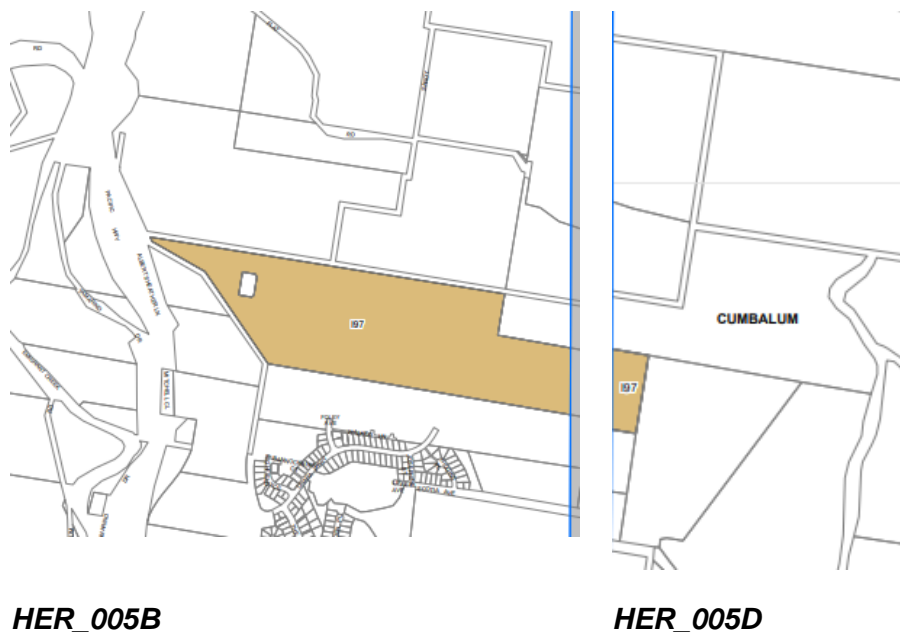
#### Issue and Justification

Heritage item I97 relates to a dry-stone wall located on land at Cumbalum. The listing within Part 1 of Schedule 5 of BLEP 2012 describes the location of the wall as “Albert Sheather Lane” and Lot 2 DP 1171927.

The location of the item is shown in the extracts from the LEP Heritage Map (Map Sheets HER\_005B & HER\_005D) in Figure 1 below.

The property has subsequently been subdivided as part of the Banyan Hill development, such that the dry-stone wall is now located on a residue lot, known as Lot 363 DP 1273203.

The current listing and the current mapping, therefore, do not identify the correct property.



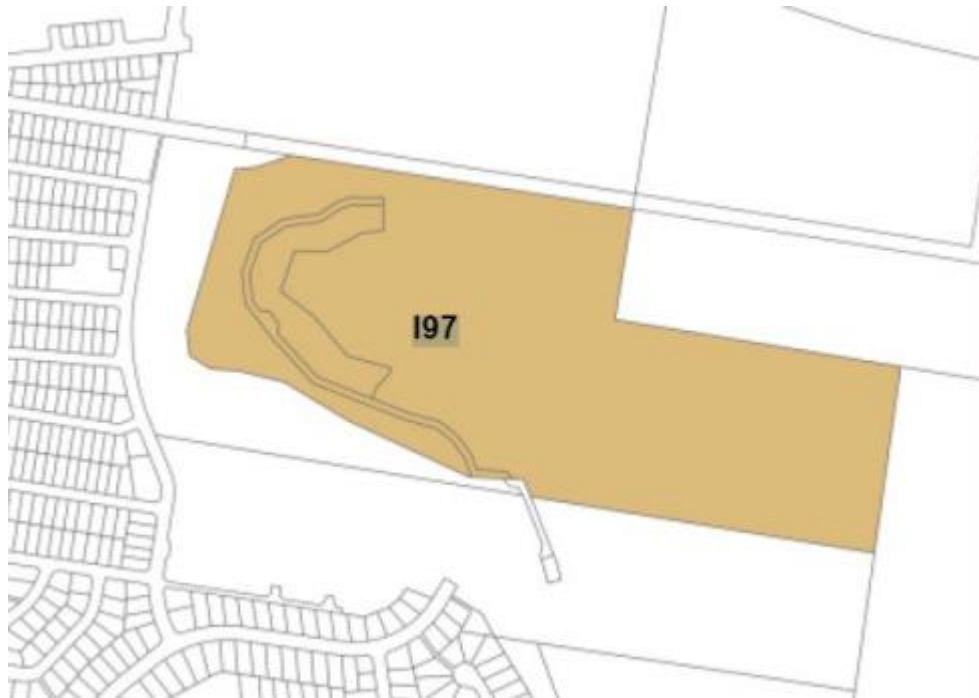
**Figure 1: Current LEP Heritage Map**

#### Proposed Amendment

It is proposed that the wording for Item I97 be amended within Part 1 of Schedule 5 to read:

*Cumbalum Dry stone wall Albert Sheather Lane Part Lot 363 DP 1273203  
Local 197*

It is also to amend LEP Maps HER\_005B and HER\_005D to show the heritage listing in relation to the land shown below in Figure 2:



**Figure 2: Proposed Heritage Map Amendment**

This amendment will also assist in enabling complying development for housing on a greater range of lots in the Banyan Hill estate.

## **Item 2: Lennox Head and Alstonville Village Centre – Active Frontages**

### Issue and Justification

Clause 7.13 of the LEP applies to land located within the Ballina Central Business District that is zoned E2 Commercial Centre and identified as “Active Frontage” on the *Active Frontages Map*. The objective of the clause is to promote uses of the land that attract pedestrian traffic at street level by requiring certain nominated land uses at ground level within those sites.

The Lennox Head and Alstonville Village Centres are zoned E1 Local Centre and the objective of promoting pedestrian traffic within these centres is also relevant in ensuring the continued viability and vibrancy of these centres.

There are a number of permissible uses within the E1 zone which could hinder this objective, including uses such as boarding houses, amusement centres, group homes, service stations and others.

### Proposed Amendment

It is proposed to amend the wording of clause 7.13 part (1) to read (changes in red):

- (b) *The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street, park and waterfront frontages in E1 Local Centre and E2 Commercial Centre.*

It is also proposed to create two new Active Frontages Map sheets – AFR\_002A and AFR\_005D identifying all of the land within the relevant village centres that is zoned E1 Local Centre as “Active Frontage”.

### **Item 3: Clause 4.3A Exceptions to height of buildings**

#### Issue and Justification

The clause aligns building height and flood planning provisions by providing that, where land is identified on the *Building Height Allowance Map*, the maximum height of buildings is measured from the AHD level shown on that map rather than from existing ground level.

The *Building Height Allowance Map* relates to flood prone land and recognises that floor levels for new buildings need to be raised to achieve the relevant flood planning levels, which are the AHD levels identified in the Map.

In most cases, the relevant flood planning level is higher than the existing ground level but there are a small number of sites that have been shown to have an existing ground level that is higher than the AHD level shown in the *Building Height Allowance Map*.

In those cases, the current wording of clause 4.3A (3) means that the maximum building height must be measured from a level that is lower than the existing ground level.

#### Proposed Amendment

It is proposed to amend the wording of clause 4.3A part (3) to read (changes in red):

- (4) *The maximum height of a building on land to which this clause applies is to be measured from the minimum level AHD permitted for that land on the Building Height Allowance Map or from existing ground level where the existing level is higher than the minimum shown on the Map.*

### **Item 4: Clause 7.9 Rural and nature-based tourism development – Agritourism**

#### Issue and Justification

Recent State Government amendments introduced a new definition of *agritourism*, with associated provisions around *farm gate premises* and *farm experience premises*. Agritourism is a type of *agriculture* and not a type of *tourist and visitor accommodation*.

Clause 7.9 applies to “tourism development” on land in zones RU1 Primary Production, RU2 Rural Landscape and C3 Environmental Management. Tourism development is defined in the clause to include a wide range of land uses that all involve visitors / customers attending the site. The definition does not include *agritourism*.

The clause specifies matters for consideration for such uses that relate to the potential for amenity impacts, access issues or impacts on agricultural production.

*Farm gate premises* and *farm experience premises* are similar to the other uses currently listed in that they rely on visitors / customers attending the site. The considerations specified in clause 7.9 are relevant to these land uses.

#### Proposed Amendment

It is proposed to amend clause 7.9 by adding the following to the definition of **tourism development** in part (6) of the clause:

(m) agritourism

### Item 5: Dwellings in E1 Zone

#### Issue and Justification

Dwelling houses and secondary dwellings are currently listed as permitted with consent in the E1 Local Centre Zone. There are a number of areas within the Shire zoned E1 Local Centre, including the village centres of Lennox Head, Wollongbar, Alstonville and Wardell.

These areas are intended to provide for the retail and business needs of their local areas. Development within these centres for dwelling houses is inconsistent with the objectives of the E1 zone, in that it will not encourage investment in local commercial development that generates employment opportunities and economic growth.

#### Proposed Amendment

It is proposed to amend the development table to the E1 Local Centre Zone to remove *Dwelling houses* and *secondary dwellings* as uses permitted with consent and add them to the list of prohibited land uses.

### Item 6: Hill Street Tintenbar – Dwelling Entitlement

#### Issue and Justification

Council's *Dwelling Opportunity Reinstatement Map* identifies land where Council records indicate historic dwelling entitlements exist. In a number of cases, the properties mapped constitute historic groups of lot holdings and clarify that a single dwelling entitlement exists over a group of lots.

Land at Hill Street Tintenbar is shown on the map below shaded purple :



**Figure 3: Extract from Current Dwelling Opportunity Reinstatement Map**

The identified group of lots was previously in a single ownership. In recent years, several of these individual lots have been sold and so the group of lots has been split up in ownership terms. This means that the dwelling opportunity is now difficult to exercise and there is an equity issue in terms of which landholder receives the one entitlement applying to the group of lots.

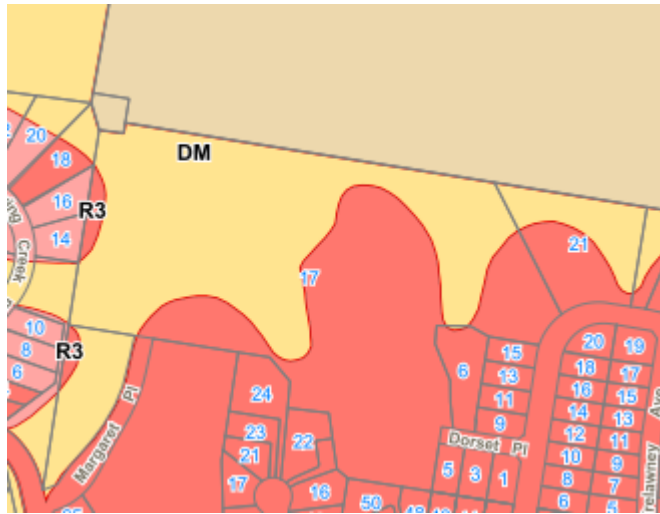
#### Proposed Amendment

It is proposed to amend the *Dwelling Opportunity Reinstatement Map* to remove the Tintenbar properties.

## Item 7: Avalon Estate, Wollongbar

### Issue and Justification

The current zoning of the final stage of the Avalon Estate (Lot 129 DP 1276352) is shown in Figure 4.



**Figure 4: Current Zoning Avalon Estate**

A portion of Lot 129 is 'deferred area' under BLEP 2012, retaining a zoning of 7(d) Environmental Protection (Scenic/Escarpment) under BLEP 1987.

A development application has been lodged for a subdivision of the property. Because of the wording of clause 11B of BLEP 1987 (Exceptions to minimum lot size for split zones), one of the resulting lots must contain all of the land zoned 7(d) and no other land.

In this case, the 7(d) lot would have an area of approx. 2.8ha, which is permitted under the provisions of BLEP 1987.

However, the lot would not have a dwelling entitlement, as there are no provisions of clause 12 of BLEP 1987 that provide an entitlement for a lot less than the minimum area required (40ha) when created in accordance with clause 11B.

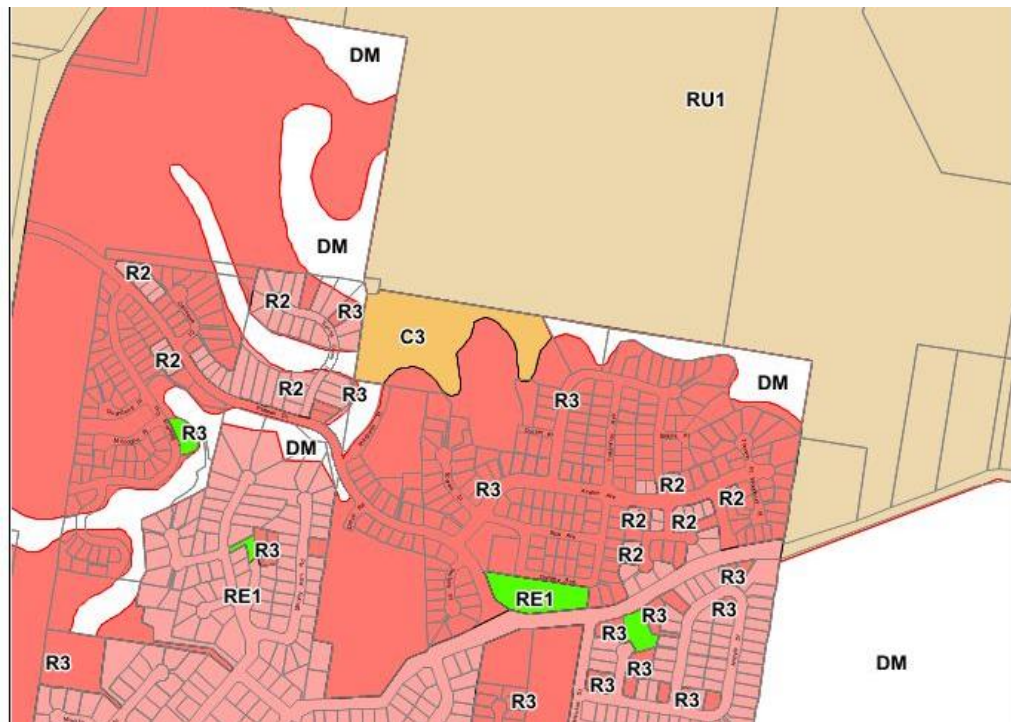
In addition, the wording of Clause 11B is such that the small area of land zoned R3 Medium Density under BLEP 2012, located on the western boundary of the lot, would need to be incorporated into another lot within that zone, resulting in a split lot, as access to that portion of land is not available.

### Proposed Amendment

It is proposed to rezone the deferred area within Lot 129 to C3 Environmental Management under BLEP 2012. The C3 area would also include the small, isolated section of land currently zoned R3 Medium Density Residential.

Under the provisions of clause 4.2C of LEP 2012, all of this land would still need to be contained within a single lot. However, that lot would have a dwelling entitlement by way of clause 4.2A as it would be "a lot created under this Plan" (cl 4.2A(3)(b)). This would then allow the owner of that lot to reside on the land to manage the area zoned C3 Environmental Management.





**Figure 5: Proposed Zoning Avalon Estate**

## **Item 8: Dual Occupancy Development**

### Issue and Justification

State Environmental Planning Policy (Housing) 2021 has recently been amended by the State Government, with the effect that development for the purposes of dual occupancies and semi-detached dwellings is now permitted with development consent in the R2 Low Density Residential zone across the whole of the State.

There are some exclusions – notably dual occupancy is not permitted on bush fire prone land, flood prone land or in a coastal vulnerability area.

Historically, dual occupancy development has been prohibited in the R2 zone in Ballina Shire, apart from a few exceptions as discussed below.

The provisions of a State Environmental Planning Policy take precedent over the LEP and there are therefore a number of current provisions of BLEP 2012 that are now no longer relevant.

### *Clause 4.1B Minimum subdivision lot size for certain strata plan schemes in certain zones*

The effect of this clause is to apply the minimum lot size that is applicable to a land subdivision to a strata subdivision in the nominated zones, which are primarily rural and environmental protection zones, but also include the R2 Low Density Residential Zone.

Now that dual occupancy development is permitted in the R2 zone, the current clause would act to prevent strata subdivision of any approved dual occupancies, unless the individual strata lots have an area of around 600m<sup>2</sup> (the minimum subdivision lot size in most R2 areas).

This will act as a disincentive to such development.

Merit applications around the suitability of a site for dual occupancy development are undertaken with the development application to construct

the building(s). The ownership of the individual dwellings (as achieved through a strata subdivision) has no practical implications for the property or the locality.

Of note is that although new dual occupancies are not permitted in some areas because of exclusions under the State policy (e.g. Ballina Island because of flooding), the change to clause 4.1B below would allow strata subdivision of historically constructed dwellings (where it is not currently permitted in R2 zones). This is likely to result in a substantial financial gain for owners of such properties if strata subdivision is undertaken.

*Proposed Amendment*

It is proposed to delete reference to zone R2 Low Density Residential from part 2 of clause 4.1B.

The effect of this amendment would be to enable approval of a strata subdivision of a lawfully approved dual occupancy development without regard to the area of the individual strata lots. This aligns with the recently introduced State policy.

*Clause 7.17 Use of certain land at Wollongbar*

This clause provides that, for land within the R2 Low Density Residential zone at Wollongbar, dual occupancy development is permitted with consent on lots that have an area of 900m<sup>2</sup> or more. The applicable area is identified as “Area O” on the Additional Permitted Uses Map.

Part 3 of the clause also specifies that consent cannot be granted to a dual occupancy on land in bush fire attack level-4 or the flame zone.

Now that dual occupancy development is permitted in all R2 Low Density zones, this clause is superfluous.

The requirement for a lot size of 900m<sup>2</sup> remains in Chapter 4 of the Ballina DCP 2014 and is not overwritten by the Housing SEPP. It can, therefore, continue to be enforced.

The changes to the Housing SEPP specifically exclude development on bush fire prone land and this therefore continues the restriction within the current part 3.

*Proposed Amendment*

Given that the clause is now superfluous, it is proposed to delete clause 7.17. It is also proposed to amend the Addition Permitted Uses Map to remove the area identified as “Area O”.

*Schedule 1 Item 1A: Use of certain land at 1 Libby Lane and 200 North Creek Road, Lennox Head*

This clause provides that dual occupancy development is permitted with consent on the land, identified as “Area D” on the Additional Permitted Uses Map. It further specifies that Clause 4.1B does not apply to a strata subdivision at the site.

*Proposed Amendment*

As above, this provision is now superfluous. It is proposed to delete Item 1A and amend the Additional Permitted Uses Map to remove “Area D”.

*Schedule 1 Item 8: Use of certain land at Alstonville*

This clause provides that, for land within the R2 Low Density Residential zone at Alstonville, dual occupancy development is permitted with consent on lots that have an area of 900m<sup>2</sup> or more. The applicable area is identified as “Area L” on the Additional Permitted Uses Map.

*Proposed Amendment*

As above, this provision is now superfluous. It is proposed to delete Item 8 and amend the Additional Permitted Uses Map to remove “Area L”.

*Schedule 1 Item 12: Use of certain land at Wardell*

This clause provides that, for land within the R2 Low Density Residential zone at Wardell, dual occupancy development is permitted with consent. The applicable area is identified as “Area M” on the Additional Permitted Uses Map.

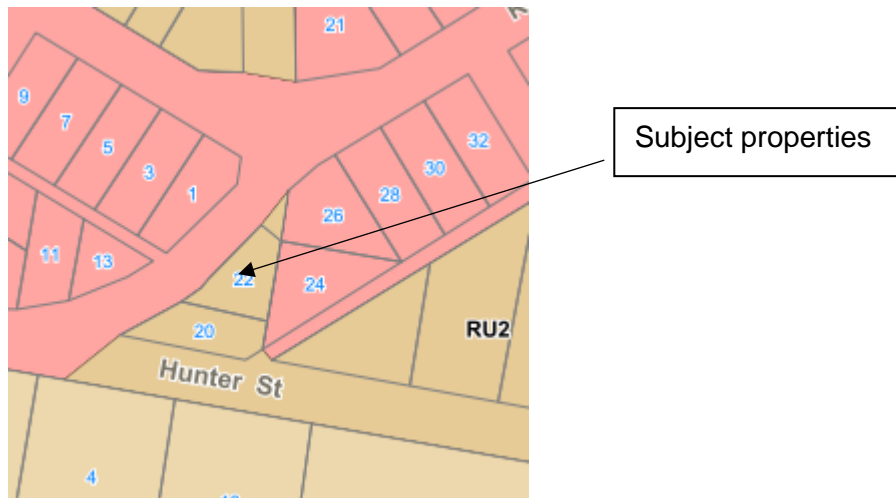
*Proposed Amendment*

As above, this provision is now superfluous. It is proposed to delete Item 12 and amend the Additional Permitted Uses Map to remove “Area M”.

**Item 9: River Street, East Wardell**

*Issue and Justification*

Properties at 20 and 22 River Street East Wardell are currently zoned RU2 Rural Landscape, as shown in Figure 9.



**Figure 9: Current Zoning River Street East Wardell**

20 River Drive – Lot 13 DP 789203 – has an area of 917.6m<sup>2</sup>. 22 River Drive – Lot 14 DP 789203 – has an area of 687.4m<sup>2</sup>.

The lots are currently vacant, and Council has previously determined that each enjoys a dwelling entitlement under the provisions of the LEP.

Given the rural zoning of the lots, future applications for dwellings on the properties would be assessed in terms of compliance with DCP 2012 Chapter 7 Rural Living and Activity, rather than Chapter 4 Residential and Tourist Development. Compliance with certain provisions of Chapter 7, notably building lines, would not be possible on these lots.

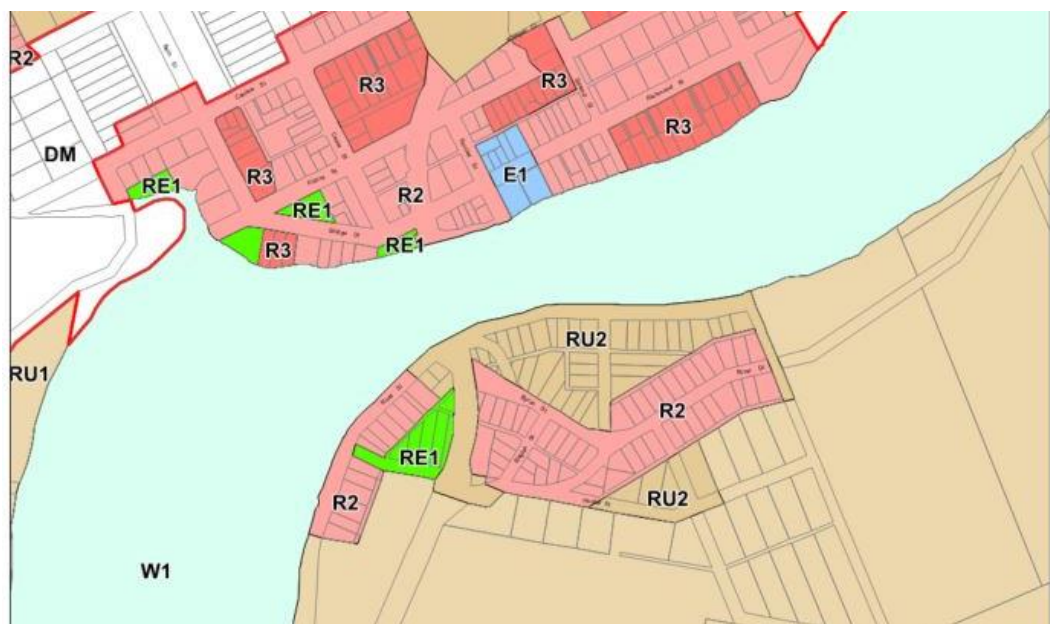
The lots are bounded to the east and west by lots of a similar size, which are zoned R2 Low Density Residential. There is reticulated water and sewerage services available to the lots as well as electricity and telecommunications.

Council records do not clearly indicate why these lots remained zoned RU2 on gazettal of BLEP 2012.

It is considered that the lots are no different to those in the adjoining residentially zoned area and that they are suitable for development for residential purposes. The land is subject to flooding, but the provisions of Council's DCP relating to flood affected urban lots would adequately address that risk.

#### Proposed Amendment

It is proposed that the properties be zoned R2 Low Density residential, as shown in Figure 10.



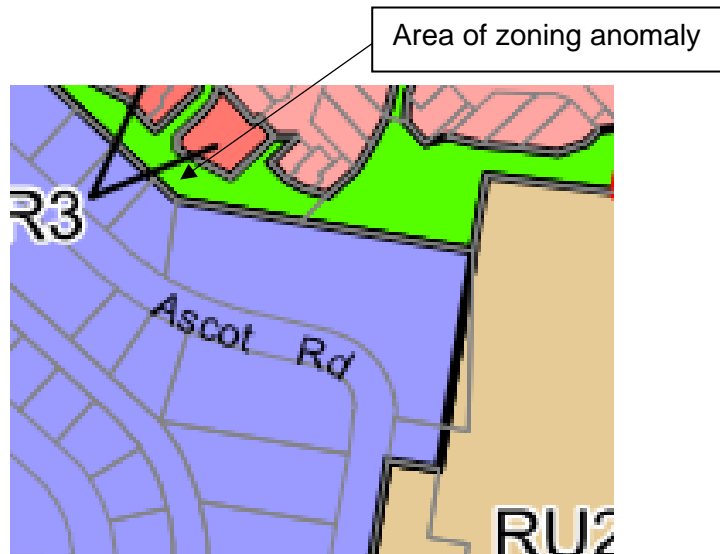
**Figure 10: Proposed Zoning River Street East Wardell**

#### **Item 10: Ascot Road, Ballina**

##### Issue and Justification

The subject land, Lot 10 DP 1297404, is situated within a largely developed urban area that is characterised by industrial uses (Southern Cross Industrial Estate) to the south and west, residential uses to the north and cleared grassland to the east.

As shown in Figure 11, the bulk of the site is zoned E4 General Industry, apart from a small portion in the south-east, which is zoned RU2 Rural Landscape.



**Figure 11: Ascot Road – Existing Zoning**

The zone boundary appears to be an anomaly, in that it does not follow the eastern boundary of the property. The same mapping anomaly is within the Lot Size Map.

**Proposed Amendment**

It is recommended that relevant BLEP 2012 Map Sheets for zoning and lot size be amended to correct the mapping anomaly by aligning with the property boundary.

**Item 11: Clause 4.2B Boundary Adjustment**

**Issue and Justification**

Clause 4.2B provides exemptions to minimum subdivision lot size for lot boundary adjustments relating to land in a rural zone.

Following receipt of legal advice it is evident that there is some ambiguity in the operation of the clause associated with use of boundary adjustment and subdivision of land terminology.

Improved wording can be applied to achieve the intended outcomes of the clause which are:

- to maintain Council's historic approach to what constitutes a 'boundary adjustment',
- to be specific about changes to boundaries rather than any form of subdivision,
- to enable a wide range of scenarios to be considered,
- to not enable additional dwellings or lots, and
- to not enable erosion of agricultural or environmental land values.

It is also noted that the clause only relates to rural zones at present, and does not apply to boundary adjustments that may be beneficial in the C2 Environmental Conservation or C3 Environmental Management zones.

## Background

Council regularly undertakes reviews of the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) to identify minor improvements that can be made and ensure that the plan is operating efficiently.

This review seeks to make a range of low impact, but timely, amendments to the Ballina LEP 2012, as detailed within this report and in the attached planning proposal (Attachment 1).

The purpose of this report is to seek direction from Council on the progression of a planning proposal to undertake the identified changes to the LEP.

## Key Issues

- Function and operation of Ballina Local Environmental Plan 2012
- Minor adjustments to the content of the LEP

## Discussion

This planning proposal seeks to amend the Ballina Local Environmental Plan (LEP) 2012 to address a range of routine or minor planning issues, improve the interpretation and operation of the plan and ensure the plan is contemporary.

The amendment relates to several issues, as summarised in Table 1.

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Item	Location	Affects	Details
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3	Shire-wide	CI 4.3A	Amend clause 4.3A - Exceptions to height of buildings to address sites where existing ground levels are higher than the level shown on the Building Height Allowance Map, providing that the maximum height of a building to which this clause applies is measured from the higher of either the existing ground level or the minimum level (AHD) permitted for that land on the map.
4	Shire-wide	CI 7.9	Amend clause 7.9 - Rural and nature-based tourism development to include a reference to agritourism.



Item	Location	Affects	Details
5	Shire-wide	E1 Zone	Remove <i>dwelling houses</i> and <i>secondary dwellings</i> from the list of land uses permitted with development consent and include them in the list of prohibited uses.
6	Tintenbar	Map: DWE_005B	Remove land at Tintenbar from the Dwelling Opportunities Reinstatement Map.
7	Avalon Estate, 17 Millbrook Terrace, Wollongbar (Lot 129 DP 1276352)	Map: LZN_001B LSZ_001B HOB_001 LAP-001	<p>Rezone the parts of the lot that are currently “deferred matter” to C3 Environmental Management. A small portion of R3 Medium Density zoned land on the western boundary of the lot is also proposed to be zoned C3.</p> <p>This would provide for the subdivision of the land to include one lot containing all of the area zoned C3 Environmental Management, which would then have a dwelling entitlement.</p> <p>Subsequent map amendments proposed to:</p> <ul style="list-style-type: none"> <li>• show land as included on Land Application Map;</li> <li>• apply a 40ha minimum lot size to the rezoned part of the site;</li> <li>• apply an 8.5m maximum building height to the rezoned part of the site.</li> </ul>
8.	Shire-wide	CI 4.1B CI 7.17 Sch 1 – Items 1A, 8 & 12	<p>Align LEP provisions to SEPP (Housing) 2021 in relation to dual occupancy development.</p> <p>SEPP (Housing) 2021 was recently amended to provide that dual occupancy development is now permitted with development consent in Zone R2 Low Density Residential across the State.</p> <p>Amendment relate to strata subdivision of dual occupancy and removal of redundant provisions from the LEP.</p>
9	20 & 22 River Drive, East Wardell	Map: LZN_003A LSZ_003A	Rezone the properties from RU2 Rural Landscape to R2 Low Density Residential and apply a minimum lot size of 1,200m <sup>2</sup> , consistent with adjoining residential area.
10	Lot 10 DP 12997404 Ascot Place, Ballina	Maps: LZN_006C LSZ_006C	Amend the E4 General Industrial zone boundary and the minimum lot size map to align with property boundary.
11	Shire-wide	CI 4.2B	Amend wording in clause to clarify intent and application of provision relates changes in lot boundaries in rural and conservation zones.
12	Shire-wide	Various zones	Prohibit <i>advertising structures</i> in all zones. Business and building identification signs would continue to be permitted.

#### Item 1: Heritage Wall Cumbalum

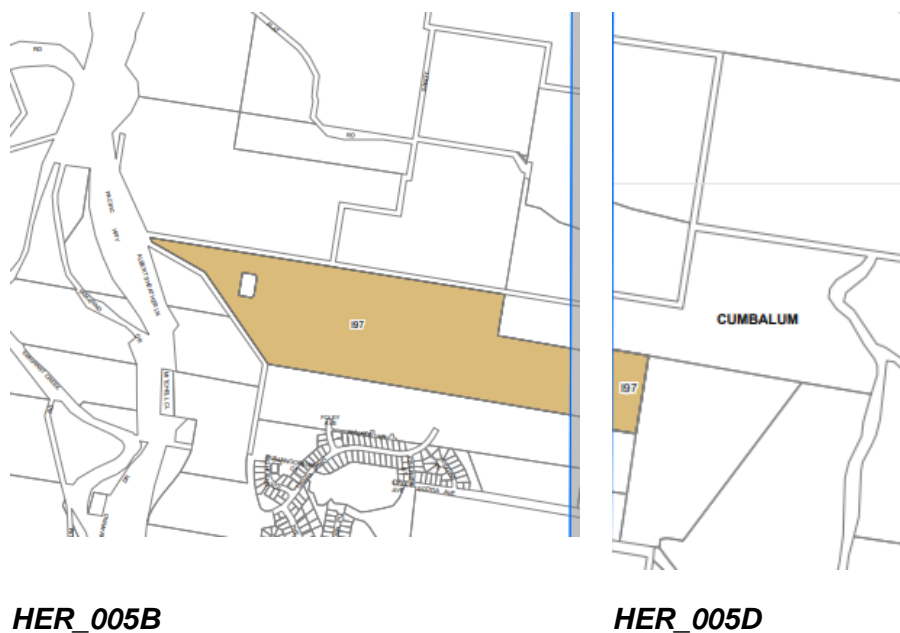
Issue and Justification

Heritage item I97 relates to a dry-stone wall located on land at Cumbalum. The listing within Part 1 of Schedule 5 of BLEP 2012 describes the location of the wall as “Albert Sheather Lane” and Lot 2 DP 1171927.

The location of the item is shown in the extracts from the LEP Heritage Map (Map Sheets HER\_005B & HER\_005D) in Figure 1 below.

The property has subsequently been subdivided as part of the Banyan Hill development, such that the dry-stone wall is now located on a residue lot, known as Lot 363 DP 1273203.

The current listing and the current mapping, therefore, do not identify the correct property.



**Figure 1: Current LEP Heritage Map**

Proposed Amendment

It is proposed that the wording for Item I97 be amended within Part 1 of Schedule 5 to read:

*Cumbalum Dry stone wall Albert Sheather Lane Part Lot 363 DP 1273203  
Local I97*

It is also to amend LEP Maps HER\_005B and HER\_005D to show the heritage listing in relation to the land shown below in Figure 2:



**Figure 2: Proposed Heritage Map Amendment**

This amendment will also assist in enabling complying development for housing on a greater range of lots in the Banyan Hill estate.

## **Item 2: Lennox Head and Alstonville Village Centre – Active Frontages**

### Issue and Justification

Clause 7.13 of the LEP applies to land located within the Ballina Central Business District that is zoned E2 Commercial Centre and identified as “Active Frontage” on the *Active Frontages Map*. The objective of the clause is to promote uses of the land that attract pedestrian traffic at street level by requiring certain nominated land uses at ground level within those sites.

The Lennox Head and Alstonville Village Centres are zoned E1 Local Centre and the objective of promoting pedestrian traffic within these centres is also relevant in ensuring the continued viability and vibrancy of these centres.

There are a number of permissible uses within the E1 zone which could hinder this objective, including uses such as boarding houses, amusement centres, group homes, service stations and others.

### Proposed Amendment

It is proposed to amend the wording of clause 7.13 part (1) to read (changes in red):

- (c) *The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street, park and waterfront frontages in E1 Local Centre and E2 Commercial Centre.*

It is also proposed to create two new Active Frontages Map sheets – AFR\_002A and AFR\_005D identifying all of the land within the relevant village centres that is zoned E1 Local Centre as “Active Frontage”.

## **Item 3: Clause 4.3A Exceptions to height of buildings**

Issue and Justification

The clause aligns building height and flood planning provisions by providing that, where land is identified on the *Building Height Allowance Map*, the maximum height of buildings is measured from the AHD level shown on that map rather than from existing ground level.

The *Building Height Allowance Map* relates to flood prone land and recognises that floor levels for new buildings need to be raised to achieve the relevant flood planning levels, which are the AHD levels identified in the Map.

In most cases, the relevant flood planning level is higher than the existing ground level but there are a small number of sites that have been shown to have an existing ground level that is higher than the AHD level shown in the *Building Height Allowance Map*.

In those cases, the current wording of clause 4.3A (3) means that the maximum building height must be measured from a level that is lower than the existing ground level.

Proposed Amendment

It is proposed to amend the wording of clause 4.3A part (3) to read (changes in red):

- (5) *The maximum height of a building on land to which this clause applies is to be measured from the minimum level AHD permitted for that land on the Building Height Allowance Map or from existing ground level where the existing level is higher than the minimum shown on the Map.*

**Item 4: Clause 7.9 Rural and nature-based tourism development – Agritourism**

Issue and Justification

Recent State Government amendments introduced a new definition of *agritourism*, with associated provisions around *farm gate premises* and *farm experience premises*. Agritourism is a type of *agriculture* and not a type of *tourist and visitor accommodation*.

Clause 7.9 applies to “tourism development” on land in zones RU1 Primary Production, RU2 Rural Landscape and C3 Environmental Management. Tourism development is defined in the clause to include a wide range of land uses that all involve visitors / customers attending the site. The definition does not include *agritourism*.

The clause specifies matters for consideration for such uses that relate to the potential for amenity impacts, access issues or impacts on agricultural production.

*Farm gate premises* and *farm experience premises* are similar to the other uses currently listed in that they rely on visitors / customers attending the site. The considerations specified in clause 7.9 are relevant to these land uses.

Proposed Amendment

It is proposed to amend clause 7.9 by adding the following to the definition of **tourism development** in part (6) of the clause:

- (n) *agritourism*

**Item 5: Dwellings in E1 Zone**

Issue and Justification

Dwelling houses and secondary dwellings are currently listed as permitted with consent in the E1 Local Centre Zone. There are a number of areas within the Shire zoned E1 Local Centre, including the village centres of Lennox Head, Wollongbar, Alstonville and Wardell.

These areas are intended to provide for the retail and business needs of their local areas. Development within these centres for dwelling houses is inconsistent with the objectives of the E1 zone, in that it will not encourage investment in local commercial development that generates employment opportunities and economic growth.

Proposed Amendment

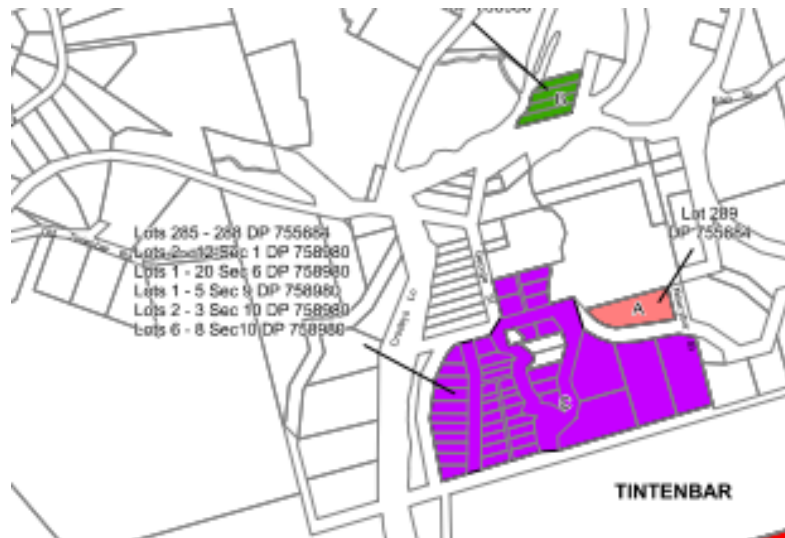
It is proposed to amend the development table to the E1 Local Centre Zone to remove *Dwelling houses* and *secondary dwellings* as uses permitted with consent and add them to the list of prohibited land uses.

**Item 6: Hill Street Tintenbar – Dwelling Entitlement**

Issue and Justification

Council's *Dwelling Opportunity Reinstatement Map* identifies land where Council records indicate historic dwelling entitlements exist. In a number of cases, the properties mapped constitute historic groups of lot holdings and clarify that a single dwelling entitlement exists over a group of lots.

Land at Hill Street Tintenbar is shown on the map below shaded purple :



**Figure 3: Extract from Current Dwelling Opportunity Reinstatement Map**

The identified group of lots was previously in a single ownership. In recent years, several of these individual lots have been sold and so the group of lots has been split up in ownership terms. This means that the dwelling opportunity is now difficult to exercise and there is an equity issue in terms of which landholder receives the one entitlement applying to the group of lots.

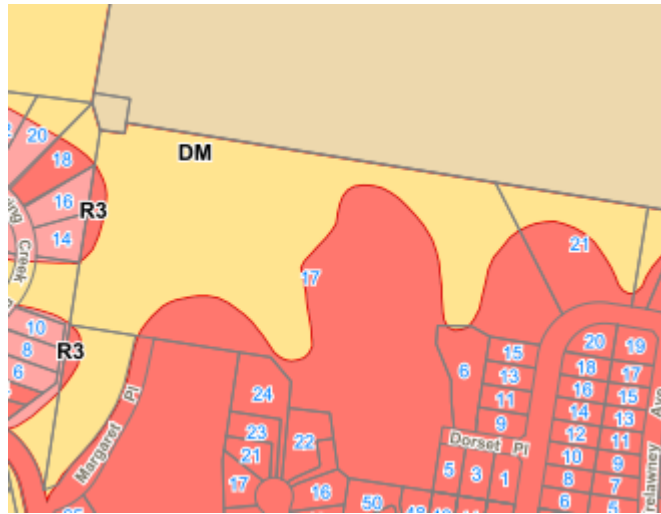
Proposed Amendment

It is proposed to amend the *Dwelling Opportunity Reinstatement Map* to remove the Tintenbar properties.

## Item 7: Avalon Estate, Wollongbar

### Issue and Justification

The current zoning of the final stage of the Avalon Estate (Lot 129 DP 1276352) is shown in Figure 4.



**Figure 4: Current Zoning Avalon Estate**

A portion of Lot 129 is 'deferred area' under BLEP 2012, retaining a zoning of 7(d) Environmental Protection (Scenic/Escarpment) under BLEP 1987.

A development application has been lodged for a subdivision of the property. Because of the wording of clause 11B of BLEP 1987 (Exceptions to minimum lot size for split zones), one of the resulting lots must contain all of the land zoned 7(d) and no other land.

In this case, the 7(d) lot would have an area of approx. 2.8ha, which is permitted under the provisions of BLEP 1987.

However, the lot would not have a dwelling entitlement, as there are no provisions of clause 12 of BLEP 1987 that provide an entitlement for a lot less than the minimum area required (40ha) when created in accordance with clause 11B.

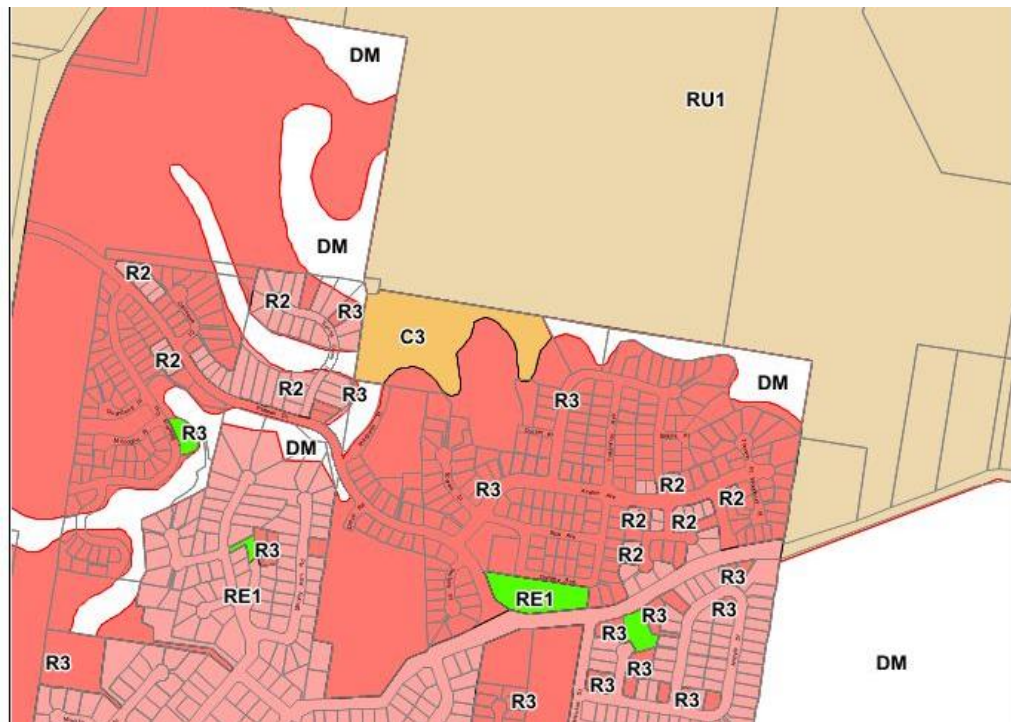
In addition, the wording of Clause 11B is such that the small area of land zoned R3 Medium Density under BLEP 2012, located on the western boundary of the lot, would need to be incorporated into another lot within that zone, resulting in a split lot, as access to that portion of land is not available.

### Proposed Amendment

It is proposed to rezone the deferred area within Lot 129 to C3 Environmental Management under BLEP 2012. The C3 area would also include the small, isolated section of land currently zoned R3 Medium Density Residential.

Under the provisions of clause 4.2C of LEP 2012, all of this land would still need to be contained within a single lot. However, that lot would have a dwelling entitlement by way of clause 4.2A as it would be "a lot created under this Plan" (cl 4.2A(3)(b)). This would then allow the owner of that lot to reside on the land to manage the area zoned C3 Environmental Management.





**Figure 5: Proposed Zoning Avalon Estate**

## **Item 8: Dual Occupancy Development**

### Issue and Justification

State Environmental Planning Policy (Housing) 2021 has recently been amended by the State Government, with the effect that development for the purposes of dual occupancies and semi-detached dwellings is now permitted with development consent in the R2 Low Density Residential zone across the whole of the State.

There are some exclusions – notably dual occupancy is not permitted on bush fire prone land, flood prone land or in a coastal vulnerability area.

Historically, dual occupancy development has been prohibited in the R2 zone in Ballina Shire, apart from a few exceptions as discussed below.

The provisions of a State Environmental Planning Policy take precedent over the LEP and there are therefore a number of current provisions of BLEP 2012 that are now no longer relevant.

### *Clause 4.1B Minimum subdivision lot size for certain strata plan schemes in certain zones*

The effect of this clause is to apply the minimum lot size that is applicable to a land subdivision to a strata subdivision in the nominated zones, which are primarily rural and environmental protection zones, but also include the R2 Low Density Residential Zone.

Now that dual occupancy development is permitted in the R2 zone, the current clause would act to prevent strata subdivision of any approved dual occupancies, unless the individual strata lots have an area of around 600m<sup>2</sup> (the minimum subdivision lot size in most R2 areas).

This will act as a disincentive to such development.

Merit applications around the suitability of a site for dual occupancy development are undertaken with the development application to construct the building(s). The ownership of the individual dwellings (as achieved through a strata subdivision) has no practical implications for the property or the locality.

Of note is that although new dual occupancies are not permitted in some areas because of exclusions under the State policy (e.g. Ballina Island because of flooding), the change to clause 4.1B below would allow strata subdivision of historically constructed dwellings (where it is not currently permitted in R2 zones). This is likely to result in a substantial financial gain for owners of such properties if strata subdivision is undertaken.

*Proposed Amendment*

It is proposed to delete reference to zone R2 Low Density Residential from part 2 of clause 4.1B.

The effect of this amendment would be to enable approval of a strata subdivision of a lawfully approved dual occupancy development without regard to the area of the individual strata lots. This aligns with the recently introduced State policy.

*Clause 7.17 Use of certain land at Wollongbar*

This clause provides that, for land within the R2 Low Density Residential zone at Wollongbar, dual occupancy development is permitted with consent on lots that have an area of 900m<sup>2</sup> or more. The applicable area is identified as “Area O” on the Additional Permitted Uses Map.

Part 3 of the clause also specifies that consent cannot be granted to a dual occupancy on land in bush fire attack level-4 or the flame zone.

Now that dual occupancy development is permitted in all R2 Low Density zones, this clause is superfluous.

The requirement for a lot size of 900m<sup>2</sup> remains in Chapter 4 of the Ballina DCP 2014 and is not overwritten by the Housing SEPP. It can, therefore, continue to be enforced.

The changes to the Housing SEPP specifically exclude development on bush fire prone land and this therefore continues the restriction within the current part 3.

*Proposed Amendment*

Given that the clause is now superfluous, it is proposed to delete clause 7.17. It is also proposed to amend the Addition Permitted Uses Map to remove the area identified as “Area O”.

*Schedule 1 Item 1A: Use of certain land at 1 Libby Lane and 200 North Creek Road, Lennox Head*

This clause provides that dual occupancy development is permitted with consent on the land, identified as “Area D” on the Additional Permitted Uses Map. It further specifies that Clause 4.1B does not apply to a strata subdivision at the site.

*Proposed Amendment*

As above, this provision is now superfluous. It is proposed to delete Item 1A and amend the Additional Permitted Uses Map to remove “Area D”.

*Schedule 1 Item 8: Use of certain land at Alstonville*

This clause provides that, for land within the R2 Low Density Residential zone at Alstonville, dual occupancy development is permitted with consent on lots that have an area of 900m<sup>2</sup> or more. The applicable area is identified as “Area L” on the Additional Permitted Uses Map.

Proposed Amendment

As above, this provision is now superfluous. It is proposed to delete Item 8 and amend the Additional Permitted Uses Map to remove “Area L”.

*Schedule 1 Item 12: Use of certain land at Wardell*

This clause provides that, for land within the R2 Low Density Residential zone at Wardell, dual occupancy development is permitted with consent. The applicable area is identified as “Area M” on the Additional Permitted Uses Map.

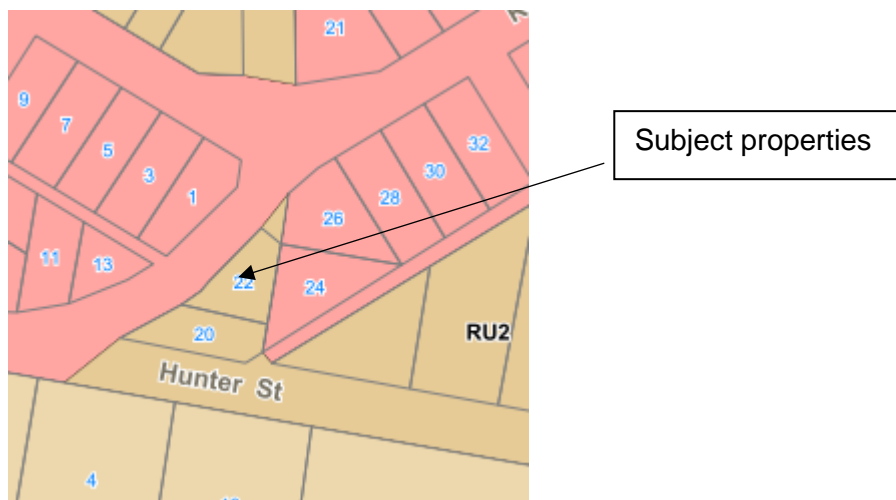
Proposed Amendment

As above, this provision is now superfluous. It is proposed to delete Item 12 and amend the Additional Permitted Uses Map to remove “Area M”.

**Item 9: River Street, East Wardell**

Issue and Justification

Properties at 20 and 22 River Street East Wardell are currently zoned RU2 Rural Landscape, as shown in Figure 9.



**Figure 9: Current Zoning River Street East Wardell**

20 River Drive – Lot 13 DP 789203 – has an area of 917.6m<sup>2</sup>. 22 River Drive – Lot 14 DP 789203 – has an area of 687.4m<sup>2</sup>.

The lots are currently vacant, and Council has previously determined that each enjoys a dwelling entitlement under the provisions of the LEP.

Given the rural zoning of the lots, future applications for dwellings on the properties would be assessed in terms of compliance with DCP 2012 Chapter 7 Rural Living and Activity, rather than Chapter 4 Residential and Tourist Development. Compliance with certain provisions of Chapter 7, notably building lines, would not be possible on these lots.

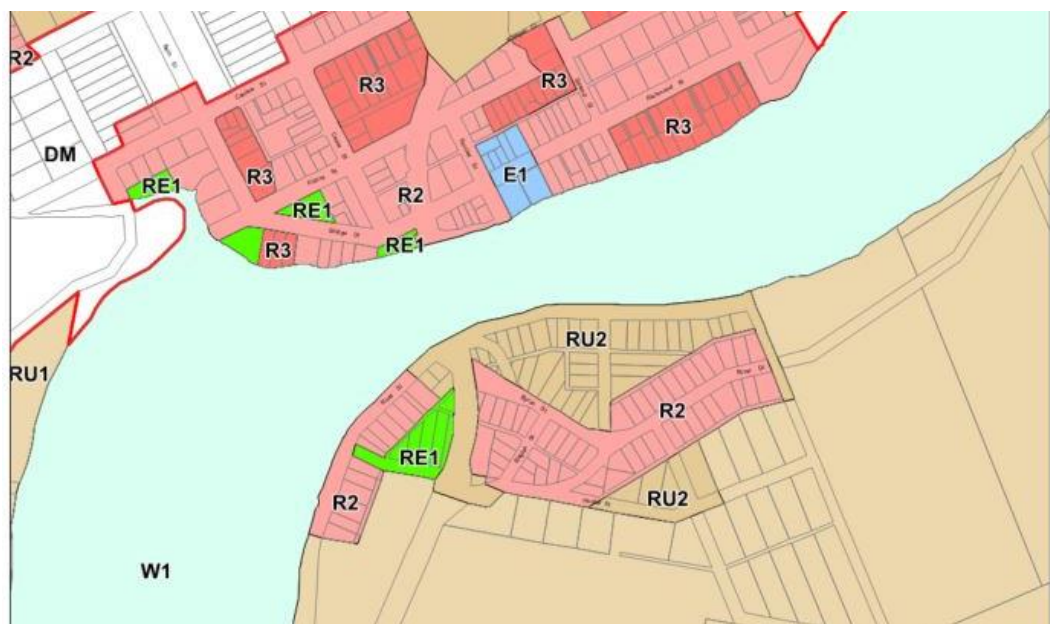
The lots are bounded to the east and west by lots of a similar size, which are zoned R2 Low Density Residential. There is reticulated water and sewerage services available to the lots as well as electricity and telecommunications.

Council records do not clearly indicate why these lots remained zoned RU2 on gazettal of BLEP 2012.

It is considered that the lots are no different to those in the adjoining residentially zoned area and that they are suitable for development for residential purposes. The land is subject to flooding, but the provisions of Council's DCP relating to flood affected urban lots would adequately address that risk.

**Proposed Amendment**

It is proposed that the properties be zoned R2 Low Density residential, as shown in Figure 10.



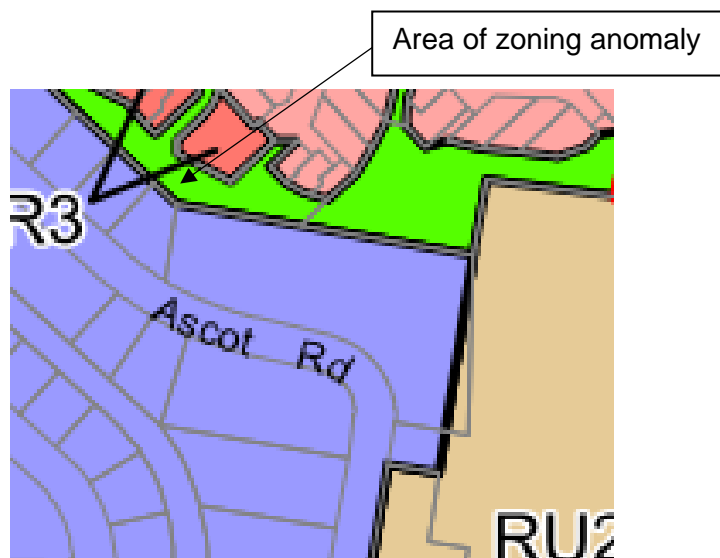
**Figure 10: Proposed Zoning River Street East Wardell**

**Item 10: Ascot Road, Ballina**

**Issue and Justification**

The subject land, Lot 10 DP 1297404, is situated within a largely developed urban area that is characterised by industrial uses (Southern Cross Industrial Estate) to the south and west, residential uses to the north and cleared grassland to the east.

As shown in Figure 11, the bulk of the site is zoned E4 General Industry, apart from a small portion in the south-east, which is zoned RU2 Rural Landscape.



**Figure 11: Ascot Road – Existing Zoning**

The zone boundary appears to be an anomaly, in that it does not follow the eastern boundary of the property. The same mapping anomaly is within the Lot Size Map.

**Proposed Amendment**

It is recommended that relevant BLEP 2012 Map Sheets for zoning and lot size be amended to correct the mapping anomaly by aligning with the property boundary.

**Item 11: Clause 4.2B Boundary Adjustment**

**Issue and Justification**

Clause 4.2B provides exemptions to minimum subdivision lot size for lot boundary adjustments relating to land in a rural zone.

Following receipt of legal advice it is evident that there is some ambiguity in the operation of the clause associated with use of boundary adjustment and subdivision of land terminology.

Improved wording can be applied to achieve the intended outcomes of the clause which are:

- to maintain Council's historic approach to what constitutes a 'boundary adjustment',
- to be specific about changes to boundaries rather than any form of subdivision,
- to enable a wide range of scenarios to be considered,
- to not enable additional dwellings or lots, and
- to not enable erosion of agricultural or environmental land values.

It is also noted that the clause only relates to rural zones at present, and does not apply to boundary adjustments that may be beneficial in the C2 Environmental Conservation or C3 Environmental Management zones.

The current wording of the clause is:

**4.2B Exceptions to minimum subdivision lot size for lot boundary adjustments**

- (3) *The objective of this clause is to permit lot boundary adjustments in rural zones that will provide improved agricultural or environmental outcomes without creating additional opportunities for the erection of dwellings.*
- (4) *Development consent may be granted for the subdivision of land in a rural zone to create lots of a size that are less than the minimum size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that—*
  - (c) *the subdivision will not result in the creation of an additional lot or the opportunity for additional dwelling entitlements, or both, on any of the lots, and*
  - (d) *the subdivision will not adversely impact on the long-term agricultural production potential or environmental characteristics of the lots and the surrounding locality.*

**Proposed Amendment**

To remedy the existing deficiencies in the clause, it is proposed to amend clause 4.2B to read (changes in red):

**4.2B Exceptions to minimum subdivision lot size for lot boundary changes**

- (4) *The objective of this clause is to permit **the boundary between two or more lots to be altered in certain circumstances to enable improved** agricultural or environmental outcomes without creating additional opportunities for the erection of dwellings.*
- (5) *This clause applies to land in the following zones;*
  - (e) *Zone RU1 Primary Production,*
  - (f) *Zone RU2 Rural Landscape,*
  - (g) *Zone C2 Environmental Conservation,*
  - (h) *Zone C3 Environmental Management.*
- (6) *Development consent may be granted for the subdivision of land **to change the boundaries of adjoining lots** to create lots of a size that are less than the minimum size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that—*
  - (a) *the subdivision will not result in the creation of an additional lot or the opportunity for additional dwelling entitlements, or both, on any of the lots, and*
  - (b) *the subdivision will not adversely impact on the long-term agricultural production potential or environmental characteristics of the lots and the surrounding locality.*



## Item 12: Advertising Structures

### Issue and Justification

In BLEP 2012, signage is defined as follows:

*means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following—*

- (d) *an advertising structure,*
- (e) *a building identification sign,*
- (f) *a business identification sign,*

*but does not include a traffic sign or traffic control facilities.*

Advertising structures can take the form of billboards or pylon signs, usually containing advertisements that do not relate to the property upon which they are erected.

There are no development controls or standards in the LEP that relate to advertising structures.

The Ballina Development Control Plan 2012 does contain controls on advertising structures, notably the following:

<b>Pole or Pylon Sign</b>	<ul style="list-style-type: none"> <li>a) Must be located wholly on private land; and</li> <li>b) Maximum advertising area of 8m<sup>2</sup>; and</li> <li>c) Maximum height 7.5m to the top of the sign, above the natural ground level; and</li> <li>d) Keep within the established heights of similar types of signs in the locality; and</li> <li>e) Must be accompanied by an engineering report indicating that the proposed structure is structurally sound.</li> </ul>
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Council's experience, however, is that it is difficult to apply and enforce these provisions and this has been most recently evident in a Land and Environment case involving a proposed advertising sign on Bangalow Road in Ballina.

Advertising structures are currently permitted with consent in the following zones:

- E1 Local Centre
- E2 Commercial Centre
- E3 Productivity Support
- MU1 Mixed Use
- RE1 Public Recreation
- W2 Recreational Waterways

The other forms of *signage*, building identification signs and business identification signs, are permitted with consent in the zones listed above and all other zones.

*Proposed Amendment*

Third party advertising on structures that does not relate to the business being carried out on the land upon which the structure is erected is an outdated form of advertising.

It is recommended that *advertising structures* be prohibited in all zones in BLEP 2012.

This would still allow other forms of *signage*, particularly building identification signs and business identification signs, to be permitted with consent across the Shire.

**Delivery Program Strategy / Operational Plan Activity**

Processing of LEP amendments and planning proposals is identified in Council's adopted Delivery Program and Operational Plan as follows:

- HE3.1 – Implement plans that balance the built environment with the natural environment.
- HE3.1g – Maintain Local Environmental Plan (LEP).

**Community Engagement Strategy**

Community engagement (including government agency referrals) for this planning proposal will be undertaken in accordance with Council's Community Participation Plan and the conditions required under the Department of Planning and Environment's (DPE) Gateway Determination, when issued.

**Financial / Risk Considerations**

The work program associated with LEP amendment requests and planning proposals is being undertaken within existing resources.

**Options**

*Option 1 – Proceed with the planning proposal*

The planning proposal seeks to make relatively minor amendments to the Ballina LEP 2012 to improve the function and operation of the LEP.

This approach involves the submission of the planning proposal contained in Attachment 1 to the Department of Planning, Housing and Infrastructure (DPHI) for Gateway determination. If supported by DPHI, the proposal will be subject to a public exhibition period prior to further consideration by Council.

Under this approach it is also proposed that Council would seek to exercise delegated plan making functions.

This is the recommended approach.

*Option 2 – Amend the planning proposal*

It is open to the Council to amend the planning proposal in relation to any of the items summarised above.

This option is not recommended without further discussion regarding the particulars of the item.

## **RECOMMENDATIONS**

1. That Council endorses, for Gateway determination, the amendments to Ballina Local Environmental Plan 2012 outlined in the planning proposal contained in Attachment 1 (BSCPP 24/002).
2. That Council submits the planning proposal contained in Attachment 1 to the NSW Department of Planning, Housing and Infrastructure for review and Gateway determination.
3. That upon an affirmative Gateway determination being received from the Department, the procedural steps associated with progression of the planning proposal, including public exhibition, be undertaken.
4. That the Department of Planning, Housing and Infrastructure be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
5. That Council receive a further report on the proposal following the completion of the public exhibition of the planning proposal.

## Appendix 2 – Gateway

## Appendix 3 – Section 9.1 Direction Checklist

Section 9.1 Ministerial Direction Checklist Planning Proposal – BLEP 2012 – General Amendments 2022	
Direction No.	Compliance of Planning Proposal
<b>Focus area 1: Planning Systems</b>	
1.1 Implementation of Regional Plans	Consistent. This planning proposal is generally consistent with the North Coast Regional Plan 2041.
1.2 Development of Aboriginal Land Council land	Does not apply to planning proposal.
1.3 Approval and Referral Requirements	Consistent. This planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
1.4 Site Specific Provisions	Consistent. This planning proposal does not introduce any site-specific provisions.
1.4A Exclusion of Development Standards from Variation	Consistent. This planning proposal does not introduce or alter an existing exclusion to clause 4.6.
<b>Focus area 1: Planning Systems – Place-based</b>	
1.5 to 1.22	These Directions do not apply to Ballina Shire.
<b>Focus area 2: Design and Place</b>	
<b>Focus area 3: Biodiversity and Conservation</b>	
3.1 Conservation Zones	Consistent. In relation to Item 7 above, this planning proposal does not reduce the conservation standards that apply to the nominated land at Wollongbar.
3.2 Heritage Conservation	Consistent. In relation to Item 1 above, this planning proposal updates the identification of heritage items on land at Cumbalum to reflect the current property description.
3.3 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Consistent. In relation to Item 7, this planning proposal is consistent with the <i>Northern Councils E Zone Review Final Recommendations</i> as the landowner has given approval to the application of the C3 Environmental Management zone over part of the land.
3.5 Recreation Vehicle Areas	Consistent. This planning proposal does not seek to enable land to be developed for the purpose of a recreation vehicle area.
3.6 Strategic Conservation Planning	Consistent. This planning proposal does not relate to land identified as avoided land or a strategic conservation area.
3.7 Public Bushland	Does not apply to Ballina Shire.
3.8 Willandra Lakes Region	Does not apply to Ballina Shire.
3.9 Sydney Harbour Foreshores and Waterways Area	Does not apply to Ballina Shire.

Section 9.1 Ministerial Direction Checklist Planning Proposal – BLEP 2012 – General Amendments 2022	
Direction No.	Compliance of Planning Proposal
3.10 Water Catchment Protection	Consistent. This planning proposal does not affect land in a regulated catchment.
<b>Focus area 4: Resilience and Hazards</b>	
4.1 Flooding	Consistent. This planning proposal does not seek to create, remove or alter a zone or provision that affects flood prone land.
4.2 Coastal Management	Consistent. This planning proposal does not seek to alter any zoning or provisions relating to land within the coastal zone.
4.3 Planning for Bushfire Protection	Inconsistent. Consultation will be undertaken with the NSW Rural Fire Service in accordance with this Direction and the terms outlined in the Gateway determination.
4.4 Remediation of Contaminated Land	Consistent. This planning proposal does not alter or affect any contaminated land.
4.5 Acid Sulfate Soils	Consistent. This planning proposal does not alter any acid sulfate soils.
4.6 Mine Subsidence and Unstable Land	Consistent. This planning proposal does not alter/impact any mine subsidence or unstable land.
<b>Focus area 5: Transport and Infrastructure</b>	
5.1 Integrating Land Use and Transport	Consistent. This planning proposal will not result in any negative impacts on accessibility or transport movements.
5.2 Reserving Land for Public Purposes	Consistent. This planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
5.3 Development Near Regulated Airports and Defence Airfields	Consistent. This planning proposal does not relate to land near a regulated airport.
5.4 Shooting Ranges	Does not apply to this planning proposal.
<b>Focus area 6: Housing</b>	
6.1 Residential Zones	Consistent. This planning proposal does not affect land within an existing or proposed residential zone or any other zone in which significant residential development is permitted. In terms of Item 5, dwelling houses are proposed to be prohibited in the E1 Zone, but this is not a zone in which <i>significant</i> residential development is permitted.
6.2 Caravan Parks and Manufactured Home Estates	Consistent. This planning proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.
<b>Focus area 7: Industry and Employment</b>	
7.1 Business and Industrial Zones	Consistent. In terms of Item 2, this planning proposal will give effect to the objectives of this Direction by promoting pedestrian traffic at street level in the Lennox Head and Alstonville village centre to support the viability of these centres.



Section 9.1 Ministerial Direction Checklist Planning Proposal – BLEP 2012 – General Amendments 2022	
Direction No.	Compliance of Planning Proposal
7.2 Reduction in non-hosted short term rental accommodation period	Does not apply to planning proposal.
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Consistent. This planning proposal does not alter or impact commercial or retail development along the Pacific Highway.
<b>Focus area 8: Resources and Energy</b>	
8.1 Mining, Petroleum Production and Extractive Industries	Consistent. This planning proposal does not include provisions that would trigger the application of this direction.
<b>Focus area 9: Primary Production</b>	
9.1 Rural Zones	Consistent. This planning proposal does not seek to alter any rural zoning or permissibility.
9.2 Rural Lands	Consistent. This planning proposal does not seek to alter any rural or conservation zones or alter existing minimum lot size within a rural or conservation zone.
9.3 Oyster Aquaculture	Does not apply to planning proposal.
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	Consistent. This planning proposal does not propose the rezoning of identified significant farmland for urban, residential or rural residential purposes.