



Planning Proposal 18/005

» Rural Function Centres

October 2020 (Council)

ballina
shire council



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1. Introduction

1.1 Summary of Planning Proposal

This planning proposal seeks to amend the Ballina Local Environmental Plan 2012 to minimise adverse impacts associated with function centres occurring on rural land in Ballina Shire, zoned RU2 Rural Landscape zone.

The planning proposal will achieve this by prohibiting function centres within the RU2 zone land use table and inserting a new local clause that makes function centres permissible, on the basis of a 3 year time-limited development consent, subject to the satisfaction of relevant heads of consideration and supporting development standards.

The planning proposal will also remove the incentive to seek approval of rural function centres under the temporary use provisions contained in Clause 2.8 of the LEP, through a reduction in the maximum period allowable for the temporary use of land under this clause.

1.2 Land to Which the Planning Proposal Applies

This planning proposal relates to all land zoned RU2 Rural Landscape zone under *Ballina Local Environmental Plan 2012*.

1.3 Council Resolutions

The Council considered this planning proposal at its Ordinary Meeting held on 24 September 2020.

[DETAILS OF COUNCIL'S RESOLUTION WILL BE INSERTED HERE]

At its Ordinary Meeting held on 25 October 2018, the Council resolved as follows [Minute No. 251018/9] following the consideration of a report on function centres:

- 1. That Council prepare a planning proposal to introduce a special provision to identify matters to be considered in association with the assessment of development applications for function centres on land zoned RU2 Rural Landscape under the provisions of the Ballina Local Environmental Plan 2012.*
- 2. The planning proposal be referred to Council for endorsement prior to being forwarded to the Department of Planning and Environment for a Gateway determination.*
- 3. That suitable draft development controls be prepared for inclusion within Ballina Shire Development Control Plan 2012 which relate to premises which are proposed to be used for the holding of wedding receptions in rural and environmental zones, such as function centres, food and drink premises, refreshment rooms and places of assembly. The proposed draft DCP controls be reported to the Council for consideration together with the planning proposal referred to in Item 2 above.*

A copy of the report considered by the Council is provided in Appendix 1.

2. Objectives & Intended Outcomes

The objective of this planning proposal is to:

- Introduce strengthened development control provisions to apply to function centres on land zoned RU2 Rural Landscape zone under the terms of the Ballina Local Environmental Plan 2012, to provide that such development will not adversely impact on other legitimate rural activities.

The intended outcomes of this planning proposal are to:

- List function centres as prohibited development in the RU2 Rural Landscape zone land use table.
- Introduce a local clause to provide for function centres as permissible development on land zoned RU2 Rural Landscape zone, on the basis of 3 year time-limited consents, and subject to the satisfaction of relevant heads of consideration and development control provisions.
- Amend Clause 2.8 (Temporary Use of Land) to provide for the temporary use of land at a maximum period of 14 days (whether or not consecutive days) in any period of 12 months (from the current maximum period of 52 days).

3. Explanation of Provisions

3.1 The Proposal

3.1.1 Plain English Version

This proposal involves the introduction of a new clause in the LEP (the Ballina Local Environmental Plan 2012) that seeks to minimise the impacts associated with function centres occurring in rural parts of the shire.

Function centres will only be permitted on land zoned RU2 under the Ballina Local Environmental Plan 2012. The LEP will also limit the development consent for function centres on RU2 land to no longer than three (3) years.

In considering development applications for rural function centres, the LEP will require that the consent authority be satisfied that the development will:

- not comprise a convention centre, exhibition centre or music festival;
- be small scale and low impact;
- not generate noise, traffic, parking or light spill that would significantly impact on surrounding residential uses; and
- not impair the use of the surrounding land for agriculture or rural industry.

The LEP will also require that the operation of function centres involve:

- No more than 1 event will be held at the function centre on any one weekend;
- No more than 20 events will be held at the function centre in any period of 12 months; and
- No more than 150 guests will be permitted to attend an event at the function centre at any one time.

The planning proposal also seeks to amend Clause 2.8 (Temporary Use of Land) to provide for the temporary use of land at a maximum period of 14 days (whether or not consecutive days) in any period of 12 months (from the current maximum period of 52 days). This will remove the incentive for potential applicants to continue to seek approval of rural function centres under the temporary use provisions.

The planning proposal is supported by development control plan provisions, which are provided in Appendix 2.

3.1.2 Draft LEP Clauses

The following clauses are provided as an example of how the LEP may be amended (subject to possible further refinement in consultation with Parliamentary Counsel):

Temporary use of land in Zone RU2 for purpose of function centre

- (1) *The objectives of this clause are to ensure that—*
 - (a) *development is compatible with the primary production potential, rural character and environmental capabilities of the land, and*
 - (b) *development for the occasional holding of events in rural areas does not adversely impact the rural amenity, agricultural production, scenic or environmental values of the surrounding lands*
- (2) *Despite any other provision of this Plan, development consent may be granted for development on land within Zone RU2 Rural Landscape for the purpose of a function centre for a maximum period of 3 years from the date of consent.*
- (3) *Development consent must not be granted to development for the purpose of a function centre on land within Zone RU2 Rural Landscape unless the consent authority is satisfied that—*
 - (a) *the development is not for the purpose of a convention centre, exhibition centre or for music festivals, and*
 - (b) *the development is small scale and low impact, and*
 - (c) *the development will not generate noise, traffic, parking or light spill that will significantly impact on surrounding residential areas, and*
 - (d) *the development will not impair the use of the surrounding land for agriculture or rural industries, and*
 - (e) *no more than 1 event will be held at the function centre on any one weekend, and*

- (f) *no more than 20 events will be held at the function centre in any period of 12 months, and*
- (g) *no more than 150 guests will be permitted to attend an event at the function centre at any one time.*

The following amendments are proposed with respect to Clause 2.8:

2.8 Temporary use of land

- (1) *The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*
- (2) *Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of ~~52 days~~ **14 days** (whether or not consecutive days) in any period of 12 months.*
- (3) *Development consent must not be granted unless the consent authority is satisfied that—*
 - (a) *the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*
 - (b) *the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*
 - (c) *the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*
 - (d) *at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*
- (4) *Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.*
- (5) *Subclause (3)(d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).*

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of any strategic study or report?

No. The planning proposal has come about as a result of a notice of motion arising from community concerns regarding the impacts of wedding venues operating in rural parts of the shire.

A report considered at the Ordinary Meeting of the Council held on 25 October 2018 (provided in Appendix 1) provides the context for how this matter arose.

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

An LEP amendment is the best way of introducing appropriate development standards for the mitigation of impacts associated with function centres occurring in rural parts of the shire.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal is generally consistent with the objectives and actions set out in the North Coast Regional Plan. The planning proposal supports Direction 8 (Promote the growth of tourism) and Direction 11 (Protect and enhance productive agricultural lands) by seeking to achieve a balance between agricultural productivity and tourism uses within rural parts of the shire, on land zoned RU2 Rural Landscape zone.

Q4 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The planning proposal is consistent with the elements and specified outcomes contained within Council's Community Strategic Plan 2017–2027 (CSP) as its objectives align with the principles of good governance and ensuring that planning instruments are operating optimally. The planning proposal also supports the CSP objectives relating to attracting new businesses and visitors (PE1), growing and diversifying business (PE2), and improving liveability in the shire (PE3).

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

No inconsistencies with applicable State Environmental Planning Policies (SEPPs) have been identified.

- SEPP (Rural Lands) 2008

This Policy aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It is possible that function centre

proposals may occur on land identified as State significant agricultural land under the meaning of the SEPP, should criteria be set for such designation under the SEPP. The SEPP does not currently contain operative provisions which address the development of State significant farmland, although it has the capacity to accommodate such provisions in the future.

The planning proposal is consistent with this SEPP.

Q6 Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 directions)?

A Section 9.1 Direction Checklist for the planning proposal is provided at Appendix 3.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The proposal seeks to provide for additional environmental protections associated with the development of function centres in rural parts of the shire.

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. The amendments proposed seek to provide for additional protections with respect to the potential (broadly defined) environmental impacts associated with function centres in rural parts of the shire.

Q9 Has the planning proposal adequately addressed any social and economic effects?

The proposal seeks to balance the social and economic impacts associated with function centres occurring in rural parts of the shire, by maintaining existing development opportunities whilst introducing additional development control provisions to minimise adverse impacts associated with such development.

The public exhibition processes associated with the planning proposal may provide further input for the Council's consideration of the social and economic impacts of the proposal.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

The proposed development control provision will seek to ensure that the provision of public infrastructure is not impacted upon by function centre proposals occurring in rural parts of the shire.

Q11 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation will be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the LEP amendment.

5. Mapping

This planning proposal does not propose the introduction or amendment of any LEP maps.

6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. It is anticipated that a minimum public notification period of 28 days will be applied to this planning proposal.

7. Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway determination	October 2020
Government agency consultation	November 2020
Public exhibition period	November 2020
Public hearing	N/A
Submissions assessment	December 2020
RPA assessment of planning proposal and exhibition outcomes	February 2020
Submission of endorsed LEP to DP&I for finalisation	March 2020
RPA decision to make the LEP amendment (if delegated)	March 2020
Forward LEP amendment to DP&E for notification (if delegated)	April 2020

Council is seeking delegation of planning functions for the processing of this LEP amendment.

8. Appendices

Appendix 1 – Council Reports

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET BALLINA,
ON 25/10/18 AT 9.00 AM**

9.3 Function Centres - Rural Areas

251018/9 RESOLVED

(Cr Sharon Parry/Cr Eoin Johnston)

1. That Council prepare a planning proposal to introduce a special provision to identify matters to be considered in association with the assessment of development applications for function centres on land zoned RU2 Rural Landscape under the provisions of the Ballina Local Environmental Plan 2012.
2. The planning proposal be referred to Council for endorsement prior to being forwarded to the Department of Planning and Environment for a Gateway determination.
3. That suitable draft development controls be prepared for inclusion within Ballina Shire Development Control Plan 2012 which relate to premises which are proposed to be used for the holding of wedding receptions in rural and environmental zones, such as function centres, food and drink premises, refreshment rooms and places of assembly. The proposed draft DCP controls be reported to the Council for consideration together with the planning proposal referred to in Item 2 above.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Stephen McCarthy, Cr Nathan Willis and Cr Keith Williams

Cr Nathan Willis returned to the meeting at 10:22 am.

Cr Jeff Johnson left the meeting at 10:22 am.

9.3 Function Centres - Rural Areas	
9.3 <u>Function Centres - Rural Areas</u>	
Delivery Program	Strategic Planning
Objective	To present options to the Council regarding potential for regulatory changes as these relate to the operation of wedding reception and similar function venues within non-urban parts of the Shire.
<hr/>	
Background	
At the Ordinary meeting held on 26 April 2018 Council resolved to adopt a Notice of Motion as follows:	
<i>That Council receive an options report to amend current Local Environmental Plans and Development Control Plans to prohibit function/event venues that cater for weddings and other similar events in both rural zoned and environmental protection zoned areas within Ballina Shire.</i>	
The purpose of this report is to present options in accordance with the above resolution.	
Key Issues	
<ul style="list-style-type: none"> • Rural land use • Residential amenity • Economic Development 	
Information	
The North Coast region has emerged and is promoted as an attractive and popular wedding destination. As a consequence, some rural residents in Ballina Shire have become increasingly concerned regarding the impacts associated with wedding events, particularly where held on rural properties.	
The key land use conflicts associated with wedding venues are traffic and noise, particularly from amplified music and revelers during evening hours. Impacts are greatest during evening hours due to the low background noise levels at such times and the potential for noise to travel large distances. Such impacts are exacerbated where the history of rural subdivision has resulted in a proliferation of rural dwellings in a particular locality.	
The majority of complaints received by Council in association with wedding events relate to facilities operating without authorisation (without having obtained the necessary development consents to enable their legal use for that purpose).	
Enforcing compliance in association with unauthorised rural wedding venues is an ongoing issue. Where these activities are occurring illegally, Council undertakes compliance activities to have the activity cease through the issuing of compliance orders and/or landholders are encouraged to seek to legitimise their use through seeking development consent, if legally able to do so.	
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9.3 Function Centres - Rural Areas

Where development consent is sought, applications are assessed on merit, having regard for the provisions of the prevailing planning instrument and the development controls that apply to the particular use for which consent is being sought. Responses from neighbour notifications can also be relevant in Council's consideration of the applications.

It is acknowledged that some of the legal venues appear to operate without generating significant adverse amenity impacts, due to a combination of appropriate siting and design of the facility, by conforming with development consent conditions and through appropriate and prudent management by the venue operators.

However, some other venues that have received consent generate complaints. Table 1 lists some of the sites that have been subject to recent compliance action and provides some relevant details regarding these venues:

Table 1 – Wedding Reception Venue Compliance Information

Site	Comments
Newrybar Downs – 1 Johnston Road, Newrybar	Originally an unauthorised establishment, compliance action resulted in a DA being lodged. This was subsequently approved for ceremonies only, but was also given a limited life consent (DA 2017/662 dated 26 April 2018 valid until 26 April 2023.)
Church of Two Grandfathers – 260-266 Rous Road, Rous	Original church constructed around 100 years ago and still being used as church. Farm building converted to a function centre and weddings held, but use of function centre is prohibited in RU1 zone. Function portion of the premises recently suffered a catastrophic fire event and not operational.
104 Victoria Park Road, Dalwood	DA approved for Bed and Breakfast as well as hosting wedding functions – Deux Bellettes. Consent granted for weddings but limit on consent to 12 weddings per annum and maximum of 100 guests at each event. Requirement for notification of number of weddings to both adjoining neighbours within 200m distance (identified by Lot and DP) as well as Council. Requires ongoing compliance monitoring.
12 Converys Lane, Wollongbar (Down Converys Lane)	Previous ongoing non-compliances resulted in matter being reported to the Council for criminal prosecution. The Council resolved to prosecute current and future breaches. On-call Rangers called out on a number of occasions when trading hours breached or noise complaints raised as a result of functions. No current issues requiring compliance action.
Current Compliance Investigations	A small number of properties currently don't have approvals to operate as wedding venues but neighbours claim this is occurring. Landowners alternatively claim private parties for family (which doesn't need consent) or family members being married on family farm (difficult to prove family relationship). These issues relate to current investigations concerning premises located at Newrybar, Brooklet, Teven and Tintenbar.

9.3 Function Centres - Rural Areas

There are distinct land use conflicts associated with the different 'stages' of wedding events, being the ceremony and the reception. The majority of adverse impacts (and their magnitude) associated with weddings relate to receptions rather than ceremonies. As noted, this is primarily due to high levels of noise and nuisance traffic during evening periods, when background noise and activity levels in rural areas are typically low.

Traffic volumes associated with wedding ceremonies can also be high at intermittent periods. Unfortunately, there is limited scope within the standard definitions of Council's planning instruments to provide separate permissibility/assessment pathways for wedding ceremonies and receptions.

Other issues of concern relating to unauthorised venues relate to adequacy of onsite sewage management systems, damage to road infrastructure due to traffic volumes, property access and parking, fireworks associated issues including stock fright concerns, the provision of unauthorised accommodation within the property and land use conflicts such as horticultural pesticide spraying on adjacent farm land on wedding days.

Whilst not having been a reason for the lodgement of complaints from neighbours, it is also conceivable that noise emanating from functions, and other activities, such as increased traffic, can have an impact on nearby native fauna, at least in some parts of our Shire.

Existing legally operating facilities accommodating wedding functions

Existing legally operating facilities that are able to accommodate wedding functions reflect a diversity of development consent histories, including those located in the rural parts of the shire. To date, the majority of these venues have been approved under the terms of the *Ballina Local Environmental Plan 1987*, variously as:

- Tourist Facilities
- Place of Assembly
- Refreshment rooms

Whether each the above facilities can legally be used for wedding ceremonies and/or receptions depends on whether such use reasonably falls within the terms of the venue's consent conditions (in terms of matters such as seating capacity, parking and hours of operation). On occasions, these facilities may also have other associated uses, such as bed and breakfast or other tourist accommodation provided.

Churches and community halls located in rural areas may also be legally able to be used for weddings and receptions, depending on the particular circumstances and history of use. Where a wedding is held on private property as a private function, rather than by commercial arrangement, Council has little regulatory control over such events. Nevertheless, the impacts of private wedding events should be mitigated by their infrequency on any particular property.

In addition to venues located in rural areas, weddings are currently held in a range of facilities in urban areas including cafés, restaurants, clubs and conference facilities.

9.3 Function Centres - Rural Areas*Current permissibility*

The majority of legal 'wedding venues' operating in Ballina Shire have been approved under the terms of the *Ballina Local Environmental Plan 1987* (Ballina LEP 1987), primarily as 'place of assembly', 'tourist facility' or in association with a 'refreshment room'. Under the terms of the Ballina LEP 1987 (and through adoption of the Model Provisions 1980), a 'place of assembly' is defined as follows:

place of assembly means a public hall, theatre, cinema, music hall, concert hall, dance hall, open-air theatre, drive-in theatre, music bowl or any other building of a like character used as such and whether used for the purposes of gain or not, but does not include a place of public worship, an institution or an educational establishment.

A tourist facility is defined as follows:

tourist facilities means an establishment providing for holiday accommodation or recreation and may include a boat shed, boat landing facilities, camping ground, caravan park, holiday cabins, hotel, house boat, marina, motel, playground, refreshment room, water sport facilities or a club used in conjunction with any such activities.

A refreshment room is defined as follows:

refreshment room means a restaurant, cafe, tea room, eating house or the like.

The permissibility of the above uses under the terms of the Ballina LEP 1987 (where it applies) is outlined in the table below.

Table 1 - Permissibility Matrix Ballina LEP 1987 (Rural and Environmental Zones Only)

Zone	Place of Assembly	Tourist Facility*	Refreshment Room
1(a1) Rural (Plateau Lands Agriculture)	✓	x	✓
1(a2) Rural (Coastal Lands Agriculture)	✓	x	✓
1(b) Rural (Secondary Agricultural Land)	✓	✓	✓
1(d) Rural (Urban Investigation)	✓	✓	✓
1(e) Rural (Extractive and Mineral Resources)	✓	✓	✓
7(a) Environmental Protection (Wetlands)	x	x	x
7(c) Environmental Protection (Water Catchment)	x	x	x
7(d) Environmental Protection (Scenic/Escarpment)	✓	✓	✓
7(d1) Environmental Protection (Newrybar Scenic/Escarpment)	x	x	x
7(f) Environmental Protection (Coastal Lands)	x	x	✓
7(i) Environmental Protection (Urban Buffer)	x	x	x
7(l) Environmental Protection (Habitat)	x	x	x

*Refers here to tourist facilities relating to wedding venues only. Tourist facilities which comprise only accommodation are permitted in some rural and environmental zones.

9.3 Function Centres - Rural Areas

Under the terms of the *Ballina Local Environmental Plan 2012*, the holding of weddings (whether ceremonies, receptions or both) could potentially occur in association with the legal operation of an approved 'function centre', 'food and drink premises' or 'registered club'.

A 'function centre' is defined as follows:

function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

The function centre definition includes facilities established for the purpose of wedding venues but may also include other uses which do not have the same level or range of potential impacts (such as conference facilities, for example).

A food and drink premises is defined as follows (and is a form of retail premises for the purpose of the 2012 LEP):

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

A registered club is defined as follows:

registered club means a club that holds a club licence under the Liquor Act 2007.

The permissibility of the above uses under the terms of the Ballina LEP 2012 is outlined in the table below.

Table 2 - Permissibility Matrix Ballina LEP 2012

Zone	Function Centre	Food and Drink Premises	Registered Clubs
RU1 Primary Production	x	x	x
RU2 Rural Landscape	✓	✓*	x
R2 Low Density Residential	✓	x	x
R3 Medium Density Residential	✓	x	✓
B1 Neighbourhood Centre	✓	✓	✓
B2 Local Centre	✓	✓	✓
B3 Commercial Core	✓	✓	✓
B4 Mixed Use	✓	✓	✓
B5 Business Development	x	✓*	x
B6 Enterprise Corridor	✓	✓	✓
IN1 General Industrial	x	x**	x

9.3 Function Centres - Rural Areas			
Zone	Function Centre	Food and Drink Premises	Registered Clubs
SP2 Infrastructure	x	x	x
RE1 Public Recreation	✓	x**	✓
RE2 Private Recreation	x	✓*	✓
E1 National Parks and Nature Reserves	***	***	***
W1 Natural Waterways	x	x	x
W2 Recreational Waterways	x	x	x

*Restaurant or cafes, a form of food and drink premises, are permissible in the zone.
**Takeaway food and drink premises are permissible in the zone, but are incompatible for wedding venue use.
***Permits uses authorised by the *National Parks and Wildlife Act 1974* without consent. No other uses permitted.

Importantly, whether any particular approved facility (whether function centre, food and drink premises or registered club, or similar such use approved under the Ballina LEP 1987) can be used as a wedding venue (for either ceremonies and/or receptions) will depend on the consistency of the activity with the facility's conditions of consent, with particular regard to capacity and hours of operation.

Weddings as Temporary Events

In some situations rural wedding venues in Ballina Shire were operating under consents issued for the activity as a 'temporary use of land', subject to clause 2.8 of the Ballina LEP 2012.

Clause 2.8 allows for temporary uses, occurring no greater than 52 days in any 12 month period, provided that the land is returned to its original condition after use.

This approach was also being used by other North Coast local councils.

In 2016, the Supreme Court of Appeal for NSW set down a judgement in a case (*Roden v Bandora Holdings Pty Ltd [2016] NSWCA 220*) involving a third party appeal against an approval granted by Byron Shire Council for a wedding venue as a temporary use of land, on land for which function centres were a prohibited use.

In that judgement the Court found that a development consent granted by Byron Shire Council was invalid and of no effect as Byron Shire Council had misinterpreted the meaning of the 'tourist facility' definition within Byron LEP 1988.

The temporary use of land provisions contained in Clause 2.8 of the Standard Instrument LEP and in Ballina LEP 2012 provide, amongst other matters, that the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, (cl 2.8(3)(b)). The test to be applied here of "not adversely impact" is higher than the general test applied to amenity impacts which provides for "no significant impact".

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9.3 Function Centres - Rural Areas

The test and the words contained in cl 2.8(3)(b) were considered in the case of *Marshall Rural Pty Ltd v Hawkesbury City Council [2015] NSWLEC 197*. Moore JA found in that case that applications for activities permitted that would otherwise be prohibited seeks a significant indulgence for such a substantial departure from the planning controls. He held that in respect to the requirement that the proposal will “not adversely impact” in the fashion specified in cl 2.8(3)(b) that:

This test, cast in absolute terms reflecting the seriousness with which an application of this nature is required to be assessed, puts a very high hurdle in the path of any such application. The placing of such a hurdle requires that the Council must approach the consideration and determination of any such application with a marked degree of precision and caution.

The *Roden v Bandora Holdings Pty Ltd* case as well as the case of *Marshall Rural Pty Ltd v Hawkesbury City Council* highlights the fact that it may be extremely difficult in a rural environment to meet the higher tests associated with permitting temporary uses otherwise prohibited within a zone. This is especially so in the case of uses such as function centres which may have some adverse noise and other impacts.

Economic benefits associated with wedding venues

It is acknowledged that the use of land for weddings has a number of potential positive economic impacts, associated with the following:

- Contributing to the visitor economy, particularly food and accommodation services associated with wedding guests visiting the Shire including supporting the growth of general tourism through repeat future visitation by wedding guests
- Supporting local business involved in servicing wedding events (such as catering, florists, transport etc).

Options for restricting wedding venues*Prohibit function centres*

The options available to the Council to restrict opportunities for new wedding venues in rural areas are limited to making amendments to the Ballina LEP 2012 (where it applies). The Department of Planning and Environment has previously advised Council that it will not support amendments to the Ballina LEP 1987 as a matter of course.

As noted above, the holding of wedding events can occur in association with a range of approved development types including (under the terms of the Ballina LEP 2012) ‘function centres’, ‘food and drink premises’ and ‘registered clubs’.

Registered clubs are already prohibited within the shire’s rural zones. Function centres and food and drink premises (which includes restaurants and cafes) are both prohibited in the RU1 Primary Production zone and permissible with consent in the RU2 Rural Landscape zone.

9.3 Function Centres - Rural Areas

In order to prohibit any further wedding reception events in rural areas, it is suggested Council would need to list function centres and food and drink premises as prohibited uses within the RU2 Rural Landscape zone. This would, however, have the effect of restricting such development types that are not associated with wedding events and which, subject to development assessment, may be considered acceptable and/or desirable in some circumstances.

Introduce a special provision

An alternative approach, and one that Byron Shire Council is currently considering, involves allowing function centres as permissible development in the RU2 zone with the addition of a special clause to address impacts associated with such development.

The Byron Shire proposed special provision is as follows:

Function Centres in RU2 Rural Landscape Zone

(1) Development consent must not be granted for a function centre on land zoned RU2 Rural Landscape unless the consent authority is satisfied that:

- (a) Events will occur in a location that is a minimum of 500m from an existing dwelling house on adjoining property. Council will consider a variation to the minimum separation distance, but not less than 250m, only where:

 - i. Existing topography and vegetation on the land is such that there is not a clear line of sight between the event site and adjacent dwellings; and*
 - ii. an acoustic assessment clearly demonstrates that event use will not result in unacceptable noise impacts at the neighbouring dwelling;**
- (b) the proposal is supported by a site specific acoustic assessment, prepared by a suitably qualified person, quantifying existing background noise levels and noise levels are predicted for events in relation to all nearby dwellings;*
- (c) the subject site is accessed by way of a sealed road with sufficient capacity for the traffic volume and type generated by the function centre, and that buses are able to access and exit the property in a forward direction;*
- (d) the use of the site for events will not result in unacceptable adverse impacts on any adjoining land or the amenity of the neighborhood, particularly in relation to noise and traffic;*
- (e) the use of the site for events will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities; and*
- (f) no tree clearing is required for the function centre.*

(2) Applications for development consent for a function centre must include an Events Management Plan, which contains (as a minimum) provisions that:

- (a) ensure that the majority of event attendees will be transported to and from each event by bus as deemed appropriate to the applicable road network; and*
- (b) require all amplified activities (music, speeches, etc.) to be undertaken within a temporary or permanent structure after 7.00pm; and*
- (c) ensure that all amplified music will cease no later than 10:00pm; and*
- (d) ensure that all event attendees will be off-site no later than 10.30pm; and*
- (e) outline measures that will be in place to ensure predicted noise levels are not exceeded at nearby dwellings; and*

9.3 Function Centres - Rural Areas

- (f) provide for the monitoring of noise generated at events and six-monthly reporting of results to Council; and*
 - (g) provide for the notification of nearby residents prior to each event, including contact details for an appropriate management person who must be on-site and contactable during each event; and*
 - (h) ensure that adequate arrangements are in place to manage wastewater and general waste for each event; and*
 - (i) manage the potential noise/ amenity impacts associated with any persons staying overnight at the site at the conclusion of the function; and*
 - (j) the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities will be prohibited.*
- (3) In deciding whether to grant consent for a function centre on land zoned RU2 Rural landscape, the consent authority must consider:*
- (a) the need for a development consent to be limited to a particular period and/or number of events;*
 - (b) the potential loss of farming on land that is mapped as either State or Regionally Significant Farmland;*
 - (c) the potential impact on areas of environmental value, whether on the function centre site or on adjacent and nearby land, including koala habitat; and*
 - (d) the need to impose a condition specifying that development consent would cease if three substantiated complaints were received in relation to functions at the site.*

The above development control provisions would have the effect of restricting the circumstances under which consent for a function centre could be granted, whilst still allowing for the approval of such activities where the provisions can be satisfied.

It is understood that the Byron Shire planning proposal has received affirmative Gateway determination, indicating a level of endorsement by the Department of Planning and Environment of this approach as a means to mitigate impacts associated with function centres in rural areas.

Whilst this approach does not address wedding events that occur within approved food and drink premises (such as restaurants and cafes) located in rural areas, it is suggested that the development assessment process for such activities (including consideration of amenity impacts, access arrangements, capacity and hours of operation) should address as a matter of course the potential impacts associated with the use of such facilities as occasional wedding venues.

Sustainability Considerations

- **Environment**
This matter has implications for the carrying out of development on land within rural zones that may impact on the natural environment.
- **Social**
The holding of wedding events can have positive and negative social impacts associated with a sense of place, rural and neighbourhood amenity and community cohesion.

9.3 Function Centres - Rural Areas
<ul style="list-style-type: none"> • Economic Commercial wedding events can have positive economic impacts associated as well as negative impacts associated with neighbourhood amenity impacts and impacts on agriculture. <p>Legal / Resource / Financial Implications</p> <p>Should the Council seek to address this matter through amendment to our local environmental plan (LEP), the processing of the planning proposal can occur within existing resources.</p> <p>It is suggested that amendment to the LEP would provide a greater level of certainty regarding the legal status of wedding events in the Shire.</p> <p>Consultation</p> <p>If Council resolves to proceed to prepare a planning proposal, the usual community consultation processes would apply. Typically, this involves the public exhibition of the planning proposal for a minimum of 28 days.</p> <p>Options</p> <ol style="list-style-type: none"> 1. Council could resolve to prepare a planning proposal to list 'function centre' as prohibited development on land zoned RU2 Rural Landscape under the provisions of Ballina LEP 2012. This option is not recommended on the basis that it would have the effect of prohibiting other uses (not involving wedding events) that also fall within the 'function centre' definition and which might otherwise be considered acceptable on land zoned RU2 Rural Landscape. 2. Council could resolve to prepare a planning proposal to introduce a special provision into the 2012 Plan to identify matters to be considered in association with the assessment of development applications for function centres on land zoned RU2 Rural Landscape. These provisions could resemble those referred to above (currently being considered by Byron Shire Council). In addition, suitable development controls could be considered for inclusion within Ballina Shire DCP 2012 (DCP). The DCP controls could relate to premises which are proposed to be used for the holding of wedding receptions in rural and environmental zones such as function centres, food and drink premises, refreshment rooms and places of assembly. This option is recommended on the basis that it would have the effect of placing additional LEP restrictions on the approval and operation of wedding venues located on land in the RU2 Rural Landscape zone under the provisions of Ballina LEP 2012, without impacting on other distinct but similarly defined uses that may be considered acceptable in this zone. In addition, it has the advantage of providing for the incorporation of suitable supplementary controls within the DCP. Such controls could then be applied to development proposals on land zoned under the provisions of Ballina LEP 1987 as well as Ballina LEP 2012. 3. Council could resolve to take no further action with respect to this matter.
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<p>9.3 Function Centres - Rural Areas</p> <p>This option is not recommended on the basis that some further control of rural wedding venues appears justified by concerns raised by residents in rural areas impacted by rural wedding venues operating illegally or outside the terms of existing consents.</p> <p>RECOMMENDATIONS</p> <ol style="list-style-type: none">1. That Council prepare a planning proposal to introduce a special provision to identify matters to be considered in association with the assessment of development applications for function centres on land zoned RU2 Rural Landscape under the provisions of the Ballina Local Environmental Plan 2012.2. The planning proposal be referred to Council for endorsement prior to being forwarded to the Department of Planning and Environment for a Gateway determination.3. That suitable draft development controls be prepared for inclusion within Ballina Shire Development Control Plan 2012 which relate to premises which are proposed to be used for the holding of wedding receptions in rural and environmental zones, such as function centres, food and drink premises, refreshment rooms and places of assembly. The proposed draft DCP controls be reported to the Council for consideration together with the planning proposal referred to in Item 2 above. <p>Attachment(s)</p> <p>Nil</p>	
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Appendix 2 – Supporting Development Control Plan amendments



3.9 Rural Function Centres

3.8.1 Application

Applies to:	
Location/s:	Zone RU2
Development Type/s:	Function Centres



Notes:
Function Centres are permissible in the RU2 zone under the terms of **Clause #.#** of the *Ballina Local Environmental Plan 2012*.

3.8.2 Planning Objectives

- a. To ensure that rural functions and/or events are held on sites that are suitable to such activities, particularly in relation to the ability to avoid or manage disturbance to the amenity of the neighbourhood or impact on other legitimate rural activities in the locality.
- b. To ensure that functions and events held on approved sites do not disturb the amenity of the neighbourhood or impact on other legitimate rural activities in the locality.

3.8.3 Development Controls

i. Site Suitability

Development consent must not be granted for a function centre unless the consent authority is satisfied that:

- a. The proposal is supported by a site specific acoustic assessment, prepared by a suitably qualified person, quantifying existing background noise levels and noise levels predicted for functions and/ or events in relation to all nearby dwellings, and demonstrating that the use of the property for functions and/ or events will not result in the generation of offensive noise, as defined in the *Protection of the Environment Operations Act 1997*;
- b. Traffic Impact Assessment has been prepared, addressing traffic numbers, impact on local roads, access and on-site parking, demonstrating that the use of the site for a function centre will not result in unacceptable adverse impacts on the safety or efficiency of local traffic or the amenity of the neighbourhood;
- c. Land Use Conflict Risk Assessment has been prepared demonstrating that the use of the site for a function centre will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities;
- d. No clearing of native vegetation is required for the development;





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- e. The function centre is not located in or immediately adjacent to areas of high Aboriginal cultural heritage significance.

- ii. Management of Functions and Events
Applications for development consent for a temporary use of land for a function centre must include an Events Management Plan, which contains (as a minimum) provisions that:
 - a. provide for all function/ event guests (other than the bridal party) to be transported to and from the site by bus, suitable to the road network to be utilised for transportation to the site; and
 - b. ensure that all amplified music will cease no later than 10:00pm; and ensure that all attendees will be off-site no later than 11:00pm, other than those staying overnight on the premises; and
 - c. outline measures that will be in place to ensure predicted noise levels are not exceeded at nearby dwellings; and
 - d. provide for the monitoring of noise generated at functions and/ or events and annual compliance reporting to Council; and
 - e. provide for the notification of nearby residents, including contact details for an appropriate management person who must be on-site and contactable during each function and/ or event and provision of a sign, located so that it can be viewed from a public space outside of the property notifying the name and contact phone number of the management person; and
 - f. ensure that adequate arrangements are in place to manage wastewater and general waste for each function and/ or event; and
 - g. manage the potential noise/ amenity impacts associated with any persons staying overnight at the site at the conclusion of the function/ event; and
 - h. prohibit the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities.
- i. In deciding whether to grant consent for a temporary function centre, the consent authority must consider:
 - i. the maximum number of functions and/ or events permitted in any calendar year; and
 - ii. the potential loss of farming on the property, particularly where part or all of the site is mapped as State and / or Regionally Significant Farmland; and
 - iii. the potential impact on areas of environmental value, whether on the property the subject of the function centre or on adjacent and nearby land, including koala habitat; and
 - iv. whether a trial period is appropriate; and
 - v. the need for a biosecurity management plan.

Appendix 3 – Section 9.1 Direction Checklist

Section 9.1 Direction Checklist	
Planning Proposal – Rural Function Centres	
Direction No	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Consistent The planning proposal does not propose to rezone land from a rural zone to a residential, business, industrial, village or tourist zone. The planning proposal does not propose provisions that would increase the permissible residential density of land within a rural zone. Function centres, to which the proposed development control provisions are proposed to apply, are currently permissible in the RU2 Rural Landscape zone.
1.3 Mining, Petroleum Production and Extractive Industries	Consistent. The planning proposal does not propose to introduce additional permissible land uses on land on or within proximity to identified extractive resources. The proposed development control provisions may, however, apply to function centre proposals that are (currently) permissible within the RU2 Rural Landscape zone.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Consistent The planning proposal will affect land within an existing rural zone. The planning proposal is consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008.
2. Environment and Heritage	
2.1 Environment Protection Zones	Consistent. The planning proposal does not involve or affect environmentally sensitive land or land in an environmental zone.
2.2 Coastal Protection	Consistent. Land within the RU2 Rural Landscape zone includes land that comprises the coastal environment area and coastal use area as identified by <i>State Environmental Planning Policy (Coastal Management) 2018</i> . The planning proposal is consistent with the objectives of the <i>Coastal Management Act 2016</i> . Function centre development is currently permitted on the subject land. Any development will need to be consistent with existing Council planning controls for development in the floodplain and on land affected by sea level rise in the long term. The proposal is consistent with the applicable coastal planning documents.
2.3 Heritage Conservation	Consistent. Ballina LEP 2012 already contains provisions (clause 5.10 and Schedule 5), which are consistent with this direction.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.

Section 9.1 Direction Checklist	
Planning Proposal – Rural Function Centres	
Direction No	Compliance of Planning Proposal
2.6 Remediation of Contaminated Land	Consistent. The planning proposal does not involve the inclusion of land in a zone that would permit a change of use. Function centres are currently a permissible land use within the RU2 Rural Landscape zone, to which the planning proposal relates. Notwithstanding, land contamination will be considered as part of the development assessment process associated with the use to which the planning proposal relates.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. The planning proposal does not relate to planning for caravan parks or manufactured home estates.
3.3 Home Occupations	Consistent. The proposal will not affect any existing permissibility or exemptions for home occupations.
3.4 Integrating Land Use and Transport	Consistent. The proposal does not involve the creation, alteration or removal of a zone or provision relating to urban land.
3.5 Development Near Licensed Aerodromes	Justifiably inconsistent. The planning proposal relates to provisions affecting the development of land zoned RU2 Rural Landscape zone, including land in the vicinity of the Ballina-Byron Gateway Airport. The implications of the planning proposal are of minor significance, however, with respect to the operation of the airport.
3.6 Shooting Ranges	Does not apply to planning proposal.
3.7 Reduction in non-hosted short term rental accommodation period	Does not apply to Ballina Shire.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Consistent. The land the subject of the proposed LEP amendment includes land mapped as containing Class 2 Acid Sulfate Soils. Ballina LEP 2012 already includes controls that deal with this issue at the development stage. No additional controls are warranted.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.

Section 9.1 Direction Checklist Planning Proposal – Rural Function Centres	
Direction No	Compliance of Planning Proposal
4.3 Flood Prone Land	<p>Consistent.</p> <p>The land the subject of the proposed LEP amendment includes land mapped as flood prone.</p> <p>The planning proposal does not introduce new permissible land uses on the land, but rather seeks to better regulate function centre development that is already permissible within the RU2 Rural Landscape zone.</p> <p>Existing flood related LEP and DCP provisions will apply. No land will change zone as a result of this planning proposal.</p> <p>The planning proposal will not:</p> <ul style="list-style-type: none"> - permit development in floodway areas, - permit development that will result in significant flood impacts to other properties, - permit a significant increase in the development of that land, - permit development that is likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or - permit additional development to be carried out without development consent.
4.4 Planning for Bushfire Protection	<p>Consistent</p> <p>The land the subject of the proposed LEP amendment includes land mapped as bush fire prone.</p> <p>The planning proposal does not introduce new permissible land uses on the land, but rather seeks to better regulate function centre development that is already permissible within the RU2 Rural Landscape zone. The existing requirements relating to planning for bushfire protection will continue to apply.</p>
5 Regional Planning	
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	<p>Consistent</p> <p>The planning proposal relates to land zoned RU2 Rural Landscape zone under the terms of the Ballina LEP 2012. The criteria for the delineation of rural zones under the Ballina LEP 2012 included that the RU2 zone not include land mapped as State or Regionally Significant Farmland under the terms of the Direction.</p> <p>Notwithstanding small areas of significant farmland may be included in the RU2 zone in some marginal and otherwise minor and inconsequential instances, in terms of the intent of the Direction.</p> <p>The planning proposal does not introduce new permissible land uses on the land, but rather seeks to better regulate function centre development that is already permissible within the RU2 Rural Landscape zone.</p>
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 to 5.7	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.

Section 9.1 Direction Checklist	
Planning Proposal – Rural Function Centres	
Direction No	Compliance of Planning Proposal
5.10 Implementation of Regional Plans	<p>Consistent.</p> <p>The planning proposal is generally consistent with the objectives and actions set out in the <i>North Coast Regional Plan 2036</i>.</p> <p>The planning proposal supports Direction 8 (Promote the growth of tourism) and Direction 11 (Protect and enhance productive agricultural lands) by seeking to achieve a balance between agricultural productivity and tourism uses within rural parts of the shire, on land zoned RU2 Rural Landscape zone.</p>
6. Local Plan Making	
6.1 Approval and Referral Requirements	<p>Consistent.</p> <p>The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.</p>
6.2 Reserving Land for Public Purposes	<p>Consistent.</p> <p>The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes that are not in Council ownership.</p>
6.3 Site Specific Provisions	Does not apply to planning proposal.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to Ballina Shire.
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Does not apply to Ballina Shire.
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.9 Implementation of Bayside West Precincts 2036 Plan	Does not apply to Ballina Shire.
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	Does not apply to Ballina Shire.