

Residential Accommodation in Business Zones

Discussion Paper

Prepared for Ballina Shire Council
by MikeSvikisPlanning
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1 Introduction

Ballina was identified in 2006 as an emerging regional centre through the New South Wales State Government's Far North Coast Regional Strategy. The North Coast Regional Plan released in 2017 identified Ballina as a *strategic centre* that has strong links to the *regional centres* of Lismore and Tweed Heads. Significant growth is predicted for Ballina as transport links to the north, south and west continue to be improved.

Ballina Shire Council prepared the *Ballina Major Regional Centre Strategy* (BMRCS) in 2015/16 to guide this growth in a way that maximises opportunities, whilst at the same time preserving the things about Ballina that are important to the community. The focus for the strategy is the identification of key policy and planning related initiatives that can define and drive Ballina as a regional centre into the future.

In relation to housing, the BMRCS has two objectives that Council has asked to be addressed in this discussion paper (see Appendix A for full version). These are:

F1.1 To encourage increased residential development in Ballina CBD

F1.2 To ensure suitable and adequate housing opportunities are available to cater to the diverse needs of our community

In implementing these objectives, Council has asked that:

- There be a review of the types of residential accommodation permitted in the Business zones of Ballina, West Ballina, Lennox Head and Alstonville
- The concept of planning controls for activated street frontages be considered for the Business zones of Ballina, West Ballina, Lennox Head and Alstonville
- The definition of shop top housing be reviewed
- There be consideration of policy incentives to encourage residential accommodation in the Business zones of Ballina, West Ballina, Lennox Head and Alstonville.

While this discussion paper was in preparation (8 October 2017), the NSW Department of Planning and Environment released a document (dated 21 June 2017) called the "Retail Expert Advisory Committee Independent Recommendations Report". This is an independent report prepared by the Retail Expert Advisory Committee to provide advice to the NSW Government. This report provides the Retail Expert Advisory Committee's advice on appropriate reforms to improve the NSW planning system as it relates to retailing. Some of its recommendations are relevant to Ballina and this discussion paper topic. These are summarised in this discussion paper.

2 Subject Land

The focus of this discussion paper is the Ballina CBD and the business centres of West Ballina, Alstonville and Lennox Head. Some consideration is also given to Wollongbar even though it has a small business centre, which is zoned B1 Neighbourhood Centre. The new urban release area at Cumbalum is also included as it has two areas zoned B2 Local Centre.

Table 1 is a summary of the land area in each zone in each locality. Small areas of B1 land have not been included. An area of B5 Business Development at North Ballina has also been omitted.

Table 1: Land area (hectares) in each zone in each locality

Locality	B1 Neighbourhood Centre	B2 Local Centre	B3 Commercial Core	B4 Mixed Use	B6 Enterprise Corridor
Ballina CBD			31.1 hectares	4.7 hectares	
West Ballina					17.6 hectares
Alstonville		8 hectares			
Lennox Head		4 hectares			
Wollongbar	2.7 hectares				
Cumbalum		10 hectares (in two locations)			

The Ballina CBD is comprised of areas zoned B3 Commercial Core and B4 Mixed Use (Figure 1).

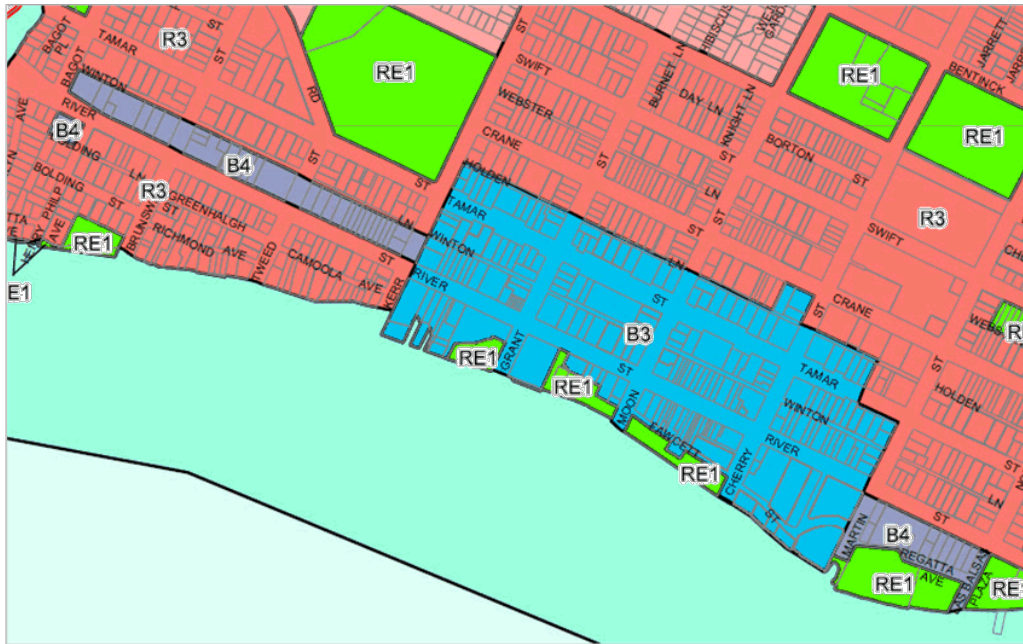


Figure 1: Ballina CBD land use zones under Ballina LEP 2012

The West Ballina business centre is zoned B6 Enterprise Corridor (Figure 2). This area adjoins a B1 Neighbourhood Centre zone along River Street.

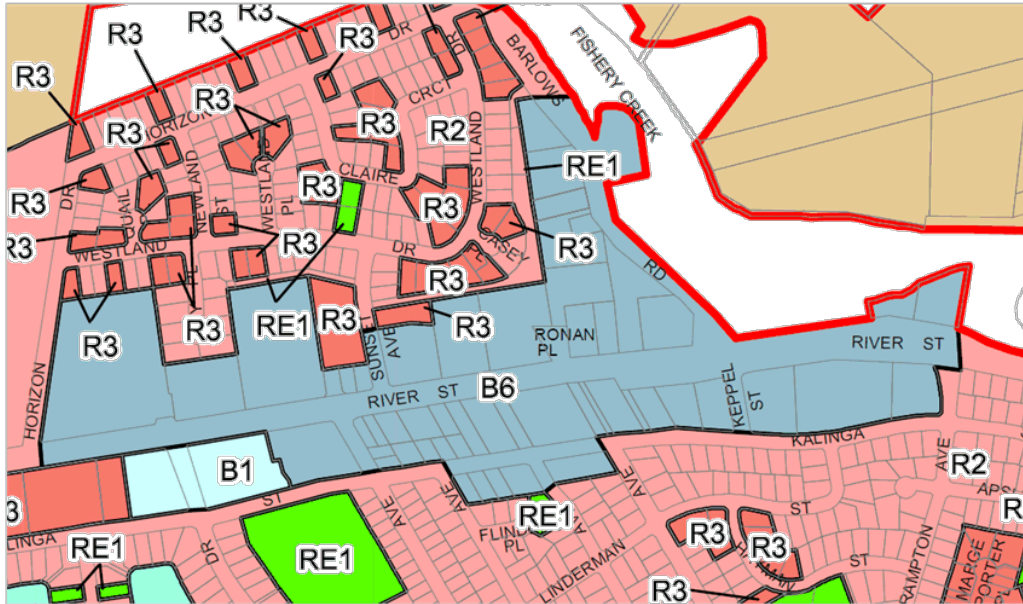


Figure 2: West Ballina Business zones under Ballina LEP 2012

The Alstonville business centre is the area zoned B2 Local Centre (Figure 3).

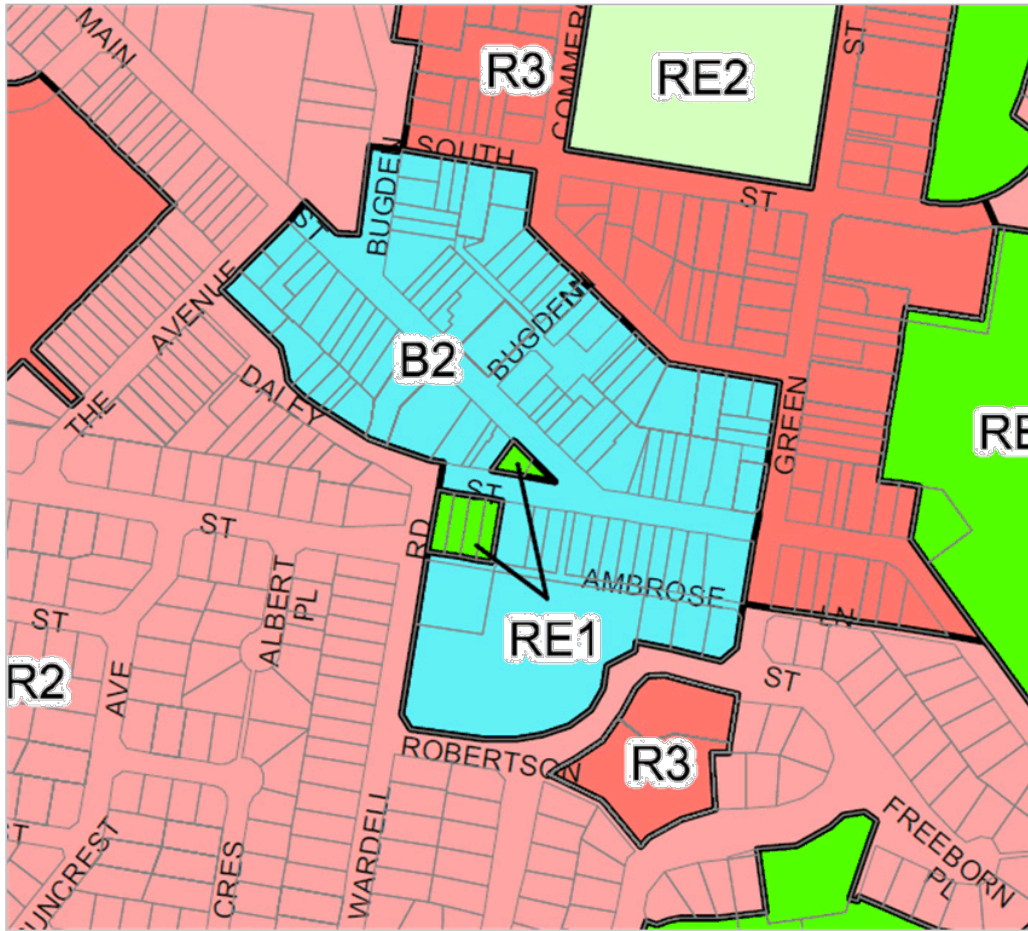


Figure 3: Alstonville Business zones under Ballina LEP 2012

The Lennox Head business centre is the area zoned B2 Local Centre (Figure 4).

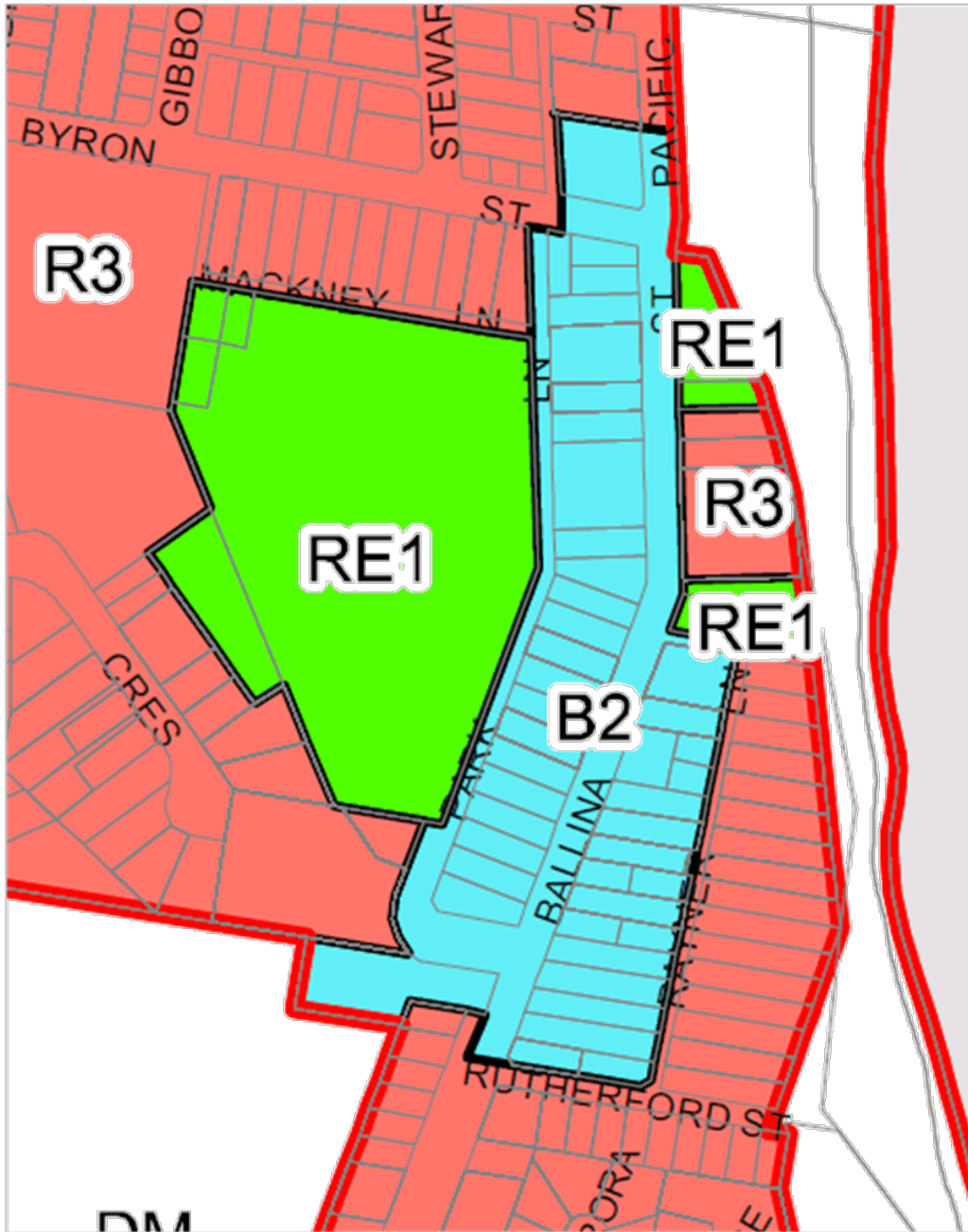


Figure 4: Lennox Head Business zones under Ballina LEP 2012

The Wollongbar business centre is the area zoned B1 Neighbourhood Centre (Figure 5).

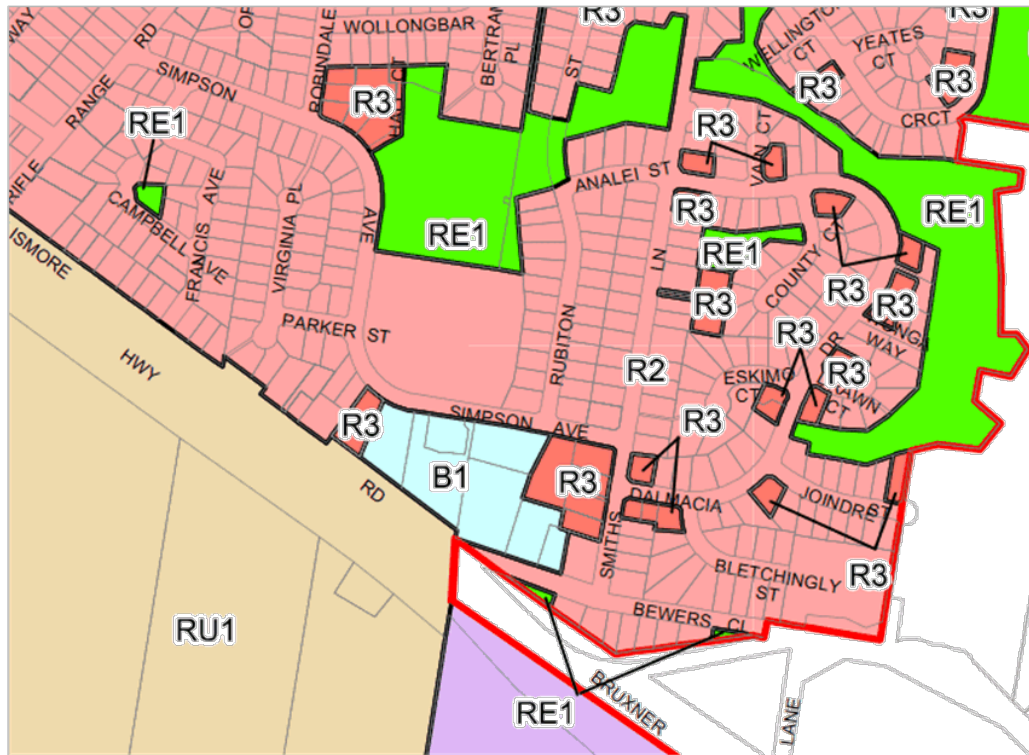


Figure 5: Wollongbar Business zones under Ballina LEP 2012

The Cumbalum urban release area business centres are the areas zoned B2 Local Centre (Figure 6).
Note: The northern part of the release area adjacent to Ross Lane is now known as Kinvara.

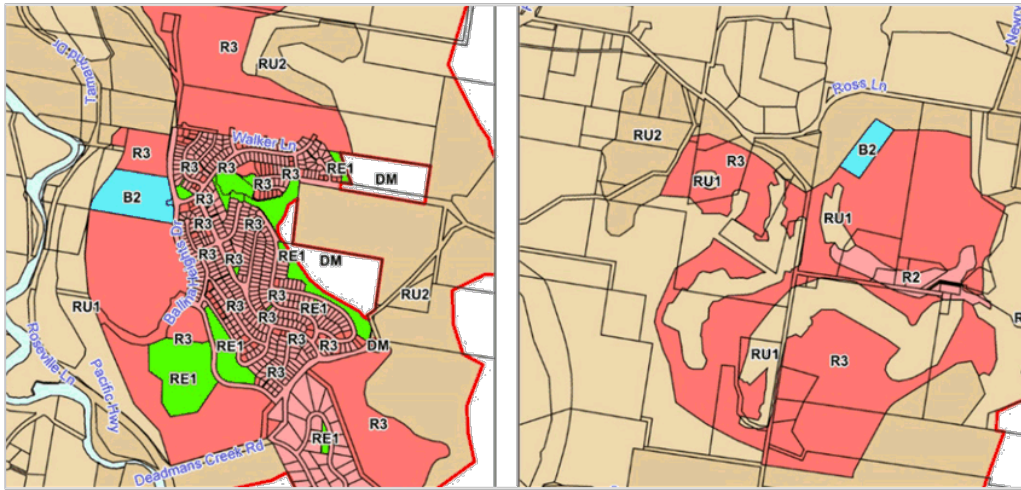


Figure 6: Cumbalum Business zones under Ballina LEP 2012

3 Existing Ballina Planning Controls and SEPPs

3.1 Ballina LEP 2012

Table 2 outlines the permissibility of the various forms of residential accommodation in Business zones under Ballina LEP 2012. Shop top housing is permitted in five out of six zones. The Mixed Use zone permits all types of residential accommodation. The Business Development zone prohibits all types of residential accommodation. The Commercial Core and Enterprise zones prohibit all residential accommodation uses except shop top housing. The Neighbourhood Centre and Local Centre zones permit four different residential types and prohibit eight.

Table 2: Ballina LEP 2012

	Shop top housing	Seniors housing	Group homes	Boarding houses	Attached dwellings	Semi-detached dwelling	Hostel	Dwellings	Secondary dwelling	Dual occupancy	Multi dwelling housing	Residential flat buildings
B1 Neighbourhood Centre	Y*	X	Y	Y	X	X	X	Y	Y	X	X	X
B2 Local Centre	Y*	X	X	Y*	X	X	X	Y	Y	X	X	X
B3 Commercial Core	Y	X	X	X	X	X	X	X	X	X	X	X
B4 Mixed Use	Y*	Y*	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y
B5 Business Development	X	X	X	X	X	X	X	X	X	X	X	X
B6 Enterprise Corridor	Y	X	X	X	X	X	X	X	X	X	X	X

Y = permitted by LEP

X = prohibited by LEP

* = mandatory in the standard LEP

3.2 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

This SEPP aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

(2) *These aims will be achieved by:*

- (a) *setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
- (b) *setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*
- (c) *ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*

In this Policy, seniors housing is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability consisting of:

- (a) *a residential care facility, or*
 - (b) *a hostel, or*
 - (c) *a group of self-contained dwellings, or*
 - (d) *a combination of these,*
- but does not include a hospital.*

This SEPP applies to land within New South Wales that is zoned primarily for urban purposes, therefore it does apply to land in a Business zone.

Notwithstanding the land use table for Ballina LEP 2012, seniors housing (subject to the controls prescribed in the SEPP) is permitted in the B2, B3 and B6 zones with Council consent. In this case, seniors housing may include a hostel or a group of dwellings as long as they are intended for seniors or people with a disability.

3.3 State Environmental Planning Policy (Affordable Rental Housing) 2009

In-fill affordable housing

This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of those zones. These uses are permitted with consent if they meet the requirements for affordable housing.

Boarding houses

This Division applies to development for the purposes of boarding houses on land within the B1 Neighbourhood Centre, B2 Local Centre or B4 Mixed Use zones. These uses are permitted with consent if they meet the requirements for affordable housing.

Residential flat buildings

This Division applies to Ballina (the town) and therefore does not apply to Alstonville, Lennox Head, Wollongbar or Cumbalum/Kinvara. Residential flat buildings are permitted within 400 metres of land in Zone B3 Commercial Core, Zone B4 Mixed Use or a land use zone that is equivalent to either of those zones.

Residential flat buildings are permitted with consent if they meet the requirements for affordable housing.

Group homes

This Division allows development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone to be carried out:

- (a) without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or
- (b) with consent in any other case.

Prescribed zone means: Zone B4 Mixed Use, any other zone in which development for the purpose of dwellings, dwelling houses or multi dwelling housing may be carried out with or without consent under an environmental planning instrument. This includes the B1 and B2 zones under Ballina LEP 2012.

Notwithstanding the land use table for Ballina LEP 2012, the abovementioned types of affordable rental housing (subject to the controls prescribed in the SEPP) are permitted in the B2, B3 and B4 zones with Council consent.

3.4 Ballina DCP 2012**Chapter 6 – Commercial Development**

Part 4 of this chapter deals with mixed use development on land within zones B1, B2, B3 and B4. It prescribes that the **shop top housing** component of any mixed use development is to comply with the provisions of Chapter 4 – Residential Development. It also prescribes a range of controls including:

- (i) Residential components are to be provided with direct access to street level with entrances clearly distinguishable from entries to *commercial premises*;
- (ii) Secure entries are to be provided to all entrances to private areas, including car parks and internal courtyards;
- (iii) All car parking required for the residential component of a development, including any required visitor car parking, must be provided on site. Section 94 Contributions for car parking spaces will not be accepted for any residential component of a development;
- (iv) Car parking provided for the residential component of the development is to be clearly delineated and provided separate to general customer parking;
- (v) Acoustic separation is to be provided wherever possible between loud commercial uses, such as cafes and restaurants, and residential uses. This may be achieved by utilising intermediate quiet-use barriers such as offices;
- (vi) To allow for their adaptive use, mixed use buildings are to incorporate the following flexible design requirements:
 - buildings are to have a simple and efficient structural grid;
 - the number of internal apartment structural walls is to be minimised;
 - ceiling heights for the ground and first floors are to be 3.6 metres

Chapters 6A, 6B, 6C and 6D

These four precinct-based chapters deal specifically with Ballina Town Centre, Alstonville, Lennox Head and West Ballina, respectively. These chapters identify the desired future character of the various precincts and reference a range of elements that need to be addressed in development.

In the Ballina CBD chapter “Active Street Frontages” is a core building element control, eg for the Fawcett Park Precinct: “Buildings address both River Street and Fawcett Street with active frontages providing opportunities

for alfresco dining facilitated by buildings that are setback from Fawcett Street." Corner buildings are required to "Provide active frontages at the ground level to both street frontages."

The West Ballina Enterprise Corridor chapter includes "Provide active and attractive street frontages" as an objective. In the West Ballina building design section:

- i. Ground floor levels shall not contain residential land uses;*
- ii. A minimum of 50% of the ground floor façades of building components addressing principal streets shall be clear glazed;*
- iii. Active ground floor uses shall be accessible and at the same level as the footpath except where floor levels need to comply with the flood level standards; and*
- iv. The main pedestrian entries to buildings are to be visible and as close to the street frontage as possible.*

Chapter 6D includes a useful generic design for small scale shop top housing in the West Ballina Corridor (Appendix B).

The Lennox Head chapter includes objectives such as:

Developments will be required to provide articulated and active frontages. Expanses of blank walls or dark obscured glass are not appropriate.

Minimise the impact of buildings on the streetscape and promote an active street experience for pedestrians.

Where ground floor levels comprise non-residential land uses, an active and accessible street frontage shall be provided at the same level of the footpath. An active street frontage shall have a minimum 50% clear glazing and shall consist of one or more of the following:

- i. a shop front,*
- ii. commercial and residential lobbies,*
- iii. a café or restaurant if accompanied by an entry from the street, or*
- iv. a public building if accompanied by an entry from the street.*

The Alstonville chapter has very little precinct-based guidance on either active street frontages or mixed use residential type development. It focusses mainly on controls relating to external building form and design.

3.5 Residential Accommodation Approvals in Business Zones in Ballina Shire since 2012

Council records show that only two developments including residential accommodation have been approved since Ballina LEP 2012 was gazetted.

One is for 36 units of shop top housing on land zoned B3 in the Ballina CBD ("Reside" development). The DA was approved in 2014 and commenced construction in February 2018.

The other is for four units of shop top housing on land zoned B2 in the Lennox Head business area. The DA was approved in 2017.

4 Other LGA Approaches and Controls

4.1 LEP Land Use Tables

It is useful to look at how other LGAs in New South Wales have drafted their land use tables to permit various types of residential accommodation in Business zones. Not all councils use the same suite of Business zones that Ballina uses. Three metropolitan councils are included (Sydney, Canada Bay and Holroyd). These are shown in Table 3, Table 4 and Table 5. Five North Coast councils are also included for comparison (Tweed, Lismore, Byron, Richmond Valley and Coffs Harbour). These are shown in Tables 6 to 10.

Table 3: Sydney LEP 2012

	Shop top housing	Seniors housing	Group homes	Boarding houses	Attached dwellings	Semi-detached dwelling	Hostel	Dwellings	Secondary dwelling	Dual occupancy	Multi dwelling housing	Residential flat buildings
B1 Neighbourhood Centre	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
B2 Local Centre	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
B3 Commercial Core	X	X	X	X	X	X	X	X	X	X	X	X
B4 Mixed Use	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
B5 Business Development	X	X	X	X	X	X	X	X	X	X	X	X
B6 Enterprise Corridor	X	X	X	X	X	X	X	X	X	X	X	X

Y = permitted by LEP

X = prohibited by LEP

Sydney LEP uses all the zones that Ballina uses, but takes a very black and white approach. Residential accommodation is permitted in all its forms in the B1, B2 and B4 zones. It is prohibited in all its forms in the B3, B5 and B6 zones.

Table 4: Holroyd LEP 2013

	Shop top housing	Seniors housing	Group homes	Boarding houses	Attached dwellings	Semi-detached dwelling	Hostel	Dwellings	Secondary dwelling	Dual occupancy	Multi dwelling housing	Residential flat buildings
B1 Neighbourhood Centre	Y	Y	Y	Y	X	X	Y	X	X	X	X	X
B2 Local Centre	Y	Y	Y	Y	X	X	Y	X	X	X	X	X
B3 Commercial Core	Not used											
B4 Mixed Use	Y	Y	X	X	X	X	Y	X	X	X	X	X
B5 Business Development	X	X	X	X	X	X	X	X	X	X	X	X
B6 Enterprise Corridor	Y	X	Y	X	X	X	Y	X	X	X	Y	Y

Y = permitted by LEP
 X = prohibited by LEP

Holroyd (now part of Cumberland and Parramatta) is a western Sydney locality with centres such as Guilford and Merrylands. Compared to Ballina it is a bit harsher on residential uses in the B4 zone but more open to it in the B6 zone. They do not use the B3 zone.

Table 5: Canada Bay LEP 2013

	Shop top housing	Seniors housing	Group homes	Boarding houses	Attached dwellings	Semi-detached dwelling	Hostel	Dwellings	Secondary dwelling	Dual occupancy	Multi dwelling housing	Residential flat buildings
B1 Neighbourhood Centre	Y	X	X	Y	X	X	X	X	X	X	X	X
B2 Local Centre	Not used											
B3 Commercial Core	X	X	X	X	X	X	X	X	X	X	X	X
B4 Mixed Use	Y	Y	X	X	X	X	X	X	X	X	X	X
B5 Business Development	Not used											
B6 Enterprise Corridor	Y	Y	X	X	X	X	X	X	X	X	X	Y

Y = permitted by LEP
 X = prohibited by LEP

Canada Bay is an inner west Sydney locality with centres such as Five Dock and Drummoyne. It prohibits most residential development in its four Business zones. No residential development is permitted in the B3 zone and only shop top housing, seniors housing and boarding houses in the other zones. Residential flat buildings are permitted in the B6 zone, which goes against the position taken in other zones. The B6 zone is used along Parramatta Road and in some other roadside localities. They do not use the B2 or B5 zones.

Table 6: Tweed LEP 2014

	Shop top housing	Seniors housing	Group homes	Boarding houses	Attached dwellings	Semi-detached dwelling	Hostel	Dwellings	Secondary dwelling	Dual occupancy	Multi dwelling housing	Residential flat buildings
B1 Neighbourhood Centre	Y	X	X	Y	X	X	X	X	X	X	X	X
B2 Local Centre	Y	X	X	Y	X	X	X	X	X	X	X	X
B3 Commercial Core	Y	X	X	Y	X	X	X	X	X	X	X	X
B4 Mixed Use	Y	Y	X	Y	X	X	Y	X	X	X	X	X
B5 Business Development	Y	X	X	X	X	X	X	X	X	X	X	X
B6 Enterprise Corridor	Not used											

Y = permitted by LEP
 X = prohibited by LEP

Tweed uses five Business zones but permits very little residential development in them. It is really limited to shop top housing and boarding houses, with Zone B4 permitting seniors housing and hostels. They do not use the B6 zone.

Table 7: Lismore LEP 2012

	Shop top housing	Seniors housing	Group homes	Boarding houses	Attached dwellings	Semi-detached dwelling	Hostel	Dwellings	Secondary dwelling	Dual occupancy	Multi dwelling housing	Residential flat buildings
B1 Neighbourhood Centre	Y	X	X	Y	X	X	X	X	X	X	X	X
B2 Local Centre	Y	X	X	Y	X	X	X	X	X	X	X	X
B3 Commercial Core	Y	Y	X	X	X	X	X	X	X	X	X	X
B4 Mixed Use	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
B5 Business Development	Not used											
B6 Enterprise Corridor	Y	X	X	X	X	X	X	X	X	X	X	X

Y = permitted by LEP
 X = prohibited by LEP

Lismore City takes a similar approach to Ballina. All forms of residential accommodation are permitted in the B4 zone, and only shop top housing in the B6 zone. The remaining zones permit only shop top housing and seniors housing or boarding houses. They do not use the B5 zone.

9.1 **Residential Development - B3 Commercial Core Zone.DOC**

Table 8: Byron LEP 2012

	Shop top housing	Seniors housing	Group homes	Boarding houses	Attached dwellings	Semi-detached dwelling	Hostel	Dwellings	Secondary dwelling	Dual occupancy	Multi dwelling housing	Residential flat buildings
B1 Neighbourhood Centre	Y	X	X	Y	X	X	Y	X	X	X	X	X
B2 Local Centre	Y	X	X	Y	X	X	Y	X	X	X	X	X
B3 Commercial Core	Not used											
B4 Mixed Use	Y	Y	X	Y	X	X	Y	Y	X	Y	Y	Y
B5 Business Development	Not used											
B6 Enterprise Corridor	Not used											

Y = permitted by LEP
 X = prohibited by LEP

Byron does not have many Business zones and does not use them widely. The B4 zone allows the most forms of residential accommodation and it is confined to one location at West Byron and one small location in Byron Bay town centre ("Sandhills"). The B1 and B2 zones are more widely used and restricted to only hostels, boarding houses and shop top housing. They do not use B3, B5 or B6 zones.

9.1 Residential Development - B3 Commercial Core Zone.DOC

Table 9: Richmond Valley LEP 2012

	Shop top housing	Seniors housing	Group homes	Boarding houses	Attached dwellings	Semi-detached dwelling	Hostel	Dwellings	Secondary dwelling	Dual occupancy	Multi dwelling housing	Residential flat buildings
B1 Neighbourhood Centre	Y	X	X	Y	X	X	X	X	X	X	X	X
B2 Local Centre	Y	X	X	Y	X	X	X	X	X	X	X	X
B3 Commercial Core	Y	X	X	Y	X	X	X	X	X	X	X	X
B4 Mixed Use	Not used											
B5 Business Development	Not used											
B6 Enterprise Corridor	Not used											

Y = permitted by LEP
X = prohibited by LEP

Richmond Valley permits only boarding houses and shop top housing in the B1, B2 and B3 zones. They do not use B4, B5 or B6 zones.

Table 10: Coffs Harbour LEP 2013

	Shop top housing	Seniors housing	Group homes	Boarding houses	Attached dwellings	Semi-detached dwelling	Hostel	Dwellings	Secondary dwelling	Dual occupancy	Multi dwelling housing	Residential flat buildings
B1 Neighbourhood Centre	Y	X	X	Y	X	X	X	X	X	X	X	X
B2 Local Centre	Y	X	X	Y	X	X	X	X	X	X	Y	Y
B3 Commercial Core	Y	Y	Y	Y	X	X	Y	X	X	X	X	Y
B4 Mixed Use	Y	Y	X	Y	X	X	Y	X	X	X	Y	Y
B5 Business Development	X	X	X	X	X	X	X	Y	X	X	X	X
B6 Enterprise Corridor	Y	Y	X	Y	Y	Y	X	Y	X	X	Y	Y

Y = permitted by LEP
 X = prohibited by LEP

Coffs Harbour uses the same Business zones as Ballina. In contrast to Ballina, Coffs Harbour is more restrictive in the B1 zone and less restrictive in the B2 zone. It permits five different forms of residential accommodation in the B3 zone, including residential flat buildings. It is more restrictive in the B4 zone, but permits dwellings in the B5 zone. It is also generous in the B6 zone, permitting eight different forms of residential accommodation. Note that Coffs Harbour has a local provision (see below) that restricts the size and character of a dwelling house in the B5 zone.

4.2 LEP Local Provisions

A number of councils use local provisions to further regulate residential development in Business zones and to create active street frontages. The DPE Model Provision on Active Street Frontages is attached at Appendix C. The influence of this model clause is evident in a number of the clauses included in this section.

Some examples of local provisions are as follows:

Coffs Harbour Local Environmental Plan 2013

7.15 Erection of dwelling houses on land in Zone B5

- (1) *The objective of this clause is to permit the erection of dwelling houses on land in Zone B5 Business Development in certain circumstances.*
- (2) *Despite any other provision of this Plan, development consent may be granted to the erection of a dwelling house on a lot in Zone B5 Business Development, on which there is currently no dwelling house, if the consent authority is satisfied that:*
 - (a) *the lot is being used for a purpose permitted in Zone B5 Business Development, and*
 - (b) *the dwelling house will be attached to another building for which development consent has been granted but is not located on the part of the lot facing the street, and*
 - (c) *the gross floor area of the dwelling house will be no more than 120 square metres, and*
 - (d) *the dwelling house will not require its own separate access.*

Tweed City Centre Local Environmental Plan 2012

6.8 Ground floor and first floor development in certain business zones

- (1) *The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in certain business zones.*
- (2) *This clause applies to land in Zone B3 Commercial Core and Zone B4 Mixed Use.*
- (3) *Development consent must not be granted to the erection of a multi storey building, or a change of use of a multi storey building, on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the building will have an active street frontage after its erection or change of use, and*
 - (b) *the ground floor of the building will be used for the purpose of commercial activities, and*
 - (c) *if the building is, or will be, located on land in Zone B3 Commercial Core, the first floor of the building will also be used for the purpose of commercial activities.*
- (4) *Subclause (3) does not apply to any part of a building that is used for any of the following purposes:*
 - (a) *entrances and lobbies (including as part of a mixed use development),*
 - (b) *access for fire services,*
 - (c) *vehicular access.*
- (5) *In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street (that is not a service lane) are used for the purposes of business premises or retail premises.*

- (6) *In this clause, commercial activities means amusement centres, business premises, function centres, hotel or motel accommodation, medical centres, office premises, registered clubs or retail premises.*

Holroyd Local Environmental Plan 2013

6.10 Ground floor development in Zones B2 and B4

- (1) *The objective of this clause is to ensure that active uses are provided at the street level in certain business zones to encourage the presence and movement of people.*
- (2) *This clause applies to land in the following zones:*
- (a) *Zone B2 Local Centre,*
 - (b) *Zone B4 Mixed Use.*
- (3) *Despite any other provision of this Plan, development consent must not be granted to development for the purposes of commercial premises or to a mixed use development with a commercial premises component, or a change of use of a building to commercial premises, on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building:*
- (a) *will not be used for the purposes of residential accommodation, and*
 - (b) *will not be used for a car park or to provide ancillary car parking spaces, and*
 - (c) *will provide for uses and building design elements that encourage interaction between the inside of the building and the external public areas adjoining the building.*
- (4) *Subclause (3) (b) does not apply to a site that:*
- (a) *is greater than 60 metres in depth from all street frontages, or*
 - (b) *has a gradient steeper than 15%, measured from boundary to boundary, or*
 - (c) *is owned by a public authority and is to be used as a public or commuter car park.*
- (5) *Subclause (3) (c) does not apply to any part of a building that:*
- (a) *faces a service lane that does not require active street frontages, or*
 - (b) *is used for one or more of the following purposes:*
 - (i) *a lobby for a commercial, residential, serviced apartment or hotel component of the building,*
 - (ii) *access for fire services,*
 - (iii) *vehicular access.*

Canada Bay Local Environmental Plan 2013

6.5 Active street frontages

- (1) *The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B4 Mixed Use.*
- (2) *This clause applies to land identified as "Active street frontage" on the [Active Street Frontages Map](#).*
- (3) *Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is*

satisfied that the building will have an active street frontage after its erection or change of use.

- (4) *Despite subclause (3), an active street frontage is not required for any part of a building that is used for any of the following:*
- (a) *entrances and lobbies (including as part of mixed use development),*
 - (b) *access for fire services,*
 - (c) *vehicular access.*
- (5) *In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street are used for the purposes of amusement centres, centre-based child care facilities, commercial premises, community facilities, educational establishments, entertainment facilities, function centres, industrial retail outlets, information and education facilities, light industries, medical centres, mortuaries, public administration buildings, recreation facilities (indoor), registered clubs or veterinary hospitals.*

6.6 Residential accommodation in Zone B6

- (1) *The objective of this clause is to ensure a high level of residential amenity for residents in close proximity to Parramatta Road.*
- (2) *This clause applies to land in Zone B6 Enterprise Corridor.*
- (3) *Development consent must not be granted to the erection of, or a change of use to, residential accommodation that is within 20 metres of Parramatta Road and on land to which this clause applies unless the consent authority has considered whether:*
- (a) *reasonable residential amenity for residents will be provided, having regard to noise, vibration, odour and air quality, and*
 - (b) *direct access to natural ventilation is provided for all residential units at all times.*

Sydney Local Environmental Plan 2012

7.13A Affordable housing in Zone B7

- (1) *Despite any other provision of this Plan, development for the purposes of a residential flat building or a mixed use development that contains shop top housing may be carried out with development consent on land in Zone B7 Business Park if the consent authority is satisfied that:*
- (a) *the residential flat building or shop top housing to which the development application relates will be used for the purposes of affordable housing, and*
 - (b) *the affordable housing will be provided by or on behalf of a public authority or social housing provider, within the meaning of the State Environmental Planning Policy (Affordable Rental Housing) 2009, and*
 - (c) *the affordable housing will be provided in accordance with the Employment Lands Affordable Housing Program adopted by the Council on 30 March 2015, and*
 - (d) *the development is compatible with the existing uses and approved uses of land in the vicinity of the development having regard to the following matters:*
 - (i) *the impact that the development (including its bulk, scale and traffic generation) is likely to have on the existing uses and approved uses of that land, and*
 - (ii) *the services and infrastructure that are or will be available to meet the demands arising from the development, and*

- (iii) *the impact that those uses are likely to have on the health, wellbeing and amenity of residents of the development by reason of noise, dust, lighting, truck movements, operating hours or otherwise, and*
- (e) *no part of the ground floor of the residential flat building or mixed use development that fronts a street will be used for residential purposes, and*
- (f) *the development is not likely to have an adverse effect on the environment and does not cause any unacceptable environmental risks to the land concerned.*
- (2) *In this clause:*
- street includes an area of land that is identified in a development control plan made by the Council as land that is proposed to be used for the purposes of a street.*

4.3 DCP Controls

A number of councils have DCP controls for active street frontages. One example is Holroyd's Commercial, Shop Top Housing and Mixed Use Development Controls, Holroyd Development Control Plan 2013, Part C. This DCP chapter contains dozens of references to active street frontages including:

- Ensure parking does not impact on the character and function of active frontages.
- No on-site parking is to be directly visible from an active or main street frontage.
- Casual surveillance of spaces is to be achieved through active frontages, street address and creating casual views of common internal areas.
- Maximise the use of glazing to active frontages.
- The ground floor level must have active uses facing streets and public open spaces.
- To provide for an active and vibrant commercial centre through activating the street, during both trading and non-trading periods.
- The provision of awnings within a centre increases the usability of amenity of the footpath, encouraging active environments through greater pedestrian movement and activity. Awnings like building entries, provide a public presence and interface with the public domain contributing to the identity of an environment.

Murwillumbah Town Centre DCP contains a section on Mixed Use Development with a focus on shop top housing.

Mixed use buildings are a unique building type that requires specific attention to ensure a high quality built form outcome. This is particularly the case in town centre areas as streets normally experience high levels of activity, with the potential to affect residential amenity. Likewise, the location of residential development within a busy retail street context has the potential to disrupt the continuity of the street and impact on the quality of the public domain.

Guidelines

- *Mixed use development is defined as a vertical integration of 2 or more activities within the one building. A typical example of mixed use development is shop top housing.*
- *Mixed use development is encouraged in Murwillumbah Town Centre in those areas identified in Figure 7.*

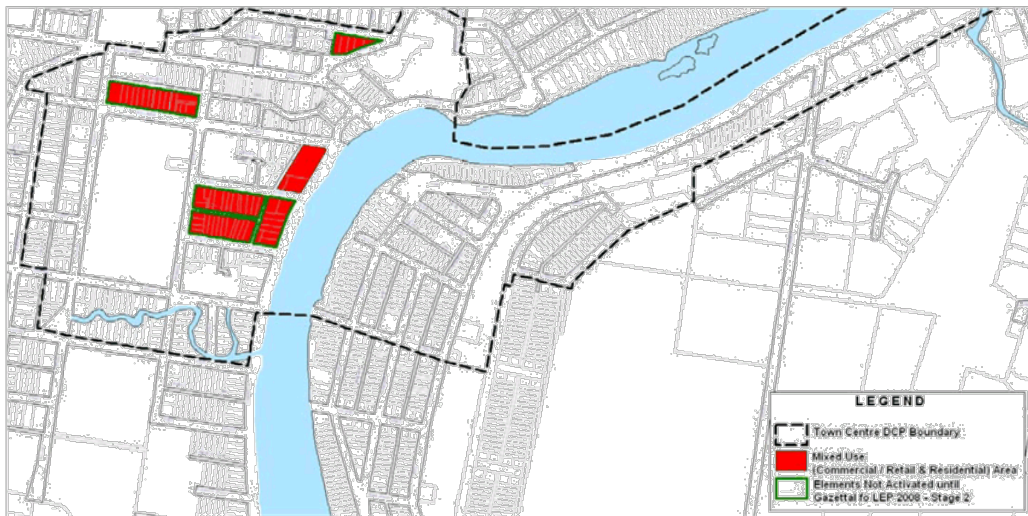


Figure 7: Murwillumbah Town Centre preferred mixed use areas DCP map

5 Ballina Regional Centre – Development Feasibility Testing

In 2015, Ballina Shire Council commissioned Hill PDA to “independently consider the development viability of both commercial and residential uses on seven sites”. The residential densities tested included dual occupancy; townhouses; three storey apartments; and four storey apartments. The seven sites included one zoned B3 in the Ballina CBD (216–234 River Street). Hill PDA evaluated two options for this site being:

- (1) ground floor retail and parking; five storeys of residential apartments above; and
- (2) ground floor retail with an arcade layout, five storeys of residential apartments above with basement car parking.

Both options were financially unviable (Figure 8).

Site / Option Specifics	Option 1	Option 2
Site Area (sqm)	1,083	1,083
No. of Residential Units*	15	21
Gross Building Area (sqm)	3,000	3,000
FSR	1.9:1	2.7:1
Land Purchase Value - 30% Premium	\$2,500,000	\$2,500,000
Residual Land Value	\$1,006,000	\$55,475
Development Margin	1.47%	-5.97%
Project IRR	1.29%	2.10%
Viability on Development Margin	Not Viable	Not Viable

Source: HillPDA 2015

Figure 8: Hypothetical development parameters for CBD site mixed use site redevelopment

The reasons given by Hill PDA for this result are:

- (1) The results demonstrate that it is more financially viable to continue as the current use then redeveloping the site into a mixed use development;
- (2) The front setbacks and the upper floor setbacks for the residential levels reduce the developable area;
- (3) A higher car parking rate is required for retail (1 per 25 sqm);
- (4) Providing basement car parking is expensive, however ground floor car parking reduces the developable area for residential apartments; and
- (5) The residual land value indicates that for the project to be viable as a vacant site the cost of land would be \$1,006,000, which equates to \$67,000 per unit.

6 The Retail Expert Advisory Committee Independent Recommendations Report

In March 2016, the NSW Government established the Retail Expert Advisory Committee (the Committee) to inquire into and provide advice to the Minister for Planning on appropriate reforms to improve the NSW planning system for retailing. This was in response to concerns and issues raised by the retail sector during consultation of the standard instrument local environmental plan (SILEP) amendment in early 2016, and relevant recommendations from other recent Government inquiries. The report (dated 21 June 2017, but released on 8 October 2017) evaluates nine retail drivers and makes five core recommendations.

- (1) Develop a State-wide retail policy to clearly articulate the strategic framework for retail planning.
- (2) Regional plans must consider adequate retail supply in relation to demand.
- (3) Amend the standard instrument local environmental plan to:
 - introduce a broader zoning framework – by collapsing and redrafting the standard instrument's business zones;
 - increase mandated permissible retail uses within zones and across local government areas to improve flexibility;
 - review all standard definitions relating to retail; and
 - review the use and application of industrial zones to maximise opportunities as employment locations through the creation of a new 'employment zone'.
- (4) Improve clarity and consistency in assessment processes.
- (5) Provide updated best practice planning guidance on a range of common retail issues such as ancillary uses and out of centre development.

These recommendations are not government policy and have not been adopted by NSW DPE. There is no timeframe over which all or any of them may be implemented.

The document does not directly address the issue of shop top housing, and in relation to wider residential accommodation it states (page 8) "Whilst recognising equally valid issues, the scope of the Committee's work and this report does not respond to the needs and pressures of industrial land users or residential uses seeking to access other zones."

The document quotes City of Sydney studies that suggest (page 27) "...a major barrier to retail development currently is not the lack of appropriately zoned land, but the comparatively higher returns and feasibility of residential development compared to retail development." This appears to be different to the Ballina experience where Hill PDA found that CBD land was more viable in its existing use for retail alone.

The document does address active street frontages and concludes (pages 27 and 28) "Many local councils in Greater Sydney have adopted active street frontage provisions which require ground floor retail in mixed use developments.....If this mandatory retail floor space is not commercially viable, ground floor leases remain vacant which does not meet the objective to activate streetscapes or provide a range of complementary uses on one site. Ground floor retail that may not be commercially viable for the initial development stage could temporarily be used for community uses, childcare or affordable housing, later converting into retail as demand grows.....This would require that building design in mixed use areas should incorporate flexibility to enable conversion of uses between residential and retail in response to market shifts and population triggers."

Other more specific recommendations in the document (page 28) are:

- *consolidation of the business zones;*
- *an expansion of permitted retail uses in all four zones;*
- *reconsideration of the use of mixed use instead of commercial core zoning where infrastructure and market circumstances support high density housing forms;*

- *relaxation of the 'ground floor activation' requirement of mixed use developments or facilitation of temporary beneficial alternative uses until the space is commercially viable for retail;*
- *a review of local planning controls to remove any unnecessary limitations to retail, for example floor space caps, and investigate any inconsistencies between councils' LEPs and DCPs; and*
- *provide operational and conditions of consent guidance to councils to facilitate the prompt delivery of retail services in high density areas, where appropriate.*

In relation to mixed use development, the document states (page 31) "Mixed use development is increasingly becoming a necessary planning response for balancing housing, employment and the significance of the new service economy.....Rather than limiting particular uses within centres a three dimensional approach to a mix of uses is needed. For example, a business zone could include residential uses provided a targeted amount of commercial space is provided."

In relation to zones, the document states (page 45):

- *There is confusion in the difference between B5 Business Development, B6 Enterprise Corridor and B7 Business Park zones, with various retail formats permitted or prohibited and floor space caps inconsistently applied.*
- *The B3 Commercial Core zoning, which is intended for high order centres, is over used, particularly in suburban centres.*
- *The B4 Mixed Use zone offers greater flexibility, but is not sufficiently used.*

In relation to definitions and the assessment process, the document states (page 48) "The Committee consider that broader uses within fewer zones combined with increased guidance should result in more clear and consistent assessment processes and result in fewer requests for spot rezonings."

7 Discussion

7.1 Increased Residential Development

Council is seeking to encourage increased residential development in certain Business zones in order to create more active and vibrant CBDs in a number of locations and to create greater housing choice.

Permitting various forms of residential accommodation in Business zones is a first step to achieving this. It could be done in combination with additional objectives in the zones to make it clear what Council is aiming for. It could also be undertaken in combination with special provisions, if they are required, and/or DCP provisions that spell out clearly what Council wants and where it would like to see it happen. Different forms of residential accommodation might be permitted in different zones.

In some cases, perhaps a different Business zone might be the best approach. Wollongbar has a B1 zone so any changes to the B2 zone will not improve residential outcomes for the Wollongbar CBD.

Council might also consider outright incentives such as reduced water or sewer charges or reduced parking requirements for new residential accommodation in Business zones.

There is not a problem with the permissibility of seniors housing or affordable housing. The SEPPs override Council's LEP and even contain reasons that cannot be used to refuse an application. The issue is what can be done to achieve "general market" residential development available to the open market.

The second aspect to the issue is to ensure that business areas remain active and vibrant, and remain as places of commerce and entertainment rather than quiet residential neighbourhoods.

7.1.1 Additional Uses

The primary business areas in Ballina, West Ballina, Alstonville and Lennox Head are all zoned B2, B3, B4 or B6. The B6 zone at West Ballina was put in place through Ballina LEP 2012 to encourage commercial activity and redevelopment in this area. In the B4 zone, the full suite of residential accommodation uses are already permitted. In the B2, B3 and B6 zones, shop top housing is already permitted. Dwellings are already permitted in the B2 zone. The key to increasing the amount of residential accommodation in these zones may be to permit dwellings in other forms. The "trick" will be to do this without undermining the business objectives and purpose of the zone.

The uses to consider more closely for the B2 zone are attached dwellings, semi-detached dwellings, multi dwelling housing and residential flat buildings. Introducing one or more of these uses into the B2 zone would affect Alstonville and Lennox Head business centres. This could be done in combination with an active street frontage map and a clause or a restriction on gross floor area (GFA) for the residential component. Both of these techniques could be used to avoid large format residential uses taking up too much Business zoned land or the limited street frontage land.

Building height in Alstonville and Lennox Head is limited to nine metres, therefore three storeys would be difficult to achieve on most sites. If the ground floor has to have a ceiling height of four metres then three storeys is not possible. In adopting the Alstonville Strategic Plan on 14 December 2017, Council agreed in principle to pursue an increase in building height in the Alstonville CBD of 10 metres. In Alstonville, the heritage controls mean that this may not generate three storey buildings that better enable mixed use development in a CBD location. If three storeys are anticipated in any location then DCP controls could be used to achieve an increased front setback on the third storey for better streetscape outcomes.

In Lennox Head in particular, there may be a tendency to use residential accommodation in the CBD for short-term holiday letting for part or all of the year. This may or may not be an issue for Council.

The B4 zone is limited in area but already permits the full range of residential accommodation forms. Council may want to consider an active street frontage map and a clause to ensure the Business uses remain dominant at street level over the long term.

The uses to consider more closely for the B3 or B6 zones are dwellings, attached dwellings, semi-detached dwellings, multi dwelling housing and residential flat buildings. These zones affect the Ballina and West Ballina business districts. These zoned areas are relatively large, have older sites suitable for redevelopment, and both have more generous building heights. West Ballina has a 10 metre height limit and the Ballina CBD has an 18 metre height limit. Permitting dwellings in these zones could be done, subject to size and other limitations similar to clause 7.15 in Coffs Harbour LEP 2013. It may be a way of generating a small number of dwellings at the rear of a mixed use development. Attached dwellings and multi dwelling housing are both "three or more" dwellings, but both require access at ground level or common walls or "not to be located above another dwelling." These restrictions are unlikely to allow proper use of the permitted building heights in this location. Semi-detached dwellings are required to be attached to only one other dwelling, which is too restrictive. This leaves residential flat buildings as a potential permitted residential use that could lead to greater housing choice. This could be done in combination with an active street frontage map and a clause or a restriction on GFA for the residential component.

7.1.2 Objectives

If additional types of residential accommodation are inserted into one or more Business zones, it is also important that objectives relating to those uses be included in the zone. These objectives can deal with both the residential uses and the concept of active street frontages. Examples of objectives that could be considered include the following (sourced from Sydney LEP 2012):

- To allow appropriate residential uses so as to support the vitality of business centres.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. (This is a standard objective in the B4 zone.)
- To promote uses with active street frontages.
- To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises.

7.2 Active Street Frontages

Active street frontage clauses generally follow the model clause in Appendix C. The options include applying it to one or more Business zones entirely or to land shown on a map within certain Business zones. The active street frontage map (Figure 9) is probably a more effective tool as it targets the control precisely and does not burden land that may not need to be activated.

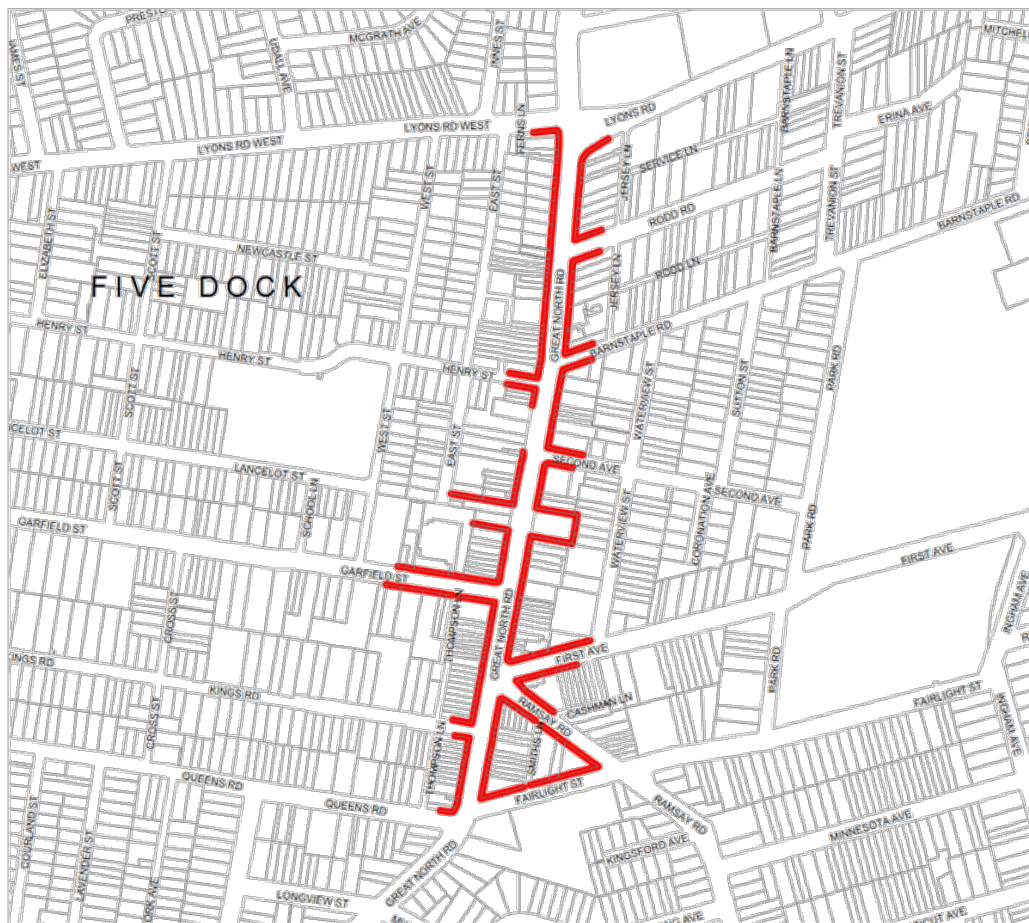


Figure 9: Canada Bay LEP 2013 Active Street Frontage map for Five Dock

7.3 DCP

Council has considerable variation in its DCP controls for different business districts. West Ballina sets a high standard as it is precinct based with clear desired future character and objectives as well as detailed development controls and diagrams. This DCP also highlights active street frontages as an issue, and provides information on shop top housing.

The Ballina CBD and Lennox Head business centre are similar but could be improved with better diagrams and visuals. Alstonville DCP is quite basic and does not provide precinct based controls or diagrams.

West Ballina DCP is the benchmark that all the Ballina business district provisions should achieve.

For buildings subject to SEPP 65, the Apartment Design Guide (ADG) requirements prevail over any DCP requirements, eg ceiling heights for ground floor commercial uses (this impacts building height and number of storeys). In this situation, Council should be aligning its controls with the ADG. This could be done by inclusion of ADG provisions or by reference to ADG.

The new planning legislation that commences on 1 March 2018 includes changes to create standard format DCPs. The Department of Planning and Environment indicates that these DCP changes will be phased in by

mid-2020. It is not clear what a standard format DCP entails, however it may include a fixed format and model provisions.

7.4 Shop Top Housing Definition

The definition of shop top housing has been in the standard instrument since the outset, but it has changed over time. The current definition is:

"shop top housing means one or more dwellings located above ground floor retail premises or business premises."

In 2014, a Land and Environment court judgment (*Hrsto v Canterbury City Council*) found on the current definition that:

...to qualify as 'shop top housing' the relevant part of the building must be truly "above" the relevant retail or commercial parts.

...in order to be characterised as "shop top housing" a dwelling must be:

in the same building as the ground floor retail premises or business premises and

on a floor of that building that is at a level higher than the top most part of the ground floor retail premises or business premises

However, a broad interpretation of the word "above" in the definition should be given which would suggest that the dwellings need only be at a floor level that is higher than the top of the ground floor retail or business premises and do not need to be contained in an envelope on the higher floor level that would be intersected by a line drawn vertically from within the envelope of the ground floor retail or business premises.

Gadens Lawyers in 2014 made the following comments in relation to this court decision:

This clarification of the meaning of shop top housing is timely, but it will have a significant impact on some sites, particularly where there is simply insufficient market demand for a full floor of retail or commercial uses. Arguably requiring retail or commercial at the rear of the site will not serve any particular planning purpose because it will not activate the street. Moreover, where there is a lack of market demand, the ground floor may sit empty for quite some time. Interestingly, it may not actually reflect what some councils had in mind when making shop top housing permissible in some areas.

Shop top housing is permitted in all but one of the Ballina Business zones, yet it has not been taken up at a high rate. This could be because:

- it adds complexity to the build because of fire regulations
- it is difficult/expensive to comply with parking requirements
- of the need for a separate entrance (difficult when there is no rear lane)
- the return on investment is not sufficient
- the demand for the end product is low.

Hill PDA identified excessive raw land values, parking rates for the commercial component, and upper floor setbacks that reduce yield.

One argument is that permitting this type of housing behind or beside a retail or business premises would be more appealing and lead to more development of this type. However, this could be a "back to the future" type discussion.

The definition back in 2006, when the standard instrument was first released was:

shop top housing means mixed use development comprising one or more dwellings located above (or otherwise attached to) ground floor retail premises or business premises.

It was changed to the current definition in February 2011. The deletion of "or otherwise attached to" is a clear message to limit the housing to being on top of the shops or businesses. There has been some discussion at changing the definition back, but this can only come from DPE and would then apply to all of New South Wales. Discussion with DPE locally indicates it is not being considered.

Council needs to work with its current definitions for the foreseeable future.

7.5 Incentives to Achieve Greater Housing Choice

Even if a planning instrument permits a range of residential accommodation forms, there can be resistance in the market to proceeding with that development. Council can promote the awareness of permissibility and how it might be achieved to overcome ignorance, or it can take a step further and consider incentives to encourage development.

In an effort to encourage shop top housing in its B3 Commercial Core zone, Lismore City produced a "Shop Top Housing" brochure (Appendix D) that uses good quality diagrams to show how it can be done. It combined this with a two-year period during which it would not charge development contributions (water, sewer, s94), as well as waive the requirement for off-street parking. Lismore planners advise that interest in the idea has been strong but the number of applications is small (two DAs). The contribution waiver period has been extended in any case.

This is not unlike the approach by a number of North Coast Councils (including Ballina) to waive any contribution fees for secondary dwellings. In Byron Shire, this has resulted in large numbers of applications for secondary dwellings looking to take advantage of a major saving in water and sewer fees.

Council could also take note of the Hill PDA work and consider reduced car parking requirements for mixed use developments (perhaps for a limited time to create urgency), or increased building height (extra yield) to appropriate sites. Note that increased height has to be undertaken through an LEP amendment and cannot be easily reversed or time limited. It also increases the raw land value, which works against the viability of mixed use development.

Encouraging the use of rear lane access for shop top housing in the Ballina CBD B4 Mixed Use zone has also been suggested.

8 Conclusion and Recommendations

There is a suite of actions that Council can take to achieve its objective to encourage increased housing in its business districts and create more vibrant centres:

- (1) Add some residential accommodation uses to the B2, B3 and B4 zones. One or more of attached dwellings, semi-detached dwellings, multi dwelling housing and residential flat buildings.
- (2) Add one or more objectives to the B2, B3 and B4 zones relevant to the introduction of residential uses in each zone.
- (3) Include an active street frontage clause in the LEP and link it to an active street frontage map.
- (4) Include a provision in the LEP to ensure a restriction on GFA for the residential component in any one development (other than shop top housing).
- (5) Consider increasing building height limits in Alstonville (supported in December 2017), Wollongbar and Lennox Head to potentially permit three storeys.
- (6) Consider changing the Wollongbar Business zone from B1 to B2 in line with its predicted future growth as a centre and to allow it to benefit from changes to the B2 zone.
- (7) Update Ballina DCPs, with Alstonville as a priority, to address residential uses in different precincts and active street frontages. West Ballina DCP is the model to work from. The heritage issues in the Alstonville CBD may be a limit to what can be achieved.
- (8) Prepare "how to" brochures to demonstrate what can be done with innovation in mixed uses in Business zones.
- (9) Adopt a contribution waiver policy (perhaps time limited to stimulate development) to encourage residential development in specific locations.
- (10) Consider waiving parking requirements for shop top housing in specific locations as an added incentive for a period of time, to stimulate development. There may be merit in surveying land owners/developers to see if there is any interest in this measure.

Actions 1–6 can be undertaken as a planning proposal. Actions 7–10 should be timed to commence soon after completion of actions 1–6.

9 Staff Workshop and the Way Forward

A workshop was conducted with eight Ballina Shire Council planning staff on 23 March 2018 to discuss the conclusions and recommendations of Chapter 8 of this Discussion Paper. The following summarises the outcomes of that meeting and provides a direction on these issues:

- (1) Residential flat buildings (RFBs) are potentially the key to adding a significant number of dwellings to a business zone. However, there is also a risk that they could undermine the purpose of the zone and impact on other uses by creating land use conflict. RFBs are not generally supported in either the B3 or B2 zone but there may be some specific locations within the B3 or B2 zone where they can work (subject to retaining an active street frontage). One option is a map that identifies land in the B3 or B2 zone that can be linked to an additional use provision permitting RFBs in certain locations.
- (2) Additional objectives in the business zones should be considered in conjunction with any LEP amendments, eg active street frontage provisions/map.
- (3) An active street frontage clause and map for parts of the B3 zone in Ballina is supported. It may also be appropriate in the B2 zone in Lennox Head. It would also assist in assessing applications relying on existing use rights to avoid activating street frontages. This would require a planning proposal.
- (4) A restriction on GFA of residential development may be considered as part of the option to introduce a map that identifies land in the B3 or B2 zone that can be linked to an additional use provision permitting residential flat buildings in that location.
- (5) Increasing height limits in any business zone should only be considered as part of a broader strategy for each centre.
- (6) Rezoning the business area of Wollongbar from B1 to B2 has merit but should be undertaken as part of a broader strategy for the centre.
- (7) Updating Ballina DCPs to address residential issues is supported.
- (8) Updating the DCPs should include "how to" material that demonstrates what Council wants to achieve with shop top housing in business zones. Capturing this information in a DCP is better than a brochure.
- (9) A contribution waiver or reduction policy should be considered as an incentive for shop top housing but only as part of an overall strategy to encourage this form of development. This needs to be further explored.
- (10) A parking survey of existing shop top housing and residential flat development within the Ballina CBD (and immediate surrounds) should be prepared to determine parking demand generated by these developments.
- (11) A parking requirement waiver or reduction policy should be considered as an incentive for shop top housing but only as part of an overall strategy to encourage this form of development. This needs to be further explored.

Items 1, 2, 3 and 4 could be a stand-alone planning proposal that could proceed quickly for the B3 zone as a priority.

Items 1, 2, 3 and 4 could also be a stand-alone planning proposal for the B2 zone if the B3 zone is successful.

Other matters could be incorporated into the general work program.

10 References

Hill PDA, 2015, Ballina Regional Centre Development Feasibility Testing.

Lismore City Council, 2015, *Shop Top Housing* brochure.

NSW Department of Planning and Environment, June 2017, *Retail Expert Advisory Committee Independent Recommendations Report*.

Appendices

Appendix A: Extract from the Ballina Major Regional Centre Strategy

Appendix B: Indicative shop top housing from West Ballina DCP, Chapter 6D

Appendix C: DPE model clause on active street frontages

Appendix D: Lismore City Shop Top Housing brochure

APPENDIX A

Extract from the Ballina Major Regional Centre Strategy

Extract from the *Ballina Major Regional Centre Strategy*

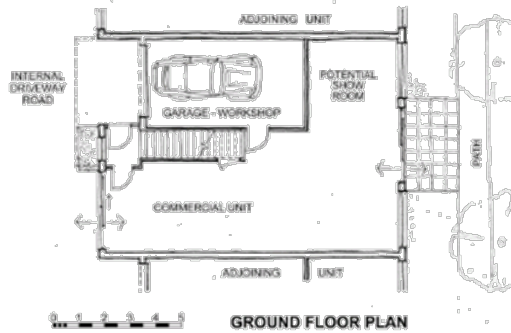
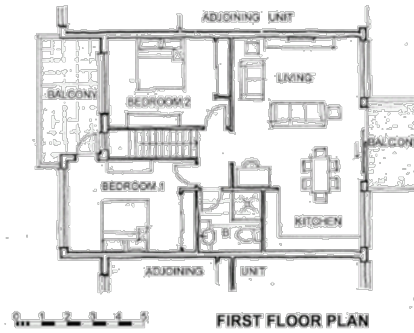
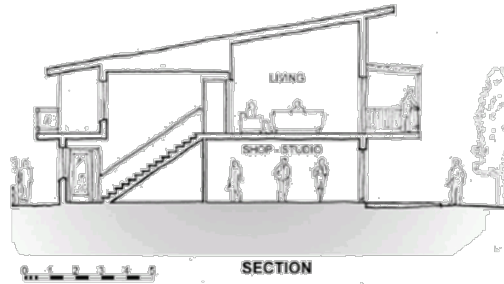
Reference	Action	The benefits will be...	This will involve...	Action Category
F. HOUSING				
Objective F1 - To ensure that the future housing stock is appropriate, accessible and affordable.				
F1.1	Encourage increased residential development in the Ballina CBD.	More active CBD. Greater housing choice.	<ul style="list-style-type: none"> - Considering policy incentives to encourage more housing in the CBD. - Considering opportunities to provide more flexibility in the design of new CBD developments that incorporate residential components, such as redefining "shop-top housing" in the LEP to allow housing that is not directly or entirely above the commercial part of the development. - Facilitating a range of residential development options to cater to young people and the elderly in the CBD. - Considering ways to manage potential land use conflict with CBD living and night life activities. - Liaising with key CBD landholders to encourage them to consider opportunities for the redevelopment of their sites. 	Plan Facilitate / Advocate
F1.2	Ensure suitable and adequate housing opportunities are available to cater to the diverse needs of our community.	More active CBD. Greater housing choice.	<ul style="list-style-type: none"> - Facilitating higher density dwelling opportunities (but not "high rise"), through appropriate land use zoning and/or amended development controls, in targeted locations, adjacent to open space but away from direct water frontage, including: <ul style="list-style-type: none"> ⊗ Within the CBD, including redefined 'shop-top housing'; ⊗ Adjacent to Kingsford Smith Park, in the vicinity of Owen Street; ⊗ In the vicinity of the Trawler Harbour in West Ballina; and ⊗ In the vicinity of Trelands Crescent. - Identifying appropriate sites for additional seniors living developments, including multi-storey seniors housing in the CBD, and facilitating their development through precinct specific development controls and other measures. - Encouraging the construction of secondary dwellings ("granny flats") within existing low density residential areas. - Revisiting the viability and capacity for permitting increased opportunities for dual occupancy development in Ballina in five years' time. 	Plan Facilitate / Advocate

APPENDIX B

Indicative shop top housing from West Ballina DCP, Chapter 6D



Figure 6d.3 – Indicative Building Design



APPENDIX C

DPE model clause on active street frontages

7.X Active Street Frontages

General Information

Continuous business or retail land uses that open directly to the footpath provide active, people-oriented street frontages. It enhances public security and passive surveillance and improves the amenity to the public domain by encouraging pedestrian activity. It can also assist in supporting the economic viability of the centre where this provision will apply.

Activity areas are usually formed along streets or as a node around, for example, major transport infrastructure. For that reason it is recommended that this provision does not apply across any one zone, but only along the streets (or parts of a street or streets) and pedestrian links where a concentration of business and/or retail is encouraged. This clause must be justifiable and applied only where it will not constrain uses able to respond to changing economic drivers.

Only the B3 Commercial core and B4 Mixed Use zones are considered suitable for inclusion into this model clause. The B2 Local Centre would need support from the Regional office where soundly justified through council's strategic planning for local activity centres. The role, objectives and scale of other business zones means they will not necessarily attract strong pedestrian movements that would require entire (not only parts of) street frontages being active.

The active street frontage should be identified and included in the Combined Local Maps under the separate title 'Active Street Frontages' as described in Standard Technical Requirement for LEP maps.

It is considered that there is no need to control the land use of the first floor of development to which this clause applies. The amenity of residential upper levels may be addressed as part of the merit assessment process.

If councils want to include design criteria for the ground floor uses, this can be included in the DCP.

- (1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B3 Commercial Core and Zone B4 Mixed Use.
- (2) This clause applies to land identified as 'Active street frontage' on the Active Street Frontages Map.
- (3) Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.
- (4) Despite subclause (3), an active street frontage is not required for any part of a building that is used for any of the following:
 - a) entrances and lobbies (including as part of mixed use development),
 - b) access for fire services,
 - c) vehicle access.
- (5) In this clause, a building has an **active street frontage** if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.

APPENDIX D

Lismore City Shop Top Housing brochure

What is shop top housing?

Where is shop top housing allowed?

What is Council doing to encourage shop top housing?

Is a development application required?

Key issues you need to address.

SHOP TOP HOUSING

Shop top housing helps revitalise commercial centres. It brings more life and activity, and enhances safety and security through greater casual surveillance. It also increases the choice of housing, allows building owners to renovate underused upper floors and increases the building's income-earning potential.

This brochure outlines how building owners can address the major issues that have inhibited shop top housing development in Lismore, especially in the CBD. This guidance is aimed at encouraging more housing in our city centre, which Lismore City Council is supporting with a policy that provides significant discounts on infrastructure contributions and removal of on-site car parking requirements.



lismore
heart of the northern coast
www.cometotheheart.com.au

What is shop top housing?

Shop top housing is defined as *'one or more dwellings located above ground floor retail premises or business premises'*. Shop top housing offers an alternative to more traditional housing types and contributes to the economic and social vitality of our village and city centres.

Lismore City Council wants to encourage more shop top housing, particularly in the CBD, as it:

- Contributes to the vibrancy of the CBD by creating more activity, particularly in the evenings.
- Renovates disused floor space above shops and offices, improving the overall appearance of buildings.
- Increases the supply of housing and the choice of housing options for residents.
- Allows people to live close to public services and facilities. It is ideally suited for people without cars.
- Increases casual surveillance of the streets, which provides a sense of safety and security and helps to reduce antisocial activities.
- Improves the viability of shops, allowing them to stay open for longer.

The key issues that have discouraged building owners from pursuing shop top housing relate to the sometimes prohibitive costs of meeting car parking requirements, fire and accessibility standards, an inflexible approach with planning controls, addressing flood issues and paying infrastructure contributions.

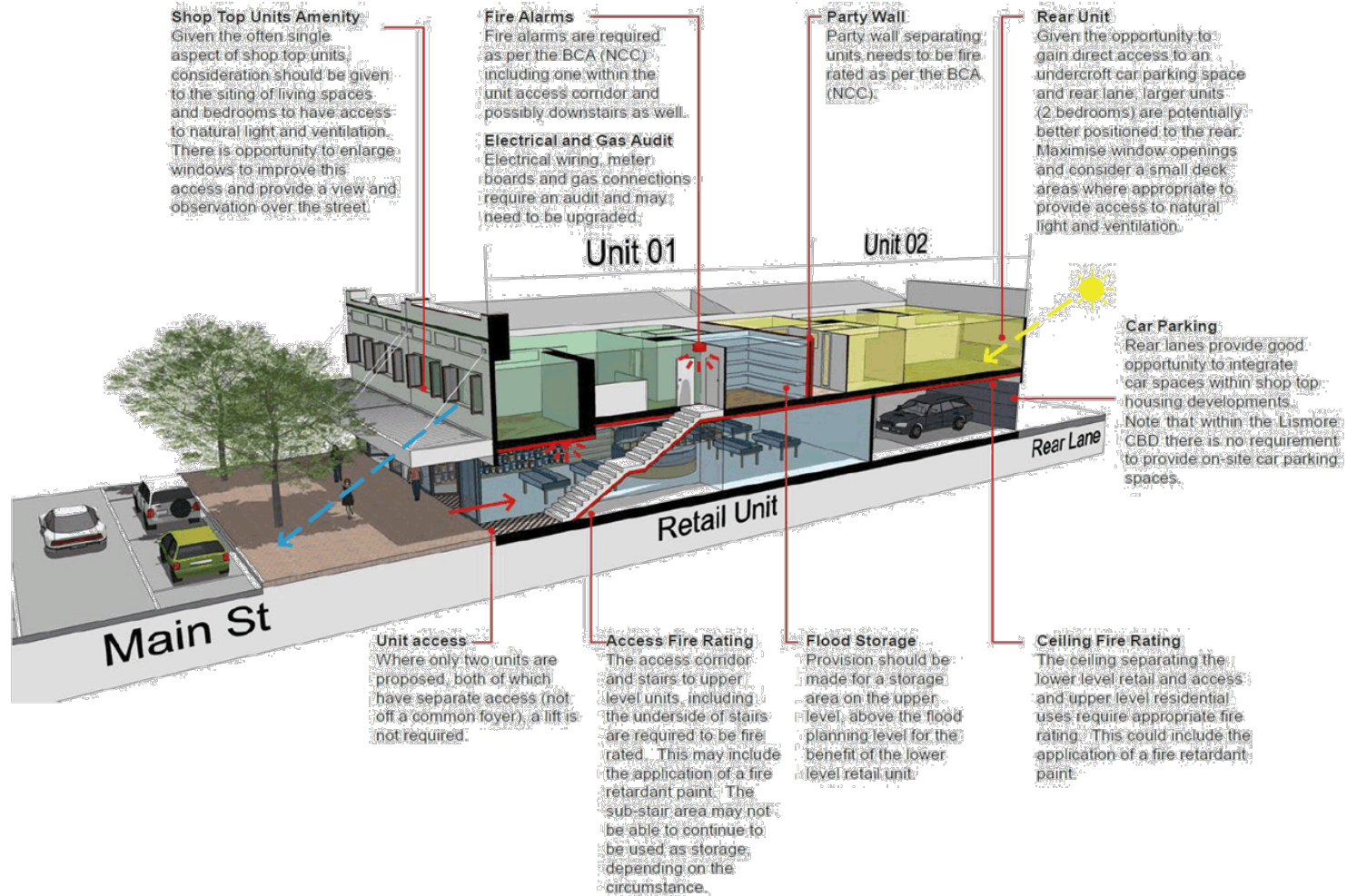
Council wants to assist building owners with plain English guidance about the key issues that building owners need to address when considering shop top housing. A series of drawings have been prepared with this brochure to show you what can be achieved. These drawings use a building in Magellan Street as an example.

Council has recently approved shop top housing (two dwellings) in this building, and there are also other recent examples.

Where is shop top housing allowed?

Shop top housing is permitted (with Council consent) in all business zones and several other zones. The greatest potential for shop top housing is in Lismore's CBD (B3 Commercial Core and B4 Mixed Use zones). However, it has also been approved in the B1 Neighbourhood Centre zone in North Lismore. Different rules may apply in specific circumstances, so it is worth asking Council what can be done with floor space above any commercial business.





What is Council doing to encourage shop top housing?

In the CBD, in the area bounded by Orion Street in the north, Dawson Street in the east, Ballina Road on the south and the Wilsons River to the west, Council will waive development contributions (sewerage, water, roads charges) for an initial period of two years for shop top housing, subject to:

- the total number of bedrooms on the site not exceeding five;
- the total number of laundries on the site not exceeding two; and
- the total number of toilets on the site not exceeding three.

In addition to waiving development contributions, Council no longer requires off-street car parking to be provided for shop top housing in existing buildings.

Is a development application required?

You will need to lodge a development application with Council.

The following paragraphs outline the key issues you need to consider when designing your shop top housing. For a list of documents required with a development application together with the Statement of Environmental Effects (SEE) refer to Council's website www.lismore.nsw.gov.au.

Key requirements for renovating existing buildings

There are a number of matters you will have to address when submitting a development application (see opposite) and further guidance can be obtained from Council's website.

Accessibility

Accessible access is generally required where more than one dwelling is proposed. This may include the requirement for a lift although if only two dwellings are proposed, and both have separate access (that is, not off a common foyer), a lift is not required. The same requirement applies across NSW.

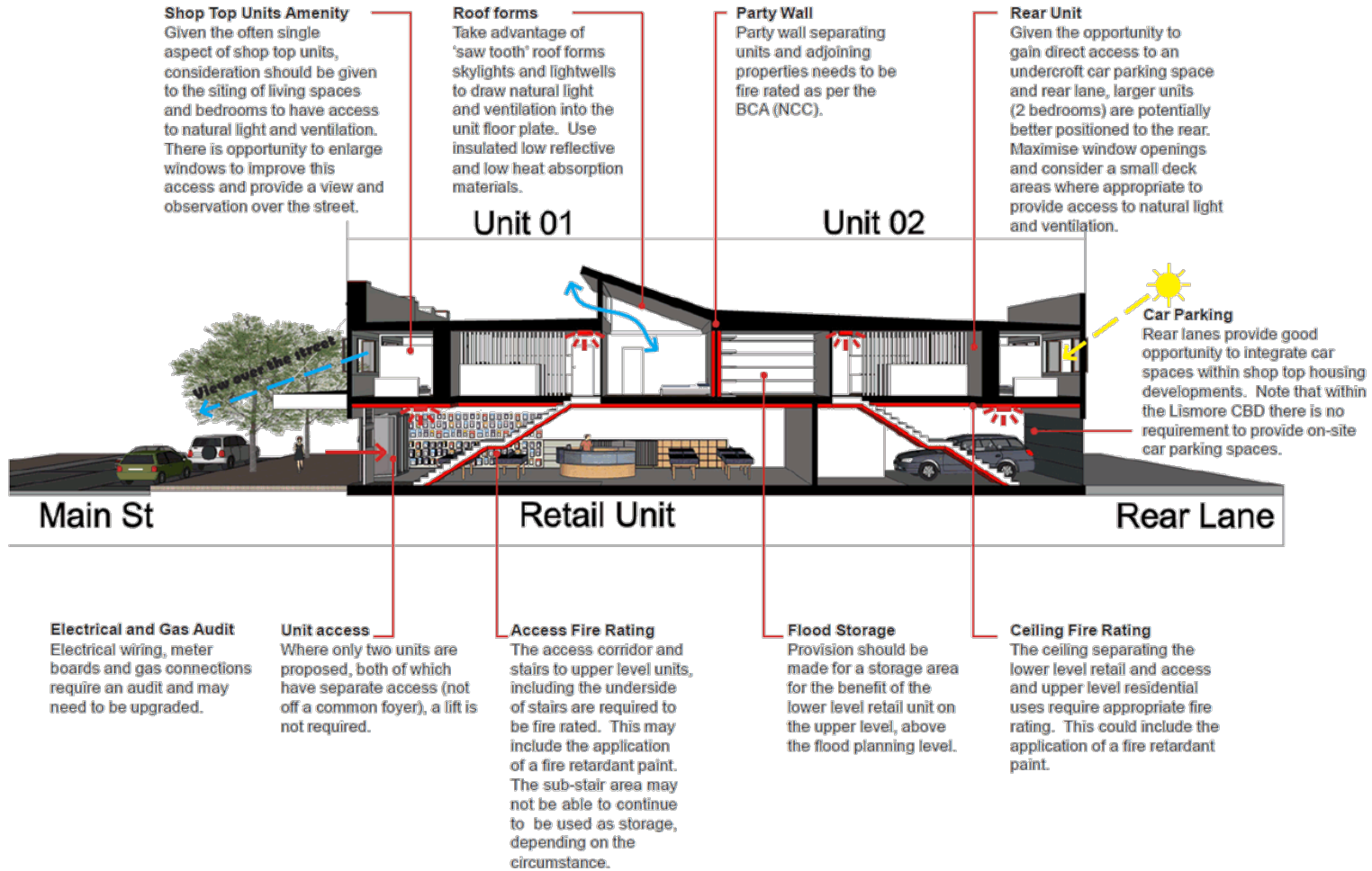
Car Parking

On-site car parking is not required for shop top housing in the Lismore CBD.

Flooding

Flood events above the 1-in-10 year ARI (average recurrent interval) flood can present major challenges for businesses and residents in the CBD and the following need particular consideration.

- All habitable floor areas have to be at or above the Flood Planning Level. The Flood Planning Level is the level of a 1:100 ARI flood event plus 0.5 metres freeboard. Council can assist with providing information on flood levels and floor levels.
- Provide flood storage space on an upper floor for the commercial use on the ground floor.
- The need to prepare an evacuation plan and be alert during a flood event. The SES provides standard evacuation plans and information on what to do during an event. All current and new business owners and residents should also register with Lismore City Council for flood alerts.



Fire safety regulations

Fire safety refers to:

- precautions that are taken to prevent or reduce the likelihood of a fire that may result in death, injury, or property damage;
- provision of systems to alert the occupants of a building to the presence of fire and smoke in the event one occurs;
- systems that better enable those threatened by a fire to be able to survive; and
- measures that assist in reducing the damage caused by a fire.

The Building Code of Australia (BCA) details specific requirements for the construction and installation of fire safety measures in new building work across Australia. However, trying to comply with these prescriptive requirements for uses in a building constructed before the introduction of the BCA can involve considerable expense, thus making the proposal economically unviable and unattainable.

The following will assist you to identify whether the fire safety measures (if any) contained within the existing building are adequate to:

- prevent fire;
- suppress fire;
- prevent the spread of fire; and
- promote the safety of persons in the event of a fire, and achieve adequate fire safety levels economically.

The following are general solutions. You should always seek advice from Council or a suitably qualified building and/or fire safety professional before using any of these measures in your building.

To prevent a fire, conduct electrical and gas audits of the premises and install a safety switch in the fuse box.

To suppress a fire, provide portable fire extinguishers, fire blankets and protection to external windows less than three metres from the boundary.

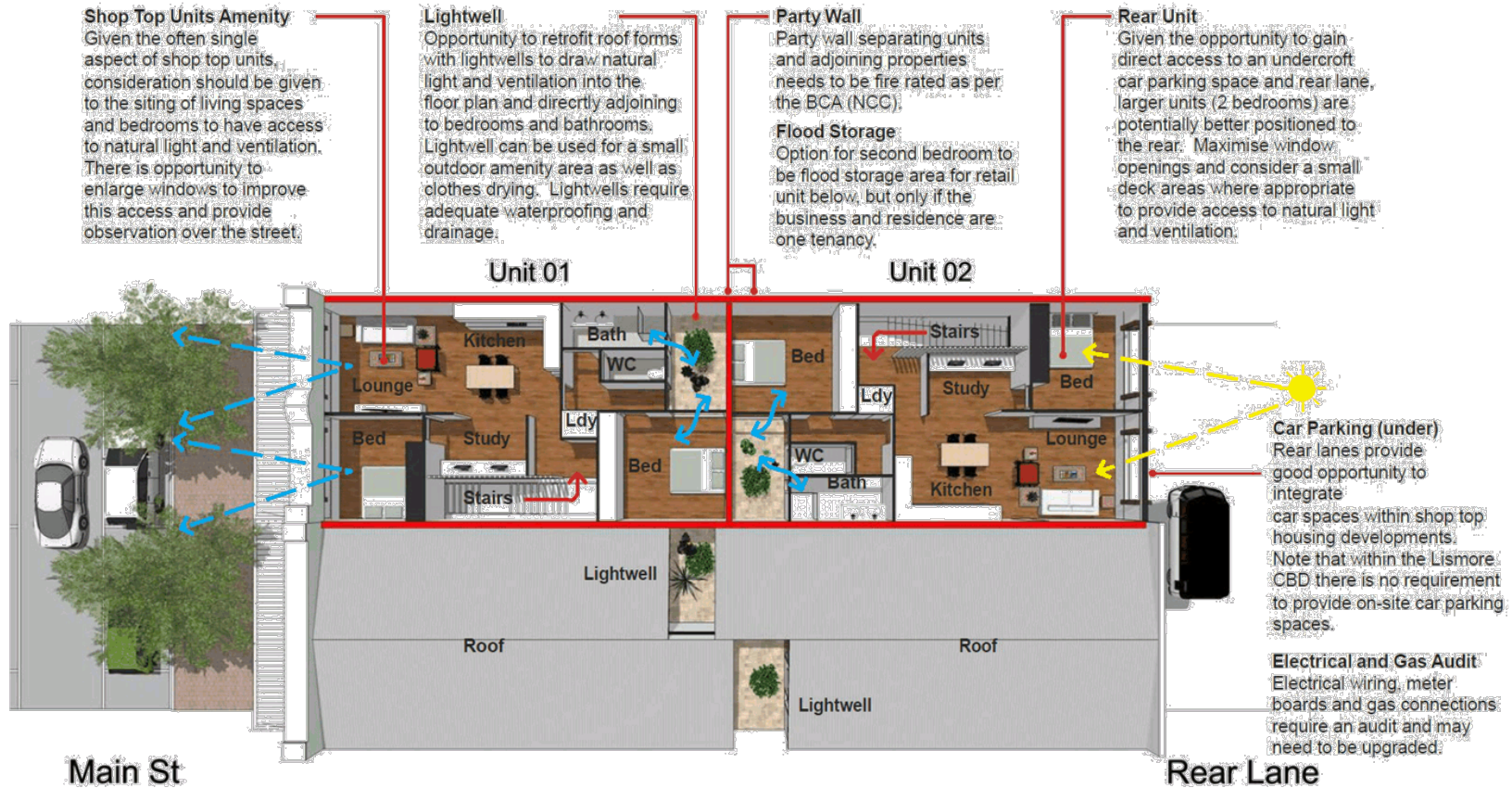
To prevent the spread of fire, a range of possible measures may be used.

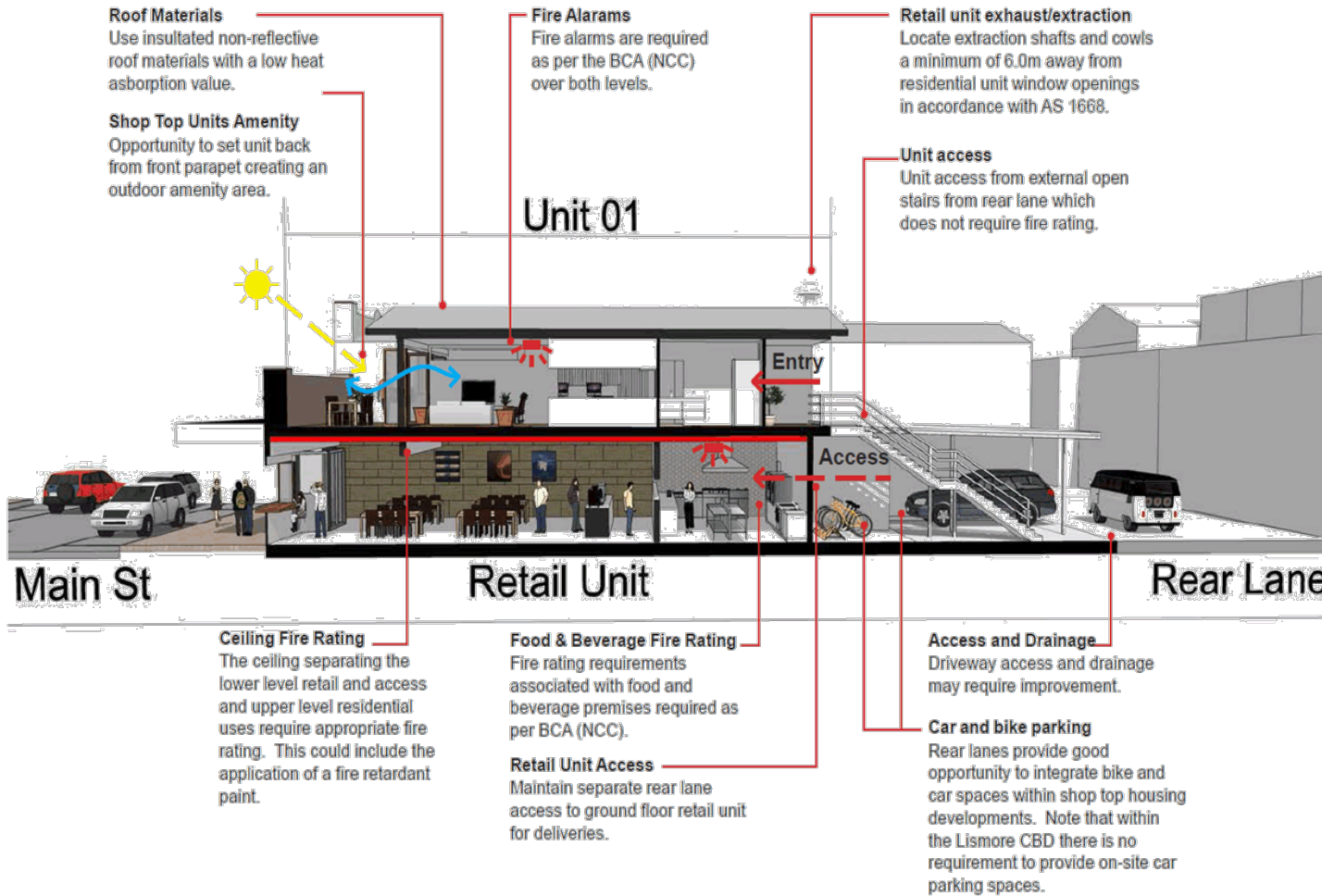
- Install self-closing fire doors to sole occupancy units and separate stairway levels where appropriate.
- Install fire-rated doors (often to be one-hour fire rated).
- Construct a non-combustible space under stairways.
- Use one-hour fire rated paint instead of 16mm gyprock fire-rated ceilings.
- Provide fire attenuation screens and/or sprinklers over windows less than three metres from the boundary.

To promote the safety of persons in the event of a fire, consider:

- emergency evacuation lighting;
- exit signage over doorways;
- avoiding the use of deadlocks on doorways and installing hard-wired, interconnected smoke alarms;
- ensuring that stairways won't be obstructed;
- installing non-slip material to the nosings of the treads in stairways;
- installing higher hand railings; and
- reviewing existing stairway construction.

If the above matters are still an issue, it may be worth engaging the services of a specialist fire safety engineer who can provide advice on options and possibly prepare a report specific to the circumstances in your building that is performance-based and avoids compliance with prescriptive requirements that might otherwise not be able to be achieved.





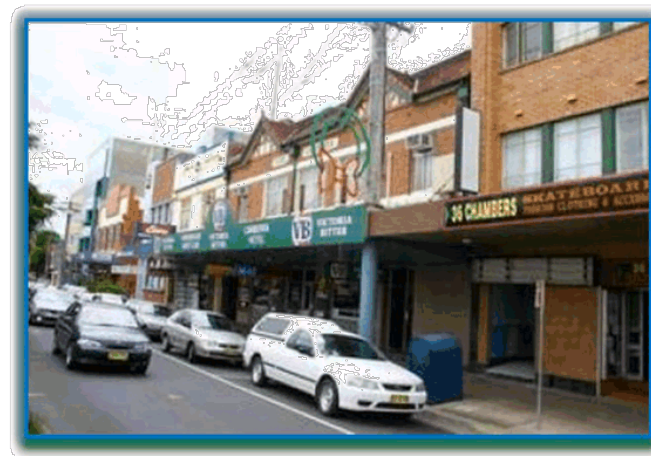
Other issues

Other matters that you need to consider include:

- adequate waste minimisation and disposal;
- availability of utility services; and
- BASIX, or the Building Sustainability Index, which is a certificate confirming that the building complies with state water and energy consumption targets, obtainable from www.basix.nsw.gov.au.

Requirements for new buildings that include shop top housing

In addition to the above issues that apply to retrofitting existing buildings, there are a range of other requirements that need to be addressed if you are planning a new building that includes shop top housing. These include building height limits, heritage impact and building setbacks.



Rear lane activation

Shop top housing helps bring life into a centre and can stimulate opportunities to explore a range of community and business chamber based activities and events throughout the year.



Existing Laneway - The existing laneway is under utilised in terms of providing additional community space, retail and shop top housing opportunity. The existing street art provides a vibrant backdrop to what could be an engaging new public space.



Transform Laneway - Improve built environment elements to include new road surface as a shared zone, shop top housing and activate rear laneway with new smaller scale retail units.

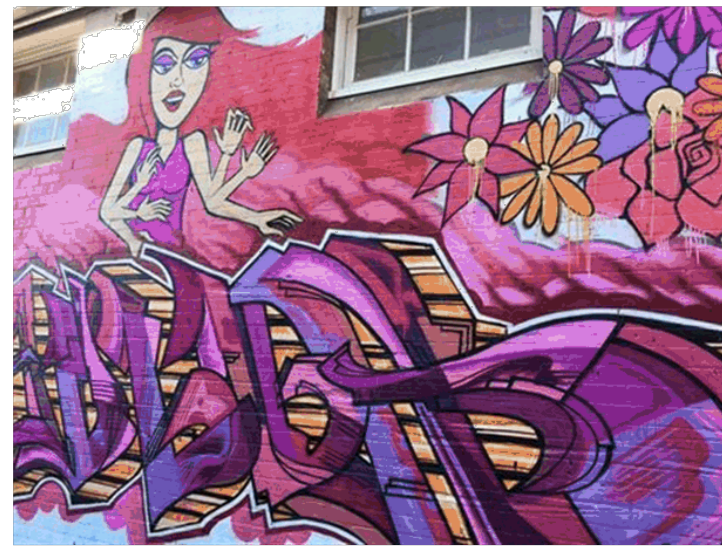




Market Mode - The laneway is transformed into a temporary market space.



Outdoor Dining Mode - The laneway is transformed into a communal outdoor dining space during food festival where local restaurants showcase their latest cuisines.



Seek Council advice before preparing your development application

Proper investigation of your proposal and a well-prepared development application can greatly reduce unnecessary delays in obtaining approvals, so it is important to get quality advice at an early stage to minimise or avoid unnecessary costs and see whether your project is worth pursuing. Even if you have been knocked back before, changes in planning and building regulations may result in a different answer or solution.

If you need advice about your shop top housing application, phone Council's Duty Planner Monday to Thursday on 1300 87 83 87 or visit Council's Corporate Centre at 43 Oliver Avenue, Goonellabah, between 8.30am and 10.30am (no appointment necessary). There is no charge for this initial service, which is generally limited to 15 minutes.

You can also make an appointment for a 30-minute discussion free of charge. Note that on-site meetings to view the proposed dwelling space/s can be arranged. A formal pre-lodgement meeting for a fee of \$443 (2015/16) can also be organised, which includes provision of more details and includes minutes after the meeting. Details are available on Council's website. Remember that a well-prepared development application will assist in timely processing.

Where can you obtain building design information?

The Northern Rivers is home to many skilled architects and building designers. While Council staff cannot design your building or your internal layout, it does offer an urban design service that provides preliminary advice on how to take advantage of features of your building, such as skylights and roof forms. Council's Urban Designer is also available to attend pre-lodgement meetings.

For more information please contact Council on 1300 87 83 87 or go to Council's website www.lismore.nsw.gov.au.





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Planning Proposal 18/001

**» Residential Flat Buildings
and Active Frontages in
the B3 Zone**

September 2018 (V1 - Council)

ballina
shire council



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1. Introduction

1.1 Summary of Planning Proposal

This planning proposal seeks to broaden the range of uses upon which dwellings are permitted to be erected in the Ballina CBD without undermining the primary purpose of the zone. Currently, residential accommodation is restricted to “shop top” housing [dwelling(s) above retail or business premises]. This planning proposal will allow dwelling(s) above a range of other uses typically found within a B3 zone. It will allow dwellings at ground level in some circumstances.

The mechanism for achieving this is to permit Residential Flat Buildings (a building containing three or more dwellings) on certain sites within the B3 zone and require these sites to maintain at least two active frontages.

The planning proposal will achieve this by:

1. adding an item to Schedule 1 of Ballina LEP 2012 to permit Residential Flat Buildings as a permitted use on certain B3 zoned land identified on a map; and
2. inserting a new clause that defines active frontage and references a map showing where Council would like to see it implemented; and
3. adding a new objective to the B3 zone that references active frontages.

This planning proposal is to apply only to certain land zoned B3 Commercial Core under *Ballina Local Environmental Plan 2012* in Ballina CBD.

2. Objectives & Intended Outcomes

The objective of this planning proposal is to:

- Permit Residential Flat Buildings on certain land zoned B3 in the Ballina CBD while maintaining active frontages on those sites.

The intended outcomes of this planning proposal are to:

- Encourage increased residential development and investment in the Ballina CBD,
- Promote uses that attract pedestrian traffic along certain ground floor street and public domain frontages (parks and waterfront) in the Ballina CBD,
- Permit residential development (or other uses) along certain ground floor frontages where they are not nominated as requiring activation, and
- Support business and social activity through the provision of an additional housing type in the Ballina CBD.

3. Explanation of Provisions

3.1 The Proposal

3.1.1 Plain English Version

A new type of residential land use (Residential Flat Buildings) is proposed to be permitted with Council consent on key sites identified on a map. Due to the location of these sites, it is important that the ground floor of any new development is substantially retained as a commercial type use consistent with the main purpose of the CBD. A map will be used to show where Council expects the ground floor to be substantially used for commercial purposes.

3.1.2 Draft LEP Clauses

The following clauses taken from other LEPs show how *Ballina Local Environmental Plan 2012* might be amended:

A) Add a new clause to Ballina LEP 2012

In order to encourage active frontages in parts of the Ballina CBD where Residential Flat Buildings will be permitted, a new clause is required. It will be similar to the following clause:

7.11 Active frontages

- (1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor frontages in Zone B3 Commercial Core.
- (2) This clause applies to land identified as "Active frontage" on the Active Frontages Map.
- (3) Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active frontage after its erection or change of use.
- (4) Despite subclause (3), an active frontage is not required for any part of a building that is used for any of the following:
 - (a) entrances and lobbies (including as part of mixed use development),
 - (b) access for fire services,
 - (c) vehicular access and parking.
- (5) In this clause, a building has an active frontage if all premises on the ground floor of the building facing the street, park or waterfront are used for the purposes of Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Passenger transport facilities; Public administration buildings;

Planning Proposal 18/001 RFBs and Active Frontages in the B3 Zone

Recreation facilities (indoor); Registered clubs; or Respite day care centres.

Note: Nothing in this clause permits a use that is otherwise prohibited in Zone B3 Commercial Core

B) Add a new item to Schedule 1 (Schedule 1 lists additional permitted uses on certain land that are not otherwise permitted within the zone applying to the land)

In order to permit Residential Flat Buildings with Council consent in parts of the Ballina CBD, an amendment to Schedule 1 will be required. It will be similar to the following:

7 Use of certain land at Ballina

- (1) This clause applies to land at River Street, Tamar Street, Kerr Street, Grant Street, Moon Street, Cherry Street, and Martin Street, Ballina, identified as "Area I" on the Additional Permitted Use Map.
- (2) Development for the purpose of a residential flat building is permitted with development consent.
- (3) Development consent may only be granted for the erection of a residential flat building on land to which this clause applies if it complies with the active frontages clause 7.11.

C) Amend the Additional Permitted Use Map

The map referred to in Schedule 1 needs to show the sites on which Council will permit a Residential Flat Building. This can be done by adding the 17 nominated sites to map sheet APU_006C and identifying them as "Area I".

A draft map is included at Appendix 1.

D) Add a new Active Frontages Map

The map referred to in proposed clause 7.11 is a new map to add to the map sheet index – AF_006C. It will show frontages where clause 7.11 will apply.

A draft map is included at Appendix 1.

E) Add a new Objective to the B3 zone

As it is proposed to add a new clause and map on active frontages that apply to parts of the B3 zone, it is appropriate to add an objective to the B3 zone that references the concept. A new objective relating to active frontages is proposed, similar to the following:

- To promote uses with active frontages.

4. Justification

4.1 Section A – Need for the Planning Proposal

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

Yes. Ballina was identified in 2006 as an emerging regional centre through the New South Wales State Government's Far North Coast Regional Strategy. The North Coast Regional Plan released in 2017 identified Ballina as a *strategic centre* that has strong links to the *regional centres* of Lismore and Tweed Heads. Significant growth is predicted for Ballina as transport links to the north, south and west continue to be improved.

Ballina Shire Council prepared the *Ballina Major Regional Centre Strategy* (BMRCs) in 2015/16 to guide growth in a way that maximises opportunities, whilst at the same time preserving the things about Ballina that are important to the community. The focus for the strategy is the identification of key policy and planning related initiatives that can define and drive Ballina as a regional centre into the future.

In relation to housing, the BMRCs has two objectives that are addressed in this planning proposal. These are:

F1.1 To encourage increased residential development in Ballina CBD

F1.2 To ensure suitable and adequate housing opportunities are available to cater to the diverse needs of our community

Site Selection

The following criteria were used to select the sites in the B3 zone that are the subject of this planning proposal.

Sites that are included:

- Corner sites to promote redevelopment
- Cherry Street, Martin Street and River Street as key corridors
- Sites with older building stock
- Lot clusters near corners that are awkward in shape or small in size

Sites that are excluded:

- Land north of Tamar Street including the northern side of Tamar Street
- Crown land sites
- LEP listed heritage sites
- Approved tourist facility sites

Planning Proposal 18/001 RFBs and Active Frontages in the B3 Zone

The total area of the B3 zone in Ballina LEP 2012 is approximately 31.1 hectares. The total amount of B3 land identified on mapping in this planning proposal is approximately 6.3 hectares.

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 achieving the potential for more residential development in the CBD while maintaining active frontages at ground level in key locations.

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 6 (Develop Successful Centres of Employment) and particularly Action 6.3 "Reinforce centres ... as primary mixed use locations for commerce, housing ..." and Action 6.5 "Promote and enable an appropriate mix of land uses"

It also supports Direction 23 (Increase Housing Diversity and Choice) and particularly Action 23.1 "Encourage housing diversity by delivering 40% of new housing in the form of ... apartments ... by 2036."

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

Ballina Shire Council prepared the Ballina Major Regional Centre Strategy (BMRCS) in 2015/16 to guide growth in a way that maximises opportunities, whilst at the same time preserving the things about Ballina that are important to the community. The focus for the strategy is the identification of key policy and planning related initiatives that can define and drive Ballina as a strategic centre into the future. This planning proposal is consistent with the BMRCS.

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 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.

Planning Proposal 18/001 RFBs and Active Frontages in the B3 Zone

- SEPP 65 – Design Quality of Residential Apartment Development

This Policy aims to improve the design quality of residential apartment development in New South Wales. Its relevance is that future development in the B3 zone that involves Residential Flat Buildings will be required to comply with the SEPP.

The planning proposal is consistent with this SEPP.

- SEPP – Coastal Management (2018)

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone.

The Ballina CBD is entirely within the coastal environment area and substantially within the coastal use area as identified by *State Environmental Planning Policy (Coastal Management) 2018*.

The planning proposal is consistent with the objectives of the *Coastal Management Act 2016*.

Residential development is already permitted in some forms on the subject land (eg "shop top" housing). 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.

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 2.

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 amendments proposed only apply to the B3 zone in Ballina CBD.

- 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 will not result in significant environmental effects.

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

It is anticipated that the social and economic outcomes likely to result from the planning proposal will be positive. Additional residents in the B3 zone that do not compromise commercial activity at street level should stimulate business and bring life into the CBD.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

Public infrastructure such as sewerage and water are adequate to cater for additional residential development in the CBD. Traffic and parking will be assessed on merit to ensure that problems do not arise. It is likely that additional electricity substations will be required on individual sites. The amendments will allow for key sites in the CBD to be redeveloped, which will result in contributions towards public infrastructure.

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 will make two changes to mapping in Ballina LEP 2012:

- (A) Add 17 nominated sites in Ballina CBD to map sheet APU_006C and identify them as "Area I".

This will identify these sites for an Additional Permitted Use to be specified in Schedule 1 as a Residential Flat Building.

- (B) Add a new map to the map sheet index – AF_006C.

This will identify a suite of frontages (that relate to the 17 nominated sites in Ballina CBD) to which a new active frontage clause will apply.

Draft maps are included at Appendix 1.

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 2018
Government agency consultation	November 2018
Public exhibition period	November 2018
Public hearing	N/A
Submissions assessment	December 2018
RPA assessment of planning proposal and exhibition outcomes	February 2019
Submission of endorsed LEP to DP&I for finalisation	March 2019
RPA decision to make the LEP amendment (if delegated)	March 2019
Forward LEP amendment to DP&E for notification (if delegated)	April 2019

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

8. Appendices

Appendix 1 – Maps

Appendix 2 – Section 9.1 Direction Checklist

Appendix 1 – Maps



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Additional Permitted Use Residential Flat Building Sites Map



Projection: GDA94 / MGA zone 56

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Planning Proposal 18/001 RFBs and Active Frontages in the B3 Zone



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Active Frontages Map



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Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 Direction Checklist (Updated Directions dated 2 April 2018)	
Planning Proposal – Residential Flat Buildings and Active Frontages in the B3 Zone	
Direction No	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Consistent. The planning proposal will not reduce the areas and locations of existing business zones in Ballina. It will not reduce the total potential floor space area for employment uses and related public services in business zones. The active frontage provisions will ensure this does not happen. It will support the viability and primacy of Ballina CBD.
1.2 Rural Zones	Does not apply to planning proposal.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Does not apply to planning proposal.
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. The Ballina CBD is entirely within the coastal environment area and substantially within the 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> . Residential development is already permitted in some forms on the subject land (eg "shop top" housing). 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. LEP listed heritage items have been excluded from the mapped areas to which this planning proposal applies, to avoid pressure for redevelopment of these sites.
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.
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.

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Section 9.1 Direction Checklist (Updated Directions dated 2 April 2018)	
Planning Proposal – Residential Flat Buildings and Active Frontages in the B3 Zone	
Direction No	Compliance of Planning Proposal
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 will not alter the B3 zone boundary. It reinforces the primacy of the B3 CBD in Ballina LGA by increasing options for residential development in the CBD that will allow for the better utilisation of the existing public transport infrastructure. Residents in the CBD will be walking distance to existing shopping, education and medical/social services. Car reliance would be eliminated or reduced for short work related trips. The proposal is consistent with the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001) and <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).
3.5 Development Near Licensed Aerodromes	Inconsistent. Ballina /Byron Gateway airport Obstacle Height Limit Surfaces mapping applies to the Ballina CBD. It is not proposed to alter the existing Building Height Limits that apply to the B3 zoned land. The B3 zone has a BHL of 18 metres, which is well below the 46.5 metre Obstacle Height Limit Surfaces mapping that applies to most of the locality. The land is not affected by ANEF noise contour mapping from the airport. At this stage, Council has not consulted with the relevant Commonwealth authorities as required by the Direction. Having regard to the fact that the planning proposal does not seek to alter permissible height limits, and seeks only to introduce an additional land use and design considerations, it is considered that consultation with Commonwealth authorities should not be required in this instance. The inconsistency is justifiable.
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Consistent. The land the subject of the proposed LEP amendment is 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.
4.3 Flood Prone Land	Consistent. The B3 zone is flood affected. However, it already has significant development potential. Existing flood related LEP and DCP provisions will apply. No land will change zone as a result of this planning proposal. The planning proposal will not: <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	Does not apply to planning proposal.

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Section 9.1 Direction Checklist (Updated Directions dated 2 April 2018)	
Planning Proposal – Residential Flat Buildings and Active Frontages in the B3 Zone	
Direction No	Compliance of Planning Proposal
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	Does not apply to planning proposal.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
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.
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>. The planning proposal supports Direction 6 (Develop Successful Centres of Employment) and particularly Action 6.3 "Reinforce centres ... as primary mixed use locations for commerce, housing ..." and Action 6.5 "Promote and enable an appropriate mix of land uses ..."</p> <p>It also supports Direction 23 (Increase Housing Diversity and Choice) and particularly Action 23.1 "Encourage housing diversity by delivering 40% of new housing in the form of ... apartments ... by 2036."</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	<p>Consistent.</p> <p>The planning proposal introduces site specific provisions affecting 17 CBD sites nominated on a map and linked to Schedule 1. For each of these sites, Residential Flat Buildings will be permitted with consent. Active frontage provisions will apply to certain locations in the CBD associated with the 17 sites.</p> <p>The suite of controls proposed will allow more residential development in the CBD without undermining the primary purpose of the B3 zone. Residential uses at ground level will be restricted to certain locations.</p> <p>The planning proposal is consistent with this Direction because it does not include specific development standards and does not contain or refer to drawings that show details of the development.</p>
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.

9.1 Residential Development - B3 Commercial Core Zone.DOC

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Section 9.1 Direction Checklist (Updated Directions dated 2 April 2018)	
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Direction No	Compliance of Planning Proposal
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.