



**BELLINGEN SHIRE COUNCIL
PLANNING PROPOSAL 13
(Version 1 – October 2017)**

BLUEBERRY REGULATION

THE PLANNING PROPOSAL

Pursuant to Section 55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), a planning proposal must be prepared before a draft Local Environmental Plan (LEP) amendment is made. The proposal must explain the intended effect of the draft LEP amendment and provide justification for the amendment. The proposal must address those matters identified by Section 55(2) of the EP&A Act, which is considered below. Council must then determine whether or not to proceed with the proposal.

History

Council resolved to proceed with the proposal at its meeting of 27 September 2017. The relevant resolution is reprinted below and the report to Council is included as Attachment 2.

ITEM: 13.1
SUBJECT: OPTIONS FOR THE POTENTIAL REGULATION OF BLUEBERRY GROWING IN BELLINGEN SHIRE
FILE/INDEX: RURAL LANDS PLANNING POLICY REVIEW
PRESENTED BY: DANIEL BENNETT, ACTING MANAGER LAND USE SERVICES

MOVED (Cr King/Cr Wright-Turner)

That Council:

1. Resolves to prepare a planning proposal specifying that development consent is required for the establishment of blueberry farms in Zones RU1, RU2, RU4 and E4, unless the farm complies with the following criteria, in which case it will be considered as a form of “exempt development”.

Blueberry farming is exempt development if it complies with following criteria.

- Blueberry plants & associated infrastructure (such as poles and netting) are located a minimum of 200m from any dwelling (not including a dwelling on the same property) and a minimum of 50m from any property boundary not held in the same ownership.
- Blueberry plants & associated infrastructure (such as poles and netting) are located the following minimum distances away from watercourses, based upon the Strahler method of stream ordering.

Stream Order	Minimum distance either side of watercourse
1st order	10 metres
2nd order	20 metres
3rd order	30m
4th order and greater	40m

- Where it is necessary to apply the setback distances specified in subclause b), and those setbacks are vegetated, the setback distances must be retained in their vegetated state, with the exception of the removal of any non-native species.
 - Blueberry plants & associated infrastructure such as poles and netting are not located within any area mapped as “core koala habitat” in any adopted Koala Plan of Management.
 - Any netting proposed for the protection of the crop must be black.
2. Resolves to forward the Planning Proposal to the Department of Planning & Environment in accordance with Section 56(1) of the Environmental Planning and Assessment Act 1979 and request the issuing of a Gateway Determination to allow for the exhibition of the proposed amendment.
 3. Resolves to advise the NSW Minister for Planning & Environment that it considers the proposed amendment to be of minor significance and that it intends to use its delegations to permit the General Manager to make the Local Environmental Plan.

4. Endorses the Engagement Strategy that has been proposed in this report for the public exhibition of the Planning Proposal.

For: Cr King, Cr Fenton and Cr Wright-Turner.
Against: Cr Carter, Cr Harrison and Cr Jenkins.

CARRIED

Mayor King utilised his casting vote to vote for the motion meaning the motion was carried.

Objectives

The objectives of the proposed LEP amendment are as follows:

1. To address concerns regarding the environmental impact of blueberry farming in Bellingen Shire by requiring development consent for new blueberry farms in certain rural areas of the Shire, unless those farms are located to minimise their impact on the environment and surrounding properties.
2. To protect the contribution that is made to the local economy by agricultural activities, by ensuring that any regulatory option is quarantined to blueberry growing only, and does not impact upon other forms of horticulture or agriculture.

Proposed provisions

The provisions of the proposed LEP amendment will include:

The objectives of the proposed LEP Amendment are proposed to be met by implementing the following amendments to Bellingen Local Environmental Plan 2010 (BLEP 2010).

“Horticulture” will be made permissible with development consent in Zones RU1, RU2, RU4 and E4, however an additional category of “exempt development” will also be inserted into Schedule 2 of BLEP 2010.

This will make “horticulture” an exempt form of development in all instances, except for a blueberry farm that does not comply with the following exemption criteria.

Proposed exempt development criteria

Blueberry farming is exempt development if it complies with following criteria.

- a) *Blueberry plants & associated infrastructure (such as poles and netting) are located a minimum of 200m from any dwelling (not including a dwelling on the same property) and a minimum of 50m from any property boundary not held in the same ownership.*
- b) *Blueberry plants & associated infrastructure (such as poles and netting) are located the following minimum distances away from watercourses, based upon the Strahler method of stream ordering.*

<i>Stream Order</i>	<i>Minimum distance either side of watercourse</i>
<i>1st order</i>	<i>10 metres</i>
<i>2nd order</i>	<i>20 metres</i>
<i>3rd order</i>	<i>30m</i>
<i>4th order and greater</i>	<i>40m</i>

- c) Where it is necessary to apply the setback distances specified in subclause b), and those setbacks are vegetated, the setback distances must be retained in their vegetated state, with the exception of the removal of any non-native species.*
- d) Blueberry plants & associated infrastructure such as poles and netting are not located within any area mapped as “core koala habitat” in any adopted Koala Plan of Management.*
- e) Any netting proposed for the protection of the crop must be black.*

An Information Checklist, Project Timeline & Delegation Request Checklist are included as Attachments 1 ,3 & 4 in accordance with the requirements of 'A Guide to preparing planning proposals'.

SPECIFIC JUSTIFICATION FOR PLANNING PROPOSAL

A. Need for Planning proposal

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

The planning proposal has had regard to the findings of community consultation that was recently undertaken by Council regarding potential blueberry regulation in Bellingen Shire. The outcomes of this consultation are fully documented in the Council Report included as Attachment 2 to this proposal.

In summary, 65% of respondents to a survey undertaken as part of the Rural Lands Planning Policy Review supported an increased level of regulation of blueberries, however only 46% of respondents supported this if it meant that other forms of horticulture (e.g.: garlic growing, potatoes etc..) would then be captured as part of a consent mechanism.

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

It is acknowledged that the blueberry industry is making moves towards developing a revised code of practice to avoid adverse impacts on surrounding land uses, however there is no timeframe provided for finalisation at this stage, and no indication that this will compel any farmer to observe the provisions of that Code.

The planning proposal addresses a pervasive concern that reliance upon a voluntary Code of Practice does not provide an adequate level of protection to environmental assets or surrounding properties, and that State Government agencies are not adequately resourced to undertake environmental compliance.

For example, the recent release of the "Investigation into water compliance and enforcement 2007-17" by the NSW Ombudsman confirms the chronic under-resourcing of the compliance and enforcement roles regarding water extraction in NSW.

The proposed regulatory approach is considered to be the optimal means to provide some basic guidelines for the establishment of new blueberry farms, without the need to go through a development consent process.

B. Relationship to strategic planning framework

Prior to addressing the specific headings in “A Guide to preparing Planning Proposal” it is important to emphasise that the planning proposal is consistent with the highest level expression of strategic planning intent in NSW.

Specifically, blueberry growing is defined as “horticulture” under the Standard Instrument Principal Local Environmental Plan (SIPLEP). Horticulture is also defined as a type of “Intensive Plant Agriculture”.

Both definitions are reprinted below.

horticulture means the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include a plant nursery, turf farming or viticulture.

Note.

Horticulture is a type of intensive plant agriculture—see the definition of that term in this Dictionary.

intensive plant agriculture means any of the following:

- (a) the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),
- (b) horticulture,
- (c) turf farming,
- (d) viticulture.

Note.

Intensive plant agriculture is a type of agriculture—see the definition of that term in this Dictionary.

The SIPLEP is in effect, the highest level expression of State Government policy regarding what uses must be allowed in various zones and the way in which they should be permitted (e.g.: with development consent or without development consent).

Horticulture is currently permissible without development consent in Zones RU1 – Primary Production, RU2 – Rural Landscape, RU4 – Primary Production Small Lots, & E4 – Environmental Living in Bellingen Local Environmental Plan 2010 (BLEP 2010).

Should Council wish, to make horticulture permissible with development consent in these zones, there is no obstacle presented by the SIPLEP because it only requires that “intensive plant agriculture” is included as either “Permitted without consent” or “Permitted with consent” in Zones RU1 & RU4. It also allows Council to determine a local policy position in Zones RU2 and E4.

Is the proposal consistent with the objectives and actions contained within the North Coast Regional Plan?

A summary table documenting the proposals compliance with the NCRP is provided below, with detailed commentary on relevant matters provided at the end of the Table.

North Coast Regional Plan – Statement of applicability to Planning Proposal 13			
Goal	Direction	Relevant (Yes/No)	Comment
Goal 1 – The most stunning environment in NSW			
	Direction 1 – Deliver environmentally sustainable growth	Yes	Complies
	Direction 2 – Enhance biodiversity, coastal and aquatic habitats, and water catchments	Yes	See comment below
	Direction 3 – Manage natural hazards and climate change	Yes	See comment below
	Direction 4 – Promote renewable energy opportunities	No	
Goal 2 – A thriving, interconnected economy			
	Direction 5 – Strengthen communities of interest and cross regional relationships	No	
	Direction 6 – Develop successful centres of employment	No	
	Direction 7 – Coordinate the growth of regional cities	No	
	Direction 8 – Promote the growth of tourism	No	
	Direction 9 – Strengthen regionally significant transport corridors	No	
	Direction 10 – Facilitate air, rail and public transport infrastructure	No	
	Direction 11 – Protect and enhance productive agricultural lands	Yes	See comment below
	Direction 12 – Grow agribusiness across the region	Yes	See comment below
	Direction 13 – Sustainably manage natural resources	Yes	See comment below
Goal 3 – Vibrant and engaged			
	Direction 14 – Provide	No	

North Coast Regional Plan – Statement of applicability to Planning Proposal 13			
Goal	Direction	Relevant (Yes/No)	Comment
communities	great places to live and work		
	Direction 15 – Develop healthy, safe, socially engaged and well connected communities	No	
	Direction 16 – Collaborate and partner with Aboriginal communities	Yes	See comment below
	Direction 17 – Increase the economic self-determination of Aboriginal communities	No	
	Direction 18 – Respect and protect the North Coast's Aboriginal heritage	Yes	See comment below
	Direction 19 – Protect historic heritage	No	
	Direction 20 – Maintain the regions distinctive built character	No	
	Direction 21 – Coordinate local infrastructure delivery	No	
Goal 4 – Great housing choices and lifestyle options		No	
	Direction 22 – Deliver greater housing supply		
	Direction 23 – Increase housing diversity and choice		
	Direction 24 – Deliver well planned rural residential housing areas		
	Direction 25 – Deliver more opportunities for affordable housing		

Direction 2 – Enhance biodiversity, coastal and aquatic habitats, and water catchments

Action 2.1 of this direction requires Council to focus development to areas of least biodiversity significance within the region, and Action 2.2 aims to ensure that local plans manage water catchment areas to avoid potential development impacts.

It is submitted that the proposed exemption criteria will assist with implementing these actions through directing new farms away from Core Koala Habitat and from riparian zones, unless a careful consideration of impact is made via a Development Assessment process.

Direction 3 – Manage natural hazards and climate change

The Integrated Regional Vulnerability Assessment, undertaken by the Office of Environment & Heritage for the North Coast, has identified a range of climate change vulnerabilities in the region, and potential actions in response.

For example, Appendix C of this document discusses the expected physical responses to climate change and projects that it is very likely that there will be a “substantial increase in runoff depths, and the magnitude of high flows”, in summer.

When documenting regionally specific impacts, it is also stated that “higher rainfall is likely to increase sheet and rill erosion, leading to increased sedimentation of coastal floodplains.”

The planning proposal responsibly aims to direct blueberry farms away from riparian zones to avoid exacerbating the projected impacts of climate change on these areas.

Direction 11 – Protect and enhance productive agricultural lands

Direction 11 notes that agricultural activities such as horticulture are growing rapidly on smaller holdings across the North Coast and that local planning controls can help support these industries by identifying potentially suitable locations for small lot primary production.

The planning proposal is consistent with this direction in that it identifies those locations, on any property, where a blueberry farm can operate without the need for obtaining any further approval from Council.

By observing the nominated buffer zones, it is expected that the likelihood of conflict with neighbours, or inadvertent breaches of legislation will be minimised, thereby leaving farmers with more time to work on core farming activities and growing their businesses.

Direction 12 – Grow agribusiness across the region

This direction is not considered directly relevant to this planning proposal as it is more focused upon facilitating agricultural support industries.

Direction 13 – Sustainably manage natural resources

This direction is not considered directly relevant to this planning proposal, as it is more focused upon the use of natural, mineral and forestry resources.

Direction 16 – Collaborate and partner with aboriginal communities & Direction 18 – Respect & protect the North Coast’s Aboriginal heritage

Council acknowledges the importance of engaging with Aboriginal communities and will engage with relevant local aboriginal organisations as part of the public exhibition of the planning proposal.

The NSW Government recognise that riparian zones have high levels of landscape value when considering whether aboriginal objects are likely to be present. For example, Section 8 of the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales states as follows regarding landscapes that are likely to obtain objects.

“Aboriginal objects are often associated with particular landscape features as a result of Aboriginal people’s use of those features in their everyday lives and for traditional cultural activities. Examples of such landscape features are rock shelters, sand dunes, waterways, waterholes and wetlands. Therefore it is essential

to determine whether the site contains landscape features that indicate the likely existence of Aboriginal objects.”

The planning proposal seeks to provide a higher level of protection to landscape features such as waterways, waterholes and wetlands. In this respect, it is submitted that the planning proposal will help to respect and protect the North Coast's Aboriginal Heritage.

Is the proposal consistent with Council's strategic plans?

Growth Management Strategy:

Councils existing Growth Management Strategy was adopted in 2007. Its principle focus was on the investigation of potential residential and rural residential land release areas, however it did include a Chapter 9 that was entitled Rural Land Strategy. A copy of Chapter 9 is included as Attachment 5 to this report.

A review of Chapter 9, which was drafted prior to the introduction of the NSW Standard Instrument Local Environmental Plan, confirms that it did not make any explicit provisions regarding what types of agricultural uses should be permitted with, or without consent in the various rural zones in the Shire

Accordingly, the provisions that are proposed in Planning Proposal 13 are not contradictory to Councils existing Growth Management Strategy.

Is the proposal consistent with applicable state environmental planning policies?

A summary table documenting the proposals compliance with relevant SEPPs is provided below, with detailed commentary on relevant matters provided at the end of the Table.

State Environmental Planning Policies – Statement of applicability to Planning Proposal 13		
SEPP	Relevant (Yes/No)	Comment
1 – Development Standards	No	
14 – Coastal Wetlands	No	
21 - Caravan Parks	No	
26 – Littoral Rainforests	No	
30 – Intensive Agriculture	No	Relates to feedlots & piggeries only
33 – Hazardous & Offensive Development	No	
36 – Manufactured Home Estates	No	
44 – Koala Habitat Protection	Yes	See comment
50 – Canal Estate Development	No	
55 – Remediation of Land	No	
64 – Advertising & Signage	No	
65 – Design Quality of Residential Apartment Development	No	
70 – Affordable Housing (Revised Schemes)	No	
Affordable Rental Housing (2009)	No	
Building Sustainability Index: BASIX (2004)	No	
Educational Establishments & Child	No	

State Environmental Planning Policies – Statement of applicability to Planning Proposal 13		
SEPP	Relevant (Yes/No)	Comment
Care Facilities (2017)		
Exempt & Complying Development Codes (2008)	Yes	See comment
Housing for Seniors or People with a Disability (2004)	No	
Infrastructure (2007)	No	
Integration & Repeals (2016)	No	
Mining, Petroleum Production & Extractive Industries (2007)	No	
Miscellaneous Consent Provisions (2007)	No	
Rural Lands (2008)	Yes	See comment
State & Regional Development (2011)	No	
State Significant Precincts (2005)	No	
Vegetation in Non-Rural Areas (2017)	No	

SEPP 44 – Koala Habitat Protection

The planning proposal proposes to direct blueberry farms away from land that has been mapped as core koala habitat under Councils Comprehensive Koala Plan of Management for the Bellingen Coastal Area.

This is consistent with the central aim of the SEPP, which is to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas.

SEPP Exempt & Complying Development Codes (2008)

The proposed exemption for “horticulture” is not provided for elsewhere within this SEPP.

SEPP Rural Lands (2008)

Section 7 of this SEPP specifies a series of rural planning principles that must be observed in the exercise of plan making functions. These principles are discussed below, in the context of Planning Proposal 13.

The Rural Planning Principles are as follows:

(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,

Comment:

The planning proposal does not prohibit any form of agriculture. In most instances, no additional consent will be required to undertake agricultural activities in Bellingen Shire.

The NSW Governments central planning framework is the Standard Instrument Local Environmental Plan. This allows Councils to choose whether or not they require development consent for horticulture in the zones affected by this proposal.

The approach that Council has elected to pursue protects all types of horticulture from the need to obtain development consent, with the exception of blueberry farms that choose to locate in areas where there is a greater likelihood of impact to either surrounding properties, or the local environment.

It is considered that this approach will allow for the continuation of environmentally sustainable agricultural activities in Bellingen Shire.

(b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,

Comment:

The objectives of this planning proposal are to address concerns regarding a recent trend for the establishment of blueberry farms and to address some of the impacts that are being associated with this trend.

A further issue that has arisen in agriculture is an apparent lack of resources to undertake environmental compliance by key NSW Government agencies. The recent release of an "Investigation into water compliance and enforcement 2007-17" by the NSW Ombudsman confirms, for example, the chronic under-resourcing of the compliance and enforcement roles regarding water extraction in NSW.

This has prompted calls from the community for Council to introduce local planning controls, capable of local enforcement by Council Officers, if necessary.

Council recognises the central role that agriculture plays in the local economy, and this is reflected in Objective 2 of the planning proposal, which aims to ensure that any regulatory option is quarantined to blueberry growing only, and does not impact upon other forms of horticulture or agriculture.

(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,

Comment:

The report that was presented to Council regarding this matter documented, and acknowledged, the role that agriculture plays in the local economy. For example, the Agriculture Forestry & Fishing Industry Sector (as a whole) added \$32 million value to the local economy in 2015/16. Of this \$32 million, \$30.5 million was attributable to agriculture alone. Furthermore, the Agriculture Forestry & Fishing Industry Sector (as a whole) currently generates the highest number of Full Time Equivalent jobs in Bellingen Shire, as of 2015/16.

(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,

Comment:

The proposed policy response respects the value of agricultural activity to the local economy and the important role that it plays in the social structure and identity of Bellingen Shire. It is not a broad brush reactive response to agriculture as a whole, but a selective refinement of existing policy.

Should a local government area consider that the economic benefits of a particular model of agriculture do not justify the potential environmental impacts of that activity, then it is reasonable to respond with a policy position that looks to address that disparity.

It is submitted that the proposed policy position effectively balances the social, economic and environmental interests of the community.

(e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,

Comment:

The planning proposal seeks to divert new blueberry farms away from environmental assets such as riparian zones, and core koala habitat. It does not seek to prohibit farms from establishing in these areas, however will require a more careful consideration of impact if it is proposed to locate within those areas. It is considered that this is a responsible and reasonable response to this planning principle.

(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,

Comment:

The planning proposal does not look to provide new opportunities for rural lifestyle, settlement and housing.

(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,

Comment:

The planning proposal does not look to provide new opportunities for rural housing.

(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

Comment:

The planning proposal is considered to be consistent with the North Coast Regional Plan. This has been addressed earlier in this planning proposal.

Is the proposal consistent with applicable Section 117 directions?

A summary table documenting the proposals compliance with relevant Section 117 Directions is provided below.

Section 117 Directions – Statement of applicability to Planning Proposal 13			
117 Category	117 Direction	Relevant (Yes/No)	Comment
Employment & Resources			
	1.1 – Business & Industrial Zones	No	
	1.2 – Rural Zones	Yes	Complies. Does not rezone existing rural land or include provisions that will increase the permissible density of land within a rural zone.
	1.3 – Mining, petroleum & Extractive Industries	No	
	1.4 – Oyster Aquaculture	No	Planning proposal would reduce potentially adverse impacts on Oyster aquaculture areas.
	1.5 – Rural Lands	Yes	<p>The planning proposal will, in accordance with Clause 3(a) of the Direction, affect land within an existing rural zone.</p> <p>Clause 4 of the Direction requires that a planning proposal to which clause 3(a) applies, must be consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008.</p> <p>It is considered that the planning proposal is consistent with the Rural Planning Principles. This has been addressed in a previous section of the planning proposal.</p>

Section 117 Directions – Statement of applicability to Planning Proposal 13			
117 Category	117 Direction	Relevant (Yes/No)	Comment
Environment & Heritage			
	2.1 – Environment Protection Zones	Yes	The planning proposal includes provisions that facilitate the protection and conservation of environmentally sensitive areas such as riparian corridors and core koala habitat.
	2.2 – Coastal Protection	Yes	Proposed provisions are consistent with relevant coastal planning guidelines.
	2.3 – Heritage Conservation	Yes	The planning proposal will positively impact upon the conservation of aboriginal cultural heritage, by virtue of the proposed setbacks to watercourses. Watercourses are recognised as landscapes that are more likely to contain evidence of aboriginal occupation.
	2.4 – Recreation Vehicle Areas	Yes	Complies
Housing, Infrastructure & Urban Development			
	3.1 – Residential Zones	No	
	3.2 – Caravan Parks & Manufactured Home Estates	No	
	3.3 – Home Occupations	No	
	3.4 – Integrating Land Use & Transport	No	
	3.5 – Development Near Licensed Aerodromes	No	
	3.6 – Shooting Ranges	No	
Hazard & Risk			
	4.1 – Acid Sulfate Soils	Yes	The planning proposal will affect land that is mapped as containing acid sulphate soils. In general terms, riparian zones in these areas are more likely to have acid

Section 117 Directions – Statement of applicability to Planning Proposal 13			
117 Category	117 Direction	Relevant (Yes/No)	Comment
			sulphate soils. The planning proposal will direct blueberry farms away from these areas.
	4.2 – Mine Subsidence & Unstable Land	No	
	4.3 – Flood Prone Land	Yes	The planning proposal will affect flood prone land. In general terms, riparian zones in these areas are more likely to be affected by flooding than other areas. The planning proposal will direct blueberry farms away from these areas.
	4.4 – Planning for Bushfire Protection	Yes	The planning proposal will affect bush fire prone land. Consultation with the Commissioner of the RFS will be required pursuant Clause 4 of this direction.
Regional Planning			
	5.1 – Implementation of Regional Strategies	No	
	5.4 – Commercial & Retail Development along the Pacific Highway, North Coast	Yes	No commercial or retail provisions are proposed. Complies.
	5.10 – Implementation of Regional Plans	Yes	Complies. Addressed elsewhere in this planning proposal.
Local Plan Making			
	6.1 – Approval & referral Requirements	Yes	Complies. No additional concurrence, consultation or referral requirements are proposed.
	6.2 – Reserving Land for Public Purposes	Yes	Complies. No land reserved for public purposes.
	6.3 – Site Specific Provisions	No	The planning proposal does not relate to a particular development proposal.

C. Environmental, social and economic impact

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

It is considered that the proposed planning proposal will have a positive impact in this regard.

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

The planning proposal is designed to reduce the environmental effects of blueberry farming in Bellingen Shire by directing farms away from areas of relatively high environmental value.

How has the planning proposal adequately addressed any social and economic effects?

It is Council's experience to date that a blueberry farm that is established without due regard to its proximity to adjoining dwellings or property, has the potential to result in a range of undesirable social impacts. This includes the potential for ongoing conflict between neighbours, when the impacts of blueberry farming extend beyond the property boundary because there are inadequate buffer zones in place.

It is acknowledged that the planning proposal may result in a reduced level of interest in establishing blueberry farms in Bellingen Shire, and that the short term economic benefits of establishing those farms in Bellingen Shire would be foregone. Council is willing to forego those benefits in the long term interest of the environmental assets of Bellingen Shire and, furthermore, sees no reason why this planning proposal should give rise to concerns regarding precedent elsewhere.

State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

The planning proposal does not impact significantly upon public infrastructure.

Views of State and Commonwealth authorities

NSW Department of Primary Industries

Council has received correspondence from the NSW Department of Primary Industries raising their concerns with the planning proposal. This was received after Council resolved to proceed with the planning proposal, and a copy is included as Attachment 6 to this planning proposal.

Having regard to the matters raised in this submission, it is Councils view that the planning proposal can proceed without impacting upon any other forms of horticulture besides blueberries. This has been demonstrated in the "Proposed Provisions" section of this report.

The suggestion that Council uses the buffer zones in '*Living and Working in Rural areas*' on a case by case basis, and to minimise land use conflict, overlooks the fact that there is no compulsion for a blueberry farmer to have any regard to this guide in establishing a farm, nor any commitment from industry to using this as a guideline.

Also, it is considered relatively unlikely that, upon a situation of land use conflict emerging, blueberry farmers will voluntarily remove plantings and infrastructure as part of a discussion facilitated by Council around the Guidelines, and what a suitable buffer should have been, after the fact. It should also be noted that Bellingen Shire Council does not have the level of resourcing necessary to facilitate bespoke negotiations regarding each particular farm, and to mediate every potential breakdown in relations between neighbours that may occur into the future.

It is for this reason that buffer zones have been nominated as the most suitable land-use planning tool for Bellingen Shire. Compliance with the buffer zones will not require the submission of a Development Application, however any intention to extend into the buffer zones can still be considered by Council, in the context of the Land Use Conflict Risk Assessment Guide that is recommended by the Department.

Other

Consultation with relevant state authorities will occur as relevant and where specified as part of the Gateway Determination.

It is expected that consultation will be required with the following agencies.

Issue	Agency
Agriculture	NSW Department of Primary Industries
Agriculture	Local Land Services
Water	NSW Office of Water
Environment	NSW Office of Environment & Heritage
Pollution	NSW Environment Protection Authority
117 Direction 4.4 Planning for Bushfire Protection	NSW Rural Fire Service
Aboriginal Cultural Heritage	NSW Office of Environment & Heritage

Proposed Community consultation

The NSW Government publication "A guide to preparing local environmental plans" categorises planning proposals into "low impact proposals" or "All other planning proposals" for the purpose of determining the level of community consultation that should be undertaken.

It is submitted that the proposed Planning Proposal meets the criteria for "All other planning proposals", for which a minimum exhibition period of 28 days is specified.

In addition to the NSW Government guidelines, the Bellingen Shire Council Community Engagement Strategy was adopted by Council at its Meeting 22 February 2012, and revised on 24 June 2015. This strategy is designed to outline the approach Bellingen Shire takes towards engaging with our community.

Having regard to the Strategy, it is considered that the planning proposal would be appropriately categorised as Level 3 – Lower impact – Shire Wide. This requires Council to "Inform, Consult & Involve the community."

Noting the specific consultation that has already taken place with the community by virtue of the Rural Lands Planning Policy Review process, it is proposed that the following additional actions be undertaken to consult with the community.

- Advertise the Planning Proposal for a period of 28 days in the Bellingen Courier Sun and the Don Dorrigo Gazette.
- Place notice of the Planning Proposal on the "Create" website for the duration of the exhibition period.
- Display the planning proposal, and relevant documentation, at the following locations for the duration of the exhibition period.
 - Bellingen Council Administrative Centre
 - Bellingen Library
 - Urunga Library
 - Dorrigo Library

It is noted though that the gateway determination will ultimately specify the community consultation that must be undertaken on the planning proposal and Council will undertake consultation in accordance with the conditions of the Gateway Determination.

Delegations to make plan

Council resolved as follows at the Ordinary Meeting of Council 28 November 2012 regarding the Delegation of Ministerial Functions to Council.

“RESOLVED (Cr Scott/Cr Manning)

- That Council advise the Minister for Planning and Infrastructure that it formally accepts the proposed delegations for plan making under the provisions of Section 59 of the EP and A Act 1979.*
- That, pursuant to Section 381(a) of the Local Government Act 1993, Council approve the delegation of plan making functions to the General Manager.*
- That Council advise the Minister for Planning and Infrastructure that the nominated Council Officer for the exercising of the proposed delegations for plan making is Liz Jeremy, General Manager.”*

Given the minor nature of this proposed amendment, Council has resolved to use its delegations for the making of the Plan and to inform the Department of its intention to use its delegation to make the Plan.

A copy of the Evaluation Criteria for delegated authority has also been included as Attachment 4, in further support of Council's adopted position on this matter.

PLANNING PROPOSAL 13

VERSION 1 ATTACHMENTS INDEX

November 2017

Attachment 1 – Information Checklist

Attachment 2 - Report to Council & Recommendation to proceed

Attachment 3 – Project Timeline

Attachment 4 – Evaluation Criteria for Delegated Authority

Attachment 5 – Rural Land Strategy

Attachment 6 – Department of Primary Industries correspondence