

Ballina Local Environmental Plan 1987

[1987-95]



New South Wales

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Ballina Local Environmental Plan 1987



New South Wales

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New South Wales

Part 1 Preliminary

1 Name of plan

This plan may be cited as the *Ballina Local Environmental Plan 1987*.

2 Aims, objectives etc

- (1) The general aims of this plan are to encourage the proper management, development and conservation of natural and man made resources, to promote the social and economic welfare of the community and to provide a better environment.
- (2) The particular aims of this plan are:
 - (a) to divide land into the zones referred to in clause 8 and to achieve in respect of land within each of those zones the objectives specified for that land in the Table to clause 9,
 - (b) to encourage the council to make development control plans regulating the carrying out of development in any zone:
 - (i) by restricting the carrying out of that development to a specified area within the zone, or
 - (ii) by fixing standards or specifying requirements in respect of any aspect of that development,
 - (c) to promote the efficient utilisation of land, services and support facilities in existing urban areas and to provide for the orderly growth of new urban areas which promise a high level of residential amenity,
 - (d) to recognise and provide for the variety of agricultural, recreational, residential, natural and other land uses which form the rural environment of the Shire of Ballina,
 - (e) to contribute to continued economic growth of the Shire of Ballina by encouraging a pattern of development which will help to diversify and increase local employment opportunities,

- (f) to take account of the physical nature of the environment of the Shire of Ballina so that development is in harmony with scenic and ecological resources,
- (g) to co-ordinate the economic and equitable provision and utilisation of community facilities and services,
- (h) to provide for appropriate and efficient transportation and utility services, and
- (i) to encourage further development of tourist and recreational activities within the Shire of Ballina, while minimising its adverse impact on the natural attractions and amenity enjoyed by permanent residents.

3 Land to which plan applies

This plan applies to the whole of the land within the Shire of Ballina as shown on the map, with the boundaries as indicated on that map.

4 Relationship to other environmental planning instruments

- (1) This plan repeals the environmental planning instruments referred to in subclause (2).
- (2) The following environmental planning instruments are repealed:
 - (a) *Interim Development Order No 1—Municipality of Ballina*,
 - (b) *Interim Development Order No 1—Shire of Tintenbar*, and
 - (c) Ballina Local Environmental Plans Nos 1-13.
- (3) *State Environmental Planning Policy No 25—Residential Allotment Sizes and Dual Occupancy Subdivision* does not apply to land shown edged heavy black on the map marked “*Ballina Local Environmental Plan 1987 (Amendment No 20)*” or the land identified in Schedule 7 to this plan.

5 Interpretation

- (1) In this plan, except in so far as the context or subject-matter otherwise indicates or requires:

aerodrome means a place or area, open to use by the public, which is licensed by the Commonwealth Department of Transport for use by aircraft and includes airline terminal buildings and associated facilities.

appointed day means the day on which this plan takes effect.

aquaculture means the cultivation of marine organisms such as fish, prawns and other crustaceans.

bed and breakfast establishment means a dwelling-house occupied and used by the permanent residents to provide short-term paid accommodation (which may

include meals) and may include ancillary buildings within the curtilage of the dwelling house.

brothel means premises habitually used by one or more prostitutes for the purpose of prostitution, or that have been used for that purpose and are likely to be used again for that purpose, and includes any premises where the act of prostitution occurs irrespective of whether other services or businesses are being provided or carried out.

camping ground does not include land used to accommodate caravans or mobile homes.

caravan park means land used to accommodate a movable dwelling within the meaning of section 288A of the [Local Government Act 1919](#).

clearing, in relation to land, means the destruction or removal in any manner of native plants growing on the land, but does not include:

- (a) the destruction or removal of plants declared noxious by proclamation pursuant to section 467 of the [Local Government Act 1919](#), by means not likely to be significantly detrimental to the native ecosystem, or
- (b) the incidental destruction or removal of native plants lying adjacent to any such noxious plants occurring unavoidably during the process of destroying or removing those noxious plants.

commercial premises means a building or place used as an office or for other business or commercial purposes, but does not include a building or place specifically defined for the purposes of this plan, or a building or place at which a land use so specifically defined is carried on.

community building means a building or place owned or leased by the council and used to provide facilities comprising or relating to any one or more of the following:

- (a) a public library,
- (b) public health, welfare or information services,
- (c) rest rooms,
- (d) meeting rooms,
- (e) indoor recreation,
- (f) child minding, or
- (g) other community support facilities.

consulting rooms means a room or a number of rooms, being a part of a dwelling-house or the whole of a former dwelling-house, and used by not more than 3

professionally qualified practitioner who practise therein their respective professions and, if more than one, practise in partnership, and who employ not more than 3 employees in connection with the practise.

council means the Council of the Shire of Ballina.

demolition, in relation to a building or work, means the damaging, defacing, pulling down or removal of that building, in whole or in part.

environmental educational facility means a building or place used for environmental education purposes.

existing holding means:

(a) in the case of land in the former Shire of Tintenbar:

- (i) except as provided by subparagraph (ii), a lot, portion or parcel of land which has the same boundaries as it had, and is owned by the same person as it was owned by, on 12 June 1970, or
- (ii) where, on 12 June 1970, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the aggregation of those lots, portions or parcels, provided that they are owned by the same person that they were owned by on that date, and

(b) in the case of land in the former Municipality of Ballina:

- (i) except as provided by subparagraph (ii), a lot, portion or parcel of land which has the same boundaries as it had, and is owned by the same person as it was owned by, on 18 July 1969, or
- (ii) where, on 18 July 1969, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the aggregation of those lots, portions or parcels, provided that they are owned by the same person that they were owned by on that date.

feed lot means a building or place in or on which livestock are held for the purpose of nurturing wholly by a feeding method other than natural grazing, but does not include a piggery or stock home.

holiday cabin means a dwelling-house used, or intended to be used, for the provision of holiday accommodation only, being one of a group of dwelling-houses erected on an allotment of land, or allotments of land, in the same ownership.

item of environmental heritage means those buildings, works, relics or places of historic, scientific, cultural, social, architectural, archaeological, natural or aesthetic significance for the Shire of Ballina:

- (a) described in Schedule 1, or
- (b) designated as an item of environmental heritage for the purposes of this plan by a development control plan in force under section 72 of the Act in respect of the whole or any part of the land to which this plan applies.

native plants means plants indigenous to the State of New South Wales, including trees, shrubs, ferns, vines, herbs and grasses indigenous to the State, but does not include plants grown for commercial purposes.

prostitution means the offering by a person of his or her body to a person of the same or different sex for sexual gratification in return for payment or other reward, and includes:

- (a) sexual intercourse as defined in section 61H of the *Crimes Act 1900*, or
- (b) masturbation committed by one person on another.

relic means any deposit, object or material evidence relating to the settlement (including aboriginal habitation) prior to 1 January 1900 of the land to which this plan applies.

renovation, in relation to a building or work, means:

- (a) the making of structural changes to the inside or outside of the building or work, or
- (b) the making of non-structural changes to the fabric or appearance of the outside of the building or work, whether or not by making changes to the outside that involve the repair, or the painting, plastering or other decoration, of the building or work.

residential building means a dwelling-house, building wholly or partly comprising residential flat development, boarding-house, lodging house or a hostel, but does not include a motel.

residential flat development means a building or development containing 2 or more dwellings on a single parcel of land.

rural tourist facility means a building or place on an allotment of land which may include a refreshment room but does not include tourist accommodation and which is used to provide tourists with a rural education concerning the growing, production or processing of rural products which are grown or cultivated on that allotment of land.

stock home means a building or place where animals are bred, trained or accommodated and nurtured for gain or reward except in relation to the use of land for the purpose of agriculture.

telecommunications facility means:

- (a) any part of the infrastructure of a telecommunications network, or
- (b) any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a telecommunications network.

the map means the series of maps marked “*Ballina Local Environmental Plan 1987*” as amended by the maps marked as follows:

Ballina Local Environmental Plan 1987 (Amendment No 1)

Ballina Local Environmental Plan 1987 (Amendment No 2), Sheets 1-8

Ballina Local Environmental Plan 1987 (Amendment No 2—Deferred Matter)

Ballina Local Environmental Plan 1987 (Amendment No 4)

Ballina Local Environmental Plan 1987 (Amendment No 5)

Ballina Local Environmental Plan 1987 (Amendment No 6)

Ballina Local Environmental Plan 1987 (Amendment No 12)

Ballina Local Environmental Plan 1987 (Amendment No 14)

Ballina Local Environmental Plan 1987 (Amendment No 22)

Ballina Local Environmental Plan 1987 (Amendment No 23)

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Ballina Local Environmental Plan 1987 (Amendment No 47)

Ballina Local Environmental Plan 1987 (Amendment No 50)

Ballina Local Environmental Plan 1987 (Amendment No 51)

Ballina Local Environmental Plan 1987 (Amendment No 53)

Ballina Local Environmental Plan 1987 (Amendment No 67)

Ballina Local Environmental Plan 1987 (Amendment No 68)

Ballina Local Environmental Plan 1987 (Amendment No 69)

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

- (2) In this plan, except in so far as the context or subject-matter otherwise indicates or requires:
- (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose,
 - (b) a reference to a map is a reference to a map deposited in the office of the council, and
 - (c) a reference to land within a zone specified in the Table to clause 9 is a reference to land shown on the map in the manner indicated in clause 8 as the means of identifying land of the zone so specified.

6 Adoption of Model Provisions

The *Environmental Planning and Assessment Model Provisions 1980* are adopted except for:

- (a) the definitions of **commercial premises**, **map**, **residential flat building** and **tourist facilities** in clause 4 (1),
- (b) the reference to the words “the Traffic Authority of New South Wales and the Commissioner for Main Roads” in clause 10 (2), and
- (c) clauses 5 (2) (c), 5 (3), 6, 15, 16, 17, 29 and 36.

7 Consent authority

The council is the consent authority for the purposes of this plan.

Part 2 General restrictions on development of land

8 Zones indicated on the map

For the purposes of this plan, land to which this plan applies shall be within a zone specified hereunder if the land is shown on the map in the manner specified hereunder in

relation to that zone:

Zone No 1 (a1) Rural (Plateau Lands Agriculture) Zone—coloured light brown with black edging and lettered “1 (a1)”.

Zone No 1 (a2) Rural (Coastal Lands Agriculture) Zone—coloured light brown with black edging and lettered “1 (a2)”.

Zone No 1 (b) Rural (Secondary Agricultural Land) Zone—coloured light brown with black edging and lettered “1 (b)”.

Zone No 1 (d) Rural (Urban Investigation) Zone—coloured light brown with black edging and lettered “1 (d)”.

Zone No 1 (e) Rural (Extractive and Mineral Resources) Zone—coloured light brown with black edging and lettered “1 (e)”.

Zone No 2 (a) Living Area Zone—coloured light scarlet and lettered “2 (a)”.

Zone No 2 (b) Village Area Zone—coloured light scarlet with black edging and lettered “2 (b)”.

Zone No 2 (t) Tourist Area Zone—coloured light scarlet with black edging and lettered “2 (t)”.

Zone No 3 Business Zone—coloured light blue and lettered “3”.

Zone No 4 Industrial Zone—coloured purple and lettered “4”.

Zone No 6 (a) Open Space Zone—coloured dark green and lettered “6 (a)”.

Zone No 7 (a) Environmental Protection (Wetlands) Zone—coloured orange with black edging and lettered “7 (a)”.

Zone No 7 (c) Environmental Protection (Water Catchment) Zone—coloured orange with black edging and lettered “7 (c)”.

Zone No 7 (d) Environmental Protection (Scenic/Escarpment) Zone—coloured orange with black edging and lettered “7 (d)”.

Zone No 7 (f) Environmental Protection (Coastal Lands) Zone—coloured orange with black edging and lettered “7 (f)”.

Zone No 7 (i) Environmental Protection (Urban Buffer) Zone—coloured orange with black edging and lettered “7 (i)”.

Zone No 7 (l) Environmental Protection (Habitat) Zone—coloured orange with black edging and lettered “7 (l)”.

Zone No 8 (a) National Parks and Nature Reserves Zone—shown by a dark green band edging.

Zone No 9 (a) Roads (Main Roads Proposed) Zone—shown by a broken red band between broken black lines.

Zone No 9 (b) Roads (Local Roads Proposed) Zone—shown grey between broken black lines.

9 Zone objectives and development control table

- (1) The objectives of a zone are set out in the Table to this clause under the heading “Objectives of zone” appearing in the matter relating to the zone.
- (2) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause:
 - (a) development for a purpose specified under the heading “Without development consent” may be carried out without development consent,
 - (b) development for a purpose specified under the heading “Only with development consent” may be carried out only with development consent,
 - (c) development for a purpose specified under the heading “Advertised development—only with development consent” may be carried out only with development consent granted after the provisions of subclauses (3)–(5) have, except as provided by subclause (6), been compiled with, and
 - (d) development for a purpose specified under the heading “Prohibited development” may not be carried out.
- (3) The provisions of section 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development (not being designated development) referred to in subclause (2) (c) in the same way as those provisions apply to and in respect of designated development.
- (4) A development application to carry out development (not being designated development referred to in subclause (2) (c) shall be accompanied by an environmental impact report which contains:
 - (a) a full description of the development proposed by the development application,
 - (b) a statement of the objectives of the proposed development, and how those objectives relate to the objectives of the zone,
 - (c) a full description of the existing environment likely to be affected by the proposed development, if carried out,
 - (d) identification and analysis of the likely environmental interactions between the proposed development and the environment,

- (e) analysis of the likely environmental impact or consequences of carrying out the proposed development,
 - (f) justification of the proposed development in terms of environmental, economic and social considerations,
 - (g) measures to be taken in conjunction with the proposed development to protect the environment and an assessment of the likely effectiveness of those measures,
 - (h) any feasible alternatives to the carrying out of the proposed development and reasons for choosing the latter, and
 - (i) consequences of not carrying out the proposed development.
- (5) In the preparation of an environmental impact report referred to in subclause (4), the person preparing the report shall consult with the council and shall, in completing the preparation of the report, have regard to any requirements notified to the person in writing by the council in respect of the form and content of the report.
- (6) Where development (not being designated development) referred to in subclause (2) (c) involves only alterations or additions to existing development, being alterations or additions of a minor nature which do not to any significant extent change the scale, size or degree of the existing development, subclauses (3)–(5) shall not apply to the development or the application in respect of the development.
- (7) Except as otherwise provided by this plan, the council shall not grant consent to the carrying out of development on land to which this plan applies unless the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Table

Zone No 1 (a1) Rural (Plateau Lands Agriculture) Zone

1 Objectives of zone

A The primary objectives are:

- (a) to regulate the subdivision and use of land within the zone to ensure that:
 - (i) land actually used for purposeful agricultural production, particularly horticulture, or
 - (ii) land having the potential for purposeful agricultural production, particularly for horticulture,

is developed in a manner to optimise its production potential, as

advised from time to time by the Department of Agriculture, and

- (b) to enable development which is ancillary to the agricultural use of land within the zone (particularly dwelling-houses, rural workers' dwellings and rural industries) where such facilities do not significantly reduce the production potential of the subject land or other land in the locality.

B The secondary objectives are to ensure that development within the zone:

- (a) maintains the rural character of the locality, and
- (b) does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.

C The exceptions to these objectives are:

- (a) development of land within the zone for public works and services, outside the parameters specified in the primary and secondary objectives, subject to the impact on agricultural resources being minimised, where practical, and
- (b) development of land for extractive resources extraction.

2 Without development consent

Agriculture (other than fee lots, piggeries, poultry farms, stock homes and other intensive keeping of animals).

3 Only with development consent

Any purpose other than a purpose specified in item 2, 4 or 5.

4 Advertised development—only with development consent

Bulk stores; bus depots; recreation establishments; recreation facilities; service stations; transport terminals; warehouses.

5 Prohibited development

Brothels; car repair stations; caravan parks; commercial premises; hotels; industries (other than rural industries); institutions; junk yards; motels; motor showrooms; recreation vehicles areas; residential buildings (other than dwelling-houses); shops (other than general stores); tourist facilities (other than bed and breakfast establishments and rural tourist facilities);

taverns.

Zone No 1 (a2) Rural (Coastal Lands Agriculture) Zone

1 Objectives of zone

A The primary objectives are:

(a) to regulate the subdivision and use of land within this zone to ensure that:

(i) land actually used for purposeful agricultural production, particularly sugar cane, or

(ii) land having the potential for purposeful agricultural production, particularly sugar cane,

is development in a manner to optimise its production potential, as advised from time to time by the Department of Agriculture, and

(b) to enable development which is ancillary to the agricultural use of land within the zone (particularly dwelling-houses, rural workers' dwellings and rural industries) where such facilities do not significantly reduce the production potential of the subject land or other land in the locality.

B The secondary objective is to ensure that development within the zone:

(a) maintains the rural character of the locality, and

(b) does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.

C The exceptions to these objectives are:

(a) development of land within the zone for public works and services, outside the parameters specified in the primary and secondary objectives, subject to the impact on agricultural resources being minimised, where practical, and

(b) development of land for extractive resource purposes.

2 Without development consent

Agriculture (other than feed lots, piggeries, poultry farms, stock homes and other intensive keeping of animals).

3 Only with development consent

Any purpose other than a purpose specified in item 2, 4 or 5.

4 Advertised development—only with development consent

Bulk stores; bus depots; recreation establishments; recreation facilities; service stations; transport terminals; warehouses.

5 Prohibited development

Brothels; caravan parks; car repair stations; commercial premises; hotels; industries (other than rural industries); institutions; junk yards; motels; motor showrooms; recreation vehicle areas; residential buildings (other than dwelling-houses); shops (other than general stores); taverns; tourist facilities (other than bed and breakfast establishments and rural tourist facilities).

Zone No 1 (b) Rural (Secondary Agricultural Land) Zone

1 Objectives of zone

A The primary objective is to regulate the subdivision and use of land within this zone:

- (a) to encourage the productive use of the land and enable development ancillary to agricultural land uses, particularly dwelling-houses, rural workers' dwellings and rural industries, and
- (b) to permit a range of uses which are compatible with the rural character of the land, particularly tourist oriented developments and recreation establishments and recreation facilities, and
- (c) (Repealed)

B The secondary objectives is to ensure that development within the zone:

- (a) maintains the rural character of the locality, and
- (b) does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.

C The exceptions to these objectives are:

- (a) development of land within the zone for public works and services, outside the parameters specified in the primary and secondary objectives, subject to the impact on agricultural resources being

minimised, where practical,

- (b) development of land for extractive resource purposes, and
- (c) development of an industry which, by reason of the processes involved or the method of manufacture or the nature of the materials used or produced, requires isolation from other buildings.

2 Without development consent

Agriculture (other than feed lots, piggeries, poultry farms, stock homes and other intensive keeping of animals); forestry.

3 Only with development consent

Any purpose other than a purpose specified in item 2, 4 or 5.

4 Advertised development—only with development consent

Bulk stores; industries (other than rural, extractive, offensive or hazardous industries); motor showrooms; warehouses.

5 Prohibited development

Brothels; caravan parks for permanent occupation; residential buildings (other than dwelling-houses); shops (other than general stores).

Zone No 1 (d) Rural (Urban Investigation) Zone

1 Objectives of zone

A The primary objectives are:

- (a) to identify land which may be needed in the future and will be thoroughly investigated with respect to its suitability or otherwise for urban land uses and the environmental consequences associated with the land's release for urban purposes,
- (b) to regulate the subdivision and use of land so as to prohibit development which could prejudice the possible future release of land within this zone for urban purposes, and
- (c) to ensure that the release of land for urban purposes, by rezoning, shall not take place unless:
 - (i) urban structure planning has been completed by the council,

- (ii) the council reviews urban suitability investigations for individual planning units, and detailed land use allocations for each planning unit have been determined by the council,
- (iii) sufficient demand exists for the release of urban land, and
- (iv) appropriate urban infrastructure and facilities are available to the land or can be provided to the land in a manner which does not create an unreasonable or uneconomic demand, or both, for the provision or extension of such services.

B The secondary objective is to regulate the subdivision and use of land to permit development for agriculture and a range of other purposes complementary to the prime objectives, particularly tourist facilities, recreation establishments and recreation facilities, subject to these developments:

- (a) maintaining the semi-rural character of the locality,
- (b) by their nature being compatible with the possible urban development, particularly residential uses, of the land in the locality, in the future, and
- (c) not creating unreasonable and uneconomic demands, or both, for the provision or extension of public amenities or services.

C The exception to these objectives are development of land within the zone for public works and services, outside the parameters specified in the primary and secondary objectives.

2 Without development consent

Agriculture (other than feed lots, piggeries, poultry farms, stock homes and other intensive keeping of animals); forestry.

3 Only with development consent

Any purpose other than a purpose specified in item 2, 4 or 5.

4 Advertised development—only with development consent

Aerodromes; bulk stores; bus depots; feed lots; heliports; liquid fuel depots; mineral sand mines; mines; piggeries; poultry farms; recreation vehicle areas; retail plant nurseries; roadside stalls; service stations; stock and sale

yards; stock homes; transport terminals; warehouses.

5 Prohibited development

Brothels; car repair stations; caravan parks for permanent occupation; commercial premises; industries (other than rural and home industries); junk yards; motor showrooms; residential buildings (other than dwelling-houses); sawmills; shops (other than general stores).

Zone No 1 (e) Rural (Extractive and Mineral Resources) Zone

1 Objectives of zone

A The primary objectives are:

- (a) to identify land which are extractive or mining industry potential,
- (b) to prohibit development which would result in the withdrawal of actual or potentially productive mineral resources land, and
- (c) to prohibit development which would be adversely affected by the operations of extractive or mineral resources development, particularly adverse affects from noise, vibration or dust.

B The exception to these objectives is development of land within this zone for public works and services, outsider the parameters specified in the primary objectives.

2 Without development consent

Agriculture; forestry.

3 Only with development consent

Bush fire hazard reduction; dwelling-houses; extractive industries; home industries; industries (other than offensive or hazardous industries); mines; open space; roads; telecommunications facilities; utility installations.

4 Advertised development—only with development consent

Any purpose other than a purpose specified in item 2, 3 or 5.

5 Prohibited development

Brothels.

Zone No 2 (a) Living Area Zone

1 Objectives of zone

A The primary objectives are:

- (a) to regulate the subdivision and use of land to permit housing and ancillary development where the scale, type and traffic generating characteristics of the ancillary development are compatible with the character and amenity of the surrounding residential area,
- (b) to permit development which is considered by the council to be an essential land use within the urban living area, but not including a shop (other than a general store), and
- (c) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for varying housing densities as well as other associated urban and tourist facilities.

B The secondary objective is to allow a variety of housing types and designs and to encourage greater visual amenity by requiring site landscaping.

C The exception to these objectives is development of land within this zone for public works and services, outside the parameters specified in the primary objectives.

2 Without development consent

Nil.

3 Only with development consent

Any purpose other than a purpose specified in item 2, 4 or 5.

4 Advertised development—only with development consent

Advertising structures; bulk stores; bus depots; bus stations; car repair stations; commercial premises; helipads; heliports; industries (other than home industries); junk yards; liquid fuel depots; mineral sand mining; mines; motor showrooms; roadside stalls; shops; stock and sale yards; stock homes; transport terminals; warehouses.

5 Prohibited development

Brothels.

Zone No 2 (b) Village Area Zone

1 Objectives of zone

A The primary objectives are:

- (a) to regulate the subdivision and use of land to permit a wide range of urban purposes, and
- (b) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for varying housing densities, commercial and special uses and other urban and tourist facility purposes.

B The secondary objectives are to allow a variety of housing types and designs and to encourage greater visual amenity by requiring site landscaping.

C The exception to these objectives is to permit development of land within the zone for public works and services, outside the parameters specified in the primary objectives.

2 Without development consent

Nil.

3 Only with development consent

Any purpose other than a purpose specified in item 2, 4 or 5.

4 Advertised development—only with development consent

Institutions; junk yards; mineral sand mining; mines; offensive or hazardous industries; recreation vehicle areas.

5 Prohibited development

Brothels.

Zone No 2 (t) Tourist Area Zone

1 Objectives of zone

A The primary objective is to permit tourist developments and uses associated with, ancillary to or supportive of the tourist developments, including retailing and service facilities where such facilities are an

integral part of the tourist development and are of a scale relative to the need of that development.

- B The exception of this objective is development of land within this zone for public works and services outside the parameters of the primary objective.

2 Without development consent

Nil.

3 Only with development consent

Any purpose other than a purpose specified in item 4 or 5.

4 Advertised development—only with development consent

Gas holders; generating works; helipads; heliports; industries (other than those specified in Schedule 2); institutions; junk yards; liquid fuel depots; mineral sand mining; mines; recreation vehicle areas; roadside stalls; sawmills; stock and sale yards; timber yards; transport terminals (other than bus stations).

5 Prohibited development

Brothels.

Zone No 3 Business Zone

1 Objectives of zone

A The primary objectives are:

- (a) to regulate the subdivision and the use of land within the zone to maintain the status of the Ballina Central Business District as the retail, commercial and administrative centre of the Shire of Ballina,
- (b) to allocate sufficient land for retail, commercial and administrative purposes within the Shire of Ballina and to regulate the subdivision and use of that land so that it is developed in accordance with a commercial hierarchy,
- (c) to permit a wide range of uses within the zone that are associated with, ancillary to or supportive of the retail and service facilities within the zone, particularly tourist developments and industries referred to

in Schedule 2, and

- (d) to permit development where it is compatible with the commercial character of the zone and provides its residents with appropriate leisure facilities to ensure a high level of residential amenity.

B The secondary objectives are:

- (a) to ensure there is adequate provision for car parking facilities within the vicinity of the zone, and
- (b) to minimize conflicts between pedestrians and vehicular movement systems within the vicinity of the zone.

C The exception to these objectives is development of land within the zone for public works and services outside the parameters specified in the primary and secondary objectives.

2 Without development consent

Nil.

3 Only with development consent

Any purpose other than a purpose specified in item 4 or 5.

4 Advertised development—only with development consent

Caravan parks; gas holders; generating works; helipads; heliports; industries (other than those specified in Schedule 2); institutions; junk yards; liquid fuel depots; mineral sand mining; mines; recreation vehicle areas; roadside stalls; sawmills; stock and sale yards; timber yards; transport terminals (other than bus stations).

5 Prohibited development

Brothels.

Zone No 4 Industrial Zone

1 Objectives of zone

A The primary objectives are:

- (a) to regulate the subdivision and use of land to permit its use for industrial purposes and other uses specified in clause 27 and

Schedule 3,

- (b) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for different industry types and intensities of development, and
- (c) to ensure industrial development creates areas which are pleasant to work in, safe and efficient in terms of transportation, land utilization and service distribution.

B The exception to these objectives is development of land within the zone for public works and services, outside the parameters specified in the primary objectives.

2 Without development consent

Nil.

3 Only with development consent

Any purpose other than a purpose specified in item 4.

4 Advertised development—only with development consent

Advertising structures; caravan parks; commercial premises (other than those used in conjunction with an industry and situated on the same land as the industry or referred to in clause 27 or Schedule 3); residential buildings (other than those used in conjunction with an industry and situated on the same land as the industry); mineral sand mining; mines; offensive or hazardous industries; recreation vehicle areas; shops (other than those referred to in clause 27 or Schedule 3); stock and saleyards.

5 Prohibited development

Nil.

Zone No 6 (a) Open Space Zone

1 Objectives of zone

A The primary objectives are:

- (a) to identify land that is used or capable of being used for active or passive recreation purposes,
- (b) to encourage the development of open spaces in a manner which

maximises the satisfaction of the community's diverse recreation needs, and

(c) to enable development associated with, ancillary to or supportive of recreation use, and

(d) to enable development that assists in meeting the social and cultural needs of the community.

B The exception to these objectives is development of land within the zone for public works and services, outside the parameters specified in the primary objectives.

2 Without development consent

Drainage; roads; works for the purposes of gardening, landscaping or bush fire hazard reduction.

3 Only with development consent

Agriculture; camping areas; cycleways; forestry; picnic grounds; racecourses; recreation areas; recreation facilities; recreation vehicle areas; surf lifesaving facilities; telecommunications facilities; utility installations (other than gas holders or generating works).

4 Advertised development—only with development consent

Any purpose other than a purpose specified in item 2, 3 or 5.

5 Prohibited development

Brothels.

Zone No 7 (a) Environmental Protection (Wetlands) Zone

1 Objectives of zone

A The primary objectives are:

(a) to protect and conserve significant wetlands, and

(b) to prohibit development which could destroy or damage a wetland ecosystem.

B The exception to these objectives is development of public works and services, outside the parameters specified in the primary objectives, only

in cases of demonstrated and overriding public need and subject to the impact on wetland ecosystem being minimised as much as is reasonably practical.

2 Without development consent

Nil.

3 Only with development consent

Agriculture; bed and breakfast establishments; bush fire hazard reduction; environmental educational facilities; environmental protection works; open space; roads; telecommunications facilities; utility installations.

4 Advertised development—only with development consent

Nil.

5 Prohibited development

Any purpose other than a purpose specified in item 3.

Zone No 7 (c) Environmental Protection (Water Catchment) Zone

1 Objectives of zone

- A The primary objective is to prevent development which would adversely affect the quantity or quality of the urban water supply.
- B The secondary objective is to enable development as permitted by the primary and secondary objectives of Zone No 1 (a1) except for development which conflicts with the primary objective of this zone.
- C The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, only in cases of demonstrated and overriding public need and subject to the impact on water quality and quantity being minimised as much as is reasonably practical.

2 Without development consent

Agriculture (other than feed lots, piggeries, poultry farms, stock homes and other intensive keeping of animals).

3 Only with development consent

Any purpose other than a purpose specified in item 2, 4 or 5.

4 Advertised development—only with development consent

Bulk stores; bus depots; caravan parks; clubs; commercial premises; educational establishments; feet lots; garbage disposal areas; hospitals; hotels; industries (other than home and rural industries); junk yards; mineral sand mining; mines; motels; motor showrooms; piggeries; poultry farms or stock homes or other intensive keeping of animals; recreation establishments and facilities; recreation vehicle areas; refreshment rooms; residential buildings (other than dwelling-houses); services stations; shops (other than general stores); stock and sale yards; taverns; transport terminals; tourist facilities (other than bed and breakfast establishments); warehouses.

5 Prohibited development

Brothels.

Zone No 7 (d) Environmental Protection (Scenic/Escarpment) Zone

1 Objectives of zone

A The primary objectives are:

- (a) to protect and enhance those areas of particular scenic value to the Shire of Ballina, and
- (b) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous areas.

B The secondary objective is to enable development as permitted by the primary and secondary objectives for Zone No 1 (b), except for development which could conflict with the primary objectives of this zone.

C The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, but only in cases of demonstrated and overriding public need and subject to the visual impact being minimised as much as is reasonably practical.

2 Without development consent

Agriculture (other than feed lots, piggeries, poultry farms, stock homes and other intensive keeping of animals and not including the erection of buildings).

3 Only with development consent

Any purpose other than a purpose specified in item 2 or 5.

4 Advertised development—only with development consent

Nil.

5 Prohibited development

Brothels; bulk stores; caravan (parks for permanent occupation); industries (other than rural, extractive, offensive or hazardous industries); mineral sand mining; mines; motor showrooms; recreation vehicle areas; residential buildings (other than dwelling-houses or dwellings); shops (other than general stores); warehouses.

Zone No 7 (f) Environmental Protection (Coastal Lands) Zone

1 Objectives of zone

A The primary objectives are:

- (a) to protect environmentally sensitive coastal lands, and
- (b) to prevent development which would adversely affect or be adversely affected, in both the short and long term, by the coastal processes.

B The secondary objectives is to enable the development of public works and recreation amenities where such development does not have significant detrimental effect on the habitat, landscape or scenic quality of the locality.

C The exceptions to these objectives are:

- (a) to permit the development of public works, outside the parameters outlined in the primary and secondary objectives, only in cases of demonstrated and overriding public need and subject to the impact on the coastal lands being minimised, as much as is reasonably practical, and

- (b) development of surf life saving, environmental education facilities and like facilities.

2 Without development consent

Nil.

3 Only with development consent

Agriculture; beach amenities; bed and breakfast establishments; bush fire hazard reduction; camping grounds; caravan parks; community buildings; drainage; dwelling-houses; environmental educational facilities; environmental protection works; forestry; golf courses; helipads; home industries; open space; picnic grounds; pipelines associated with aquaculture; recreation establishments; recreation facilities; refreshment rooms; roads; surf club houses; utility installations.

4 Advertised development—only with development consent

Nil.

5 Prohibited development

Any purpose other than a purpose specified in item 3.

Zone No 7 (i) Environmental Protection (Urban Buffer) Zone

1 Objectives of zone

- A The primary objective is to create a rural buffer in the locality of Alstonville and Wollongbar and to prevent development of an urban character within any part of the zone which is likely to be seen by existing or likely future residents of the villages of Alstonville and Wollongbar or from a major road in the locality.
- B The secondary objective is to enable development as permitted by the primary and secondary objectives of Zone No 1 (a1), except for development which would conflict with the primary objective of this zone.
- C The exception of these objectives is development of land within the zone for public works and services, outside the parameters specified in the primary and secondary objectives.

2 Without development consent

Agriculture (not including the erection of buildings).

3 Only with development consent

Agriculture (involving the erection of buildings); bed and breakfast establishments; bush fire hazard reduction; dwelling-houses; home industries; open space; roads; roadside stalls; rural industries; rural workers' dwellings; telecommunications facilities; utility installations.

4 Advertised development—only with development consent

Nil.

5 Prohibited development

Any purpose other than a purpose specified in item 2 or 3.

Zone No 7 (I) Environmental Protection (Habitat) Zone

1 Objectives of zone

- A The primary objective is to protect areas of particular habitat significance.
- B The secondary objective is to enable development of a similar nature to that intended as being the primary and secondary objectives of Zone No 1 (b), except for development which would conflict with the primary objective of this zone.
- C The exception to these objectives is development of public works and services, outside the parameters of the primary and secondary objectives, but only in cases of demonstrated and overriding public need and subject to the impact on the habitat area being minimised as much as is reasonably practical.

2 Without development consent

Nil.

3 Only with development consent

Agriculture; bed and breakfast establishments; bush fire hazard reduction; camping grounds; community buildings; dwelling-houses; environmental educational facilities; environmental protection works; forestry; home industries; open space; roads; telecommunications facilities; utility

installations.

4 Advertised development—only with development consent

Nil.

5 Prohibited development

Any purpose other than a purpose specified in item 3.

Zone No 8 (a) National Parks and Nature Reserves Zone

1 Objectives of zone

The objective is to identify those lands included in national parks, nature reserves, aboriginal areas and state recreation areas and permit development of land within the zone as deemed appropriate by the Director of the National Parks and Wildlife Service.

2 Without development consent

Any purpose authorized by or under the [National Parks and Wildlife Act 1974](#) or any purpose ancillary or incidental to such purpose.

3 Only with development consent

Nil.

4 Advertised development—only with development consent

Nil.

5 Prohibited development

Any purpose other than a purpose specified in item 2.

Zone No 9 (a) Roads (Main Roads Proposed) Zone

1 Objectives of zone

The objective is to reserve those lands which are required for the purposes of main roads.

2 Without development consent

Agriculture (other than feed lots, piggeries, poultry farms, stock homes and other intensive keeping of animals and not including the erection of

buildings).

3 Only with development consent

Any purpose other than a purpose specified in item 2, 4 or 5.

4 Advertised development—only with development consent

Advertising structures; bulk stores; car repair stations; caravan parks; commercial premises; hotels; industries (other than rural industries); junk yards; mineral sand mining; mines; motor showrooms; recreation facilities; recreation vehicle areas; residential buildings (other than dwelling-houses); shops (other than general stores); taverns; transport terminals; warehouses.

5 Prohibited development

Brothels.

Zone No 9 (b) Roads (Local Roads Proposed) Zone

1 Objectives of zone

The objectives is to reserve those lands which required for the purposes of major local roads.

2 Without development consent

Agriculture (other than feed lots, piggeries, poultry farms, stock homes and other intensive keeping of animals and not including the erection of buildings).

3 Only with development consent

Any purpose other than a purpose specified in item 2, 4 or 5.

4 Advertised development—only with development consent

Advertising structures; bulk stores; car repair stations; caravan parks; commercial premises; hotels; industries (other than rural industries); junk yards; mineral sand mining; mines; motor showrooms; recreation facilities; recreation vehicle areas; residential buildings (other than dwelling-houses); shops (other than general stores); taverns; transport terminals; warehouses.

5 Prohibited development

Brothels.

Part 3 Special provisions

10 Subdivision generally

A person shall not subdivide land to which this plan applies except with the consent of the council.

11 Subdivision within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (f), 7 (i) or 7 (l)

- (1) The council shall not consent to the subdivision of:
 - (a) land within Zone No 1 (a1), 1 (a2), 1 (d), 1 (e), 7 (a), 7 (c), 7 (f), 7 (i) or 7 (l)—except in accordance with this clause, or
 - (b) land within Zone No 1 (b) or 7 (d)—except in accordance with this clause or clause 13.
- (2) Except as provided by subclause (3), the council may consent to the subdivision of land referred to in subclause (1) only where the area of each allotment to be created by the subdivision is not less than:
 - (a) in the case of land within Zone No 1 (a1) or 7 (i)—20 hectares, and
 - (b) in the case of land within Zone No 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (f) or 7 (l)—40 hectares.
- (3) The council may consent to the subdivision of land referred to in subclause (2) (a) where the area of each allotment to be created by the subdivision is not less than 13 hectares.
- (4) In deciding whether to grant consent under subclause (3) the council shall consider:
 - (a) the area and quality of land and its potential agricultural productivity,
 - (b) the likely effects, both economic and otherwise, that the proposed subdivision will have on agricultural industries in the area and the resources employed by or in connection with those industries,
 - (c) the likely effects, both economic and otherwise, that the proposed subdivision will have on the use and development of other land and resources in the area,
 - (d) whether there are any reasonable alternatives to the proposed subdivision in the circumstances,
 - (e) the effect of the existence of, or potential to erect, a dwelling,
 - (f) the cumulative effect of similar proposals if consent is granted, and
 - (g) the likelihood of the proposed allotments remaining available for agricultural use.

(h) the adequacy of the water supply to the proposed allotments.

(5) Where land within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (f), 7 (i) or 7 (l):

(a) is lawfully used for a purpose other than a dwelling-house, bed and breakfast establishment or agriculture, or

(b) may lawfully be used for a purpose other than a dwelling-house, bed and breakfast establishment or agriculture by reason of a development consent granted in respect of that use,

the council may consent to the excision of that land for that purpose.

(6) Nothing in this clause shall prohibit or restrict a subdivision for any of the following purposes:

(a) the opening or widening of a public road,

(b) adjustments to common property boundaries,

(c) enlarging the area of any existing allotment without reducing the area of any existing allotment, and

(d) rectifying any encroachment upon an existing allotment.

12 Dwelling-houses within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (f), 7 (i) or 7 (l)

(1) This clause applies to land within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (f), 7 (i) or 7 (l).

(1A) For the purpose of this clause, a reference to a dwelling-house includes a reference to a dwelling-house operated as a bed and breakfast establishment.

(2) The Council shall not consent to the erection of a dwelling-house on land to which this clause applies except in accordance with this clause.

(3) A dwelling-house may, with the consent of the council, be erected on vacant land to which this clause applies only where that land:

(a) has an area of not less than:

(i) in the case of land within Zone No 1 (a1) or 7 (i)—20 hectares,

(ii) in the case of land within Zone No 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (f) or 7 (l)—40 hectares,

(b) is an existing holding,

- (c) is an allotment created by subdivision to which development consent has been granted in accordance with clause 11,
 - (d) is an allotment created by a subdivision to which development consent has been granted in accordance with clause 13 as in force when consent for the subdivision was granted but before the gazettal of *Ballina Local Environmental Plan 1987 (Amendment No 36)*, or
 - (e) is an allotment created by a subdivision to which development consent was granted before the appointed day, not being a development consent which was granted subject to a condition that a dwelling-house could not be erected on that allotment,
 - (f) is an allotment not in the 7 (f) zone created on or after the appointed day by a subdivision carried out in accordance with Part 12 of the [Local Government Act 1919](#) where:
 - (i) the consent of the Council was not required for the subdivision, and
 - (ii) before the subdivision was carried out, a dwelling-house could have been erected under this clause on the land comprising that allotment.
- (3A) Notwithstanding the provisions of subclause (3), the council may consent to the erection of a dwelling-house on an allotment of land that was lawfully created before the appointed day and upon which a dwelling-house could lawfully have been erected immediately prior to the appointed day.
- (4) A rural workers' dwelling may, with the consent of the council, be erected on an allotment of land, being an allotment having an area of not less than:
- (a) in the case of land within Zone No 1 (a1) or 7 (i)—10 hectares for the first rural workers' dwelling and 30 hectares for each subsequent rural workers' dwelling, and
 - (b) in the case of land within Zone No 1 (a2), 1 (b), 1 (d), 7 (a), 7 (c), 7 (d), 7 (f) or 7 (l)—20 hectares for the first rural workers' dwelling and 60 hectares for each subsequent rural workers' dwelling,
- if the council is satisfied that:
- (c) the erection of each such additional dwelling will not impair the suitability of the land for agriculture,
 - (d) the needs of existing agriculture genuinely require that rural workers reside on the land, and
 - (e) any other rural workers' dwellings on the holding are being used by persons substantially engaged in agricultural employment on that land.

- (5) Notwithstanding the provisions of subclause (3), the council may consent to the erection of a dwelling-house on Lot 1, DP 575688, No 2 Old Pacific Highway, Newrybar, if the council is satisfied that the disposal of waste water on the land does not adversely affect the water quality in the catchment of Emigrant Creek Dam.

13 (Repealed)

14 Dual occupancy

- (1) This clause applies to land within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 2 (a), 2 (b), 2 (t), 7 (a), 7 (c), 7 (d), 7 (f), 7 (i) or 7 (l).
- (2) Where, in pursuance of this plan, development for the purposes of a dwelling-house may be carried out on an allotment of land to which this clause applies, a person may, with the consent of the council:
- (a) alter or add to a dwelling-house erected on the allotment so as to create 2 dwellings, or
- (b) erect 2 attached dwellings on the allotment,
- if, but only if, there will be no more than 2 dwellings on the allotment after the development has been carried out (excluding the dwellings of workers engaged in rural activities on the allotment).
- (3) A person must not subdivide land on which development has been carried out in pursuance of this clause if the subdivision would permit the separate ownership of each dwelling.

14A (Renumbered as cl 14)

15 Development adjoining arterial roads

- (1) A person shall not carry out development on land within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (f), 7 (i) or 7 (l) for a purpose referred to in Schedule 5 within 400 metres of a main or arterial road if any form of direct vehicular access is gained from a main or arterial road except with the concurrence of the Commissioner for Main Roads.
- (2) In deciding whether to grant concurrence under subclause (1), the Commissioner for Main Roads shall take into consideration:
- (a) whether the development by its nature, intensity or the volume and type of traffic likely to be generate is likely to constitute a traffic hazard or to materially reduce the capacity and efficiency of the main road to carry traffic,
- (b) whether the development is of a type, whether or not related to the characteristics of the land on which it is proposed to be carried out, that justifies a location in proximity to a main road,

- (c) whether the location, standard and design of access points, and on-site arrangements for vehicle movement and parking, ensure that through traffic movements on the main road will not be impeded, and
- (d) the extent to which the development might prejudice future improvements or realignment of the main road, as indicated to the council from time to time by the Commissioner for Main Roads.

16 Development of land on adjoining boundaries

- (1) This clause applies to land within 50 metres of a boundary between any 2 zones, except Zone No 7 (a), 7 (f) or 7 (i).
- (2) Subject to subclause (3), development may, with the consent of the council, be carried out on land to which this clause applies for any purpose for which development may be carried out in any adjoining zone.
- (3) The council shall not consent to the carrying out of development referred to in subclause (2) unless, in the opinion of the council, the carrying out of the development is desirable due to design, ownership, servicing or similar requirement relating to the optimum development of land to which this clause applies.
- (4) In respect of the carrying out of development on land to which this clause applies:
 - (a) clause 9 (4) shall not apply, and
 - (b) the provisions of section 84, 85, 86, 87 (1) and 90 of the Act shall not apply in the manner referred to in clause 9 (3).

17 Limitation on building height

- (1) In this clause **height**, in relation to a building the topmost floor of which has a ceiling, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.
- (2) Except as provided by subclauses (2A), (4), a person shall not, on any land to which this plan applies, erect a building taller than 6.4 metres in height unless the council is satisfied that the building will not:
 - (a) adversely affect the existing or future amenity of adjoining properties by overshadowing or causing loss of privacy,
 - (b) significantly obstruct views from adjacent buildings and public places,
 - (c) have an adverse impact on the scenic or landscape quality of the locality, or
 - (d) exceed 2 storeys.
- (2A) Notwithstanding subclause (2) (d), a person may, with the consent of the Council,

erect a building containing more than two storeys on land on which the Ballina Racecourse operates, being allotment 3 DP 820688 Racecourse Road, Ballina.

(3) (Repealed)

(4) A person may, with the consent of the council, erect a building on land in the central business district of Ballina shown hatched green on the map only if the building does not exceed 16 metres in height.

18 Items of environmental heritage

(1) A person shall not, in respect of a building, work, relic or place that is an item of environmental heritage:

(a) demolish, renovate or extend any such building or work,

(b) damage or despoil any such relic or any part of any such relic,

(c) excavate any land for the purpose of exposing or removing any such relic,

(d) erect a building on the land on which that building, work or relic is situated or the land which comprises that place, or

(e) subdivide the land on which that building, work or relic is situated or the land which comprises that place,

except with the consent of the council.

(2) The council shall not grant development consent to a development application in respect of an item of environmental heritage unless it has made an assessment of:

(a) the significance of the item as an item of the environmental heritage of the Shire of Ballina,

(b) the extent to which the carrying out of the development in accordance with the consent would affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item and its site,

(c) whether the setting of the item and, in particular, whether any stylistic, horticultural or archaeological features of the setting should be retained, and

(d) whether the item constitutes a danger to the users or occupiers of that item or to the public.

19 Development in the vicinity of items of environmental heritage

The council shall not consent to the carrying out of development on land within 60 metres of the boundary of any land which is or on which there is an item of environmental heritage unless it has made an assessment of the effect which the carrying out of that

development will have on the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item of environmental heritage and its setting.

20 Conservation incentive relating to heritage items

(1) Nothing in this plan prevents the council from granting consent to the use for any purpose of a building that is an item of environmental heritage or of the land on which that building is erected, where the council is satisfied that:

- (a) the use would have little or no adverse effect on the amenity of the area, and
- (b) conservation of the building depends on the council granting consent as referred to in this subclause.

(2) The council, when considering an application for consent to erect a building on land on which there is a building which is an item of environmental heritage, may exclude from its calculation of the gross floor area of the buildings erected on the land the gross floor area of the item of environmental heritage:

- (a) for the purpose of determining the floor space ratio, and
- (b) for the purpose of determining the number of parking spaces to be provided on the site,

but only if the council is satisfied that the conservation of the building which is an item of environmental heritage depends upon the council granting consent as referred to in this subclause.

21 Heritage Council to be given prior notice of demolition consent

Where a person makes a development application for consent to demolish a building or work that is an item of environmental heritage, the council shall not consider that application until the council has notified the Secretary of the Heritage Council of New South Wales of its intention to do so.

22 Advertising of heritage applications

(1) Pursuant to section 30 (4) of the Act, the provisions of section 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of:

- (a) the demolition of a building or work that is an item of environmental heritage, and
- (b) the use of a building or land referred to in clause 20 for a purpose which, but for that clause, would be prohibited under this plan,

in the same way as those provisions apply to and in respect of designated development.

- (2) Subclause (1) does not apply to or in respect of an application for consent to the partial demolition of a building or work where, in the opinion of the council, the partial demolition is of a minor nature and does not adversely affect the significance of the building or work as part of the environmental heritage of the Shire of Ballina.

23 Development within Zone No 1 (d), 7 (c), 7 (d), 7 (f), 7 (i) or 7 (l)

A person shall not, on land within Zone No 1 (d), 7 (c), 7 (d), 7 (f), 7 (i) or 7 (l):

- (a) notwithstanding clause 8 of the *Environmental Planning and Assessment Model Provisions 1980*, cut down, top, lop or otherwise destroy a tree (other than a tree planted for commercial or landscaping purposes), or
- (b) clear, fill or otherwise alter the surface level of land,
- without the consent of the council.

24 Development within Zone No 7 (a)

- (1) This clause applies to land within Zone No 7 (a).
- (2) A person shall not clear, drain, excavate or fill land to which this clause applies without the consent of the council.
- (3) The council shall not consent to the carrying out of development on or adjacent to land within Zone No 7 (a) unless it has taken into consideration:
- (a) the likely effects of the development on the flora and fauna found in the wetlands,
- (b) the likely effects of the development on the water table, and
- (c) the effect of the wetlands of any proposed clearing, draining excavating or filling.

25 Development within Zone No 7 (d) or 7 (i)

- (1) This clause applies to land within Zone No 7 (d) or 7 (i).
- (2) A person shall not erect a building on land to which this clause applies without the consent of the council.
- (3) The council shall not grant consent to the erection of a building on land to which this clause applies unless it has made an assessment as to whether it should impose conditions relating to:
- (a) the height and location of the building, and
- (b) the colour of materials, so as to ensure that the building blends with the surrounding landscape and other development and preserves or enhances the scenic quality of the land.

26 Development within Zone No 7 (I)

- (1) This clause applies to land within Zone No 7 (I).
- (2) The council shall not consent to the carrying out of development on land within Zone No 7 (I) until it has taken into consideration the likely effects of the development on the flora and fauna found in the locality.

26A Development within Zone No 6 (a)

- (1) This clause applies to land within Zone No 6 (a).
- (2) The council shall not consent to the carrying out of development on land to which this clause applies unless it is satisfied that such development will promote or would otherwise be related to the use and enjoyment of the land for recreational and social needs of the community.
- (3) In determining an application for consent to carry out development on land to which this clause applies, the council must take into consideration the following matters:
 - (a) the need for the proposed development on the land,
 - (b) the likely impact of the proposed development on the existing or likely future use and character of the land,
 - (c) the need to retain the land for its existing or likely future use,
 - (d) whether any proposed building or use will be secondary and complementary to the existing or the proposed use of the land as open space,
 - (e) whether the proposed development will substantially diminish the use of the land for open space,
 - (f) whether the proposed development is compatible with the adjacent uses in relation to height, bulk, noise generation and any other aspects which the council considers may conflict with surrounding land uses, and
 - (g) the proposed development's consistency with any plan of management relating to the land.

27 Retailing of bulky goods within Zone No 4

- (1) This clause applies to land within Zone No 4.
- (2) In this clause, **bulky goods** means large goods which are, in the opinion of the council, of such a size and shape as to require:
 - (a) a large area for handling, storage or display, and
 - (b) easy and direct vehicular access to enable the goods to be collected by customers

after sale.

- (3) Subject to subclauses (4) and (5), nothing in this plan shall prevent a person, with the consent of the council, from carrying out development for the purposes of the retail sale of bulky goods on land to which this clause applies.
- (4) The council shall not consent to an application to carry out development referred to in subclause (3) unless it is satisfied that:
 - (a) suitable land for the development is not available in any nearby business centre,
 - (b) to grant consent would not, by reason of the number of retail outlets which exist or are proposed on land within Zone No 4, alter the predominantly industrial nature of the zone, and
 - (c) the proposed development will not detrimentally affect the viability of any business centre.
- (5) This clause does not apply to development for the purposes of shops selling food or clothing or development for the purposes of produce stores.

28 Tourist accommodation

- (1) This clause applies to development for the purposes of tourist accommodation on any land other than land within Zone No 2 (a), 2 (b), 2 (t) or 3.
- (2) The council shall not consent to the carrying out of development for a purpose specified in Column 1 of the Table to this subclause:
 - (a) so as to permit the erection or use of more sites, units or cabins, as the case may be, than the number permitted by Column 2 of that Table, and
 - (b) if the allotment of land on which the development is to be carried out has an area less than that specified in Column 3 of that Table,shown opposite that purpose.

Table

| Column 1 | Column 2 | Column 3 |
|-----------------------|----------------------|-----------------|
| Caravan/Camping Parks | 25 sites per hectare | 5 hectares |
| Hotels/Motels | 10 units per hectare | 2 hectares |
| Holiday Cabins | 3 cabins per hectare | 5 hectares |

- (3) The council may grant consent to an application to carry out development to which this clause applies only where an environmental impact report has been lodged with the application containing the matters referred to in clause 9 (4).

- (4) In the preparation of the environmental impact report referred to in subclause (3), the person preparing the statement shall consult with the council and shall, in completing the preparation of the statement, have regard to any requirements notified to the person in writing by the council in respect of the form and content of the report.

28A Tourist facilities and recreation establishments fronting classified roads

- (1) This clause applies to development for the purpose of tourist facilities or recreation establishments when carried out on any land other than land within Zone No 2 (a), 2 (b), 2 (t), 3 or 6 (a).
- (2) Notwithstanding the provisions of clause 9, the council shall not consent to the carrying out of development to which this clause applies on any site where such site fronts a classified road and vehicular access is not available to the site otherwise than directly from the classified road.
- (3) For the purpose of this clause, **classified road** has the meaning ascribed to it in the [Roads Act 1993](#).

29 Suspension of certain laws etc

- (1) For the purpose of enabling development to be carried out in accordance with this plan (as in force at the time the development is carried out) or in accordance with a consent granted under the Act:
 - (a) section 314 (1) (c) of, and Schedule 7 to, the [Local Government Act 1919](#),
 - (b) section 37 of the [Strata Titles Act 1973](#), and
 - (c) any agreement, covenant or instrument imposing restrictions as to the erection or use of buildings for certain purposes or as to the use of land for certain purposes, to the extent necessary to serve that purpose, shall not apply to development carried out in accordance with this plan.
- (2) Pursuant to section 28 of the Act, before the making of this clause:
 - (a) the Governor approved of subclause (1), and
 - (b) the Minister for the time being administering the provisions referred to in subclause (1) (a) and (b) concurred in writing in the recommendation for the approval of the Governor of subclause (1).

30 Acquisition of land

- (1) This clause applies to land within Zone No 9 (a) or 9 (b) and land referred to in Schedule 6.
- (2) The owner of any land within a zone or referred to in a schedule specified in Column 1

of the Table to this subclause may, by notice in writing, require the public authority specified in Column 2 of the Table opposite the description of that zone or schedule to acquire that land.

Column 1

Column 2

Schedule 6

Director of Environment and Planning

Zone No 9 (a) Roads (Main Roads Proposed)

Commissioner for Main Roads

Zone No 9 (b) Roads (Local Roads Proposed)

Council

- (3) Upon receipt of a notice referred to in subclause (2), the public authority concerned shall, subject to subclauses (4) and (5), acquire that land.
- (4) The council shall not be required to acquire land, the subject of a notice referred to in subclause (2), where the land is required to be dedicated to the council as a condition of development consent or subdivision approval.
- (5) The Commissioner for Main Roads shall not be required to acquire land, the subject of a notice referred to in subclause (2), unless:
 - (a) a development application has been made in respect of the land,
 - (b) the development, the subject of the development application, consists of development for a purpose for which development could have been carried out on the land prior to the appointed day, and
 - (c) the council has refused its consent to the development application on the basis that the Commissioner for Main Roads has not concurred in the development.

31 Use of land pending acquisition

- (1) Land to which clause 30 applies may be developed for any purpose, with the consent of the council, prior to its acquisition by the public authority concerned.
- (2) The council shall not grant consent to development referred to in subclause (1) on land within Zone No 9 (a) unless it obtains the concurrence of the Commissioner for Main Roads.
- (3) In determining whether to grant concurrence under subclause (2), the Commissioner for Main Roads shall take into consideration:
 - (a) the effect of the proposed development on the costs of acquisition,
 - (b) the imminence of acquisition, and
 - (c) the costs of reinstatement of the land for the purposes for which the land is to be

acquired.

32 Concurrence of Director—Zone No 7 (f)

- (1) The council shall not consent to the carrying out of development within Zone No 7 (f) for any purpose except with the concurrence of the Director.
- (2) In considering whether to grant concurrence under subclause (1), the Director shall take into consideration:
 - (a) whether any environmental issues are involved in, or raised by, the proposed development,
 - (b) if so, whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment, and
 - (c) whether the development complies with the objectives of Zone No 7 (f) as set out in the Table to clause 9.

32A Coastal erosion hazard area—Lennox Head

- (1) This clause applies to land in the village of Lennox Head shown hatched in black on the map.
- (2) Notwithstanding the provisions of clause 9, a person shall not carry out development on the land to which this clause applies except with the consent of the council.
- (3) The council shall not consent to the carrying out of development on land referred to in subclause (1) unless it has taken into consideration the susceptibility of the proposed development to erosion or damage by the sea and whether adequate precautions will be taken to mitigate such erosion or damage.

32B Caravan parks in Zones Nos 1 (b) and 1 (d)

- (1) This clause applies to the following land:
 - Lot 58, DP 2952 (Ballina Gardens Caravan Park)
 - Lot 2, DP 251003 (Joylyn Caravan Park)
 - Lot 1, DP 605802 (Sandlewood Leisure Village)
 - Lot 3, DP 707551, Ross Lane, Newrybar (Sanctuary Village)
- (2) Notwithstanding the provisions of clause 9, the council may consent to the expansion of caravan parks located immediately before the commencement of *Ballina Local Environmental Plan 1987 (Amendment No 1)*, on land to which this clause applies, being expansion for the purpose of providing permanent caravan park accommodation.

33 (Repealed)

34 Development of land adjacent to North Creek Road, Ballina

- (1) This clause applies to land described as Lots 1 and 2 in DP 503608, Lot 3 in DP 558706, Lots 3 and 4 in DP 544759, Lot 4 in DP 607328, Lot 2 in DP 207848 and Lots 1 and 2 in DP 522045 North Creek Road, Ballina as shown by heavy black edging on the map marked “*Ballina Local Environmental Plan 1987 (Amendment No 7)*” deposited in the office of the council.
- (2) Notwithstanding the provisions of clauses 9, 11 and 12, the council may consent to the carrying out of development on the land to which this clause applies for one or more of the purposes for which such consent may be granted in relation to land within Zone No 2 (a).
- (3) The council shall not grant consent to the carrying out of development on the land to which this clause applies unless it is satisfied that the proposed development reflects the basic principles and techniques of affordable housing embodied in the “Australian Model Code for Residential Development” and the “Ballina Green Street Housing Project” prepared by Steel and Associates Pty. Ltd.
- (4) (Repealed)
- (5) Nothing in subclause (3) shall prevent the council from granting consent to the making of changes (whether structural or non-structural) or additions to, or the rebuilding of, a building or place being used for a purpose for which consent has been granted in accordance with this clause.

34A Development of land on Cabbage Tree Island, Wardell

- (1) Notwithstanding the other provisions of this plan, two dwelling-houses may, with the consent of the council, be erected on Lot 261, DP 755691, Cabbage Tree Island, Wardell.
- (2) However, council must not grant consent to the development described in subclause (1), until such time as the two dwelling-houses occupying Lot 94, DP 755691, Cabbage Tree Island, Wardell, have been demolished.

35 What is exempt and complying development?

- (1) Development of minimal environmental impact listed as exempt development in *Development Control Plan No 7—Exempt and Complying Development* is **exempt development**, despite any other provision of this plan.
- (2) Development listed as complying development in *Development Control Plan No 7—Exempt and Complying Development* is **complying development** if:
 - (a) it is local development of a kind that can be carried out with consent on the land

on which it is proposed, and

(b) it is not an existing use, as defined in section 106 of the Act.

(3) Development is exempt or complying development only if it complies with the development standards and other requirements applied to the development by *Development Control Plan No 7—Exempt and Complying Development*.

(4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Development Control Plan No—7 Exempt and Complying Development* adopted by the Council, as in force when the certificate is issued.

(5) In subclauses (1)–(3), ***Development Control Plan No 7—Exempt and Complying Development*** means the plan adopted by the Council on 25 November 1999, as amended by the plans marked as follows (with the date of adoption of each amendment by the Council shown after it):

*Development Control Plan No 7—Exempt and Complying Development
(Amendment No 1) (27 July 2000)*

*Development Control Plan No 7—Exempt and Complying Development
(Amendment No 2) (23 August 2001)*

Schedule 1

(Clause 5)

- 1 House at No 54, Swift Street, Ballina.
- 2 Monument to HMAS Lismore, Compton Drive, East Ballina.
- 3 PV Richmond Pilot Boat, River Street, Ballina.
- 4 MV Florrie Passenger Vessel and Tug, adjoining the Museum, Ballina.
- 5 Pioneer Cemetery, East Ballina.
- 6 Cemetery, Tintenbar.
- 7 Group of 4 houses on Bruxner Highway, Wollongbar, adjoining Research Station, Wollongbar.
- 8 Uniting Church, Cherry Street, Ballina.
- 9 Ballina Post Office, River Street, Ballina.
- 10 Ballina Court House, River Street, Ballina.
- 11 Ballina Council Chambers, Cherry Street, Ballina.
- 12 Fenwick House, Shaws Bay, Ballina.

- 13 Brundah, Norton Street, Ballina.
- 14 Ballina Lighthouse, East Ballina.
- 15 Former CBC Bank, corner Moon and River Streets, Ballina.
- 16 Ballina Public School, Crane Street, Ballina.
- 17 Anglican Church, Norton Street, Ballina.
- 18 Presbyterian Church, Cherry Street, Ballina.
- 19 Federal Hotel, Main Street, Alstonville.
- 20 Post Office, Main Street, Alstonville.
- 21 Former CBC Bank, Main Street Circ, Alstonville.
- 22 Anglican Church, The Avenue, Alstonville.
- 23 Cemetery, Alstonville.
- 24 Police Station, Main Street, Alstonville.
- 25 Peanut Factory, Bruxner Highway, Alstonville.
- 26 National Bank, Police Station and Hotel, Wardell.
- 27 Cemetery, Rous.
- 28 Species of tree "Fountainia Oraria" on Lot 4, DP 553415 and Lot 3, DP 592045.
- 29 Aboriginal sites on the following properties:
 - Lot 3, DP 587685.
 - Lot 2, DP 587685.
 - Portion 46, Parish of Ballina.
 - Portion 58, Parish of Ballina.
 - Portion 212, Parish of Ballina.
 - Portion 217, Parish of Teven.
 - North Creek, Adjacent lot 3, DP 558706.
 - Property Lot 1, Resub lot 232, DP 709484.
 - Lot 3, DP 528058.
 - Public Reserve, Ref R 1082 (near Sand Point).
 - Portion 394, Parish of Ballina.

Northeastern corner of the Agricultural School and Experimental Farm site adjacent Emigrant Creek.

Rems Portion 181, Parish of South Ballina.

Portion 151, Parish of South Ballina.

Portion 113, Parish of South Ballina.

Adjacent Portion 113 (on the beach).

Lot 1712, DP 597523.

South Ballina Beach—adjacent South Ballina Beach Road.

Patches Beach, Adjacent Portion 77—Parish of South Ballina.

Cabbage Tree Island.

Goat Island.

Rems Portion 7, Parish of South Ballina.

Lot 1, DP 255961.

30 Old Tintenbar Shire Council Chambers, Corner Bruxner Highway and High Street, Alstonville.

31 Former Sunnyhaven Flats, Corner Norton Street and Crane Street, Ballina.

32 Crawford House, No 10 Wardell Road, Alstonville.

Schedule 2

(Clause 9)

Boot and shoe repairing.

Bread, cake and pastry manufacture.

Dental mechanics workshop.

Dry cleaning and dyeing agency.

Electrical appliances repair shop.

Home industries.

Laundering.

Photographic.

Any other use which closely resembles a use identified above.

Schedule 3

(Clause 9)

Newsagency.

Shops used for the sale of:

Hardware,

Medical and surgical supplies and equipment,

Smallgoods and sandwiches.

Other premises used for:

Banking facilities,

Brothels,

Accounting and computing facilities,

Refreshment rooms.

Any other use which closely resembles a use identified above.

Schedule 4 (Repealed)

Schedule 5

(Clause 15)

Abattoirs
Boarding-houses
Bulk stores
Bus depots
Bus stations
Car repair stations
Caravan parks
Clubs
Commercial premises
Educational establishments
Extractive industries
Generating works
Holiday cabins
Hospitals
Hotels
Institutions
Junk yards
Liquid fuel depots
Offensive or hazardous industries
Motels
Motor showrooms
Places of assembly
Recreation facilities
Residential buildings (other than dwelling-houses)
Retail plant nurseries
Road transport terminals
Roadside stalls
Sawmills
Shops

Stock transport terminals
Taverns
Timber yards
Tourist facilities
Transport terminals
Warehouses

Schedule 6

(Clause 30)

Lot 2, DP 572995.

Part portion 32, Parish of Ballina (east of the coast road).

Part lot B, DP 911431 (east of the coast road).

Schedule 7 (Repealed)