

Author	SJ Connelly CPP Pty Ltd on behalf of North Angels Beach Development (Ballina) Pty Ltd
Issue Category	Site specific North Angels Beach Estate
Submission No.	68
Issue Summary	Seeks amendment to the draft LEP to reduce the area of E2 Environmental Conservation zone applied along the northern property boundary.

Assessment

The draft LEP 2011 proposes the application of an E2 Environmental Conservation zone over vegetation east of Condon Drive along the northern boundary of North Angels Beach Estate. The E2 zone was applied on the basis of the habitat value of the vegetation and the status of a substantial area of the vegetation as an endangered ecological community. Furthermore, the 2007 approved plans for the subject land do not identify potential urban development in the vegetated area the subject of the submission.

Having regard for the characteristics of the land, the E2 zone is considered to reflect the ecological value of the vegetation. However, it is evident that the zone line could be adjusted slightly northward to better match the extent of standing vegetation.

Recommendation	That the E2 zone be retained but with minor adjustment to better match the extent of standing vegetation.
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Author	P & R Stewart
Issue Category	Site specific Coast Road Sharpes Beach
Submission No.	69
Issue Summary	<p>Objection to inclusion of land on the eastern side of the Coast Road at Sharpes Beach as the only land in Ballina Shire identified for Acquisition for Public Purposes.</p> <p>Council has provided no objectives or rationale for the selection of the land for acquisition, or any planned end use for the land. The E2 zoning provides adequate protection from development.</p> <p>The acquisition order may result in Council being liable to pay for land which it would otherwise acquire as public space during re-zoning for urban development.</p>

Assessment

The subject land is currently identified in the BLEP 1987 as being subject to landowner initiated acquisition provisions. The Department of Planning & Infrastructure is the relevant acquisition authority and has requested that Council retain this provision in the draft LEP 2011. This provision is related to the State government's coastal lands acquisition program.

Recommendation	No change.
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Author	SJ Connelly CPP Pty Ltd on behalf of Riverbend Village Pty Ltd and Supbrook Pty Ltd
Issue Category	Site specific Riverbend village
Submission No.	70
Issue Summary	Seeks amendment to the draft LEP to identify the proposed Western Arterial alignment and the application of a residential zone to the area of the approved Riverbend manufactured home estate. The submission also seeks a minimum lot size for subdivision similar to that provided on surrounding residential land.

Assessment

The matters raised in the submission are addressed as follows:

Identification of the western arterial alignment:

The draft LEP 2011 does not identify the proposed Western Arterial Road alignment because the current alignment represents a preferred position of the Council rather than a fully studied and fixed road corridor and the DP&I do not advocate the identification of road corridors given that the Infrastructure SEPP permits roads in a variety of zones.

Application of a residential zone to the Riverbend Village footprint:

A northward extension of the existing Riverbend Village is subject to development approval but has not yet been constructed. The area the subject of the extension was zoned RU2 Rural Landscape and included in schedule 1 of the draft LEP 2011 with caravan parks identified as an additional permitted use on the land. This was designed to enable the expansion of the manufactured home use but not conventional residential development. The intent was to support the provision of affordable housing options in the shire.

The application of a residential zone to the land enables a wider range of land uses on the site. Having regard for this and the above, the application of a residential zone to the land is not recommended on the basis that it may lead to outcomes inconsistent with the strategic land use planning framework for the locality articulated within the West Ballina Planning Study and Structure Plan.

Application of reduced minimum lot size for subdivision:

Given the above recommendation to maintain a rural land use zone over the site and that the adopted West Ballina Planning Study and Structure Plan suggests manufactured home, seniors housing or integrated housing outcomes on the land, it is considered appropriate to retain the 40ha lot size applied under the exhibited draft LEP 2011 at this time.

Recommendation	No change.
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Author	W.J. & B.S. Grace
Issue Category	Site specific 130 Coolgardie Road, Coolgardie
Submission No.	71
Issue Summary	<p>Land zoned 1(b) Rural (Secondary Agricultural Land) and 7(d) Environmental Protection (Scenic / Escarpment) when purchased for the purpose to enable a small Murray Grey cattle stud and Black face Suffolk sheep stud. Proposed LEP will rezone more than 50% of land currently zoned 1(b) to E2.</p> <p>The permitted land uses in the E2 zone are limited and ability to undertake activities currently permitted will become restricted and effectively prohibited. Significant funds spent in 2007 investigating the feasibility of 1 or 2 holiday cabins in the area north of the creek and this use will be prohibited within the E2 zone.</p> <p>Use of the property for activities currently undertaken on the land will require either a development application or continued use.</p> <p>The proposed rezoning appears to rely on 2005 Geolink Report which is broad-scale and not based on detailed studies. The report places too much emphasis on environmental attributes and does not have sufficient regard for economical and social attributes.</p> <p>Land value will be diminished and enquire as to whether Council will reimburse landowners for loss of value of land. Cleared area north of the creek proposed to be zoned E2 is subject to an approved boundary adjustment. In the event that the boundary adjustment does not proceed compensation will be sought from Council.</p> <p>Clause 5.9 will enable Council to require consent for activities currently permitted without consent under the Native Vegetation Act 2003 and is an example of Council planning by stealth.</p> <p>Lack of consultation with landowners. Individual landowners should be contacted directly where such rezoning is proposed.</p> <p>Object in the strongest terms to proposed rezoning of any part of the property to E2 Environmental Conservation.</p>

Assessment

The area referred to in the submission proposed for rezoning to E2 Environmental Conservation comprises the vegetated parts of the property. The submission refers to a cleared area in the north-east part of the property which is also proposed to be rezoned E2.

The draft LEP 2011 maintains the application of the E2 Environmental Conservation zone to the vegetated parts of the property and applies the E3 Environmental

Management zone to the north east corner of the property. There is a small cleared area which has been maintained in the E2 zone which could also be appropriately zoned E3.

A review of the proposed application of the E2 Environmental Protection zoning concludes that with the minor exception of that part of the land referred to above, the application of the zoning is entirely consistent with the criteria formally adopted by Council as part of the LEP preparation process.

A review undertaken by Council's Environmental Scientist states that the vegetation is considered mature to old growth forest and presents excellent habitat for a wide range of fauna species.

In relation to the permitted land uses within the E2 zone, in the event that those parts of the site presently zoned 1(b) are established as enjoying existing or continuing use rights then the proposed new zoning will not impact on the ability of the landowner to continue those particular land uses.

Extensive consultation has been undertaken in the preparation of the draft LEP as detailed in this and previous reports to Council.

Recommendation	Minor adjustment to the northern section of the property to apply the E3 zone to the existing small cleared area currently zoned E2.
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Author	SJ Connelly CPP Pty Ltd on Ballina HSC Pty Ltd
Issue Category	Site specific Lot 2 in DA 2010/962 being subdivision of Lot 11 DP 1011575
Submission No.	72
Issue Summary	Seeks amendment to the draft LEP 2011 to identify the proposed Western Arterial alignment and the application of a residential zone to the area west of the Riverbend estate but east of the planned western arterial road alignment. The submission also seeks a minimum lot size for subdivision of 600m ²

Assessment

The matters raised in the submission are addressed as follows:

Identification of the western arterial alignment:

The draft LEP 2011 does not identify the proposed Western Arterial Road alignment because the current alignment represents a preferred position of the Council rather than a fully studied and fixed road corridor and the DP&I do not advocate the identification of road corridors given that the Infrastructure SEPP permits roads in a variety of zones.

Application of a residential zone to the subject land:

The area the subject of the submission is subject to an RU2 Rural Landscape under the draft LEP 2011 and is included in schedule 1 of the draft LEP 2011 with caravan parks identified as an additional permitted use on the land. This was designed to enable the expansion of the manufactured home use but not conventional residential development. The intent is to support the provision of affordable housing options in the shire.

The application of a residential zone to the land enables a wider range of land uses on the site. Having regard for this and the above, the application of a residential zone to the land is not recommended on the basis that it may lead to outcomes inconsistent with the strategic land use planning framework for the locality articulated within the West Ballina Planning Study and Structure Plan.

Application of reduced minimum lot size for subdivision:

Given the above recommendation to maintain a rural land use zone over the site and that the adopted West Ballina Planning Study and Structure Plan suggests manufactured home, seniors housing or integrated housing outcomes on the land, it is considered appropriate to retain the 40ha lot size applied under the exhibited draft LEP 2011 at this time.

Recommendation	No change.
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Author	SJ Connelly CPP Pty Ltd on behalf of Live International
Issue Category	Site specific Lot 21 DP 1007134 (Condon Hill)
Submission No.	73
Issue Summary	Seeks deferral of the zoning of the Condon Hill site to enable further investigation. The submission mutes a part E3 Environmental Management and part R3 Medium Density Residential zone. The E3 zone is suggested along part of the southern portion of the land fronting The Coast Road.

Assessment

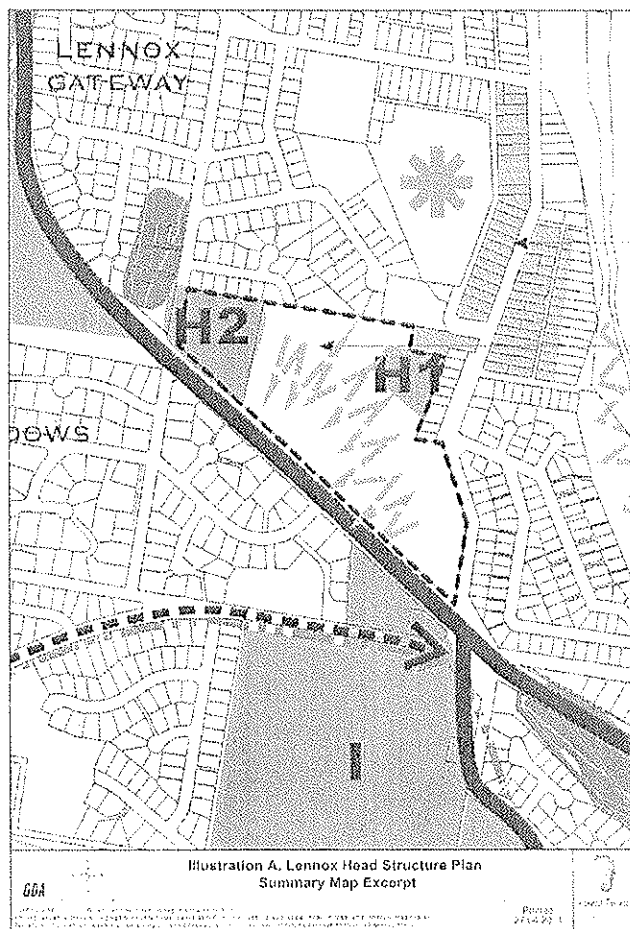
The land use zoning arrangement was subject to specific consideration in the May 2011 reporting to Council's Environmental and Sustainability Committee. The reporting included the following information:

This matter relates to the rezoning of approximately 11 hectares of land located between the Lennox Head village centre and Byron Bay Road commonly referred to as Condon Hill. The subject land includes two adjacent land parcels, Lot 21 DP1007134 owned by the Condon family and Lot 12 DP581159 owned by the Catholic Church, that are currently zoned 1(d) Rural (Urban Investigation) Zone under the Ballina LEP 1987.

The subject land is identified in the Ballina Urban Land Release Strategy (ULRS) for future urban investigation. The Lennox Head Structure Plan (LHSP) identifies parts of the land as candidate investigation areas H1 and H2 (see below). The LHSP identifies the following requirements for development of the areas shown as H1 and H2 subject to rezoning investigations:

- Area H1. The preferred land use for area H1 is an extension of the Consulting Room Precinct immediately adjacent to the site. Any development in this area will need to be designed having careful regard to the impact of the development from a geotechnical perspective and to ensure that views to the scenic escarpment are retained. A built form of light weight construction with little or no excavation to minimise disruption to the landform, is also considered appropriate for this site.
- Area H2. A combination of low and medium density residential development (L2 and M1 pursuant to Ballina DCP No.1) is the preferred use for this site. Any such development would need to ensure adequate buffering for road traffic noise and be well screened from the Coast Road. Access to area H2 is to be via Greenwood Place. A built form of light weight construction with little or no excavation to minimise disruption to the landform, is considered appropriate for this site. Any buildings on this site shall have a building height lower than the red roof of the duplex building to north of site at 14 Blue Horizon Drive, so as to minimise the visual impact of development in this area.

The area shown with broken zigzag lines below is identified as 'visually significant land' in the LHSP.



Rezoning investigations involving this site have been ongoing over a number of years and Councillors have received reports relating to it at the following meetings:

- Ordinary Meeting held on 23 August 2007 [Minute No.230807(016)]
- Environmental Committee Meeting held on 9 August 2007
- Ordinary Meeting held on 24 August 2006 [Minute No.240806(008)]
- Ordinary Meeting held on 28 April 2005 [Minute No.280405(004)]

The land has previously been the subject of Draft Ballina LEP Amendment No.96 that proposed to rezone the land from 1(d) Rural (Urban Investigation) Zone to 7(d) Environmental Protection (Scenic Escarpment) Zone, over the majority of the Condon land. The draft plan was publicly exhibited during March and April 2005.

The landholder's consultants provided an alternative proposal which envisaged rezoning parts of the site, including the Catholic Church land and a strip of land adjacent the Coast Road (on the Condon land) for residential purposes, with the remainder of the site proposed 6(a) Open Space. The proposal also requested that parts of the land, including the Condon family home and land adjacent to the medical centre be deferred for future investigation.

When the matter was last considered by the Council (23 August 2007) the Council resolved as follows:

1. That Council incorporate the consideration of zoning and land use for Area H and Condon Hill (as defined under the Lennox Head Structure Plan) into the comprehensive renewal of the Ballina Local Environmental Plan. Further that this consideration be based on the landowner proposed zoning and land use arrangement as set out in this report.
2. That the proponents be advised that Council will require suitable documentation to enable assessment of the proposed zoning arrangement, particularly in relation to those areas proposed to be zoned for residential/urban purposes and that this may be subject to independent assessment at the proponents cost and the applicable Council fees and charges.

The effect of the above resolution was to incorporate the land into the shire-wide LEP renewal process and specifically extend the area of land to be considered for rezoning to include the adjacent land parcel, owned by the Catholic Church also zoned 1(d) Rural (Urban Investigation) Zone, that was not the subject of LEP Amendment No.96.

In response to the resolution, the landholders were invited to provide further information to support their rezoning request. Due to delays in the provision of the necessary additional information, the matter was not able to be incorporated into the comprehensive LEP prior to the public exhibition.

Further information was subsequently provided by the landholders' representatives and has been considered by Council staff. This matter was also discussed at the Councillor workshop held on 27 September 2010. A review of the documentation available on this matter, including the additional technical reports submitted by landholders, has identified the following key issues relevant to the determination of land use zoning over the Condon Hill site:

- Visual prominence;
- Geotechnical instability; and
- Road noise.

Visual Prominence

Parts of the subject land have significant visual prominence being highly visible from the Lennox Head village centre, beaches and public spaces, surrounding residential areas and the public road network including the scenic coastal road route (the Coast Road).

Extensive consultation undertaken with the Lennox Head community during the preparation of the Lennox Head Community Aspirations Strategic Plan (2002) identified the landscape as a key defining feature of the character of Lennox Head. The visual prominence of parts of the subject site were confirmed by the preparation of a Landscape and Visual Analysis (2003) undertaken by an independent consultant to Council. As a consequence, the LHSP identifies the elevated parts of the site, including prominent ridgelines as 'visually significant land'.

The landholders' consultants provided a visual assessment to support their rezoning request. The report set out a scale of visual constraint and identified areas subject to these constraints. The report also proposed mitigation measures to lessen the visual impact of the proposed development footprint. The prominent ridgelines are generally identified as being subject to 'high constraint', land above the road cutting on Ballina Street is given a

'moderate constraint' and land behind houses on Ballina Street/Park Lane and behind Blue Horizon Drive is shown as subject to 'low constraint'.

The exception to this is a portion of land adjacent to the Coast Road, proposed for residential development, that is identified as subject to 'moderate constraint' if unmitigated and 'low constraint' if mitigated with a vegetated buffer between the Coast Road and the proposed development footprint. It is noted, however, that this last area includes land along the ridgeline that has high visual prominence from the Coast Road/North Creek Road and forms part of the 'visual arc' from the Coast Road to the crest of Condon Hill. It is noted that the view corridor along the Coast Road has greater visual prominence when viewed from the south east as compared from the north west, although land adjacent to the north-south ridgeline itself, which forms the 'visual arc' referred to above, remains a key visual element of the Condon Hill site from both directions.

Geotechnical instability

Geotechnical investigations undertaken in relation to LEP Amendment No.96 and in relation to a development application that was lodged (and subsequently refused by Council and the NSW Land and Environment Court) for a 'seniors living' proposal over part of the site (DA No.2005/516) have identified key geotechnical constraints to development in some parts of the site. The geotechnical assessment provided by the landholders' consultant identifies that the western section of the site has limited constraints to development, however the north-eastern part of the site is subject to the following geotechnical constraints:

- Slope instability risk and history of landslip/slumping;*
- Complex and variable geological conditions;*
- Deep colluvial soils (soils derived from landslides and slope wash processes);*
- Areas of low bearing capacity; and*
- Poor site drainage.*

The report concludes that:

"...Significant remediation or alteration of the slopes above the area to be redeveloped to near the crest of ridge would be required to allow development to proceed in a manner that may be considered acceptable to the community...Such remedial measures would require significant disturbance of the slopes...The design of such remedial measures would be complex and the economics of such would require detailed geotechnical investigation once the proposed development scheme is understood."

Due to the significant challenges associated with any future development scenarios for the north-eastern portion of the site, the landholder has requested that this portion of the site be deferred for future investigation.

Road noise

Road noise assessments undertaken for the site have indicated that land adjacent to Ballina Street and the Coast Road is subject to road noise impacts. The assessments indicate that the relevant internal noise standards can be met with reliance on the construction of a noise attenuation mound (berm) and on building treatments such as acoustic insulation of buildings and use of air conditioning or mechanical ventilation of buildings (to allow doors and windows to be closed). Further information regarding appropriate

building treatments and design standards may be required to support further consideration of land affected by road noise.

Zoning options

It is noted that the subject land is presently zoned 1(d) Rural (Urban Investigation) Zone under the Ballina LEP 1987. The objectives of the 1(d) zone are to ensure that the land is subject to detailed suitability investigations to determine the appropriate zoning regime for the site, including the potential for urban development. The limited range of development types currently permissible on the land reflects this rural zoning.

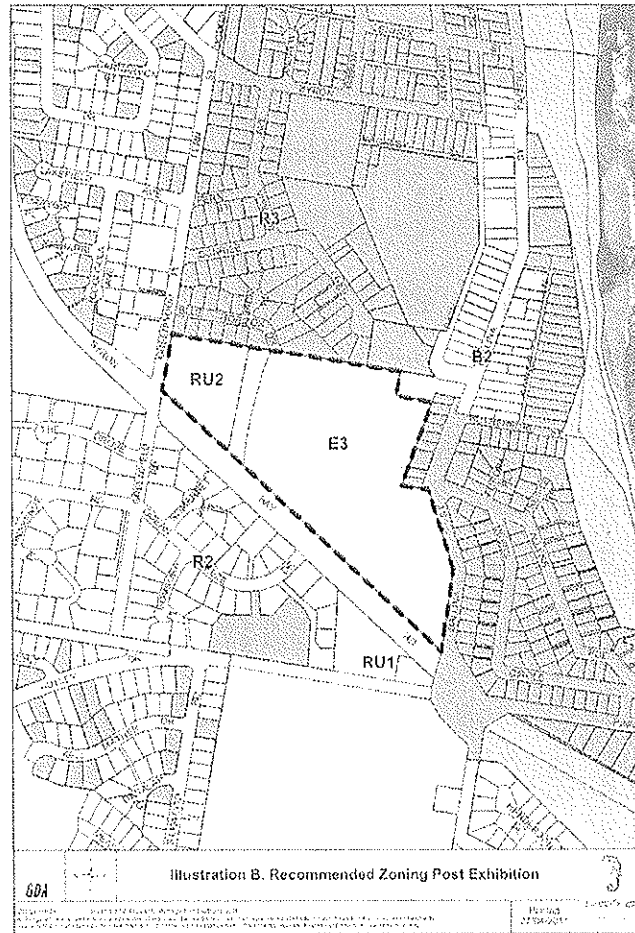
It is the conclusion of staff that the interaction of visually significant land, geotechnical instability and road noise issues present significant limitations to the suitability of parts of the site to accommodate urban development.

With respect to visually significant of parts of the site, being land adjacent to the site's prominent ridgelines, it is recommended these areas be zoned E3 Environmental Management Zone.

With respect to geotechnical issues affecting parts of the site, it is noted that the landholders' consultants have identified a number of significant geotechnical constraints to development acknowledging that development of the site would be a complex undertaking and require extensive modification of the slopes of the hill. Further, the consultants suggest that such development may not be economically viable, and that this could only be determined when the details of a development proposal are known. It is recommended, therefore, that the parts of the site affected by significant geotechnical constraints be zoned E3 Environmental Management Zone. This includes the north eastern portion of the land identified in the LHSP as area H1.

Parts of the site, not otherwise affected to some degree by the above constraints, appear to have some urban development potential. Having regard for the need for local residents and neighbours to have an opportunity to review the details of a future proposal, it is recommended that the landholders be invited to further progress the matter over the remaining parts of the site separate from the LEP renewal via the planning proposal process. This essentially means preparing and submitting a separate rezoning request with conceptual details of a development proposal for consideration by Council and the Department of Planning and Infrastructure. As an interim measure, it is proposed these areas, primarily located in the south west of the site, be zoned RU2 Rural Landscape Zone under the new LEP.

The recommended zoning regime for the Condon Hill site is shown below.



The submission made to the exhibition of the draft LEP 2011 does not provide any further technical information that justifies a change in the position recommended by staff as set out above. The recommended E3 Environmental Management zone is consistent with Council's adopted strategic planning framework for the locality and has been applied based on a consideration of both the subject land and the adjoining property.

Importantly, it should be recognised that the E3 zone includes a broad range of permitted land uses including tourist and visitor accommodation which forms part of the proposed outcomes muted by the subject submission.

Deferral of this matter is not recommended as it is considered that there has been ample opportunity over an extended period for the provision of a comprehensive LEP amendment proposal for the consideration of Council. To date, the information supplied does not suggest that the land is suited to residential subdivision/development aside from a thin strip adjacent to the land parcel immediately to the west of the site (currently in the ownership of the Catholic Church). This is consistent with the adopted Lennox Head Structure Plan.

Recommendation	No change.
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Author	SJ Connelly CPP Pty Ltd on behalf of Trustees of the Roman Catholic Church
Issue Category	Site specific Lot 12 DP 581159 Greenwood Place, Lennox Head (commonly considered as part of Condon Hill)
Submission No.	74
Issue Summary	Seeks application of an R3 Medium Density Residential zone to land on Greenwood Place at Lennox Head.

Assessment

The subject land is identified in the draft LEP 2011 as being subject to an RU2 Rural landscape zone and is recognised as having potential for urban development. Council invited the landholder, in conjunction with the landowner of the adjoining Condon Hill site to submit material for consideration in relation to the zoning of the land under the draft LEP 2010. The material submitted at that time was not sufficient to facilitate the application of a residential zone to the land.

Given the status of the draft LEP 2011 and that the land is a significant land parcel in the Lennox Head area, it is not considered appropriate to apply a residential zone to the land at this late stage of the LEP process and without a public exhibition process. However, the land may be suited to residential purposes. As such, it is recommended that the proponent be invited to progress this matter via a planning proposal with the initial step being a site specific report regarding the concept being presented to Council (in accordance with phase 1 of Council's Planning Proposal process).

This course of action will retain the subject land within an RU2 Rural Landscape zone but leave a change of zoning open to Council via a subsequent site specific amendment process where considered appropriate.

Recommendation	No change.
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Author	SJ Connelly CPP Pty Ltd on behalf of Trustees of the Roman Catholic Church
Issue Category	Site specific Lot 3 DP 564340 (Old Kirklands Depot), Cherry Street, Ballina
Submission No.	75
Issue Summary	Seeks application of a commercial zone over the subject land on the basis of a historic approval for a service station and road transport terminal.

Assessment

This matter was considered in response to the public exhibition of the 2010 version of the draft LEP. No change was recommended to the zoning of the land on the basis that Council's Industrial and Commercial Land Audit identifies that there is substantial capacity for commercial development in the existing Ballina CBD. It is also not considered desirable to provide for expansion to the long established CBD footprint on an ad hoc basis and a commercial zone would facilitate a much wider range of land uses than those identified as approved on the site.

The approved uses may be undertaken where they have been commenced in accordance with the terms of the EP&A Act and as such, the terms of the existing approval are not affected by the proposed R3 Medium Density Residential zone. The R3 zone is consistent with the current zone over the land.

No additional information has been submitted by the proponent to justify a change in the previous recommendation for retention of the R3 Medium Density Residential zone over the land.

Recommendation	No change.
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Author	Mr Brett Harries and Mr Bill Harries
Issue Category	Site specific Lot 1 DP 552129 Tintenbar
Submission No.	76 & 76a
Issue Summary	Oppose the proposed E2 Environmental Conservation zoning of the land. Basis for opposition includes assessment by Environmental Scientist which indicates that the vegetation on the site generally comprises Camphor Laurel regrowth and has little or no ecological value. Request for the application of RU1 or RU2 zone to the subject land.

Assessment

Council's Environmental Scientist has reviewed the submission and agrees with the ecological report submitted. The proposed E2 zoning is not justified and a rural zone should be applied to the land.

Recommendation	That the E2 Environmental Conservation zone be removed and the appropriate underlying rural zone be applied to the land.
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Author	Mr Troy Outerbridge
Issue Category	Site specific Lot 2 SP 34603, No. 198 – 204 Southern Cross Drive, Ballina
Submission No.	77
Issue Summary	Site is adjacent to airport parking area and proposed to be zoned IN1 General Industrial. The proposed industrial zoning is too limiting for activities in the airport precinct. Council should adopt a master plan for the airport and surrounding precinct, separate to the industrial estate. A combination of IN1 General Industrial, B4 Mixed Use and B6 Enterprise Corridor may be more appropriate for the site.

Assessment

A master plan is currently being prepared for the Airport however it is understood that it does not include the subject land. The appropriate mechanism for reviewing the potential relationship between the site and the airport would be to initially engage with Council's Commercial Services Group. Any identified potential amendments to the zoning of the land could be pursued as a separate Planning Proposal.

Recommendation	No change.
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Author	Newton Denny Chapelle
Issue Category	Site specific Lots 133 & 203 DP 755626, Sneesbys Lane, East Wardell
Submission No.	78
Issue Summary	<p>The submission encloses a copy of a letter from Council dated 24 October 2011 confirming that Lots 133 & 203 in DP 1048732 Sneesbys Lane, East Wardell had dwelling entitlements as at October 2008 that had been acknowledged in writing by Council and that this recognition was affected by the repeal of clause 12 provisions under the Ballina Local Environmental Plan 1987 (BLEP 1987) in 2009.</p> <p>In effecting the above amendment to BLEP 1987 Council resolved to "protect" the dwelling entitlements for rural properties which do not comply with the revised dwelling entitlement clause, but for which Council has previously acknowledged an entitlement in writing.</p> <p>Request that the allotments be included on the "Dwelling Opportunities Reinstatement Map".</p>

Assessment

The subject allotments satisfy the requirements for the reinstatement of dwelling entitlements and the submission is supported.

Recommendation	Amendment to the "Dwelling Opportunities Reinstatement Map" to include Lots 133 & 203 DP 755626, Sneesbys Lane, East Wardell.
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