

# Ballina Local Environmental Plan 1987

[1987-95]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Planning Legislation Amendment Bill 2019](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 25 February 2022

# Ballina Local Environmental Plan 1987



New South Wales

## Contents

<b>Part 1 Preliminary</b>	5
1 Name of plan	5
2 Aims, objectives etc	5
3 Land to which plan applies	6
4 Relationship to other environmental planning instruments	6
5 Interpretation	6
6 Adoption of Model Provisions	13
7 Consent authority	13
<b>Part 2 General restrictions on development of land</b>	13
8 Zones indicated on the map	13
9 Zone objectives and development control table	15
<b>Part 3 Special provisions</b>	34
10 Subdivision generally	34
11 Subdivision of land within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l)	34
12 Dwelling-houses within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l)	36
13 (Repealed)	37
14 Dual occupancy	37
14A (Renumbered as cl 14)	38
15 (Repealed)	38

16 Development of land on adjoining boundaries .....	38
17 Limitation on building height.....	38
18 Items of environmental heritage .....	39
19 Development in the vicinity of items of environmental heritage.....	40
20 Conservation incentive relating to heritage items.....	40
21 (Repealed) .....	40
22 Advertising of heritage applications .....	40
23 Development within Zone No 1 (d), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l) .....	41
24 Development within Zone No 7 (a).....	41
24A Development within Zone No 7 (c).....	41
25 Development within Zone No 7 (d), 7 (d1) or 7 (i).....	42
26 Development within Zone No 7 (l).....	42
26A Development within Zone No 6 (a).....	42
27 Retailing of bulky goods within Zone No 4 and on land referred to in Schedule 4.....	43
28 Tourist accommodation .....	43
28A Tourist facilities and recreation establishments fronting classified roads.....	45
29 Suspension of certain laws etc .....	45
30 Acquisition of land .....	46
31 Use of land pending acquisition.....	46
32 Development within Zone No 7 (f).....	46
32A Coastal erosion hazard area—Lennox Head .....	47
32B Caravan parks in Zones Nos 1 (b) and 1 (d).....	47
33 Development of land at Henderson Farm, Lennox Head.....	47
33A Development of land adjacent to North Creek Road, Lennox Head.....	48
34 Development of land adjacent to North Creek Road, Ballina .....	48
34A Development of land on Cabbage Tree Island, Wardell .....	49
34B Development of land at Lindendale Road, Wollongbar .....	49
35 What are exempt and complying development? .....	49
36 Development on land identified on Acid Sulfate Soils Planning Maps.....	50
37 Controls for advertisements .....	53
38 Classification and reclassification of public land.....	54
39 Exceptions to development standards .....	55
40 Demolition requires development consent .....	57
41 Temporary use of land .....	57

42 Conversion of fire alarms..... 58

43 Standards that cannot be used to refuse consent—playing and performing music.....58

**Schedule 1** ..... 59

**Schedule 2** ..... 63

**Schedule 3** ..... 63

**Schedule 4** ..... 63

**Schedule 5 (Repealed)** ..... 63

**Schedule 6** ..... 63

**Schedule 7 Classification and reclassification of public land**..... 64

# Ballina Local Environmental Plan 1987



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—
  - (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
  - (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—

**Acid Sulfate Soil Manual** means the *Acid Sulfate Soil Manual* published from time to time by the NSW Acid Sulfate Soil Management Advisory Committee and adopted by the Director-General of the Department of Infrastructure, Planning and Natural Resources.

**acid sulfate soils** means actual or potential acid sulfate soils.

**Acid Sulfate Soils Planning Maps** means the series of maps marked “*Ballina Local Environmental Plan 1987 (Amendment No 66)—Acid Sulfate Soils Planning Maps*” kept in the office of the council.

**actual acid sulfate soils** means soils containing highly acidic soil horizons or layers resulting from the oxidation of soil materials that are rich in iron sulfides, primarily pyrite. This oxidation produces acidity in excess of the sediment’s capacity to neutralise the acidity resulting in soils of pH 4 or less.

**advertisement** means a display of symbols, messages or other devices for promotional purposes or for conveying information, instructions, directions or the like, whether or not the display involves the erection of a structure or the carrying out of a work.

**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.

**building identification sign** means a sign that identifies or names a building, and that may include the name of a business or building, the street number of a building, the nature of the business and a logo or other symbol that identifies the business, but that does not include general advertisements for products, goods or services.

**business identification sign** means a sign—

- (a) that indicates the name of a person carrying on a business, and the business carried on by the person, at the premises or place at which the sign is displayed, and
- (b) that may include the address of the premises or place and a logo or other symbol that identifies the business,

but that does not include any advertisement relating to a person who does not carry on business at the premises or place.

**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 free-standing building with a gross floor area of not more than 50 square metres (excluding balconies) that contains a room or suite of rooms with a maximum of two bedrooms and that is intended to be used solely for the provision of temporary holiday accommodation.

**item of environmental heritage** means those buildings, works, relics, trees 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.

**potential acid sulfate soils** means soils that contain iron sulfides or sulfidic material which have not been exposed to air and oxidised. The field pH of these soils in their unoxidised state is pH 4 or more and may be neutral or slightly alkaline.

**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 industry** has the same meaning as in the standard instrument prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#).

**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—

**Editorial note—**

The amending maps are not necessarily listed in the order of gazettal or publication on the NSW legislation website. Information about the order of gazettal or publication can be determined by referring to the Historical notes at the end of the plan.

*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)*

*Ballina Local Environmental Plan 1987 (Amendment No 28)*

*Ballina Local Environmental Plan 1987 (Amendment No 32)*

*Ballina Local Environmental Plan 1987 (Amendment No 33)—Sheet 1*

*Ballina Local Environmental Plan 1987 (Amendment No 35)*

*Ballina Local Environmental Plan 1987 (Amendment No 38)*

*Ballina Local Environmental Plan 1987 (Amendment No 40)*

*Ballina Local Environmental Plan 1987 (Amendment No 42)*

*Ballina Local Environmental Plan 1987 (Amendment No 44)*

*Ballina Local Environmental Plan 1987 (Amendment No 47)*

*Ballina Local Environmental Plan 1987 (Amendment No 48)*

*Ballina Local Environmental Plan 1987 (Amendment No 50)*

*Ballina Local Environmental Plan 1987 (Amendment No 51)*

*Ballina Local Environmental Plan 1987 (Amendment No 52)*

*Ballina Local Environmental Plan 1987 (Amendment No 53)*

*Ballina Local Environmental Plan 1987 (Amendment No 59)*

*Ballina Local Environmental Plan 1987 (Amendment No 67)*

*Ballina Local Environmental Plan 1987 (Amendment No 68)*

*Ballina Local Environmental Plan 1987 (Amendment No 69)*

*Ballina Local Environmental Plan 1987 (Amendment No 71)*

*Ballina Local Environmental Plan 1987 (Amendment No 78)*

*Ballina Local Environmental Plan 1987 (Amendment No 80)*

*Ballina Local Environmental Plan 1987 (Amendment No 82)*

*Ballina Local Environmental Plan 1987 (Amendment No 83)*

*Ballina Local Environmental Plan 1987 (Amendment No 88)*

*Ballina Local Environmental Plan 1987 (Amendment No 94)*

*Ballina Local Environmental Plan 1987 (Amendment No 95)*

*Ballina Local Environmental Plan 1987 (Amendment No 102)*

*Ballina Local Environmental Plan 1987 (Amendment No 103)*

*Ballina Local Environmental Plan 1987 (Amendment No 111)*

*Ballina Local Environmental Plan 1987 (Amendment No 116)*

**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.

**Note—**

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Plan.

- (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, and
  - (d) notes included in this plan do not form part of this plan.

## 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**, **rural industry** 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 (d1) Environmental Protection (Newrybar Scenic/Escarpment) Zone—coloured orange with black edging and lettered “7 (d1)”.

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) (Repealed)
  - (d) development for a purpose specified under the heading “Prohibited development” may not be carried out.
- (3)–(6) (Repealed)
- (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, 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 (Repealed)**

## **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, 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 (Repealed)**

#### **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 (Repealed)**

## **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 (Repealed)**

## **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 (Repealed)**

## **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 (Repealed)**

## **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 (Repealed)**

### **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 (Repealed)**

### **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 (Repealed)**

## **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 (Repealed)**

## **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 (Repealed)**

## **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 (Repealed)**

### **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 regulate the use of land within the zone—
  - (a) to encourage the productive use of land for agricultural purposes and to permit development which is ancillary to agricultural land uses, except for development which would conflict with the primary objective of the zone, and
  - (b) to ensure development of the land maintains the rural character of the locality, and
  - (c) to ensure development of the land does not create unreasonable and uneconomic demands, or both, for the provision or extension of public amenities or services.
- 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); bush fire hazard reduction.

### **3 Only with development consent**

Bed and breakfast establishments; childcare centres; dwelling-houses; forestry; helipads; home industries; public utility undertakings; retail plant nurseries; roads; telecommunications facilities; utility installations.

### **4 (Repealed)**

### **5 Prohibited development**

Any purpose other than a purpose specified in item 2, 3 or 4.

## **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 (Repealed)**

#### **5 Prohibited development**

Advertisements; 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 (d1) Environmental Protection (Newrybar Scenic/Escarpment) Zone**

#### **1 Objectives of zone**

A The primary objectives are—

- (a) to protect and enhance areas of particular scenic value to the local government area of Ballina, and
- (b) to encourage the productive use of land within the zone and enable development ancillary to agricultural land uses, particularly dwelling-houses, rural workers' dwellings and rural industries, and
- (c) to ensure development within the zone maintains the rural character of the locality and minimises any detrimental scenic impact, and
- (d) to ensure development within the zone is of a scale and nature that will not adversely impact on the existing amenity of the area.

B The secondary objectives are—

- (a) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous areas and areas of excessive gradient, and
- (b) to ensure that development within the zone does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.

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 practicable.

## **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**

Agriculture (other than agriculture allowed without development consent as specified in item 2); bush fire hazard reduction; community buildings; dwelling-houses; home industries; roads; roadside stalls; rural industries; rural workers' dwellings; telecommunications facilities; tourist facilities comprising only bed and breakfast establishments or holiday cabins, or both; utility installations.

## **4 (Repealed)**

## **5 Prohibited development**

Any development other than development included in item 2 or 3.

# **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 (Repealed)**

## **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 (Repealed)**

### **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 (Repealed)**

**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 (Repealed)**

**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 (Repealed)**

#### **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 (Repealed)**

#### **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 of land within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (d1), 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 (d1), 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 (d1), 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 (d1), 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) minor adjustments to common property boundaries, but only if the council is satisfied that any such adjustment will not lead to—
  - (i) the creation of any additional allotments or additional dwelling entitlements or both, and
  - (ii) a substantial change to the land area contained in each allotment or a substantial change to the configuration of each allotment, and
  - (iii) an increase in the size of an allotment that would provide in the future for the creation of additional allotments or additional dwelling entitlements, and
  - (iv) an outcome contrary to the terms of any development consent granted in respect of any of the land concerned, and
  - (v) an increase in the likelihood of potential for land use conflict,
- (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 (d1), 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 (d1), 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 (d1), 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, or approval, was granted by the Council in accordance with the provisions of *Interim Development Order No 1—Municipality of Ballina* or *Interim Development Order No 1—Shire of Tintenbar* before the appointed day, not being development consent, or approval, that was granted subject to a condition that a dwelling could not be erected on the allotment.

(f) (Repealed)

(3A) (Repealed)

(3B) The council may consent to the erection of a dwelling-house on vacant land to which this clause applies that would have complied with subclause (3) but for the fact that part of the land has been acquired by a public authority for a public purpose.

(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 (d1), 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) (Repealed)

### **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 (d1), 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 (Repealed)**

**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) (Repealed)

**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.

**Note—**

The website of the Heritage Branch of the Department of Planning has publications that provide guidance on assessing the impact of proposed development on the heritage significance of items (for example, *Statements of Heritage Impact*).

**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 (Repealed)**

**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 (d1), 7 (f), 7 (i) or 7 (l)**

A person shall not, on land within Zone No 1 (d), 7 (c), 7 (d), 7 (d1), 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.

### **24A Development within Zone No 7 (c)**

- (1) This clause applies to land within Zone No 7 (c).
- (2) 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) any potential adverse impact, including any incremental adverse impact, on the water quality within the catchment that may result from the development,
  - (b) whether adequate safeguards and other measures have been proposed to protect the water quality,

- (c) whether the proposed development would be more suitably undertaken on an alternative site,
- (d) any comments that have been provided in relation to the proposed development following consultation with the relevant water supply authority.

**25 Development within Zone No 7 (d), 7 (d1) or 7 (i)**

- (1) This clause applies to land within Zone No 7 (d), 7 (d1) 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 (l)**

- (1) This clause applies to land within Zone No 7 (l).
- (2) The council shall not consent to the carrying out of development on land within Zone No 7 (l) 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 and on land referred to in Schedule 4**

- (1) This clause applies to land within Zone No 4 and land referred to in Schedule 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 purpose of tourist accommodation on any land to which clause 12 applies on which a dwelling-house is lawfully erected or on which a dwelling-house may be erected in accordance with that clause.

- (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

- (2A) Notwithstanding subclause (2), the council must not consent to development for the purpose of holiday cabins on land within Zone No 7 (d1) of a density greater than 1 cabin per 5 hectares of site area up to a total maximum of 5 holiday cabins (not including a manager’s residence).
- (3) The council may grant consent to an application to carry out development to which this clause applies only if an environmental impact report containing the following matters has been lodged with the application—
- (a) a full description of the proposed development,
  - (b) a statement of the objectives of the proposed development and how the 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 the measures,

(h) any feasible alternatives to the carrying out of the proposed development and reasons for the proposed development,

(i) consequences of not carrying out the proposed development.

- (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**

Schedule 6

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

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

**Column 2**

Director of Environment and Planning

Commissioner for Main Roads

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), (3) (Repealed)

**32 Development within Zone No 7 (f)**

The council must not consent to the carrying out of development within Zone No 7 (f) for any purpose unless it has taken into consideration—

- (a) whether any environmental issues are involved in, or raised by, the proposed development, and
- (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 Development of land at Henderson Farm, Lennox Head**

- (1) This clause applies to the following land at Henderson Farm, Lennox Head, as shown edged heavy black and labelled “2 (a)”, “6 (a)”, “7 (a)” or “7 (l)” on the map marked “*Ballina Local Environmental Plan 1987 (Amendment No 103)*” deposited in the office of Ballina Shire Council—
  - (a) Lots 1 and 2, DP 1070446,

- (b) part of Lot 99, DP 755684,
  - (c) part of Lot 8, DP 772192,
  - (d) part of Lot 1, DP 829277,
  - (e) part of a Crown road reserve.
- (2) Despite any other provision of this Plan, development consent may be granted for development on land to which this clause applies for the purpose of stormwater management systems.
- (3) In this clause, **stormwater management system** has the same meaning as in [State Environmental Planning Policy \(Infrastructure\) 2007](#).

### **33A Development of land adjacent to North Creek Road, Lennox Head**

- (1) This clause applies to the land zoned Zone 7 (a) Environmental Protection (Wetlands) Zone or Zone 1 (b) Rural (Secondary Agricultural Land) Zone as shown by distinctive colouring, edging and lettering on the map marked “*Ballina Local Environmental Plan 1987 (Amendment No 59)*” deposited in the office of the council.
- (2) Despite any other provision of this plan, the council may consent to the subdivision of the land to which this clause applies into—
- (a) not more than 2 allotments with dwelling entitlements provided that the council is satisfied that any dwellings to be constructed on such land are to be located within land zoned Zone 1 (b) Rural (Secondary Agricultural Land) Zone, and
  - (b) any number of allotments for uses such as environmental protection works, infrastructure and the like.

### **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) (Repealed)
- (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.

#### **34B Development of land at Lindendale Road, Wollongbar**

- (1) This clause applies to part of Lot 237, DP 755745, Lindendale Road, Wollongbar, as shown by the heavy black edging on the map marked "*Ballina Local Environmental Plan 1987 (Amendment No 116)*" deposited in the office of the council.
- (2) Despite any other provision of this plan, development consent may be granted for development the land for the purposes of a veterinary hospital.
- (3) In this clause—

***veterinary hospital*** means a building or place used for diagnosing or surgically or medically treating animals, whether or not animals are kept on the premises for the purposes of treatment.

#### **35 What are exempt and complying development?**

- (1) Development of minimal environmental impact listed as exempt development in Part 1 of *Ballina Shire Development Control Plan—Exempt and Complying Development* is ***exempt development***, despite any other provision of this plan.
- (2) Development listed as complying development in Part 2 of *Ballina Shire Development Control Plan—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 *Ballina Shire Development Control Plan—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 *Ballina Shire Development Control Plan—Exempt and Complying Development* adopted by the Council, as in force when the certificate is issued.

- (5) In subclauses (1)–(3), **Ballina Shire Development Control Plan—Exempt and Complying Development** means the document titled *Ballina Shire Development Control Plan—Exempt and Complying Development* adopted by the Council on 26 October 2006 and amended on 26 August 2010.

**36 Development on land identified on Acid Sulfate Soils Planning Maps**

- (1) **Consent usually required** A person must not, without the consent of the council, carry out works on land identified as being class 1, 2, 3, 4 or 5 land on the Acid Sulfate Soils Planning Maps, being the works specified for the class of land in the following table—

Class of land	Specified works
1	Any works.
2	Works below the ground surface. Works by which the watertable is likely to be lowered.
3	Works beyond 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered beyond 1 metre below the natural ground surface.
4	Works beyond 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered beyond 2 metres below the natural ground surface.
5	Works within 500 metres of class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD in adjacent class 1, 2, 3 or 4 land.

- (2) For the purposes of the table to subclause (1), **works** includes the following—
- (a) any disturbance of more than one tonne of soil (such as occurs in the carrying out of agriculture, the construction or maintenance of drains, extractive industries, dredging, the construction of artificial waterbodies (including canals, dams and detention basins) or foundations, or flood mitigation works),
  - (b) any other works that are likely to lower the watertable, such as drainage works, ground water bores, wells, ground dewatering, or the like, which may lower the groundwater level in the general area.
- (3) **Exception following preliminary assessment** This clause does not require consent for the carrying out of works described in the table to subclause (1) if the land is above 10m Australian Height Datum (AHD) or if—
- (a) a copy of a preliminary assessment of the proposed works undertaken in

accordance with the *Acid Sulfate Soil Manual* has been given to the council, and

- (b) the council has provided written advice to the person proposing to carry out the works confirming that results of the preliminary assessment indicate the proposed works need not be carried out pursuant to an acid sulfate soils management plan prepared in accordance with the *Acid Sulfate Soil Manual*.

(4) **Considerations for consent authority** The council must not grant a consent required by this clause unless it has considered—

- (a) the adequacy of an acid sulfate soils management plan prepared for the proposed development in accordance with the *Acid Sulfate Soil Manual*, and
- (b) the likelihood of the proposed development resulting in the discharge of acid water, and
- (c) any comments received from the Department of Land and Water Conservation within 21 days of the council having sent that Department a copy of the development application and of the related acid sulfate soils management plan.

(5) **Public authorities and private drainage boards not excepted** This clause requires consent for development to be carried out by councils, county councils or drainage unions despite—

- (a) clause 35 and items 2 and 11 of Schedule 1 to the *Environmental Planning and Assessment Model Provisions 1980*, as adopted by this plan, and
- (b) clause 10 of *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development*.

(6) **Special provisions for council and county councils** Despite subclause (5), the following types of development may be carried out by the council or a county council without consent of the council—

- (a) development consisting of emergency work,
- (b) development consisting of routine maintenance,
- (c) development consisting of minor work,

including development ancillary to that development, such as the carrying out of excavation work, the construction of accessways and the provision of power supplies.

(7) If the council or a county council carries out development described in subclause (6) and encounters, or is reasonably likely to encounter, acid sulfate soils, the council or county council is to properly deal with those soils in accordance with the *Acid Sulfate Soil Manual* so as to minimise the actual or potential impact to the environment arising from the disturbance of the soils.

- (8) **Exception for sugar cane land** In the case of land used for the cultivation of sugar cane, this clause does not require consent for the carrying out of works if—
- (a) an existing production area entitlement with the NSW Sugar Milling Cooperative Ltd applies to the land at the time of carrying out the works, and
  - (b) the works are carried out in accordance with a drainage management plan lodged with and endorsed by the NSW Sugar Milling Cooperative Ltd, and
  - (c) the drainage management plan has been prepared in accordance with the *NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils* (dated May 2000), or any subsequent revised version, a copy of which is available at the office of the council, and
  - (d) the *NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils* (dated May 2000), or any subsequent revised version, has been approved by the Director-General of the Department of Urban and Transport Planning in consultation with the NSW Acid Sulfate Soil Management Advisory Committee and the Department of Agriculture and has been adopted by the council, and
  - (e) the works are not carried out on any land zoned 7 (a)—Environmental Protection (Wetlands) Zone, 7 (f)—Environmental Protection (Coastal Lands) Zone or 7 (l)—Environmental Protection (Habitat) Zone, unless it can be demonstrated that the land was used for cultivation before the appointed day, and
  - (f) the council has not issued any notice to the person carrying out or using the works requiring that the works or use cease or that development consent be obtained prior to the carrying out or further use of the works.
- (9) An annual review of drainage management plans and works to which subclause (8) relates is to be carried out by NSW Sugar Milling Cooperative Ltd to a standard satisfactory to the council and the Cooperative is to provide the council with a copy of the results of the review immediately after it has been carried out. The council may issue a notice under subclause (8) (f) relating to any one or more of those works if either of those requirements is not complied with.
- (10) For the purposes of this clause, a reference to works of the council or county council is a reference to works that are owned or controlled by the council or a county council.
- (11) In this clause—

**county council** has the meaning given by the [Local Government Act 1993](#).

**drain** means a depression, ditch or channel deeper than 300mm that is not naturally occurring and is used to convey water from one area to another.

**emergency work** means the repair or replacement of any part of the works of the

council or county council because—

- (a) it has been (or is being) damaged by a natural disaster, an accident, an act of vandalism or a like occurrence, and
- (b) it has ceased to function adequately,

and includes work reasonably necessary to prevent or limit any further damage or malfunction.

***flood mitigation works*** means structural measures intended to reduce flood damage by either reducing flood levels or the lateral extent of flooding and includes any of the following—

- (a) levees,
- (b) flood mitigation drains,
- (c) retarding or detention basins,
- (d) by-pass floodways,
- (e) flood gates on drains,
- (f) channel improvement.

***minor work*** means new work carried out by the council or a county council, not being drainage work, which has a value of less than \$20,000.

***routine maintenance*** means the periodic inspection, cleaning, repair and replacement of the works of the council or a county council, but does not include work that would result in an increase in the design capacity of any part of those works or result in an increase in the capacity of existing works.

### **37 Controls for advertisements**

(1) **Objectives** This clause aims to ensure that advertisements—

- (a) convey the advertiser's messages and images while complementing and conforming to both the building on which they are displayed and the character of the surrounding locality, and
- (b) do not adversely affect the area in which they are located in terms of appearance, size, illumination, overshadowing or in any other way, and
- (c) do not lead to visual clutter through the proliferation of signs, and
- (d) are compatible with the desired amenity and visual character of an area, and
- (e) provide effective communication in suitable locations, and

(f) are of high quality design and finish.

(2) **Directional signs** Despite any other provision of this plan, the erection or display of a directional sign by the Council or another public authority does not require development consent.

(3) **Matters for assessment relating to advertisements** When determining a development application for consent to carry out development for the purposes of an advertisement, the Council must take into consideration the following—

(a) the size and number of advertisements both proposed and existing,

(b) the relationship of the advertisement to the scale, character and architecture of the premises where the sign is to be sited,

(c) the impact of the advertisement on the streetscape and heritage value (if any) of the area,

(d) the colour, graphics and standard of presentation of the advertisement,

(e) the impact of the advertisement on traffic safety in the area, and on residential amenity, where relevant.

(f) (Repealed)

### 38 Classification and reclassification of public land

(1) The objective of this clause is to enable the council, by means of this plan, to classify or reclassify public land as “operational land” or “community land” in accordance with Part 2 of Chapter 6 of the [Local Government Act 1993](#).

**Note—**

Under the [Local Government Act 1993](#), “public land” is generally land vested in or under the control of a council (other than roads, Crown reserves and commons). The classification or reclassification of public land may also be made by a resolution of the council under section 31, 32 or 33 of the [Local Government Act 1993](#). Section 30 of that Act enables this plan to discharge trusts on which public reserves are held if the land is reclassified under this plan as operational land.

(2) The public land described in Part 1 or Part 2 of Schedule 7 is classified, or reclassified, as operational land for the purposes of the [Local Government Act 1993](#).

(3) The public land described in Part 3 of Schedule 7 is classified, or reclassified, as community land for the purposes of the [Local Government Act 1993](#).

(4) The public land described in Part 1 of Schedule 7—

(a) does not cease to be a public reserve to the extent (if any) that it is a public reserve, and

(b) continues to be affected by any trusts, estates, interests, dedications, conditions,

restrictions or covenants that affected the land before its classification, or reclassification, as operational land.

- (5) The public land described in Part 2 of Schedule 7, to the extent (if any) that it is a public reserve, ceases to be a public reserve on the commencement of the relevant classification plan and, by the operation of that plan, is discharged from all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except—
  - (a) those (if any) specified for the land in Column 3 of Part 2 of Schedule 7, and
  - (b) any reservations that except land out of the Crown grant relating to the land, and
  - (c) reservations of minerals (within the meaning of the [Crown Land Management Act 2016](#)).
- (6) In this clause, the **relevant classification plan**, in relation to land described in Part 2 of Schedule 7, means this plan or, if the description of the land is inserted into that Part by another environmental planning instrument, that instrument.
- (7) Before the relevant classification plan inserted a description of land into Part 2 of Schedule 7, the Governor approved of subclause (5) applying to the land.

### **39 Exceptions to development standards**

- (1) The objectives of this clause are as follows—
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening

the development standard.

- (4) Development consent must not be granted for development that contravenes a development standard unless—
  - (a) the consent authority is satisfied that—
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone No 1 (a1) Rural (Plateau Lands Agriculture) Zone, Zone No 1 (a2) Rural (Coastal Lands Agriculture) Zone, Zone No 1 (b) Rural (Secondary Agricultural Land) Zone, Zone No 1 (d) Rural (Urban Investigation) Zone, Zone No 1 (e) Rural (Extractive and Mineral Resources) Zone, Zone No 7 (a) Environmental Protection (Wetlands) Zone, Zone No 7 (c) Environmental Protection (Water Catchment) Zone, Zone No 7 (d) Environmental Protection (Scenic/Escarpment) Zone, Zone No 7 (d1) Environmental Protection (Newrybar Scenic/Escarpment) Zone, Zone No 7 (f) Environmental Protection (Coastal Lands) Zone, Zone No 7 (i) Environmental Protection (Urban Buffer) Zone or Zone No 7 (l) Environmental Protection (Habitat) Zone if—
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).



- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated.

#### **40 Demolition requires development consent**

The demolition of a building or work may be carried out only with development consent.

**Note—**

If the demolition of a building or work is identified in an applicable environmental planning instrument, such as this plan or [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#), as exempt development, the Act enables it to be carried out without development consent.

#### **41 Temporary use of land**

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

- (5) Subclause (3)(d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).

#### **42 Conversion of fire alarms**

- (1) This clause applies to a fire alarm system that can be monitored by Fire and Rescue NSW or by a private service provider.
- (2) The following development may be carried out, but only with development consent—
- (a) converting a fire alarm system from connection with the alarm monitoring system of Fire and Rescue NSW to connection with the alarm monitoring system of a private service provider,
  - (b) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider,
  - (c) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.
- (3) Development to which subclause (2) applies is complying development if it consists only of—
- (a) internal alterations to a building, or
  - (b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm × 100mm × 100mm.
- (4) A complying development certificate for any such complying development is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.
- (5) In this clause—
- private service provider*** means a person or body that has entered into an agreement that is in force with Fire and Rescue NSW to monitor fire alarm systems.

#### **43 Standards that cannot be used to refuse consent—playing and performing music**

- (1) The consent authority must not refuse consent to development in relation to licensed premises on the following grounds—
- (a) the playing or performance of music, including the following—
    - (i) the genre of music played or performed, or

- (ii) whether the music played or performed is live or amplified, or
  - (iii) whether the music played or performed is original music, or
  - (iv) the number of musicians or live entertainment acts playing or performing, or
  - (v) the type of instruments played,
- (b) whether dancing occurs,
- (c) the presence or use of a dance floor or another area ordinarily used for dancing,
- (d) the direction in which a stage for players or performers faces,
- (e) the decoration to be used, including, for example, mirror balls, or lighting used by players or performers.
- (2) The consent authority must not refuse consent to development in relation to licensed premises on the grounds of noise caused by the playing or performance of music, if the consent authority is satisfied the noise may be managed and minimised to an acceptable level.
- (3) In this clause—

***licensed premises*** has the same meaning as in the [\*Liquor Act 2007\*](#).

## 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.

33 Dry stone wall, adjacent to Lots 1, 2 and part Lot 3, DP 253428, North Creek Road, Lennox Head.

34 Catholic Precinct: Church, Convent/Mercy Centre, Presbytery, St Patrick's School, Grotto and Posts (at entry to Sugartowns Pre-school) (but not including a shed on Lot 13, DP 217966), 50 Richmond Street (Lot 8, DP 759050), 54 Richmond Street (Lot 10, DP 217966) and 9 Sinclair Street (Lot 14, DP 217966), Wardell.

35 Fig tree (on traffic island opposite Royal Hotel), Sinclair Street, Wardell.

36 Fig trees, Richmond Street, Wardell.

37 Henderson family graves (gravesites and headstones), 126 Justelius Road (Lot 4, DP 253873), Meerschaum Vale.

38 Meerschaum Vale Public Hall (including honour roll), 1 Marom Creek Road (Lot 1, DP 576619), Meerschaum Vale.

39 Old Wardell Ferry approaches in park, Lot 80, DP 728670, Wardell.

40 Pimlico Hall (including honour roll), 580 Pimlico Road (Lot 3, DP 622957), Pimlico.

41 Post Office, 664 River Drive (Lot 3, DP 616658), Empire Vale.

- 42 Former Post Office (now residence), 929 Wardell Road (Lot 2, DP 544311), Meerschaum Vale.
- 43 Post Office, 26 Bridge Drive (Lot 3, DP 622957), Wardell.
- 44 Tramlines across River Drive, Empire Vale.
- 45 Wardell and District War Memorial Hall (including honour roll), 49 Richmond Street (Lot 1, DP 312334), Wardell.
- 46 Wardell Cemetery (including gravesites, headstones and traditional plantings), Lot 83, DP 728685, Pine Street, Wardell.
- 47 Cabbage Tree Island.
- 48 Dwelling-house known as *Laurel Hill* on proposed Lot 1 in a plan of subdivision of Lot 1, DP 305806, Smiths Lane, Wollongbar.
- 49 Ruins of Pig Sty (built in early 1930s), Henderson Farm (Lot 1, DP 1070446), Lennox Head.
- 50 Fig Tree (planted by Tim Henderson in 1947), Henderson Farm (Lot 1, DP 1070446), Lennox Head.
- 51 Norfolk Island Pines, Henderson Farm (Lot 1, DP 1070446), Lennox Head.
- 52 Dry Stone Wall, Henderson Farm (Lots 1 and 2, DP 1070446), Lennox Head.
- 53 Dry Stone Wall, Henderson Farm (Lot 2, DP 1070446), Lennox Head.
- 54 Dry Stone Wall, Henderson Farm (Lot 1, DP 1070446), Lennox Head.
- 55 Location of Barn, Henderson Farm (Lot 1, DP 1070446), Lennox Head.
- 56 Bunya Pines, Henderson Farm (Lot 2, DP 1070446), Lennox Head.
- 57 Circle of Stones, Henderson Farm (Lot 2, DP 1070446), Lennox Head.
- 58 Half Circle of Stones, Henderson Farm (Lot 2, DP 1070446), Lennox Head.
- 59 Well, Henderson Farm (Lot 2, DP 1070446), Lennox Head.
- 60 Location of Original House, Henderson Farm (Lot 2, DP 1070446), Lennox Head.
- 61 Location of Orchard, Henderson Farm (Lot 2, DP 1070446), Lennox Head.
- 62 Location of Shed, Henderson Farm (Lot 2, DP 1070446), Lennox Head.
- 63 Location of Well, Henderson Farm (Lot 2, DP 1070446), Lennox Head.
- 64 Location of Ruts, Henderson Farm (Lot 2, DP 1070446), Lennox Head.
- 65 Wharf, North Creek, South of Henderson Farm, Lennox Head.

## 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

(Clause 27)

Lots 4–6, DP 419544, Lots 6–9, DP 608693 and Lots 4, 5 and 8, DP 239023, being adjacent to Bentinck Street, Kerr Street or Burnet Street, Ballina.

## Schedule 5 (Repealed)

## 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 Classification and reclassification of public land

(Clause 38)

Part 1 Land classified, or reclassified, as operational land—no interests changed

Column 1	Column 2
Locality	Description
Alstonville	
Commercial Road	Lot 116, DP 1111892, as shown edged heavy black on Sheet 4 of the map marked “Ballina Local Environmental Plan 1987 (Amendment No 114)”.
Ballina	
North Creek Road	Part of Lot 11, DP 260847, as shown edged heavy black on Sheet 1 of the map marked “Ballina Local Environmental Plan 1987 (Amendment No 114)”.
Richmond River (land adjoining)	Lot 1, DP 858199, as shown edged heavy black on Sheet 3 of the map marked “Ballina Local Environmental Plan 1987 (Amendment No 114)”.
East Ballina	
Compton Drive	Lot 1, DP 781542
Lennox Head	
Alexander Circuit	Lot 34, DP 1121058, as shown edged heavy black on Sheet 2 of the map marked “Ballina Local Environmental Plan 1987 (Amendment No 114)”.
Wardell	
Old Bagotville Road	Part of Lot 5, DP 843369, as shown edged heavy black on the map marked “Ballina Local Environmental Plan 2012 (Amendment No 17)”.

Part 2 Land classified, or reclassified, as operational land—interests changed

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc not discharged



**Alstonville**

Deegan Drive	Part of Lot 158, DP 243997, as shown edged heavy black on the map marked " <i>Ballina Local Environmental Plan 1987 (Amendment No 109)</i> "	Nil.
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**Ballina**

North Creek Road	Lot 4, DP 260847, as shown edged heavy black on the map marked " <i>Ballina Local Environmental Plan 1987 (Amendment No 109)</i> "	Nil.
Racecourse Road	Lot 72, DP 737313, as shown edged heavy black on the map marked " <i>Ballina Local Environmental Plan 1987 (Amendment No 104)</i> "	Nil.

**Lennox Head**

Sapphire Court	Lot 13, DP 1041589, as shown edged heavy black on the map marked " <i>Ballina Local Environmental Plan 1987 (Amendment No 104)</i> "	Right of carriageway (AC1793) as noted on Certificate of Title Folio Identifier 13/1041589.
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**Part 3 Land classified, or reclassified, as community land**

Column 1	Column 2
Locality	Description