



Planning Proposal BSC 26/003

» General Amendments 2026

Ballina Local Environmental Plan 2012

Date: September 2026 (V2 Exhibition)

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1. Introduction

1.1 Summary

This planning proposal seeks to amend the Ballina Local Environmental Plan (LEP) 2012 to address a range of minor or routine planning issues and improve the interpretation and accuracy of the plan. The amendment relates to several separate issues, as summarised in Table 1 below. Further discussion on each item is provided in Section 2 of this planning proposal.

Item	Location	Affects	Details
1	Shire Wide (Rural and Conservation Zones)	Clause 4.2B	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	Adoption of an optional clause within the Standard Instrument LEP relating to consent requirements and exemptions in areas of public bushland.
3	Ballina (Waste Facility)	Maps LZN_006C and LZN_006A	Change the zoning for the waste facility from RU2 Rural Landscape to SP2 Infrastructure and to identify the purpose of the site as ' <i>waste or resource management facility</i> ' to ensure the ongoing use of this facility is consistent with zone objectives and planning controls.

1.2 Background to the Planning Proposal

An amendment to Clause 4.2B was undertaken as part of a general amendments planning proposal in 2024 (PP-2024-1710 – Finalised as Amendment #57). However suggested wording within PP-2024-1710 was amended by Parliamentary Counsel which has had the effect of limiting the circumstances in which Council can approve boundary changes that would allow for improved agricultural or environmental outcomes without creating opportunities for the erection of additional dwellings.

This is the stated objective of the clause and was the intent of the 2024 planning proposal. Ballina Council is therefore seeking to further amend Clause 4.2B to resolve this matter in accordance with recent case law and legal advice.

In undertaking this amendment to the LEP, Council has identified two other minor amendments that may be progressed simultaneously.

2. Planning Proposal

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

Part 1 – Objectives and intended outcomes

The objective of this planning proposal is to amend Ballina LEP (BLEP) 2012 to address several minor or routine matters (as summarised in Table 1 above) to clarify and adjust several aspects of BLEP 2012. Detailed descriptions of the proposed amendments are provided below in Part 2. The intended outcomes are to ensure the BLEP 2012 functions efficiently and that its provisions are up to date and reflect the community's expectations.

Part 2 – Explanation of provisions

The amendments contained in this planning proposal are detailed below. The final wording of the proposed amendments will be determined in conjunction with the NSW Parliamentary Counsel's Office.

Item 1: Change of wording to enable lot boundary changes within rural and conservation zones.

Issue and Justification

Clause 4.2B 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.*

Ballina Council's 2024 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, and
- To not enable an erosion of agriculture or environmental land values.

However, subsequent changes to the wording of the proposed clause by the Parliamentary Counsel Office (PCO) re-instated the word 'adjustment(s)' which has had the unintended effect of limiting the circumstances in how the clause can be applied, given the legal interpretation of a 'boundary adjustment'.

Council requested that DPHI amend the wording to that originally proposed by Council under Section 3.22 of the *Environmental Planning and Assessment Act (1979)*. However the Department advised that Council should embark on a fresh planning proposal that sets out precisely what outcomes are intended and not intended by Council.

Council's 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 to the legal interpretation and Land and Environment Court principles that the proposed lots must not include significant changes to the configuration and bear 'some resemblance' to the current lot configuration.

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 the Standard Instrument LEP Public Bushland clause

Issue and Justification

Ballina Shire Council's Open Spaces team has identified regulatory impediments to undertaking routine vegetation management activities on some public land. In a submission on proposed changes to the Resilience and Hazards SEPP with regards to weed control in mapped coastal wetlands, it was identified that under various other regulatory controls including the Biodiversity and Conservation SEPP and the Transport and Infrastructure SEPP, Council is required to lodge a development application 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 of the Standard Instrument LEP was introduced in 2022 and applied to LEPs 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 Council's may 'opt in' to have it applied in their Local Environmental Plans. Inclusion of the provision within the Ballina LEP 2012 would provide a set of assessment criteria where development consent is required for works within public bushland and sets out the circumstances whereby consent is not required. As such it is considered to be an additional, useful tool in the management of public bushland.

Proposed amendment

It is intended that the following Clause from the Standard Instrument LEP be applied to 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 3: Rezoning of land at the Ballina waste facility

Issue and Justification

An assessment of a development application (DA) at the Ballina waste facility has identified that the current RU2 Rural Landscape (RU2) zoning is not appropriate and that use as a '**waste or resource management facility**' is inconsistent with the zone objectives. Whilst the current DA can be assessed and approved under provisions in Division 23 of the Transport and Infrastructure SEPP, a change of zone to SP2 Infrastructure (SP2) would be a more suitable zoning of the site as it reflects longer term intentions for the land.

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 below in Figures 1 and 2.

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



Figure 1: Current Zoning

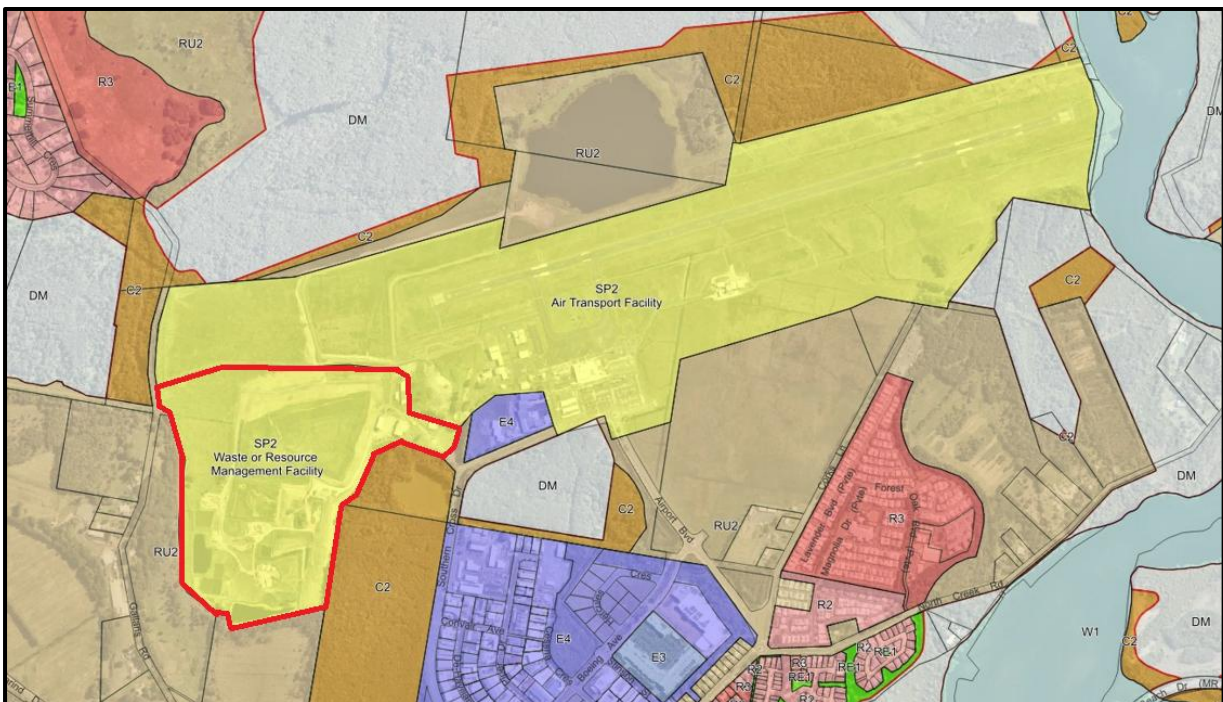


Figure 2: Proposed zoning

Part 3 – Justification

Section A – Need for the planning proposal

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

The proposed amendments are changes resulting from Council's periodic and general review of the function and operation of the LEP, as well as responding to actions in local place-based strategies.

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

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

Section B – Relationship to strategic planning framework

- Q3 Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?**

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

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

- Q4 Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or CSC, or another endorsed local strategy or strategic plan?**

Ballina Shire Council Community Strategic Plan 2025-2035 (CSP)

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

Ballina Shire Local Strategic Planning Statement 2026-2046 (LSPS)

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

- Q5 Is the planning proposal consistent with any other applicable State and regional studies or strategies?**

There are no other relevant state or regional studies or strategies relevant to the planning proposal.

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

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

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

Yes. A number of section 9.1 Directions are relevant to the planning proposal. A section 9.1 Direction checklist is provided at Appendix 2.

Section C – Environmental, social and economic impact

Q8 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

There is no likelihood of any adverse impacts on critical habitat or threatened species. The planning proposal does propose any additional land uses in any areas likely to contain threatened species or critical habitat.

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

No adverse environmental effects resulting from this planning proposal have been identified. The inclusion of Clause 5.23 Public Bushland will ensure appropriate considerations are undertaken where works are proposed within areas of public urban bushland.

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

The proposed amendments are considered to have minor social and economic benefits by providing greater flexibility when assessing development applications for the realignment of boundaries and the construction of dwellings / dual occupancies within rural and conservation zones.

Section D – Infrastructure (Local, State and Commonwealth)

Q11 Is there adequate public infrastructure for the planning proposal?

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

Section E – State and Commonwealth Interests

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

Consultation will be undertaken with the following public authorities as required by the Gateway determination:

- Department of Primary Industries and Regional Development – NSW Resources
- Development Coordination Authority – Hazards and Resources Advisory (bushfire)
- Ballina Byron Gateway Airport lessee/operator

Part 4 – Mapping

The following map sheets of the BLEP 2012 are proposed to be amended as outlined in response to Item 3 of Part 2 of this PP:

- LZN_006C &
- LZN_006A

Part 5 – Community Consultation

This proposal will be exhibited for a minimum of 20 working days in accordance with the Gateway determination, the terms of the *Environmental Planning and Assessment Act 1979* and Council's Community Participation Plan 2019.

Part 6 – Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	26 August 2026
Government Agency Consultation	1 September 2026 – 14 October 2026
Public Exhibition Period	1 September 2026 to 29 September 2026
Public Hearing	N/A
Submissions Assessment	October 2026
Report to Council on submissions	November 2026
Finalisation	December 2026 – January 2027

Appendices

Appendix 1 – Council Report (Under Separate Cover)

Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 Ministerial Direction Checklist Planning Proposal – BSC26/03	
Direction No.	Compliance of Planning Proposal
Priority1: Aboriginal Outcomes	
P1.1 Aboriginal Land Planning	Does not apply to this Planning Proposal.
P1.2 Cultural Guidance	Does not apply to this Planning Proposal.
Priority 2: Housed	
P2.1 Housing	Not directly applicable. Item 2 (adoption of public bushland clause) may affect land with a residential zoning but will not impact upon housing opportunities within Ballina Shire.
Priority 3: Prosperous	
P3.1 Employment	Does not apply to this Planning Proposal.
P3.2 Rural	Justifiably Inconsistent Item 1 seeks to create additional flexibility in the assessment of applications for boundary realignments in rural and conservation zones. Item 3 seeks to change the zoning of an existing waste facility from RU2 to SP2. No loss of agriculture or impact on biodiversity values as a result of the planning proposal. The planning proposal does include land identified as state or regionally significant farmland. It does not seek to rezone any such land. Given that the land is not used for agricultural purposes the noncompliance with the direction principles required by this Priority such as supporting landowners to exercise their right to farm is considered to be of minor significance. This is because the change in zoning affects only the existing Ballina Waste Management Facility and will have no adverse impact on existing agricultural lands uses.
P3.3 Airport Safeguarding	Unresolved Item 3 seeks the rezoning of rural land adjacent to the Ballina / Byron airport to SP2. Ballina Shire Council is the owner / operator of the airport. The proposed change of zone to the existing waste facility from RU2 to SP2 will not impact upon the adjoining airport or airspace. This direction remains unresolved until consultation has taken place with the airport lessee/operator as required by the Gateway determination.
P3.4 Mining and Petroleum Production	Unresolved The proposal is inconsistent with this priority as the rezoning of the waste facility from RU2 Rural Landscape to SP2 Infrastructure will have the effect of prohibiting mining on the land. Consultation with the NSW Department of Primary Industries and Regional Development (DPIRD) is required before consistency can be determined
P3.5 Oyster Aquaculture	Does not apply to this Planning Proposal.

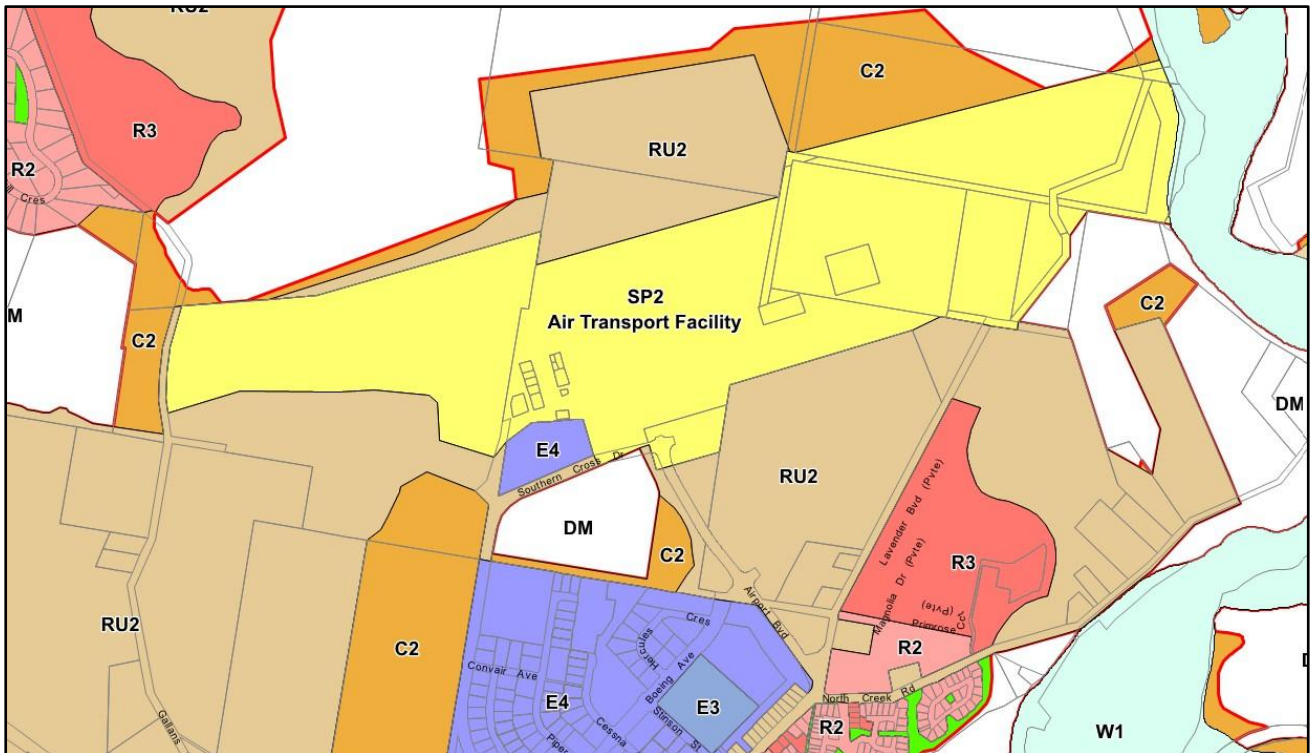
Section 9.1 Ministerial Direction Checklist Planning Proposal – BSC26/03	
Direction No.	Compliance of Planning Proposal
P3.6 Mine Subsidence and Unstable Land	Does not apply to this Planning Proposal.
Priority 4: Connected	
P4.1 Integrating Land Use and Infrastructure	Does not apply to this Planning Proposal.
Priority 5: Resilient	
P5.1 Strategic Conservation Planning	Does not apply to this Planning Proposal.
P5.2 Conservation	Consistent Item 1 applies to the realignment of lot boundaries in rural and conservation zones. The proposed clause will not reduce the conservation outcomes of the land.
P5.3 Foreshores and Water Catchment Areas	Does not apply to this Planning Proposal.
P5.4 Contaminated Lands	Justifiably Inconsistent The proposal is inconsistent with this priority as it will rezone existing contaminated land (Ballina Waste Management Facility) without a supporting preliminary site investigation. This inconsistency is considered to be of minor significance as the change in zoning will decrease the number of existing permissible uses, does not allow additional sensitive uses, and only seeks to apply a more appropriate zoning to reflect the existing land use on the site.
P5.5 Acid Sulfate Soils	Justifiably Inconsistent The proposal is inconsistent with the priority as it affects acid sulfate soils and the has not considered the Acid Sulfate Soils Assessment Guidelines as required. As the planning proposal does not propose an intensification of land uses or application of LEP clause 7.1 Acid Sulfate Soils, the inconsistency is considered of minor significance.
P5.6 Threatened Species, Threatened Ecological Communities and their Habitat	As the planning proposal will cover the entire Ballina Shire, the planning proposal does include lands that are mapped on the Biodiversity Values Map. No works are proposed and no change to allowable activities are proposed. The planning proposal is considered to be consistent with the Ministerial Direction.
P5.7 Flooding	Justifiably Inconsistent The proposal is inconsistent with this priority as it will rezone land within the flood planning area from RU2 to SP2 Infrastructure. This inconsistency is considered justified because the waste facility use is already occurring on the site. Further consideration of flood impacts can adequately occur at the development application stage should new development be proposed.

Section 9.1 Ministerial Direction Checklist Planning Proposal – BSC26/03	
Direction No.	Compliance of Planning Proposal
P5.8 Coastal Management	Justifiably Inconsistent The proposal is inconsistent with this priority as it applies to and is located within a coastal environmental and coastal use area and the proposal does not include provisions that give effect to the NSW Coastal Management Act 2016. An assessment against the required Coastal Design Guidelines has been provided (Appendix 4) which concludes there will be no adverse impacts associated with the planning control changes. The inconsistency is therefore considered to be of minor significance.
P5.9 Planning for Bushfire Protection	Unresolved As the planning proposal will cover the entire Ballina Shire, and Item 1 relate to rural and conservation zones, the planning proposal does include lands that are within areas mapped as containing bushfire prone land. Item 3 contains areas mapped as being within a vegetation buffer. Any requirement regarding consultation with the NSW Rural Fire Service will be determined through the Gateway determination. The planning proposal is not considered to have any impact or to change existing land uses within mapped bushfire areas. Compliance with this direction cannot be determined until consultation has taken place with the Development Coordination Authority – Hazard and Resources Advisory (bushfire).
Priority 6: Liveable	
P6.1 Reserving Land for Public Purposes	Justifiably Inconsistent The proposal is inconsistent with this priority as it will apply a special purpose zone without the agreement of the Planning Secretary. This inconsistency is considered to be of minor significance as the rezoning only seeks to apply an appropriate zone to reflect Councils existing waste management facility (whose agreement to the zoning is implicit within their proposal).
P6.2 Willandra Lakes Region	Does not apply to this Planning Proposal.
Priority 7: Coordinated	
P7.1 High Pressure Dangerous Goods Pipeline	Does not apply to this Planning Proposal.

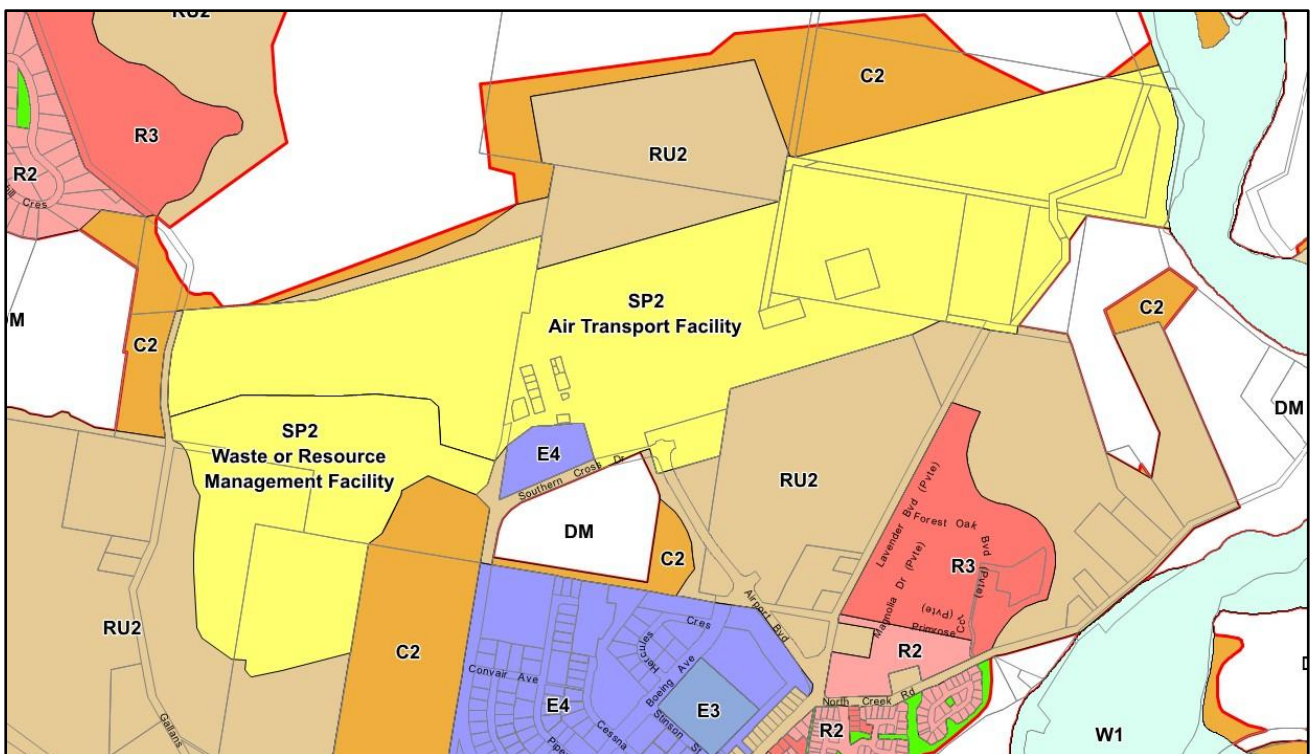
Appendix 3 – Mapping

Mapping amendments are proposed to the land zoning maps as part of Item 3.

The proposed change will impact LZN_006C & LZN_006A. The change is as follows:



Existing Zone Map.



Proposed Zone Map.

Appendix 4 – NSW Coastal Design Guidelines

(Under Separate Cover)