

---

**MANAGER DEVELOPMENT AND ENVIRONMENT REPORT**

---

**ITEM 12.3 SF3599 270225 PROPOSED AMENDMENT TO THE NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010 - ADDITIONAL PERMITTED USE AT 19 HAMERTON COURT TEWINGA**

---

**AUTHOR/ENQUIRIES:** Charles Watts, Development Assessment Officer

**Summary:**

Council has received a planning proposal from representatives of the owners of Lot 5 DP1077244 – 19 Hamerton Court, Tewinga, which proposes to amend the Nambucca Local Environmental Plan 2010 to add 'Agritourism' and 'Viticulture' as additional permitted uses on the land.

The Draft Planning Proposal has been included within **Attachment 1**.

The proposed amendment to add additional permitted uses on the land in the form of agritourism and viticulture is supported as these land uses better utilise the land as it cannot be further subdivided for residential purposes, and the proposed uses have a low potential to have conflict with surrounding land uses.

**NOTE:** This matter requires a "Planning Decision" meaning a decision made in the exercise of a function of the council under the Environmental Planning and Assessment Act 1979 including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan. Under Section 375A of the *Local Government Act 1993* it requires the General Manager to record the names of each Councillor supporting and opposing the decision.

**RECOMMENDATION:**

That Council forward the attached planning proposal to amend the Nambucca Local Environmental Plan 2010 to the Minister for Planning for gateway determination in accordance with section 3.34 of the *Environmental Planning and Assessment Act 1979*.

**OPTIONS:**

- 1 Proceed with the planning proposal with or without amendments and forward to the Minister for gateway determination in accordance with section 3.34 of the *Environmental Planning & Assessment Act 1979*.
- 2 Not proceed with the planning proposal.

**DISCUSSION:**

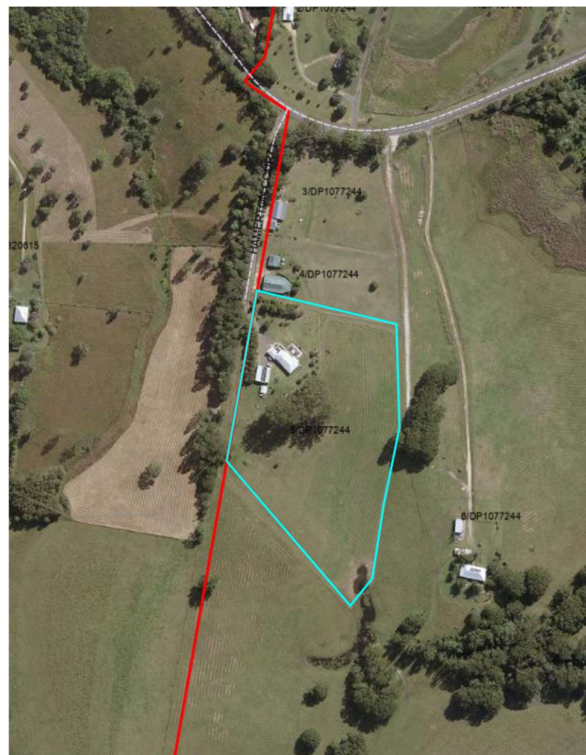
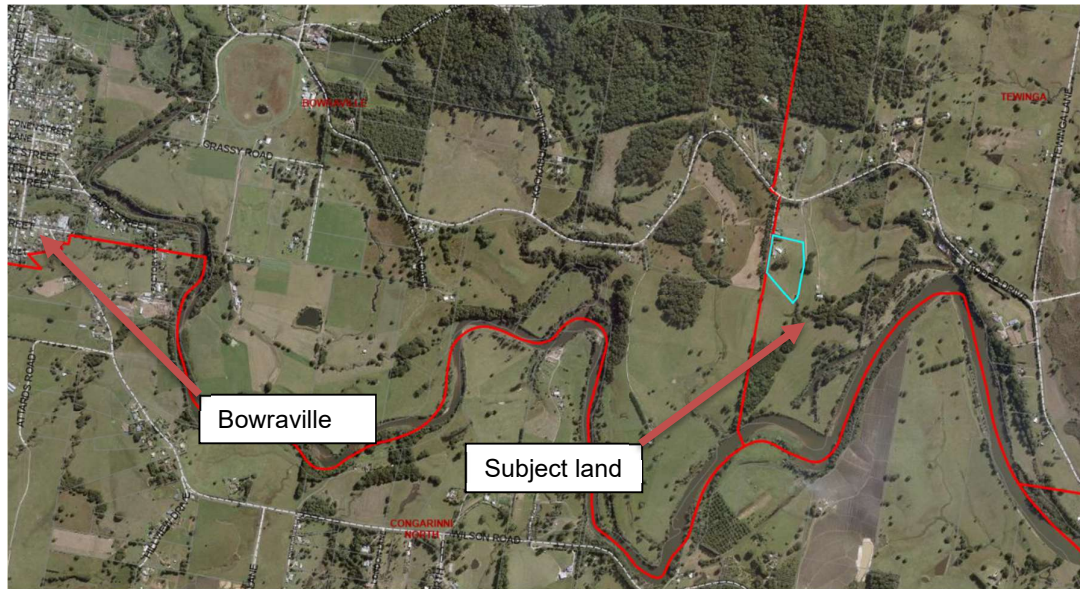
A Planning Proposal has been received by Council from Lisa Hall to amend the Nambucca Valley Local Environment Plan 2010 to enable additional permissible uses at 19 Hamerton Court, Tewinga. The additional permitted uses proposed are 'Agritourism' and 'Viticulture'.

**The subject land and surrounding environment**

The subject lot is located at 19 Hamerton Court, Tewinga – Lot 5 DP 1077244 and is accessed off Rodeo Drive. Immediately north of the subject land exists two lots of land zoned R5 Large Lot Residential within Hamerton Court.

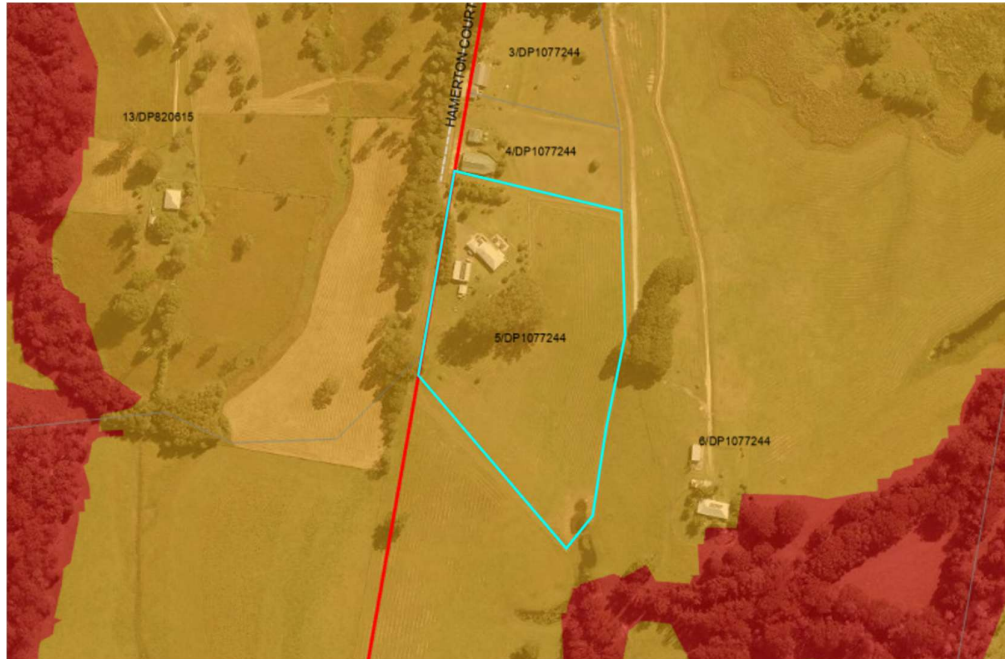
Surrounding the east, south and west of the subject site is land zoned as RU1 Primary Production and RU2 Rural Landscape. This land features three separate lots, all of which contain single dwellings, and are used primarily for grazing purposes.

**ITEM 12.3 PROPOSED AMENDMENT TO THE NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010 -  
ADDITIONAL PERMITTED USE AT 19 HAMERTON COURT TEWINGA**

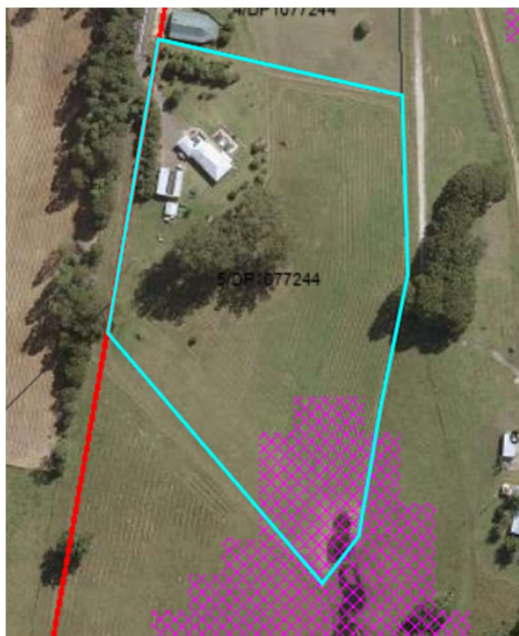


**ITEM 12.3 PROPOSED AMENDMENT TO THE NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010 -  
ADDITIONAL PERMITTED USE AT 19 HAMERTON COURT TEWINGA**

The lot is mapped as bush fire prone, and is considered to have a vegetation classification of grasslands in accordance with Planning for Bush Fire Protection 2019. Although the subject land is mostly clear of trees, there are spots of forest vegetation to the south-east and west of the site.



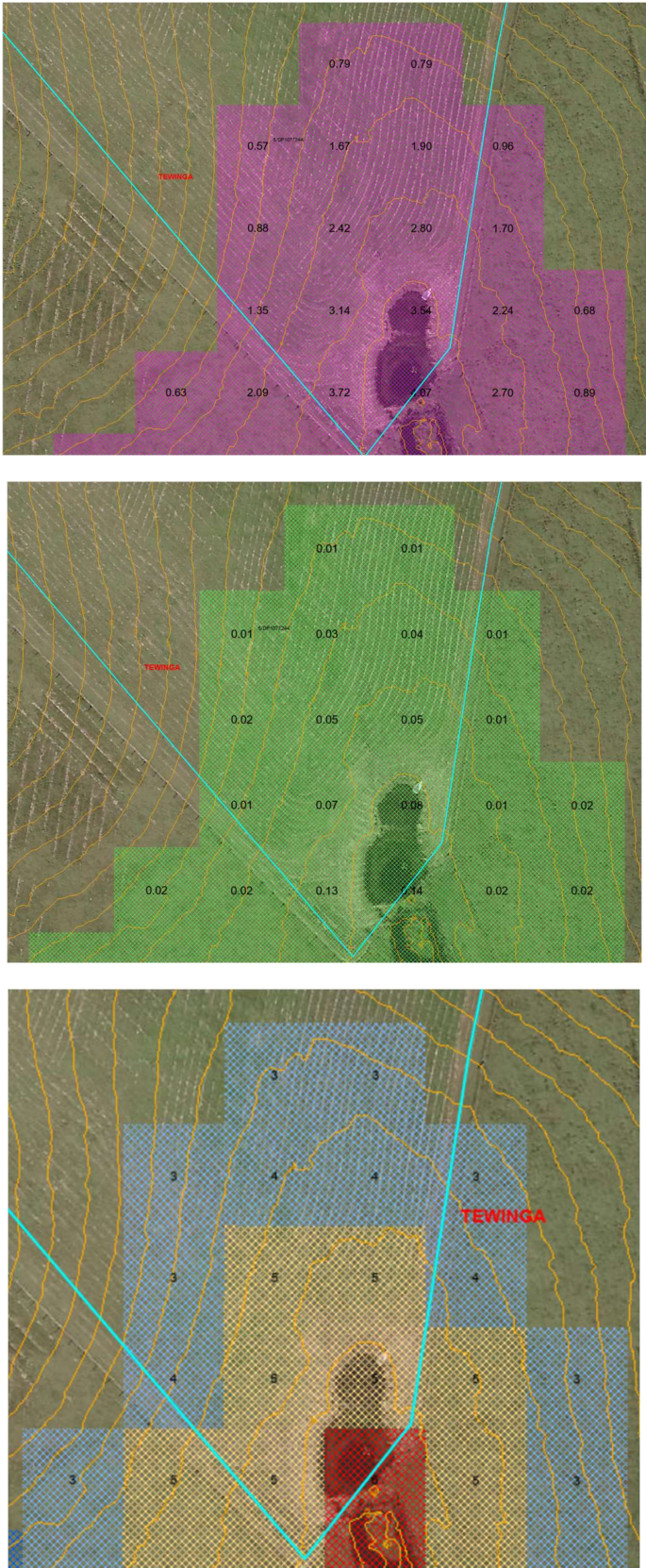
The southern portion of the land is mapped as being flood prone, as can be seen in the following image.



The height of a 1 in 100 year flood in the flood prone portion ranges from 4.07 at its lowest point to 0.79 at its highest, while the velocity ranges from 0.01 to 0.14 metres per second. This gives a hydraulic hazard on the land at 6 at the lowest point, and 3 at the highest point.



ITEM 12.3 PROPOSED AMENDMENT TO THE NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010 -  
ADDITIONAL PERMITTED USE AT 19 HAMERTON COURT TEWINGA



---

**ITEM 12.3 PROPOSED AMENDMENT TO THE NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010 -  
ADDITIONAL PERMITTED USE AT 19 HAMERTON COURT TEWINGA**

---

There is not known to be any sites of Aboriginal significance on the land or within 200m of the land. The land is not known to be contaminated. The land utilises reticulated water, telecommunications and electricity, as well as utilising on site sewerage management.

Planning Proposal

The following points are components that each planning proposal must contain, as provided by the applicant and with comment from Council where necessary.

1 Objectives and Intended Outcomes

The intention of the planning proposal, as provided by the applicant, is to facilitate the permissibility of Agritourism and Viticulture with consent at 19 Hamerton Court, Tewinga, being Lot 5 in DP1077244.

The planning proposal permits the additional land uses only on the subject land, rather than a broad change for the R5 Large Lot Residential zone. This allows for land uses which has merit on the subject land without causing potential conflicts on other parcels of land.

A broadscale application of viticulture as permissible with consent within the whole R5 zone would be desirable. This is due to the existing permissibility of horticulture in the zone with development consent; with the current prohibition of viticulture resulting in an inconsistency within the R5 zone land use table given the similarities between the two forms of intensive plant agriculture and the comparable potential impacts.

However, despite the inconsistency in the land use table and comparable impacts to horticulture, it is unlikely the NSW Department of Planning would accept viticulture as a permissible use within the R5 zone without analysis being undertaken on potential impacts on residential development within the zone. It is not considered that such an analysis of the R5 zone is the responsibility of the applicant and Council does not have the capacity at this point in time to prepare any such analysis. As such, in order to facilitate the applicants proposal, the requested additional permitted use on the lot is supported.

2 Explanation of Provisions

The Planning Proposal seeks to include Agritourism and Viticulture as Additional Permitted Uses (APU) in Schedule 1 of the Nambucca Local Environmental Plan 2010. The Additional Permitted Uses are proposed to apply to the subject lot as mapped below.



---

**ITEM 12.3 PROPOSED AMENDMENT TO THE NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010 -  
ADDITIONAL PERMITTED USE AT 19 HAMERTON COURT TEWINGA**

---

The following is proposed by the applicant to be added to Schedule 1 of the Nambucca Local Environmental Plan 2010:

**Use of certain land at Hamerton Court**

- (1) This clause applies to land being Lot 5, DP1077244, Hamerton Court, Tewinga
- (2) Development for the purpose of Agritourism and Viticulture is permitted with development consent.

**3 Justification**

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

No.

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

Additional permitted uses would be the best means of achieving the objectives and intended outcomes provided by the applicant. The alternative options would be to rezone part of the land to either RU1 Primary Production or RU2 Rural Landscape where Agritourism and Viticulture are permitted, or to permit Agritourism and Viticulture in the R5 Large Lot Residential zone in the whole of the Local Government Area.

The first alternate option to rezone part of the land to an RU1 Primary Production or RU2 Rural Landscape zoning is unfeasible, as it would create a lot that is under the minimum lot size for the RU1 and RU2 zones, being 40 hectares.

The second alternate option to permit Agritourism and Viticulture with development consent in the R5 Large Lot Residential zone is unfeasible, as there are potential negative effects on all lots with R5 zoning that would require a much more extensive study to assess the potential impacts.

It is due to these reasons that an Additional Permitted Use for Agritourism and Viticulture on the subject land is seen as the optimal solution to achieve the objectives and intended outcomes, as it is more of a targeted approach that benefits the subject land without potentially having negative impacts on the subject land, adjoining lots and R5 Large Lot Residential lots in the LGA.

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

The planning proposal is considered to be consistent with the North Coast Regional Plan 2041.

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

The planning proposal is considered to be consistent with the Nambucca LSPS and the Nambucca Community Strategic Plan.

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

The planning proposal is not inconsistent with the applicable state and regional strategies.

## ITEM 12.3 PROPOSED AMENDMENT TO THE NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010 - ADDITIONAL PERMITTED USE AT 19 HAMERTON COURT TEWINGA

*Is the planning proposal consistent with applicable SEPPs?*

The planning proposal is consistent with the applicable SEPPs.

*Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or key government priority?*

The applicable 9.1 Ministerial Directions have been included in the below table:

| Direction                              | Comment  |
|--|--|
| 1.1 Implementation of Regional Plans   | Planning proposal is consistent with the regional plan as outlined above.  |
| 1.3 Approval and Referral Requirements | Consistent.  |
| 1.4 Site Specific Provisions           | Consistent - the planning proposal contains concept drawings of the proposed development; however, these are conceptual only and do not indicate the final design of the future development on site. |
| 3.1 Conservation Zones                 | Consistent - the subject land is not in an environmentally sensitive area.   |
| 3.2 Heritage Conservation              | There is not known to be any sites of Aboriginal Significance on the land or within 200m of the land.  |
| 4.1 Flooding                           | Consistent - the land is identified as being in the 1 in 100 year zone, however the land use is compatible with the flood nature of the land.  |
| 4.2 Coastal Management                 | Consistent.  |
| 4.3 Planning for Bushfire Protection   | Consistent.  |
| 4.5 Acid Sulfate Soils                 | Consistent.  |
| 5.1 Integrating Land Use and Transport | The planning proposal is consistent with the objectives of this direction.   |
| 6.1 Residential Zones                  | The planning proposal is consistent with the directions of this part.  |

*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?*

The subject land does not contain critical habitat or threatened species, populations or ecological communities, or their habitats, and is already utilised for residential purposes.

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

The planning proposal is not likely to have any significant environmental effects.

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

The planning proposal adequately addresses any potential social and economic effects.

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

**ITEM 12.3 PROPOSED AMENDMENT TO THE NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010 -  
ADDITIONAL PERMITTED USE AT 19 HAMERTON COURT TEWINGA**

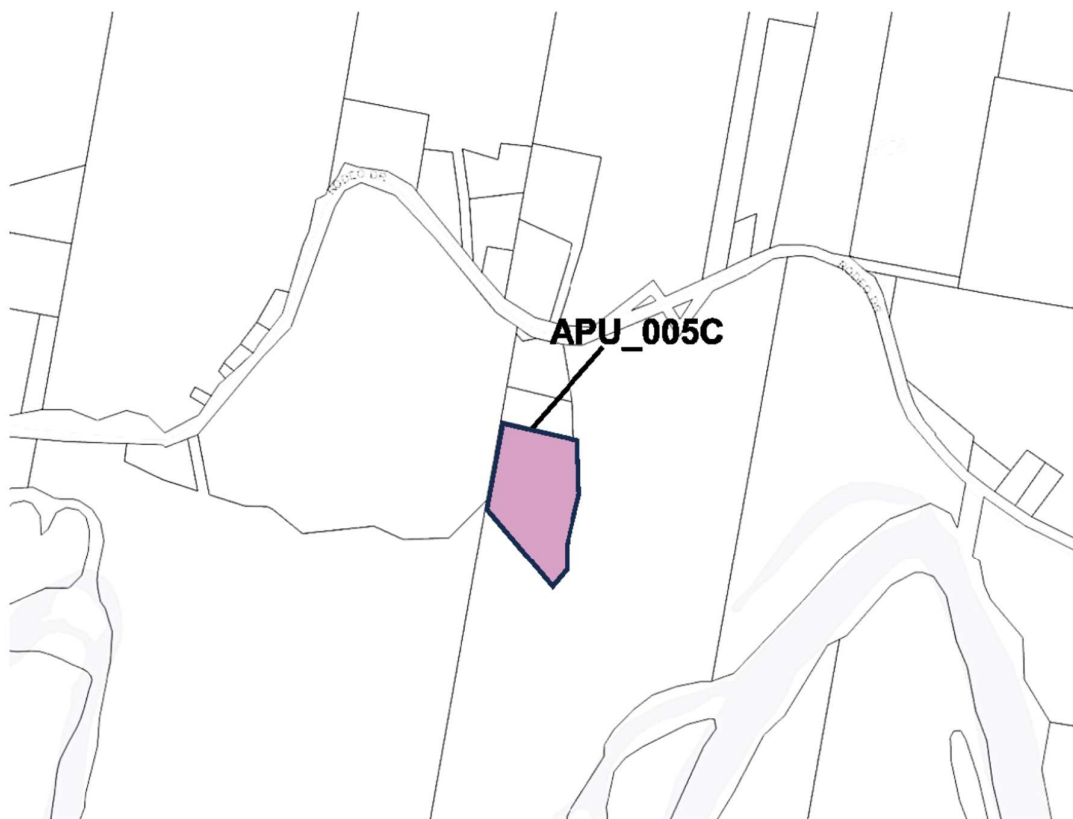
There is adequate public infrastructure for the planning proposal. Any required infrastructure upgrades for the additional permitted uses will be determined at the development application stage.

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

No state and federal public authorities or government agencies were required to be consulted at this stage. This will occur following gateway determination.

#### 4 Mapping

The below map, outlining what land is to contain the additional permitted uses, is to be added to the Nambucca LEP 2010 mapping.



#### 5 Community Consultation

Should the planning proposal be approved to be sent for Gateway Determination, it will follow the guidelines as prescribed in the Local Environmental Plan Making Guidelines for standard planning proposals. The public exhibition will be for a period of 20 working days, which includes notification on Council's website, the Planning Portal, and in writing to adjoining owners, and will include details of the planning proposal and how to make a submission.

#### 6 Project Timeline

The planning proposal is classified as Standard, and indicative timing will be in line with Local Environmental Plan Making Guidelines as follows:

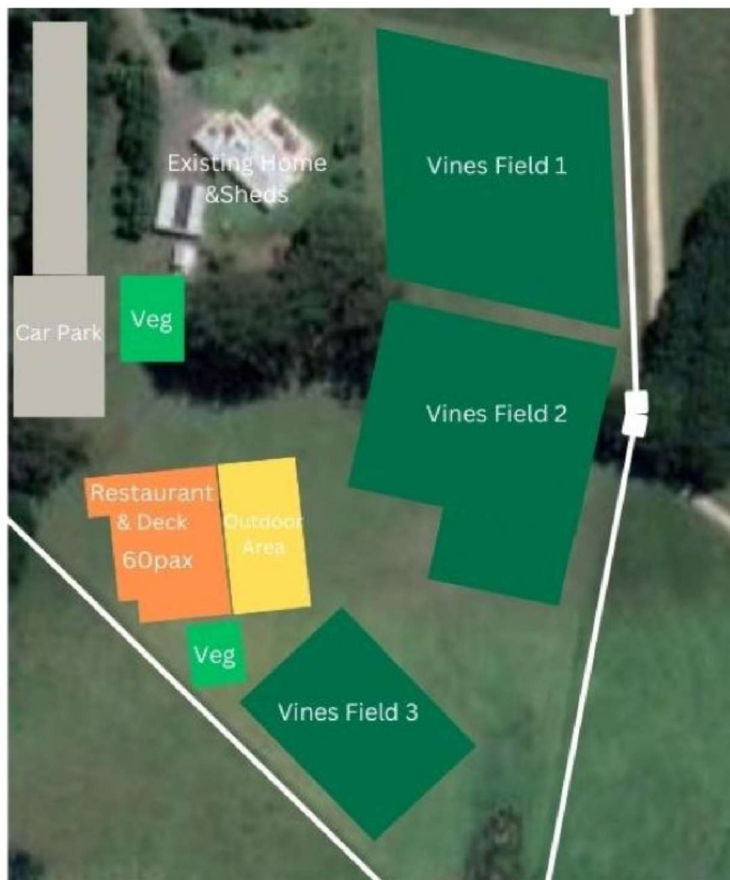


## ITEM 12.3 PROPOSED AMENDMENT TO THE NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010 - ADDITIONAL PERMITTED USE AT 19 HAMERTON COURT TEWINGA

| Stage                                    | Maximum Benchmark Timeframes (working days) |                  |                  |                  |
|--|---|------------------|------------------|------------------|
|  | Basic                                       | Standard         | Complex          | Principal        |
| Stage 1 – Pre-lodgement                  | 30 days                                     | 50 days          | 60 days          | 20-30 days       |
| Stage 2 – Planning Proposal              | 80 days                                     | 95 days          | 120 days         | 40 days          |
| Stage 3 – Gateway determination          | 25 days                                     | 25 days          | 45 days          | 45 days          |
| Stage 4 – Post-Gateway                   | 20 days                                     | 50 days          | 70 days          | 160 days         |
| Stage 5 – Public Exhibition & Assessment | 70 days                                     | 95 days          | 115 days         | 95 days          |
| Stage 6 – Finalisation                   | 25 days                                     | 55 days          | 70 days          | 80 days          |
| Sub-total (Department target)            | 140 working days                            | 225 working days | 300 working days | 380 working days |
| Total (end to end)                       | 220 days                                    | 320 days         | 420 days         | 420 days         |

### Staff Comment

The draft planning proposal submitted to Council will allow for Agritourism and Viticulture to be permitted with consent on the subject land. An example of the potential of allowing these land uses on the subject land has been provided by the applicant, as pictured below.



---

**ITEM 12.3 PROPOSED AMENDMENT TO THE NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010 -  
ADDITIONAL PERMITTED USE AT 19 HAMERTON COURT TEWINGA**

---

The subject lot is zoned as R5 Large Lot Residential. The objectives of this zone are as follows:

The land is currently zoned R5 Large Lot Residential. The objectives of this zone are as follows:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality,
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future,
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities, and
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

The proposed amendment to add additional permitted uses on the land in the form of agritourism and viticulture is consistent with the objectives of the zone as they have a low potential to have conflict with surrounding land uses and retain ability for permitted residential accommodation on the land.

Potential issues that could arise from the additional permitted uses are outlined below.

**Flooding**

The land is partially prone to flooding, being within the 1 in 100 flood zone per the Nambucca Flood Risk Management Study. The proposed land uses are not incompatible with the flood nature of the land, and any future development on the land will be subject to a development application which will assess the flood risk of the land in relation to the development.

**Fire**

The land is mapped as bushfire prone. Any future development applications for the proposed land uses will have adequate land for any required bush fire protection measures. Council will consult with the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of clause 4, Schedule 1 to the EP&A Act, and take into account any comments so made.

**Traffic**

Although the additional land uses have potential to increase traffic in Hamerton Court, the uses will require a development application which will address any potential issues regarding traffic generation.

**CONSULTATION:**

Manager Development & Environment

**SUSTAINABILITY ASSESSMENT:** Discussed in report.

**Risk Analysis:** Nil

| Identified | Risk Likelihood<br>(H,M,L) | Impact of risk<br>(H,M,L) | Strategy to<br>manage risk | Risk<br>Assessment |
|------------|----------------------------|---------------------------|----------------------------|--------------------|
| Nil        | L                          | L                         | -                          | L                  |

**FINANCIAL IMPLICATIONS:** Nil.

**ATTACHMENTS:**

1 66259/2024 - Planning Proposal