

8.2 Planning Proposal - LEP 2012 General Amendments 2026

Section Strategic Planning

Objective To outline proposed general amendments to Ballina Local Environmental Plan 2012 and seek direction on progression of the planning proposal to Gateway Determination.

Background

Council periodically updates its Local Environmental Plan (BLEP 2012) to ensure statutory planning controls are consistent with community and Council expectations.

Periodic reviews generally occur on an annual or as needs basis depending on the issues arising.

The most recent LEP General Amendments planning proposal was endorsed by Council (post consultation) in December 2025 and was notified (gazetted) on the legislation website on 8 May 2026.

The planning proposal outlined in this report comprises three items, one of which is required to amend an error that occurred during the finalisation stage of the 2024 General Amendments Planning Proposal (PP-2024-1710).

This drafting error relates to Clause 4.2B regarding adjustment to lot boundaries.

The issue has arisen due to changes in the wording of the clause originally proposed by Council during the Parliamentary Counsel review and drafting process.

When it became clear that the amended clause did not achieve intended outcomes, Council requested the Department of Planning, Housing and Infrastructure (DPHI) amend the wording to that originally proposed by Council under Section 3.22 *Expedited amendments of environmental planning instruments* of the *Environmental Planning and Assessment Act (1979)*.

However, the DPHI advised that Council should embark on a fresh planning proposal.

In preparing a planning proposal for this purpose, staff have identified and recommended two other amendments for consideration.

This report outlines these proposed amendments and recommends that Council endorse the Planning Proposal for the purposes of seeking a Gateway Determination and undertaking public and agency consultation.

The Planning Proposal is included as Attachment 1 to this report.

Key Issues

- Function and operation of the Ballina Local Environmental Plan 2012

Discussion

The planning proposal seeks to amend the Ballina Local Environmental Plan 2012 to address three planning matters, ultimately to improve the operation of the plan.

The proposed amendments are summarised in Table 1 and discussed in more detail after the table.

Table 1: Summary of Proposed Amendments

Item	Location	Affects	Details
1	Shire Wide (Rural and Conservation Zones)	Clause 4.2B Exceptions to minimum subdivision lot size for lot boundary adjustments	Amend the wording of Clause 4.2B to allow for changes of boundaries to occur within designated rural and conservation zones.
2	Shire Wide (Non-rural areas)	Clause 5.23 Public Bushland	Adoption of an optional clause within the Standard Instrument LEP relating to consent requirements and exemptions for maintenance in areas of public bushland.
3	Ballina (Waste Facility)	Land Zoning Maps LZN_006C and LZN_006A	Change the zoning for the waste facility from RU2 (Rural Landscape) to SP2 (Infrastructure) and identify the purpose of the site as ' <i>waste or resource management facility</i> ' to reinforce the intended ongoing use of this facility.

Item 1: Amendment to Clause 4.2B Exceptions to minimum subdivision lot size for lot boundary adjustments

Issue and Justification

Clause 4.2B of the BLEP 2012 applies where landowners of two or more adjoining lots are seeking to adjust the configuration of their boundaries.

The clause specifies that consent may be granted to a lot boundary adjustment despite the proposed lots not meeting minimum lot size requirements, where the consent authority is satisfied that –

- (a) the subdivision will not result in the creation of an additional lot or the opportunity for additional dwelling entitlements on a lot, or both, and*
- (b) the subdivision will not have adverse impacts on the long-term agricultural production potential, biodiversity values or environmental characteristics of the lots and the surrounding locality.*

Council's 2024 LEP General Amendments planning proposal (PP-2024-1710) contained an amendment to this clause.

The amendment was initiated following legal advice as to the interpretation of what constitutes a 'boundary adjustment' subdivision, and the established Land and Environment Court principles.

Additionally, it was intended to provide for improved wording in this clause to achieve the intended outcomes of the clause which are:

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

When the LEP Amendment was being finalised, the proposed wording of the clause was amended by the Parliamentary Counsel Office (PCO), which has had the result of limiting the circumstances in how the clause can be used, given the legal interpretation of a 'boundary adjustment'.

As a result, a further amendment to Clause 4.2B is required.

The intent is to provide opportunities for boundary changes to rural and environmentally zoned lots where applications are consistent with the objectives of the clause and the provisions in 4.2B(3), without being restricted by the legal interpretation relative to Land and Environment Court principles (being that proposed lots must not include significant changes to the configuration and bear 'some resemblance' to the current lot configuration).

Essentially the case law impacts the flexibility Council has historically applied in relation to the operation of boundary adjustment provisions.

This can be addressed by the proposed wording change under the Planning Proposal.

Proposed amendment

An amendment to Clause 4.2B is proposed as follows, (with changes shown in red and strikethrough).

4.2B Exceptions to minimum subdivision lot size for lot boundary adjustments ~~changes~~

(1) *The objective of this clause is to permit ~~adjustments to~~ the boundaries between 2 or more lots **to be altered in certain circumstances** to enable ~~that will provide~~ improved agricultural or environmental outcomes without creating additional opportunities for the erection of dwellings.*

(2) *This clause applies to land in the following zones—*

- (a) *Zone RU1 Primary Production,*
- (b) *Zone RU2 Rural Landscape,*
- (c) *Zone C2 Environmental Conservation,*
- (d) *Zone C3 Environmental Management.*

(3) Development consent may be granted for the subdivision of land ~~to change the boundaries of adjoining lots for the purposes of a boundary adjustment between adjoining lots to create lots of a size that are less than the minimum size shown for the land on the Lot Size Map if the consent authority is satisfied that—~~

(a) the subdivision will not result in the creation of an additional lot or the opportunity for additional dwelling entitlements on a lot, or both, and

(b) the subdivision will not have adverse impacts on the long-term agricultural production potential, biodiversity values or environmental characteristics of the lots and the surrounding locality.

Item 2: Introduction of Clause 5.23 Public Bushland

Issue and Justification

In the course of reviewing proposed changes to the Resilience and Hazards State Environmental Planning Policy (SEPP) with regards to weed control in mapped coastal wetlands, it became apparent that under various regulatory controls in other SEPPs including the Biodiversity and Conservation SEPP and the Transport and Infrastructure SEPP, Council is required to lodge a development application and seek development consent in some circumstances for maintenance activities in public bushland.

It is noted that areas of Council-owned (and managed Crown) land classified as “community” under the *Local Government Act 1993* are governed by a Plan of Management (PoM).

In these areas, maintenance activities are generally approved by the PoM and do not require further consent.

However, there are numerous circumstances including closed roads, road reserves and other Crown land that are not covered by a PoM.

Clause 5.23 Public Bushland of the Standard Instrument – Principal Local Environmental Plan was introduced in 2022 and initially applied to councils in the greater Sydney and Central Coast areas following the repeal of the Bushland in Urban Area provisions in the Biodiversity and Conservation SEPP.

The clause is now identified as an “optional” clause whereby councils may ‘opt in’ to have it included in their LEPs.

Inclusion of the provision within the Ballina LEP 2012 would provide a set of assessment criteria where development consent is required for works within urban public bushland and sets out the circumstances whereby consent is not required.

As such it is an additional, useful tool in the management of public bushland.

A factsheet prepared by the former Department of Planning and Environment when clause 5.23 was originally applied, provides more detail about the aims of the clause and where it applies.

The factsheet is included as Attachment 2 to this report.

The following flowchart from the factsheet sets out how and where the provision would apply.

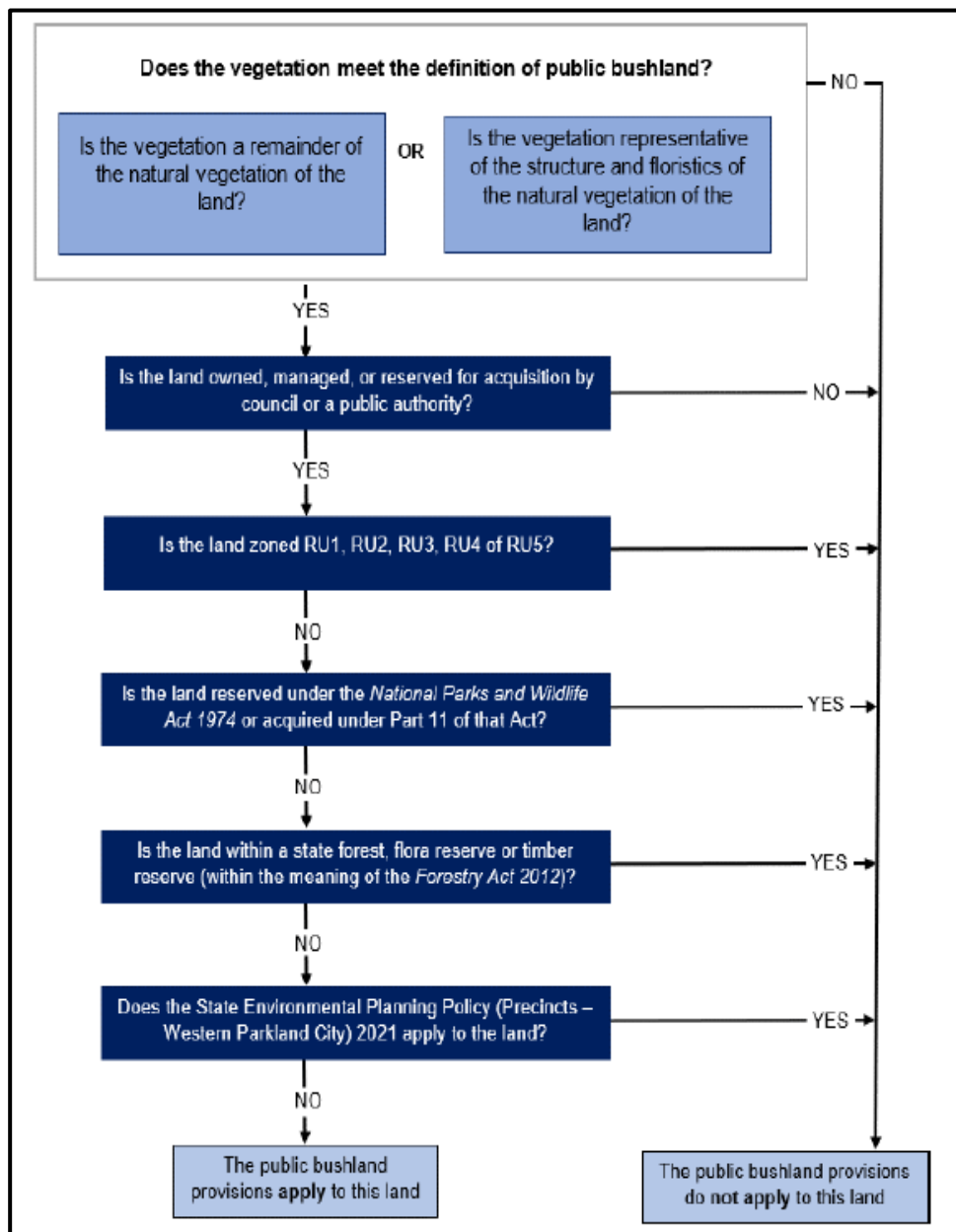


Figure 1: Flowchart for the application of Clause 5.23 Public Bushland

Proposed amendment

It is intended that the following optional clause from the Standard Instrument Principal LEP be included in the Ballina LEP 2012:

5.23 Public bushland

(1) *The objective of this clause is to protect and ensure the ecological viability of bushland, including rehabilitated areas in urban areas, by—*

- (a) *preserving biodiversity, habitat corridors and links between public bushland and other nearby bushland, and*
- (b) *preserving bushland as a natural stabiliser of the soil surface, and*
- (c) *preserving existing hydrological landforms, processes and functions, including natural drainage lines, watercourses, wetlands and foreshores, and*

- (d) preserving the recreational, educational, scientific, aesthetic, environmental, ecological and cultural values and potential of bushland, and*
 - (e) mitigating disturbance caused by development.*
- (2) Development that will disturb, or is reasonably likely to disturb, public bushland is permitted with development consent.*
- (3) Development consent must not be granted to development that will disturb, or is reasonably likely to disturb, public bushland unless the consent authority is satisfied of the following—*
 - (a) the disturbance of the bushland is essential for a purpose in the public interest,*
 - (b) there is no reasonable alternative to the disturbance,*
 - (c) the development minimises the amount of bushland to be disturbed,*
 - (d) the development includes measures to remediate the disturbed bushland.*
- (4) Despite subclause (2), development that will disturb, or is reasonably likely to disturb, public bushland is permitted without development consent if the development is for the following purposes—*
 - (a) the construction, operation or maintenance of pipelines to carry water, sewerage or gas or pipelines licensed under the Pipelines Act 1967,*
 - (b) the construction, operation or maintenance of electricity or telecommunication lines,*
 - (c) bush fire hazard reduction,*
 - (d) the construction or maintenance of classified roads,*
 - (e) facilitating the recreational use of the public bushland.*
- (5) Development specified in subclause (4)(e) is permitted without development consent only if it is carried out in accordance with a plan of management for the public bushland, adopted by the Council in the same way a plan of management is required to be adopted for community land under the Local Government Act 1993, Chapter 6, Part 2, Division 2, that includes measures for the following—*
 - (a) the recreational use of the land,*
 - (b) bush fire hazard reduction,*
 - (c) the prevention of degradation, including the alteration of drainage patterns, rubbish dumping, vehicle intrusion and infestation with weeds or non-native plants,*
 - (d) the remediation of degraded public bushland.*
- (6) This clause does not require development consent for clearing of native vegetation if the clearing is of a kind that is authorised under the Local Land Services Act 2013, section 60O.*
- (7) In deciding whether to grant development consent to development on land adjoining public bushland, the consent authority must consider the following—*
 - (a) the need to retain public bushland adjoining the site of the development,*
 - (b) the likely effect of the development on public bushland, including the following—*
 - (i) the erosion of soil,*
 - (ii) the siltation of streams and waterways,*
 - (iii) the spread of weeds and non-native plants within public bushland,*
 - (c) other matters the consent authority considers relevant to the protection and preservation of public bushland.*
- (8) This clause does not apply to the following land that is public bushland—*

- (a) land in Zone RU1, RU2, RU3, RU4 or RU5,
- (b) land reserved, dedicated or acquired under the National Parks and Wildlife Act 1974,
- (c) land within a State forest, flora reserve or timber reserve within the meaning of the Forestry Act 2012,
- (d) land to which State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 7 applies.

(9) In this clause—

disturb public bushland means—

- (a) remove vegetation from public bushland, or
- (b) cause a change in the natural ecology of public bushland that results in the destruction or degradation of the public bushland.

non-native plant means a plant that is not native vegetation.

public bushland means land—

- (a) on which there is vegetation that is—
 - (i) a remainder of the natural vegetation of the land, or
 - (ii) representative of the structure and floristics of the natural vegetation of the land, and
- (b) that is owned, managed or reserved for open space or environmental conservation by the Council or a public authority.

Item 4: Rezoning land at the Ballina Resource Recovery Centre

Issue and Justification

Assessment of a development application for the second weighbridge at the Ballina Resource Recovery Centre has identified that an SP2 Infrastructure zone would better reflect the use of the site as a '**waste or resource management facility**'.

Whilst the facility can operate under the current RU2 zoning and provisions under Division 23 of the Transport and Infrastructure SEPP enable certain waste related development on the land, the SP2 zone will better reflect the current and long term waste management intentions for the site.

Proposed amendment

A change of zoning from RU2 to SP2 and identifying '**waste or resource management facility**' as the purpose shown on the zone map as shown in Figures 2 and 3.

The amendment would apply to part of Lot 244 DP1175317, part of Lot 386 DP755684 and part of Lot 114 DP755684.



Figure 2: Waste Facility (Current Zoning)

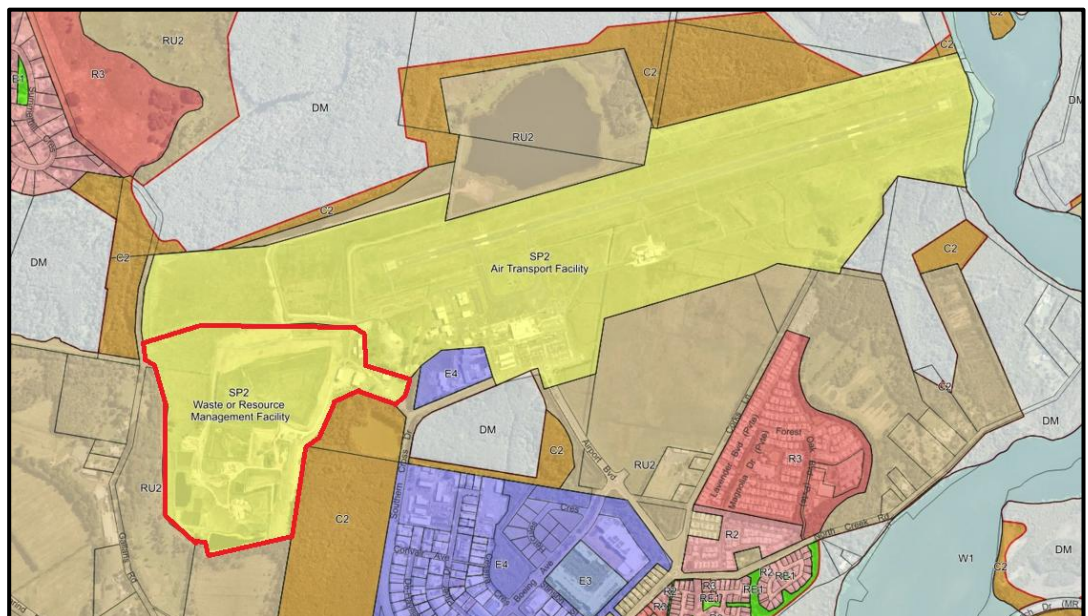


Figure 3: Waste Facility (Proposed Zoning)

Delivery Program Strategy / Operational Plan Activity

The management of Council's planning instruments, including its LEPs, is a central part of Council's land use planning functions and strategic planning work program.

Community Engagement Strategy

Community engagement including State Government agency referrals will be undertaken in accordance with conditions required by the Department of Planning, Housing and Infrastructure's (DPHI) Gateway Determination and Council's Community Participation Plan.

Financial / Risk Considerations

There are no significant financial or other risks associated with progression of the planning proposal. The planning proposal can be progressed utilising existing available resources allocated to the Strategic Planning Section.

Options

Option 1 – Endorse the planning proposal

The attached planning proposal seeks to make three amendments to the Ballina LEP 2012 to improve its operation and function.

This option involves submitting the planning proposal in Attachment 1 to the DPHI for a Gateway Determination and, if forthcoming, to progress to public exhibition and state agency referral.

Under this option Council would also seek authority from DPHI to exercise its delegated plan making function.

This is the recommended option for the reasons outlined within this report.

Under this option Council may decide to amend or delete any item identified in the planning proposal.

Option 2 – Decline to support the planning proposal

Council may choose not to proceed with the planning proposal. However, this option is not recommended as the items detailed in this report have planning merit and will improve operation of the LEP.

RECOMMENDATIONS

1. That Council endorses the proposed General Amendments to the Ballina Local Environmental Plan 2012, included as Attachment 1 to this report (BSCPP 26/002) for submission to the Department of Planning, Housing and Infrastructure (DPHI) for Gateway determination.
2. That the DPHI be advised that Council is seeking to be authorised as the Local Plan Making Authority for this amendment and to exercise its delegated plan making functions.
3. That upon confirmation of a Gateway Determination being received, Council proceeds to public exhibition and agency consultation in accordance with Gateway Determination requirements.
4. That, if no community or state agency objections are received, that Council proceeds to finalisation of the planning proposal. If any objections

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are received, a further report on the outcomes of public exhibition be prepared for Council's consideration.

Attachment(s)

1. BSCPP 26/002 - Planning Proposal (Initiation)
2. BSCPP 26/002 - Public Bushland Clause Factsheet