



# Gateway determination report – PP-2024-1710

General Amendments 2024

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment A – Planning Proposal v2 – PP-2024-1710 – July 2024
Attachment D – Council Correspondence regarding Item 9 – PP-2024-1710 – August 2024
Attachment E – Council Legal Advice regarding Item 11 – PP-2024-1710 – August 2024

# 1 Planning proposal

## 1.1 Overview

Table 2 Planning proposal details

LGA	Ballina
PPA	Ballina Shire Council
NAME	General Amendments 2024
NUMBER	PP-2024-1710
LEP TO BE AMENDED	Ballina LEP 2012
ADDRESS	Various
DESCRIPTION	Various
RECEIVED	1/08/2024
FILE NO.	IRF24/1889
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

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

The objective of the planning proposal is 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.

## 1.3 Explanation of provisions

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

Table 3 Proposed Amendments

Item	Location	Provision	Proposed amendment
1	Heritage Wall, Cumbalum	Maps: 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 identify the correct property.

2	Lennox Head and Alstonville Village Centres	CI 7.13 Maps: Active Frontages Map	Amend clause 7.13 – <i>Active Frontages</i> 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.  Include new Active Frontages Maps for these areas.
3	Shire-wide	CI 4.3A	Amend clause 4.3A - <i>Exceptions to height of buildings</i> to address sites where existing ground levels are higher than the AHD 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 - <i>Rural and nature-based tourism development</i> to include a reference to agritourism.
5	Shire-wide	E1 Zone	Remove dwelling houses and secondary dwellings 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 certain land that now has a split ownership pattern at Tintenbar from the Dwelling Opportunities Reinstatement Map.
7	Avalon Estate, 17 Millbrook Terrace, Wollongbar  (Lot 129 DP 1276352)	Maps: LZN_001B LSZ_001B HOB_001 LAP-001	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.  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.  Subsequent map amendments are proposed to: <ul style="list-style-type: none"> <li>• include the land on the 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 area.</li> </ul>
8	Shire-wide	CI 4.1B  CI 7.17  Sch 1 – Items 1A, 8 & 12	Align LEP provisions to SEPP (Housing) 2021 in relation to dual occupancy development, now permitted with development consent in Zone R2 Low Density Residential across the State.  Amendment relates to strata subdivision of dual occupancy and removal of redundant provisions from the LEP.
9	20 & 22 River Drive, East Wardell	Maps: LZN_003A LSZ_003A	Rezone land from RU2 Rural Landscape to R2 Low Density Residential and apply a minimum lot size of 1,200m <sup>2</sup> , consistent with the 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 4.2B - <i>Exceptions to minimum subdivision</i>

			<i>lot size for lot boundary adjustments</i> to clarify intent and application of provision as it relates to changes in lot boundaries in rural and conservation zones.
12	Shire-wide	Various zones	Prohibit advertising structures in all zones. Business and building identification signs would continue to be permitted.

The planning proposal contains an explanation of provisions that explains how the objectives of the proposal will be achieved, including draft clauses for items proposing substantial clause amendments and draft mapping for map amendments. Further clarification will be required for some items prior to agency and community consultation, as described in Section 2 of this report.

## 1.4 Site description and surrounding area

### Items 3 – 5, 8 and 11 – 12

These amendments apply to various land parcels throughout the LGA through the application of the relevant proposed clauses.

### Item 1 – Heritage item I97 at Cumbalum

This amendment applies to Heritage item I97, a dry-stone wall located on land formerly described as Lot 2 DP 1171927 at Cumbalum (**Figure 1**). 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.



**Figure 1: Location of Item 1, Cumbalum (source: Nearmap 2024)**



## Item 2 – Lennox Head and Alstonville Village Centres

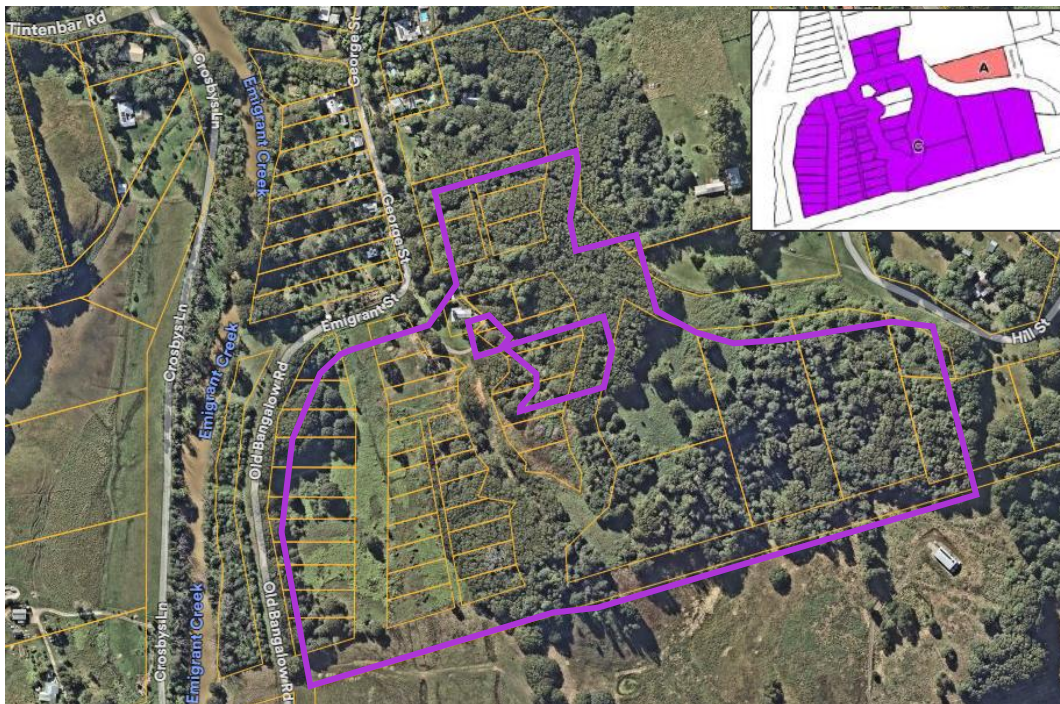
This amendment applies to land zoned E1 Local Centre at Lennox Head and Alstonville (**Figure 2**).



**Figure 2: Zone E1 Locations (shaded blue) at Alstonville (left) and Lennox Head (source: Planning Portal Spatial Viewer)**

## Item 6 – Certain land at Tintenbar

This amendment applies to a cluster of small, undeveloped lots located at George and Hill Streets, Tintenbar (**Figure 3**). The amendment excludes Lots 1, 4 and 5 Section 10 DP758980.

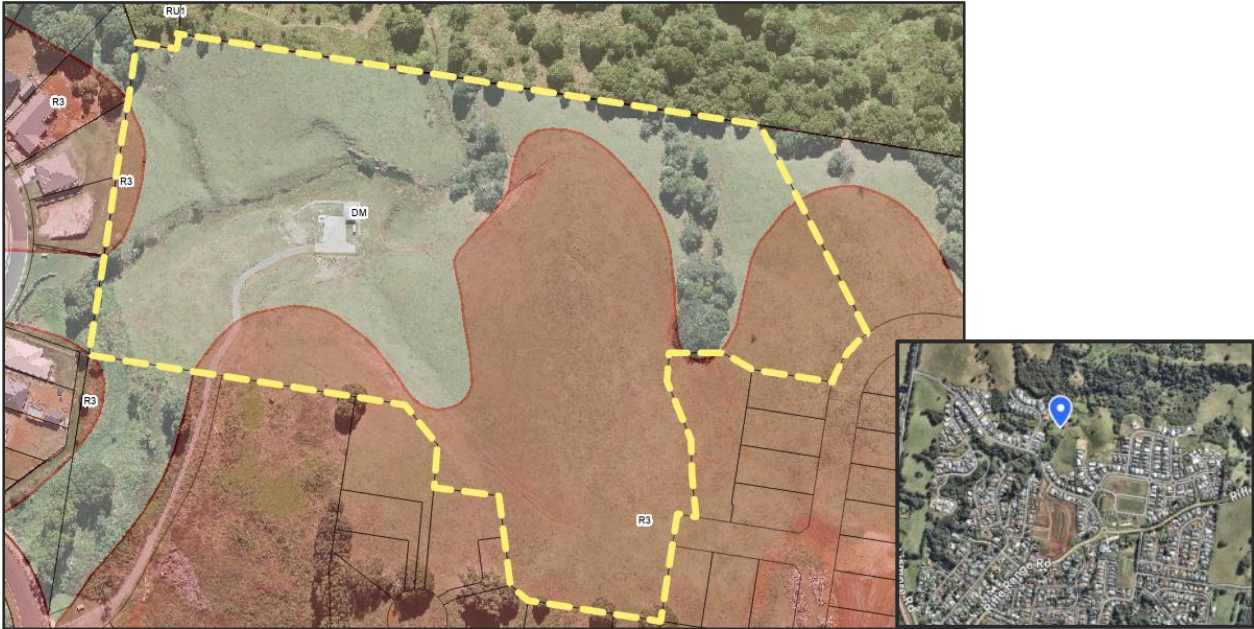


**Figure 3: Location of Item 6 (specific lots marked “C” on inset map) (source: Nearmap 2024; Planning Proposal)**



### Item 7 – Avalon Estate, Wollongbar

This amendment applies to the final rezoning stage of the Avalon Estate (Lot 129 DP 1276352) at Wollongbar (**Figure 4**). A portion of Lot 129 is identified as ‘deferred area’ under the LEP, retaining a zoning of 7(d) Environmental Protection (Scenic/Escarpment) under Ballina LEP 1987. Adjoining land within the estate is zoned R3 Medium Density, while land to the north is zoned RU1 Primary Production. The amendment applies to the ‘deferred area’ only.



**Figure 4: Site of Item 7, Avalon Estate, Alstonville (Source: Planning Portal Spatial Viewer)**

### Item 9 – Certain land at River Street, East Wardell

This amendment applies to land at 20 River Street (Lot 13 DP 789203) and 22 (Lot 14 DP 789203) River Street, East Wardell (**Figure 5**). The lots are currently zoned RU2 Rural Landscape, with an area of 917.6m<sup>2</sup> and 687.4m<sup>2</sup> respectively. The lots are currently vacant, and Council has previously determined that each enjoys a dwelling entitlement under the provisions of the LEP. The lots are bounded to the east and west by lots of a similar size, zoned R2 Low Density Residential.



**Figure 5: Proposed site for Item 9 at Wardell East (Source: Planning Portal Spatial Viewer)**

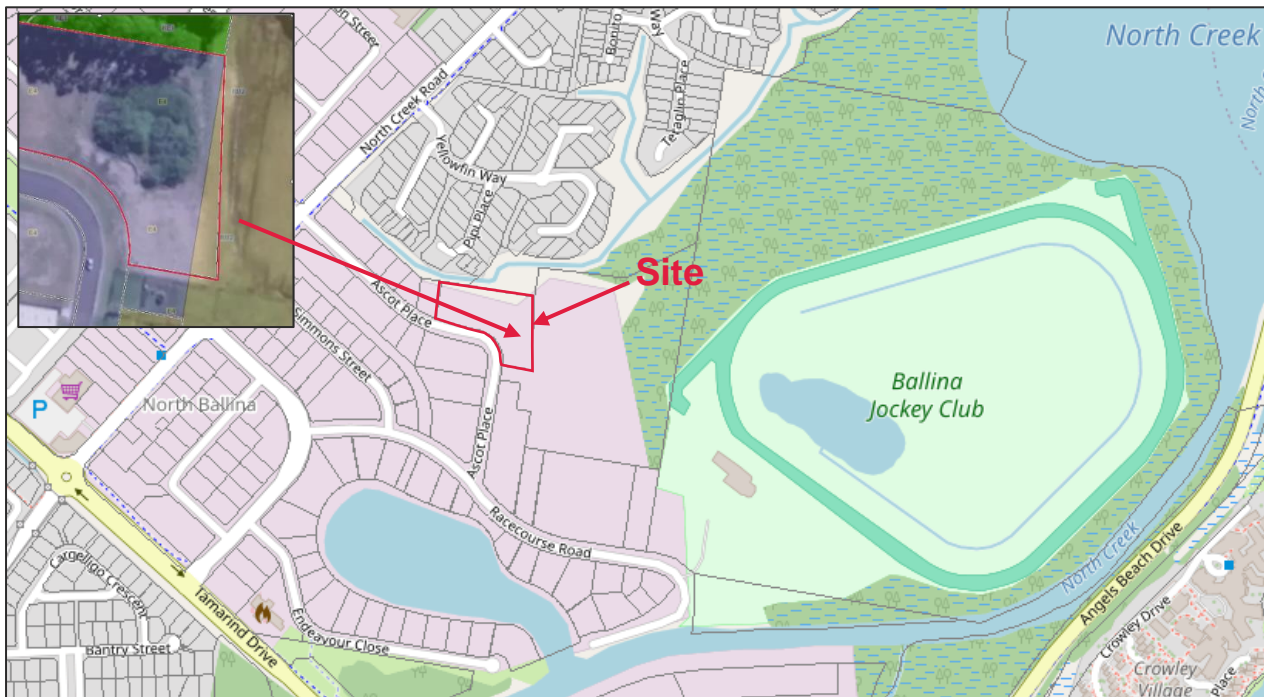


The proposed Item 9 amendment is not considered to be general or 'housekeeping' in nature. Further information and assessment is required for this item against the North Coast Regional Plan 2041 and relevant Ministerial Directions and SEPPs. The land is outside the Urban Growth Boundary, within the Coastal Area, is flood prone and is classified as important farmland under the Regional Plan. This has been discussed with Council who has subsequently requested a Gateway determination that excludes Item 9 (**Attachment D**). No further assessment of Item 9 will be undertaken within this report and a Gateway condition excluding Item 9 from the planning proposal is recommended.

### Item 10 – Certain land at Ascot Road, Ballina

This amendment applies to Lot 10 DP 1297404, Ascot Road, Ballina (**Figure 6**). The land 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.

The bulk of the site is zoned E4 General Industry, apart from a small triangular portion of cleared land approximately 600m<sup>2</sup> along the eastern boundary, which is zoned RU2 Rural Landscape.



**Figure 6: Proposed site for Item 10 at Ascot Road, Ballina (Source: Northern Region Spatial Viewer)**

## 1.5 Mapping

The planning proposal (**Attachment A**) generally includes mapping showing the proposed changes to the various maps requiring amendment except some ancillary associated maps such as the lot size and height of building maps for Item 7 at Wollongbar. It is recommended that the Gateway require the proposal to be updated to include all proposed map changes prior to agency and community consultation.

## 2 Need for the planning proposal

The planning proposal is not a result of an approved local strategy. Council has prepared the proposal following a periodic review of the Ballina LEP 2012. The amendments are required to refine non-mandatory provisions, correct minor mapping anomalies, include land currently deferred

from the LEP and update the LEP in response to State-wide SEPP amendments to ensure the efficient and effective operation of the LEP.

The proposed amendments are considered to have merit and are appropriate. The following provides a summary of the proposed amendments, the justification, and planning assessment.

### **Policy amendments (text and maps)**

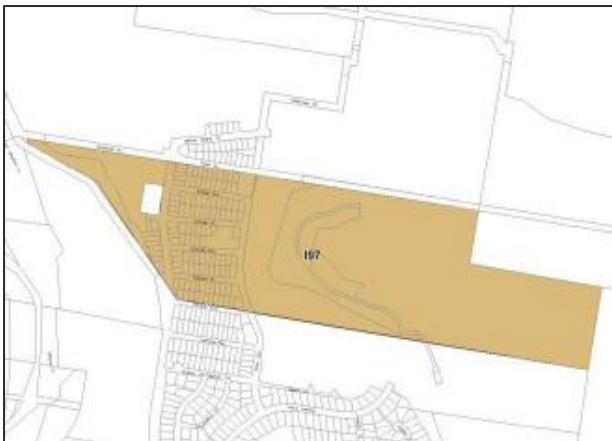
#### **Item 1: Heritage Item I97 at Cumbalum**

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 (**Figure 7**). 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.

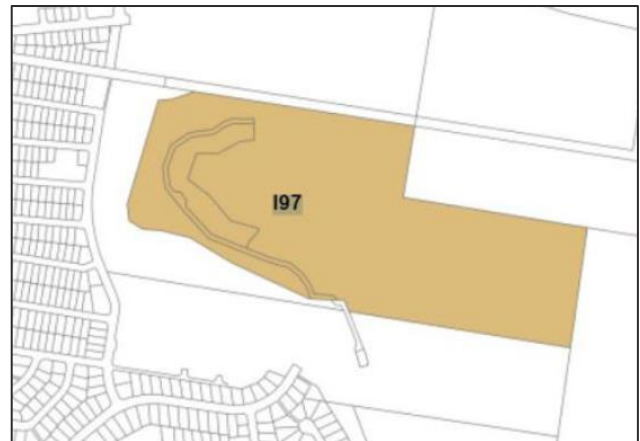
#### **Proposed amendment:**

It is proposed to amend the description for Item I97 within Part 1 of Schedule 5 to identify the correct property and amend LEP Maps HER\_005B and HER\_005D to show the heritage listing in relation to the land (**Figure 8**).

A draft clause and draft mapping are included in the planning proposal and is considered adequate for consultation purposes.



**Figure 7: Existing heritage map identification of Item I97 (Source: Planning Proposal)**



**Figure 8: Proposed heritage map identification of Item I97 (Source: Planning Proposal)**

#### **Item 2: Amend clause 7.13 – Active Frontages**

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.

#### **Proposed amendment:**

It is proposed to:

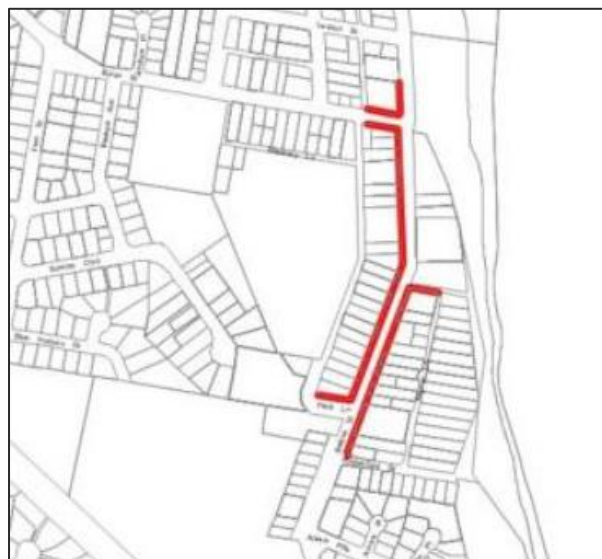
- amend the wording of clause 7.13 to include land within the E1 zone, thus capturing land in the Alstonville and Lennox Head town centres; and

- create two new Active Frontages Map sheets (**Figures 9 and 10**) identifying the land within the relevant village centres to which the provisions will apply.

A draft clause and draft mapping are included in the planning proposal and is considered adequate for consultation purposes.



**Figure 9: Proposed Active Frontages mapping for Alstonville (Source: Planning Proposal)**



**Figure 10: Proposed Active Frontages mapping for Lennox Head (Source: Planning Proposal)**

### **Item 3: Amend clause 4.3A - Exceptions to height of buildings**

Clause 4.3A currently 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 (the relevant flood planning level) rather than from existing ground level. The map relates to and recognises that floor levels for new buildings on flood prone land need to be raised to achieve the relevant flood planning levels.

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 to provide 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.

A draft clause is included in the planning proposal for consultation purposes.

### **Item 4: Amend clause 7.9 - Rural and nature-based tourism development**

Recent amendments to the Standard Instrument LEP 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 a reference to agritourism to the definition of tourism development in part (6) of the clause.

It is noted that the Ballina LEP 2012 has adopted the SI LEP optional clause 5.25 Farm gate premises. The proposed application of clause 7.9 is not however considered to be inconsistent with the SI LEP or clause 5.25 as the drafting notes for the clause confirm that additional development standards for farm gate premises may be included. The final drafting and how the intent of this proposal is incorporated into the Ballina LEP 2012 will be determined by Parliamentary Counsel.

It is also noted clause 7.9 applies to zones RU1 Primary Production, RU2 Rural Landscape and C3 Environmental Management. Agritourism is not however permitted in the C3 Environmental zone under the Ballina LEP 2012. The proposal should be amended prior to consultation to clarify that no change to the current permissibility of agritourism in the C3 Zone is intended.

A draft clause is included in the planning proposal for consultation purposes.

#### **Item 5: Dwellings in E1 Zone**

Dwelling houses and secondary dwellings are currently listed as permitted with consent in the E1 Local Centre Zone. E1 zoned 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.

A draft clause is included in the planning proposal for consultation purposes.

#### **Item 8: Amend clause 4.1B, clause 7.17 and items in Schedule 1 to align LEP provisions to SEPP (Housing) 2021 in relation to dual occupancy development**

SEPP (Housing) 2021 has recently been amended to permit development for the purposes of dual occupancies and semi-detached dwellings with development consent in the R2 Low Density Residential zone.

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 specified in the LEP. Some of these existing provisions are now considered redundant as a result of the SEPP amendment, as discussed below.

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

This clause applies the minimum lot size that is applicable to a land subdivision to a strata subdivision in the nominated zones, including 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.

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.

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 proposed change to clause 4.1B would allow strata subdivision of historically constructed dwellings (where it is not currently permitted in R2 zones).

*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.

Proposed Amendment:

It is proposed to delete clause 7.17 and 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”.

Draft clauses and draft mapping are included in the planning proposal for consultation purposes.

**Item 11: Amend clause 4.2B Boundary Adjustment**

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

Council has received legal advice (**Attachment E**) that has raised concern that there is some ambiguity in the operation of the clause associated with use of boundary adjustment and subdivision of land terminology. Council proposes the apply improved wording 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.

Proposed Amendment:

It is proposed to amend clause 4.2B to:

1. expand its application to the C2 Environmental Conservation and C3 Environmental Management zones; and
2. reduce the current ambiguity of the wording of the clause to support its intended outcomes.

It is understood that Council’s proposed changes are for the purpose clarifying and restricting the operation of the clause to boundary adjustments as intended, as opposed to subdivision in general.

It should be noted that Council’s intent is contrary to the proposed amendment of similar clauses in other Council LEPs which have sought to provide more flexibility for rural boundary adjustments.

A draft clause is included in the planning proposal for consultation purposes. The proposed amendment is considered reasonable, subject to further clarification of its intent. A Gateway condition is recommended requiring clarification within the planning proposal of the intent of the proposed amendment prior to community and agency consultation.

**Item 12: Prohibit advertising structures in all zones.**

Advertising structures are a form of signage, as defined in the SI LEP, along with business identification signs and building identification signs. 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 Ballina LEP 2012 that relate to advertising structures.



Advertising structures are currently permitted with consent in the E1 Local Centre, E2 Commercial Centre, E3 Productivity Support, MU1 Mixed Use, RE1 Public Recreation and W2 Recreational Waterways zones. The other forms of signage are permitted with consent in all zones. It is noted that the proposal incorrectly identifies advertising structures as being currently prohibited in the E4 General Industrial Zone. This should be amended prior to consultation.

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

#### Proposed Amendment:

It is proposed to prohibit advertising structures in all zones in BLEP 2012.

Business and building identification signs would continue to be permitted with consent in all zones across the LGA.

### **Map only amendments**

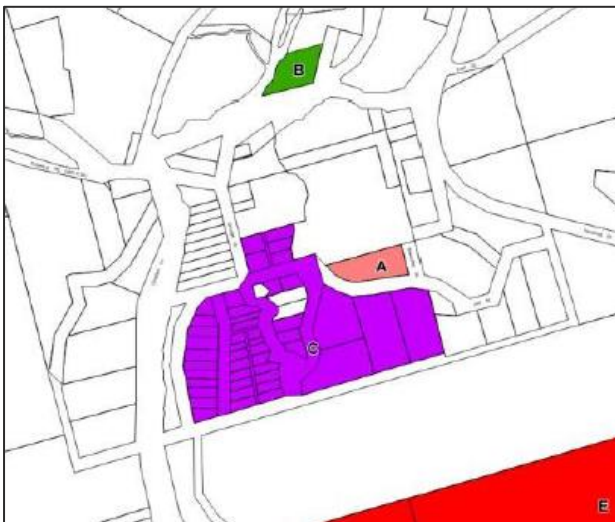
#### **Item 6: Hill Street Tintenbar – Dwelling Entitlement**

Land at Hill Street, Tintenbar, is shown on Council's *Dwelling Opportunities Reinstatement Map*, coloured in purple with the letter 'C' (**Figure 11**). The identified group of lots was previously in a single ownership. In recent years, several of these individual lots have been sold, with the group of lots being split into different ownerships. 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.

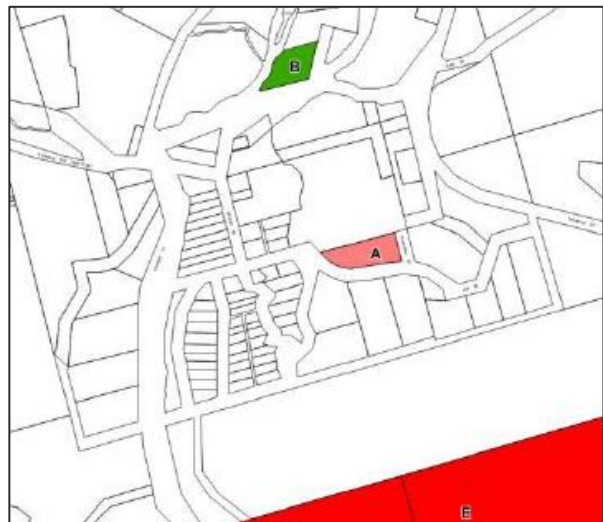
#### Proposed amendment:

It is proposed to amend the Dwelling Opportunity Reinstatement Map to remove these Tintenbar properties (**Figure 12**).

Draft mapping is included in the planning proposal and is considered adequate for consultation purposes.



**Figure 11: Existing Dwelling Opportunities map**  
(Source: Planning Proposal)



**Figure 12: Proposed Dwelling Opportunities map**  
(Source: Planning Proposal)

#### **Item 7: Mapping amendments to land at Avalon Estate, 17 Millbrook Terrace, Wollongbar**

A portion of Lot 129 is 'deferred area' under BLEP 2012, retaining a zoning of 7(d) Environmental Protection (Scenic/Escarpment) under BLEP 1987 (**Figure 13**).

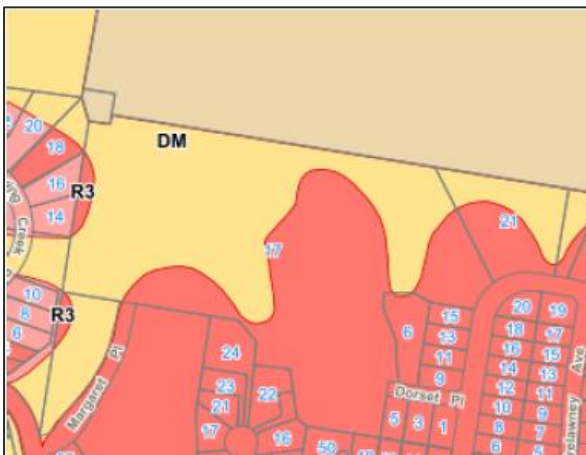
A development application has been lodged for a subdivision of the residue property from the remaining residential zoned land. Subdivision of the land under LEP 1987 would not afford a dwelling entitlement for the residue lot. In order to provide for a dwelling entitlement the land must be included within LEP 2012.

Proposed amendment:

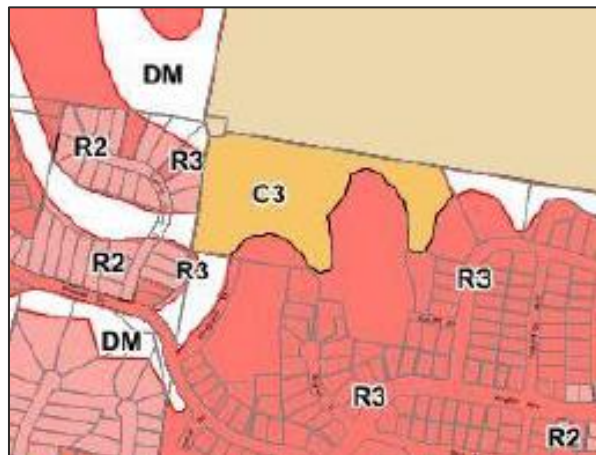
It is proposed to rezone the deferred area within Lot 129 to C3 Environmental Management under BLEP 2012 (**Figure 14**). The small, isolated section of land currently zoned R3 Medium Density Residential on the western boundary is also proposed to be included in the C3 zone. These parts of the site satisfy the criteria in the Ministerial Direction 3.4 for zoning land C3, as the landowner has advised they support this proposed zone change.

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.

Draft mapping is included in the planning proposal and is considered adequate for consultation purposes subject to the inclusion of the associated lot size and height of building map changes. The proposal also contains an error on p20 which incorrectly references the C2 Environmental Management Zone. This should be amended prior to consultation.



**Figure 13: Current zoning of subject land**  
(Source: Planning Proposal)



**Figure 14: Proposed zoning of subject land**  
(Source: Planning Proposal)

### Item 10: Mapping amendments at Ascot Road, Ballina

The bulk of Lot 10 DP 1297404 is zoned E4 General Industry, apart from a small portion in the south-east, which is zoned RU2 Rural Landscape (**Figure 15**). The zone boundary appears to be an anomaly, in that it does not follow the eastern cadastre boundary of the property. The same mapping anomaly is within the Lot Size Map (**Figure 16**).

Proposed amendment:

It is proposed to amend the relevant map sheets for zoning (**Figure 17**) and lot size (**Figure 18**) to correct the mapping anomaly by aligning with the property boundary.

Draft mapping is included in the planning proposal for consultation purposes. It is noted that, in addition to the realignment of the zoning and lot size mapping to include all land within the boundary of Lot 10, the proposed maps also show the removal of the current E4 zone and Lot Size standard from the adjoining part of Lot 2 DP 791177 to the immediate south. This change is not discussed in the planning proposal and Council's intention with regards to Lot 2 is not clear. Council has subsequently confirmed that this is an error and no change to zoning or minimum lot

size for Lot 2 is intended as part of this proposal. Mapping shown in the planning proposal will need to be updated to clarify Council's intention. A condition to the Gateway determination has recommended to ensure this occurs prior to community and agency consultation.



Figure 15: Existing zoning map (Source: Planning Proposal)

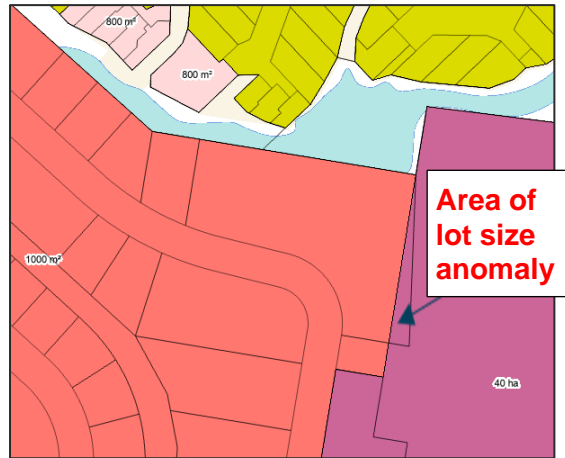


Figure 17: Existing Lot Size map (Source: Planning Portal Spatial Viewer)

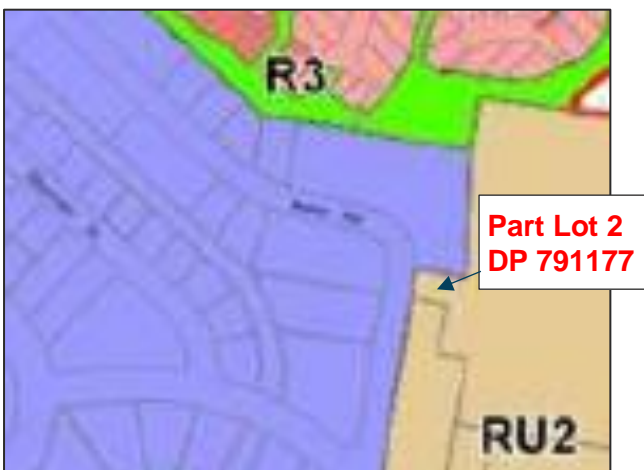


Figure 16: Proposed zoning map (Source: Planning Proposal)

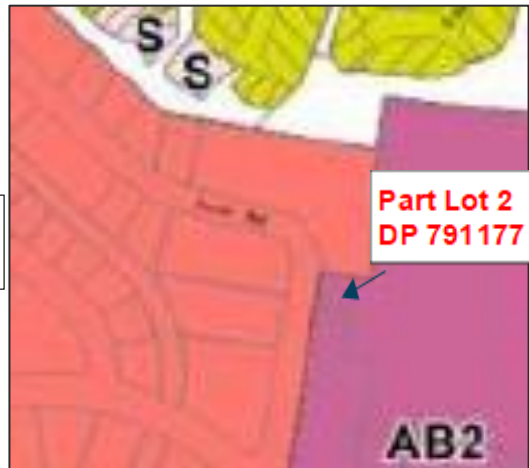


Figure 18: Proposed Lot Size map amendment (Source: Planning Proposal)

## 3 Strategic assessment

### 3.1 Regional Plan

The planning proposal is considered to be generally consistent with the goals, objectives and overall intent of the 2041 Regional Plan. The proposed amendments are housekeeping in nature and consistent with the strategic planning intent for development within the region and Ballina LGA. The following table provides an assessment of specific items within planning proposal against relevant aspects of the Regional Plan.



**Table 4 Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 1: Provide well located homes to meet demand	Item 8 reduces current restrictions relating to dual occupancy development and strata subdivision of such in the R2 Low Density Residential zone, consistent with the intention SEPP (Housing) 2021.
Objective 8: Support the productivity of agricultural land	The proposed amendment for Item 10 will result in a minor loss of agricultural land (currently zoned RU2). The land is not mapped as Important Farmland. The land is adjacent to existing employment land and within the land parcel of land intended to be wholly zoned for employment uses. The inconsistency is considered to be of minor significance as the amendment merely rectifies mapping anomalies in the zoning and minimum lot size controls for that portion of the lot.
Objective 11: Support cities and centres and coordinate the supply of well-located employment land	<p>The proposal includes provisions to support local business centres (Items 2 and 5) and employment areas (Item 10) through regulation of appropriate uses and expansion of employment lands.</p> <p>Items 2 and 5 support the desired development and operation of employment land in the E1 Local Centre zone.</p> <p>Item 10 supports the development of existing employment land by rectifying mapping anomalies relating to the land.</p>

## 3.2 Local

The proposal is generally consistent with Council's local plans and endorsed strategies, including its Growth Management Strategy 2013, Local Strategic Planning Statement 2020 – 2040 and Community Strategic Plan 2022 – 2032.

## 3.3 Section 9.1 Ministerial Directions

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

**Table 5 9.1 Ministerial Direction assessment**

Directions	Consistency	Reasons for Consistency or Inconsistency
1.2 Implementation of Regional Plans	Justified	The planning proposal is generally consistent with the overall intent of the North Coast Regional Plan 2041 as discussed above.
3.2 Heritage Conservation	Consistent	The planning proposal provides for the accurate identification and protection of a heritage item.
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Consistent	This Direction applies in relation to Item 7. The proposal is consistent with the <i>Northern Councils E Zone Review Final Recommendations</i> report, as the landowner has given approval to the application of the C3 Environmental Management zone over part of the land.

4.1 Flooding	Justified	The proposal is inconsistent with this Direction as the proposal contains land that falls within the flood planning area (Item 10). The inconsistency is considered of minor significance as the proposal relates to the rectification of a mapping anomaly and is unlikely to result in adverse flooding impacts to the land or surrounding properties. The Ballina LEP 2012 and DCP contain provisions that allow this matter to be adequately addressed at the development application stage. The inconsistency with the Direction is therefore considered to be justified.
4.2 Coastal Management	Unresolved	<p>Parts of the proposal are located within the coastal zone, as defined under the Coastal Management Act 2016, comprising the coastal environment area.</p> <p>The proposal does not include provisions which give effect to the objectives of the Coastal Management Act 2016, the NSW Coastal Management Manual and Toolkit and the NSW Coastal Design Guidelines 2023. The planning proposal also does not include a completed assessment checklist for planning proposals, in accordance with the Guidelines.</p> <p>It is recommended that the Gateway require a completed checklist be included in the proposal prior to exhibition. Until this checklist is completed the Direction consistency will remain unresolved.</p>
4.3 Planning for Bushfire Protection	Unresolved	The planning proposal is inconsistent with this Direction because parts of the subject land are bush fire prone. The Direction provides that the Council must consult with the Commissioner of the NSW RFS following the issue of a Gateway determination and prior to community consultation. Until this consultation has occurred the inconsistency with the Direction is unresolved.
4.5 Acid Sulfate Soils	Justified	An assessment of ASS mapping shows the site at Item 10 is mapped as Class 2. The proposal is inconsistent with the Direction as it is not supported by an appropriate soils study. The inconsistency is considered to be of minor significance as the proposal relates to the rectification of a mapping anomaly and the Ballina LEP 2012 contains adequate provisions to address potential ASS impacts at the development application stage.
6.1 Residential Zones	Justified	The proposal is inconsistent with this Direction due to the loss of a small (approx. 700m <sup>2</sup> ) area of residential zoned land along the western boundary of this property ( <b>Figure 13</b> ). This inconsistency is of minor significance as the land is isolated from the remainder of the residential area and not feasible for development.
7.1 Employment Zones	Consistent	<p>Item 2 of 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.</p> <p>Item 10 facilitates better use of the land for employment purposes through alignment of the zoning and minimum lot size boundaries with the lot boundary.</p>

9.1 Rural Zones	Justified	The proposal is inconsistent with this Direction as it rezones land from a rural zone to an employment zone. The inconsistency is considered of minor significance as the proposal relates to the rectification of a mapping anomaly and is unlikely to result in any adverse impacts to adjoining rural zoned land.
9.2 Rural Lands	Justified	The planning proposal seeks to alter a rural zone and alter the existing minimum lot size within a rural zone and is inconsistent with this Direction as it does not satisfy all the stated requirements. The inconsistency is considered of minor significance as the proposal relates to the rectification of a mapping anomaly and is unlikely to result in adverse impacts to adjoining rural land.

### 3.4 State environmental planning policies (SEPPs)

The planning proposal is not inconsistent with any relevant SEPPs.

## 4 Site-specific assessment

### 4.1 Environmental

It is unlikely that the proposal will have any adverse impact upon threatened species, populations or ecological communities, or their habitats.

### 4.2 Social and economic

No adverse social or economic impacts are considered likely to arise from the planning proposal. The proposal will enhance the operation of the LEP in relation to a range of potential development.

### 4.3 Infrastructure

There will be no impact on State or regional infrastructure or the requirement for additional funding.

## 5 Consultation

### 5.1 Community

The planning proposal is categorised as standard under the LEP Making Guidelines (August 2023). Accordingly, a community consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination.

### 5.2 Agencies

Due to the range of issues requiring consideration, it is recommended the following agencies be consulted on the planning proposal and given 30 days to comment unless otherwise stated:

- NSW Rural Fire Service
- Department of Climate Change, Energy, the Environment and Water - Biodiversity Conservation and Science Division (Biodiversity Conservation)
- Department of Primary Industries and Regional Development – Agriculture and Biosecurity

## 6 Timeframe

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

An LEP completion period of nine (9) months is recommended with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has requested delegation to be the Local Plan-Making authority.

In accordance with the Secretary's directive to Northern Rivers Councils in 2016, planning proposals that seek to apply a conservation zone (Item 7) are unable to be delegated to Council.

## 8 Assessment summary

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

- the proposal is generally consistent or expected to be justifiably inconsistent with the North Coast Regional Plan 2041, relevant SEPPs and Ministerial Directions;
- the proposal is not inconsistent with the Ballina Shire Local Strategic Planning Statement or the Department approved Ballina GMS 2013; and
- will ensure a more efficient and effective LEP.

Based on the assessment outlined in this report, the planning proposal is to be updated before consultation to:

- Include mapping of all proposed planning controls changes;
- Remove Item 9 from the planning proposal;
- Update the proposed zoning and lot size maps within the document to show that no changes are intended for adjoining land Lot 2 DP 791177;
- Clarify that the purpose of Council's proposed amendment of clause 4.2B (Item 11) is to restrict the clause's application to boundary adjustments;
- Clarify in Item 12 that advertising structures are currently permissible in the E4 General Industrial zone;
- Include a completed NSW Coastal Design Guidelines 2023 Appendix 1: Assessment checklist for planning proposals;
- Clarify that no change to the current permissibility of agritourism in the C3 Zone is intended in regard to Item 4.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 1.1 Implementation of Regional Plans, 4.1 Flooding, 4.5 Acid Sulfate Soils, 6.1 Residential Zones; 9.1 Rural Zones and 9.2 Rural Lands are minor or justified; and
- Note that the consistency with section 9.1 Directions 4.2 Coastal Management and 4.3 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

The following conditions are recommended to be included on the Gateway determination:



1. The planning proposal is to be amended prior to agency and community consultation to:
  - Include mapping of all proposed planning controls changes;
  - Remove Item 9 from the planning proposal;
  - Update the proposed zoning and lot size maps within the document to show that no changes are intended for adjoining land Lot 2 DP 791177;
  - Clarify that the purpose of Council's proposed amendment of clause 4.2B (Item 11) is to restrict the clause's application to boundary adjustments;
  - Clarify in Item 12 that advertising structures are currently permissible in the E4 General Industrial zone;
  - Include a completed NSW Coastal Design Guidelines 2023 Appendix 1: Assessment checklist for planning proposals;
  - Clarify that no change to the current permissibility of agritourism in the C3 Zone is intended in regard to Item 4.
2. Consultation is required with the following public authorities:
  - NSW Rural Fire Service
  - Department of Climate Change, Energy, the Environment and Water - Biodiversity Conservation and Science Division (Biodiversity Conservation)
  - Department of Primary Industries and Regional Development – Agriculture and Biosecurity
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. Consistent with the recommendations of the E Zone Review, Council must ensure that any landowner whose land is proposed to have a conservation zone applied, is notified in writing of the planning proposal and the consultation arrangements.
5. When Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, the landowners whose land will be subject to a conservation zone must be notified in writing of Council's decision and advised that they have 28 days to notify the Department if they would like the Chief Planner (or equivalent) to review the proposed zoning of their property.

In accordance with the Secretary's directive to Northern Rivers Councils in 2016, planning proposals that seek to apply a conservation zone (Item 7) are unable to be delegated to Council.

An LEP completion timeframe of nine (9) months should be included on the Gateway.



23/8/24

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(Signature)

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

Craig Diss

Manager, Hunter and Northern Region



26/8/24

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

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

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