



IRF 26/4188

Gateway determination report – PP-2024-2438

Amendment to Ballina LEP 2012 to rezone land at 47 Dufficys Lane and Ross Lane, Kinvara (part Lot 60 DP 1136918 and part Lot 11 DP 1127111), amend associated development standards, and facilitate changes to SEPP (Planning Systems) 2021 and SEPP (Exempt and Complying Development Codes) 2008

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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.

Contents

1	Planning proposal.....	1
1.1	Overview	1
1.2	Objectives of planning proposal.....	1
1.3	Explanation of provisions.....	2
1.4	Site description and surrounding area	3
1.5	Mapping	7
2	Need for the planning proposal	8
3	Strategic assessment	9
3.1	Regional Plan	9
3.2	Local.....	9
3.3	Section 9.1 Ministerial Directions.....	10
3.4	State environmental planning policies (SEPPs)	11
4	Site-specific assessment	11
4.1	Environmental	11
4.2	Social and economic	12
4.3	Infrastructure	13
5	Consultation.....	13
5.1	Community	13
5.2	Agencies	13
6	Timeframe	14
7	Local plan-making authority	14
8	Assessment summary	14
9	Recommendation.....	14

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment 1 - Planning Proposal BSCPP 24/005 – CURA B E1 Zone Relocation and Height of Building Increase – Feb 2026
Attachment 2 - Preliminary Contamination Assessment (September 2008) Land Partners
Attachment 3 - CURA B Stage 1 Retail Needs Assessment

Attachment 4 - Council Report CURA B

Attachment 5 - Environmental and Sustainability Committee Meeting Minutes

Attachment 6 – Council Minutes

Attachment 7 - Justification for Increase Building Height

Attachment 8 – Engineering Advice for Local Environmental Study – July 2011

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Ballina
PPA	Ballina Shire Council
NAME	Amendment to Ballina LEP 2012 to rezone land at 47 Dufficys Lane and Ross Lane, Kinvara (part Lot 60 DP 1136918 and part Lot 11 DP 1127111), amend associated development standards, and facilitate changes to SEPP (Planning Systems) 2021 and SEPP (Exempt and Complying Development Codes) 2008
NUMBER	PP-2024-2438
EPI TO BE AMENDED	Ballina Local Environmental Plan (LEP) 2012 State Environmental Planning Policy (SEPP) (Planning Systems) 2021 State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008
ADDRESS	Part of 47 Dufficys Lane and Ross Lane, Kinvara
DESCRIPTION	Part Lot 60 DP1136918 and Part Lot 11 DP112711
RECEIVED	6/05/2026
FILE NO.	IRF26/4188
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 of the planning proposal are to:

- relocate the E1 Local Centre zone to a more central and level site within the urban release area to facilitate walkability, accessibility, and integration with surrounding neighbourhoods;
- increase the building height within the proposed E1 zone from 8.5m to 11m to support two storeys of residential development above a commercial ground floor; and
- ensure consistency with a recently adopted Development Control Plan (DCP).

The proposal will require a number of LEP maps to be amended, including land zoning, height of building, minimum lot size and urban release area.

As part of establishing the Development Coordination Authority, the Department is currently introducing a new referrals framework for local DAs. This framework will consolidate referral requirements that were previously detailed in numerous local environmental planning instruments into a single, clear list in Chapter 4 of SEPP (Planning Systems) 2021. This process includes the transfer of the existing concurrence requirement in clause 6.1 of the Ballina LEP 2012 and the associated Urban Release Area Map into SEPP (Planning Systems) 2021.

This change will take effect on 1 July 2026, prior to the finalisation of this planning proposal.

The subject land is also mapped on the Greenfield Housing Code Area Map (Ballina Local Government Area Map 1) included in SEPP (Exempt and Complying Development Codes) 2008. The existing E1 land is excluded while the R3 land is included.

Council's planning proposal must therefore seek to amend the Ballina LEP 2012 to rezone land at 47 Duffcys Lane and Ross Lane, Kinvara (part Lot 60 DP 1136918 and part Lot 11 DP 1127111), amend associated development standards and also facilitate changes to SEPP (Planning Systems) 2021 and SEPP (Exempt and Complying Development Codes) 2008.

Prior to exhibition, the planning proposal is to be updated to state that the proposal will amend the LEP to update the land zoning, height of building and minimum lot size maps, as well as to exact changes to SEPP (Planning Systems) 2021 to facilitate amendments to the urban release area map as well as SEPP (Exempt and Complying Development Codes) 2008 to facilitate amendments to the Greenfield Housing Code Area Map to reflect the revised residential and employment zoning.

Otherwise, the objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Ballina LEP 2012 and SEPP (Planning Systems) 2021 per the changes below:

Table 3 Current and proposed controls – Ballina LEP 2012

Control	Current	Proposed
Zone	E1 Local Centre (2.97ha)	R3 Medium Density Residential (Area 1)
	R3 Medium Density Residential (2.38ha)	E1 Local Centre (Area 2)
Maximum height of the building	8.5m	No change for land zoned R3 (Area 1)
	8.5m	11m for land zoned E1 (Area 2)
Minimum lot size	800m ² on land zoned E1	450m ² for land zoned R3 (Area 1)
	450m ² on land zoned R3	800m ² for land zoned E1 (Area 2)
Urban release area	Land zoned R3 identified on the URA map	To be transferred to SEPP (Planning Systems) 2021

Table 4 Current and proposed controls - SEPP (Planning Systems) 2021

Control	Current	Proposed
Urban release area	Land zoned E1 excluded	Land zoned R3 included (Area 1)
	Land zoned R3 included	Land zoned E1 excluded (Area 2)

Table 5 Current and proposed controls - SEPP (Exempt and Complying Development Codes) 2008

Control	Current	Proposed
Greenfield Housing Code Area Map	Land zoned E1 excluded	Land zoned R3 included (Area 1)
	Land zoned R3 included	Land zoned E1 excluded (Area 2)

As detailed in Section 1.2, the planning proposal will be required to be updated prior to exhibition to include an updated explanation of provisions explaining how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The planning proposal relates to 47 Duffcys Lane and Ross Lane, Kinvara (part Lot 60 DP 1136918 and part Lot 11 DP 1127111) (**Figures 1 and 2**). The land is predominantly cleared and has historically been used for grazing and agricultural activities.

The subject land is part of the CURA B estate which is a large greenfield master planned area. CURA B is located within a wider urban release area which includes Cumbalum Precinct A and CURA C (not yet rezoned for urban development).

CURA B is located approximately 5.5 kilometres west of Lennox Head and 7.5 kilometres north-west of Ballina.

The land subject to this proposal is currently zoned E1 Local Centre Zone (**Area 1**) and R3 Medium Density Residential (**Area 2**) within the Ballina LEP 2012.

Area 1 sits on a slope of 11% which is a 31.5m fall over 284m, while **Area 2** has a lower and more consistent elevation more suited to the local centre zone (**Figure 10**).

The site includes areas of mapped acid sulfate soils (**Figure 3**) and potential high environmental value land (**Figure 4**). The land is within the North Coast Regional Plan 2041 urban growth area boundary (**Figure 5**) and coastal strip (**Figure 6**) and is classified as bushfire prone (**Figure 7**). It is within the strategic urban growth area (SUGA) (**Figure 8**) as well as an urban release area (**Figure 9**), both mapped in the LEP.

Residential land is also included on the Greenfield Housing Code Area Map in SEPP (Exempt and Complying Development Codes) 2008 (**Figure 11**).

It is noted that Lot 60 DP 1136918 comprises two separate parcels joined by a vinculum. This proposal does not apply to the eastern portion of the allotment, which is mapped under the *Coastal Management Act 2016* and chapter 2 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (**Figure 12**) as:

- coastal wetlands
- coastal wetland proximity area

- coastal environment
- coastal use

While areas proposed to be rezoned are not flood prone, there are sections of both allotments which are subject to flooding (**Figure 13**). A portion of Lot 60 DP 1136918 is also affected by the Building height allowance map, however, this does not apply to the land to be rezoned.



Figure 1: Locality plan showing Lot 60 DP 1136918 (source: NSW Planning Portal Spatial Viewer)



Figure 2: Locality plan showing 11 DP 1127111 (source: NSW Planning Portal Spatial Viewer)



Figure 3: Class 3 (Pink) and Class 5 (yellow) acid sulfate soils (source: DPHI Northern Viewer)

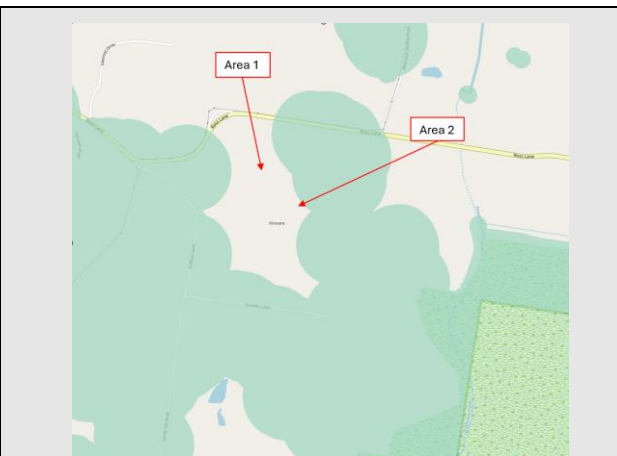


Figure 4: High environmental value land (source: DPHI Northern Viewer)

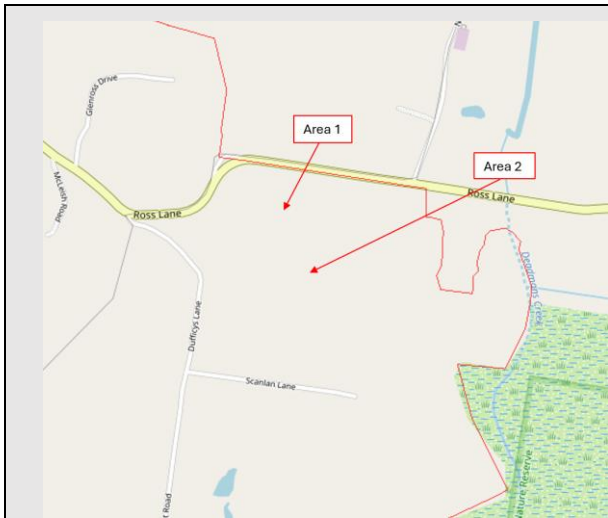


Figure 5: Urban Growth Area (source: DPHI Northern Viewer)



Figure 6: Coastal Strip (source: DPHI Northern Viewer)

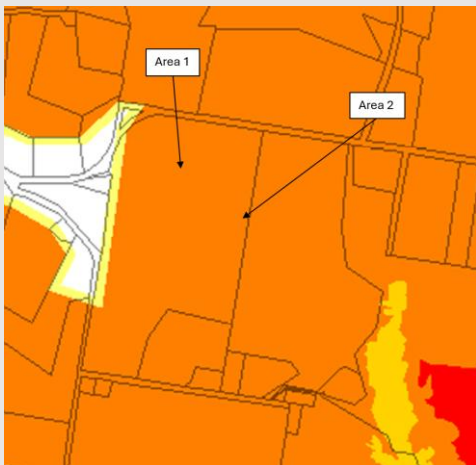


Figure 7: Ballina Shire Council – Bushfire Prone Land Map – 11 November 2025 (source: DPHI Northern Viewer)

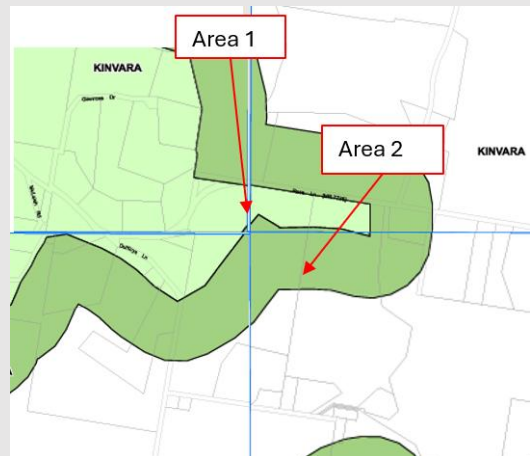


Figure 8: Strategic Urban Growth Area (SUGA) Map (source: NSW Planning Portal Spatial Viewer)

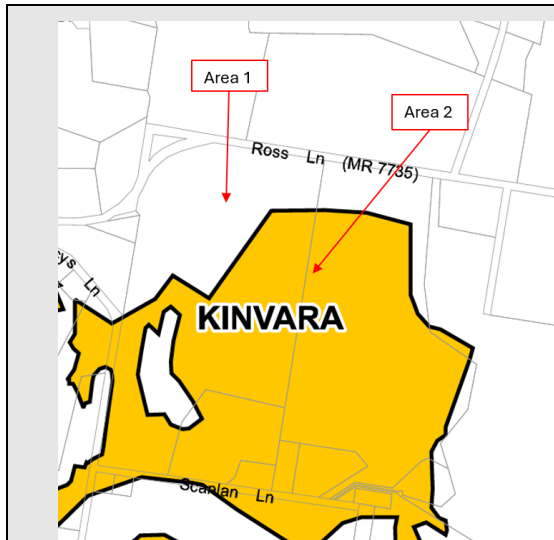


Figure 9: Urban Release Area Map (source: NSW Planning Portal Spatial Viewer)

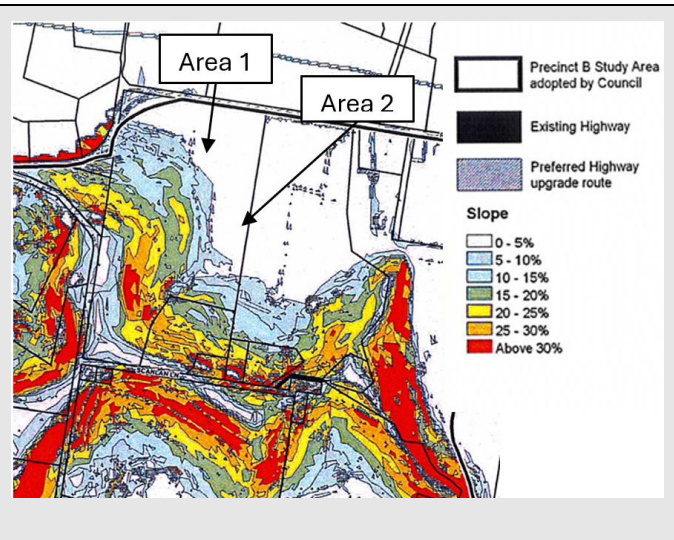


Figure 10: Slope Analysis (source: Engineering Advice for Local Environmental Study – July 2011)

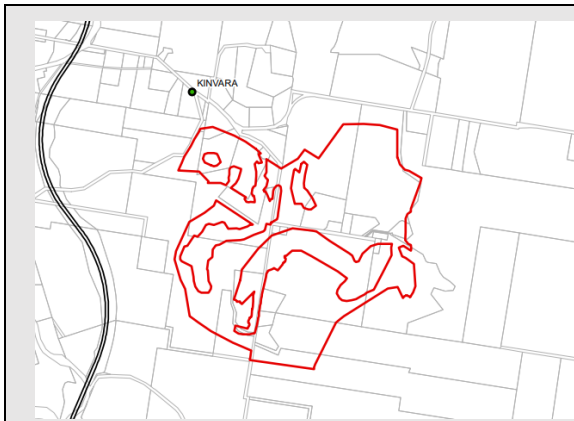


Figure 11: Greenfield Housing Code Area Map – Ballina Local Government Area 1 (source: SEPP (Exempt and Complying Development Codes) 2008)

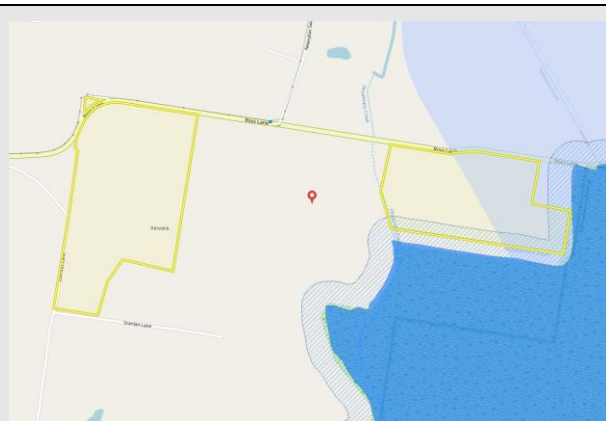


Figure 12: Coastal hazard mapping (source: DPHI Northern Viewer)

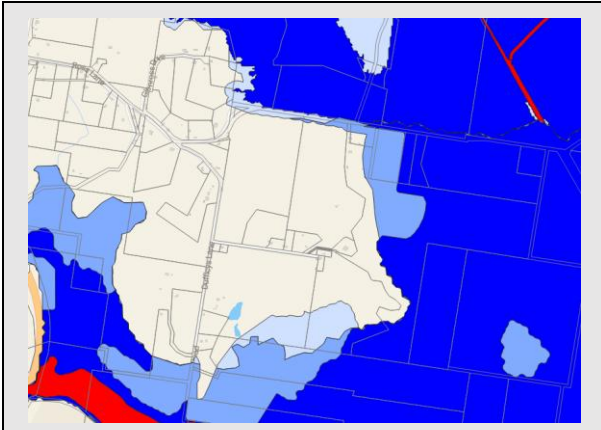


Figure 13: Flood hazard mapping – DCP (source: Ballina Shire Council GIS mapping)

1.5 Mapping

The proposal includes mapping that illustrates the existing and proposed changes to the Ballina LEP 2012 land zone, lot size and height of buildings maps which are suitable for agency and community consultation (**Figures 14-19**).

As discussed in Section 1.2 of this report, the area to be rezoned to R3 Medium Density Residential (**Area 1**) is to be included in the Urban Release Area and Greenfield Housing Code Area maps (**Figures 9 & 11**) while the area to be rezoned to E1 Local Centre is to be excluded. Prior to exhibition, the planning proposal is to be updated to illustrate proposed updates to these maps, included in SEPP (Planning Systems) 2021 and SEPP (Exempt and Complying Development Codes) 2008.

The final mapping must comply with the Standard Technical Requirements for Standard Instrument LEP Maps prior to finalising the LEP amendment.

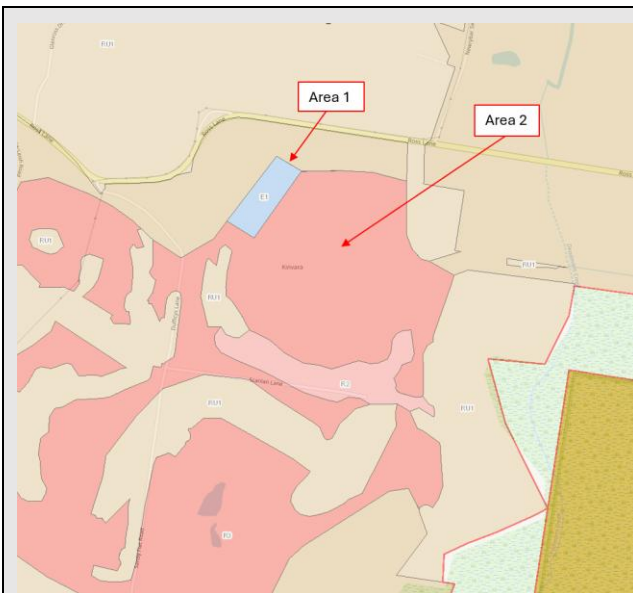


Figure 14: Current Land Zone Map



Figure 15: Proposed Land Zone Map



Figure 16: Current Lot Size Map



Figure 17: Proposed Lot Size Map



Figure 18: Current Height of Building Map

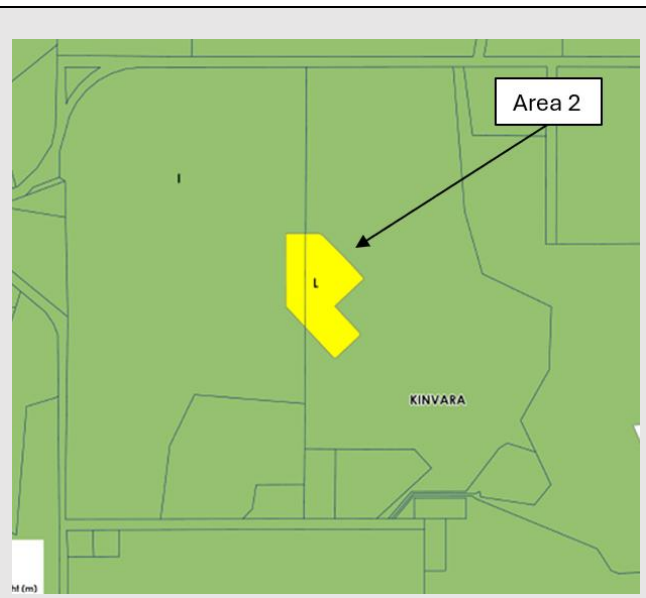


Figure 19: Proposed Height of Building Map

2 Need for the planning proposal

The planning proposal is not a result of a local strategic planning statement or Department approved local housing strategy, employment strategy or strategic study or report.

Rather, the planning proposal seeks to amend the LEP to ensure consistency with the most recent Structure Plan affecting the site, included in a DCP amendment adopted by Ballina Shire Council at its Ordinary meeting on 22 August 2024.

The existing E1 zone is located on the edge of the future development area and is constrained by its steeper topography (11%). As such, the amended Structure Plan relocated the E1 zone to facilitate a flatter, more central neighbourhood centre to improve walkability, accessibility and integration with surrounding neighbourhoods.

A Voluntary Planning Agreement is also proposed to ensure that a minimum amount of commercial floor space is delivered in a timely fashion alongside residential development to meet the everyday needs of residents.

The proposal is considered the most appropriate means to achieve the intended planning outcome.

3 Strategic assessment

3.1 Regional Plan

The proposal is considered to be consistent with the North Coast Regional Plan 2041 and in particular the following relevant aspects.

Table 6 Regional Plan assessment

Regional Plan Objectives	Justification
Objective 1: Provide well located homes to meet demand	The application is considered consistent with this objective. The proposed height of building increase in the E1 zone from 8.5m to 11m will support provision of two storeys of residential development above a commercial ground floor.
Objective 3: Protect regional biodiversity and areas of high environmental value	As detailed in section 1.4 of this report, the subject lands contain mapped Potential High Environmental Value (PHEV) (Figure 4). Environmental assessment of the land is considered to have been adequately completed when the allotments were rezoned for urban purposes. This planning proposal seeks to rezone land within an existing urban development footprint and does not pose a higher risk of biodiversity impacts than the current scenario. As such, it is considered that any potential impacts on biodiversity and HEV be reasonably addressed at the Development Application stage.

3.2 Local

The proposal confirms that it is consistent with the following local plans and endorsed strategies as outlined in the following table.

Table 7 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement 2020-2040	The proposal is consistent with the LSPS, particularly: - Planning priority 2: Encourage good urban design which increases chances for social interaction and connectedness - Planning priority 5: Maintain a supply of suitably located industrial land, close to population centres at Alstonville – Wollongbar, and Ballina – Lennox Head, so as to foster local employment opportunities and to reduce journey to work travel distances.

Draft Ballina Shire Local Strategic Planning Statement 2025-2046	The planning proposal does not address the draft LSPS 2025-2046. Prior to exhibition, the proposal is to be updated to consider this matter.
Ballina Shire Housing Strategy 2024	The proposal will not result in the reduction of land dedicated for housing and is therefore consistent with the intent of Council's housing strategy.
Ballina Shire Council Community Strategic Plan 2022-2032	The proposal is considered to align with the Community Strategic Plan by ensuring that planning instruments operate effectively to deliver strategic outcomes, optimising land-use planning to meet community needs.
Ballina Draft Community Strategic Plan 2025-2035	The proposal aligns with Council's Draft Community Strategic Plan by promoting sustainable growth and effective land use planning to achieve a liveable, connected, and environmentally responsible community.

3.3 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all relevant section 9.1 Directions except as discussed below:

Table 8 Section 9.1 Ministerial Direction assessment

Directions	Consistent / Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Justifiably Inconsistent	The proposal is inconsistent with this direction as it alters a zone or provision on a site that includes areas of flood prone land. The inconsistency of the proposal with this direction is considered to be of minor significance as: • flooding does not affect the land to be rezoned; • the land is already zoned for urban purposes; and • any potential flood matters can be adequately considered and addressed at the development application stage.
4.2 Coastal Management	Unresolved	The proposal is inconsistent with this direction as it affects land within the coastal zone and is not supported by a completed NSW Coastal Design Guidelines Assessment checklist. A condition to complete and complete the required checklist has been included in the Gateway determination. Consistency with this direction will remain unresolved until such time as the checklist has been completed.

4.3 Planning for Bushfire Protection	Unresolved	The proposal is inconsistent with this direction as it affects land identified as being bushfire prone (Figure 7). A bushfire risk assessment is required to be prepared to confirm that the site is suitable for rezoning and this matter forms a condition of the Gateway determination. This direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS). Until consultation has been undertaken, consistency with this direction remains unresolved.
4.5 Acid Sulfate Soils	Justifiably Inconsistent	The proposal is inconsistent with this direction as its effects land containing acid sulfate soils and is not supported by an acid sulfate soils study. The inconsistency with this direction is considered to be of minor significance as the Ballina LEP 2012 already contains suitable provisions (Clause 7.1) to ensure that this matter can be appropriately considered and addressed as part of any future development application.
7.1 Employment Zones	Justifiably Inconsistent	The proposal is inconsistent with this direction as it will reduce the quantity of existing employment land and also rezone land for employment purposes not identified in a strategy approved by the Secretary. The planning proposal will result in a reduction of 5,861m² of E1 zoned land, with the revised area totalling 2.38 hectares. The inconsistency is considered to be of minor significance as: - the proposal is supported by a retail needs assessment (Attachment 3) which confirms that there will be sufficient employment area available to provide for the needs of the local community; and - the revised location of the employment land is in a more central and topographically suitable area to serve the needs of the local community.

3.4 State environmental planning policies (SEPPs)

The planning proposal is considered to be consistent with all relevant SEPPs, including proposed amendments to SEPP (Planning Systems) 2021 as well as SEPP (Exempt and Complying Development Codes) 2008.

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal which have not already been discussed elsewhere within this report.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Contamination	The planning proposal applies to cleared land that has historically been used for agriculture (including sugar cane cropping). A Preliminary Contaminated Site Investigation (PSI) was prepared by Land Partners dated September 2008 to support the original rezoning proposal for CURA B (Attachment 2). The PSI identified that there was a low risk of broad scale contamination across the site. Any areas of contamination that were detected in the PSI were generally associated with existing farm structures and areas used for agricultural activities. Assessment of potential for contamination is considered to have been adequately completed when the allotments were rezoned for urban purposes. This planning proposal seeks to rezone land within an existing urban development footprint and does not pose a higher risk of contamination impacts than the current scenario. As such, it is considered reasonable that any further consideration of this matter be undertaken at the development application stage.

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Height of building increase	Council states that the proposed height of building increase from 8.5m to 11m for the E1 zone will allow additional flexibility in achieving well designed contemporary-built form outcomes, including mixed-use developments that can accommodate ground-floor parking and active ground floor uses while still providing two levels of shop top housing. The increased height of building control provides the opportunity to deliver diversity in housing typology and affordability in an area with good access to amenity, employment and recreational nodes. Impacts from the proposed height of building increase are expected to be ameliorated as: - the lower elevation of the proposed E1 site will reduce the visual prominence of development - development on E1 land can be separated from nearby residential land uses by suitable road layouts - the central location of the E1 zone will facilitate a gradual reduction in height and density from 11m in the village centre to 8.5m in the surrounding residential areas with a gradual transition to the landscape-dominated rural and conservation zones.
Social	Relocating the E1 zone to a more central location in the precinct provides an opportunity for greater access to essential retail and services as well as a walkable neighbourhood design.

Economic

The economic opportunities provided by the planning proposal will not be significantly different from those afforded by the existing scenario.

4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 11 Infrastructure assessment

Infrastructure	Assessment
Local	The site is part of the CURA B urban release area, which is being developed by Council under a master planning and infrastructure delivery framework. The relocated E1 Local Centre zone is already planned to be serviced by: • road access via Dufficys Lane and new subdivision roads • sewer and water infrastructure provided as part of Stage 1 subdivision works • proximity to a proposed district park and shared path network. Detailed servicing strategies will be addressed at the development application stage for both subdivision and future built form.
State	Part 6 of the Ballina LEP contains requirements for the provision of designated State public infrastructure in relation to urban release areas. As detailed previously within this report, these provisions will be transitioned by the Department into SEPP (Planning Systems) 2021. This planning proposal does not propose any alterations to the written LEP instrument and as such there is no impact expected on the provision of State infrastructure.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days (equivalent to 20 working days).

The exhibition period proposed is considered appropriate, and forms a condition of the Gateway determination.

5.2 Agencies

The planning proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- NSW Rural Fire Service

6 Timeframe

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

An LEP completion date of nine months is recommended having regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

As the planning proposal will require amendments to SEPP (Planning Systems) 2021 and SEPP (Exempt and Complying Development) 2008, it is not considered appropriate to authorise Council to be the local plan-making authority for this proposal.

8 Assessment summary

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

- it is consistent with the applicable strategic planning framework; and
- it will assist in supporting a diversity of housing in urban growth areas, encouraging walkable, mixed-use neighbourhoods and maintaining employment lands near population centres.

As discussed in the previous sections of this report, the planning proposal is required to be updated prior to agency consultation and public exhibition to:

- state that it will amend the LEP to update the Land Zoning, Height of Building and Lot Size maps, as well as exact changes to SEPP (Planning Systems) 2021 to facilitate amendments to the Urban Release Area Map and SEPP (Exempt and Complying Development Codes) 2008 to facilitate amendments to the Greenfield Housing Code Area Map
- include maps detailing proposed updates to the Urban Release Area map and Greenfield Housing Code Area map
- address the provisions of the draft Ballina Local Strategic Planning Statement 2025 - 2046
- include a completed NSW Coastal Design Guidelines Assessment checklist
- include a bushfire risk assessment.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 4.1 Flooding, 4.5 Acid Sulfate Soils and 7.1 Employment Zones 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. Prior to agency consultation and public exhibition, the planning proposal is to be updated to:

- state that it will amend the LEP to update the Land Zoning, Height of Building and Lot Size maps, as well as exact changes to SEPP (Planning Systems) 2021 to facilitate amendments to the Urban Release Area Map and SEPP (Exempt and Complying Development Codes) 2008 to facilitate amendments to the Greenfield Housing Code Area Map
 - include maps detailing proposed updates to the Urban Release Area map and Greenfield Housing Code Area map
 - address the provisions of the draft Ballina Local Strategic Planning Statement 2025 - 2046
 - include a completed NSW Coastal Design Guidelines Assessment checklist
 - include a bushfire risk assessment.
2. Consultation is required with the following public authorities:
- NSW Rural Fire Service
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway not authorise council to be the local plan-making authority and that an LEP completion date of nine months from the date of the Gateway determination be included on the Gateway.



(Signature)

28 May 2026

Kate Campbell

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Hunter and Northern Region



(Signature)

28 May 2026

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