

FOR ACTION

COUNCIL

16/09/2010

TO: Executive Assistant (Barbara Parkins)

Subject: Nambucca LEP 2010 as made on 30 July 2010
Target Date: 29/09/2010
Notes:
Trim Reference SF241 (20228/2010)

2425/10 **RESOLVED:** (Hoban/Finlayson)

That Council deal with recommendation 1(e) first and then recommendation 2.

2426/10 **RESOLVED:** (Finlayson/Ainsworth)

- 1** That pursuant to the clause 55 of the *Environmental Planning and Assessment Act 1979*, Council prepare a Planning Proposal for each of the following items as appropriate following further discussions with the Department of Planning, and the Planning Proposal/s be submitted to the Minister for Planning for consideration under clause 56 of the Act:
- e** Land at Matthew Street, Scotts Head be amended to include a 0.4:1 Floor Space Ratio in accordance with the Urban Design Strategy prepared by Bennell and Associates.

For the Motion: Councillors Ballangarry, Flack, Smyth, Finlayson, Ainsworth, Moran, South and
Hoban Total (8)
Against the Motion: NIL

Note: Cr Ainsworth left the meeting for recommendation 2 at 7.39 pm and returned following the conclusion of recommendation 2, at 7.40 pm.

2427/10 **RESOLVED:** (Court/South)

- 2** That the owners of the following land be advised that their land was not zoned R5 Large Lot Residential with a 1ha minimum Lot size as resolved by Council and the owners be provided with a copy of the advice provided by the DoP:
- Lot 103 and 105 DP819474 Wilson Road Congarinni (Pireki); and
 - Lot 2 DP 773170 166 Bald Hill Road (Taree Lands)

For the Motion: Councillors Court, Ballangarry, Flack, Smyth, Finlayson, Moran, South and
Hoban Total (8)
Against the Motion: NIL

Note: The Director Environment and Planning left the meeting for recommendation 1a, at 7.40 pm and returned following the conclusion of this recommendation, at 7.41 pm.

2428/10 **RESOLVED:** (Ainsworth/Finlayson)

- 1** That pursuant to the clause 55 of the *Environmental Planning and Assessment Act 1979*, Council prepare a Planning Proposal for each of the following items as appropriate following further discussions with the Department of Planning, and the Planning Proposal/s be submitted to the Minister for Planning for consideration under clause 56 of the Act:
- a** The following Land be reclassified from Community land to Operational land pursuant to clause 30 of the *Local Government Act 1993*:

- Part Lot 31 DP248561 Yarrawonga St;
 - Part Lot 40 DP711098 Kingsworth Estate; and
 - Lot 163 DP822649 Eungai (Eungai Pre School)
- b That Council owned Operational Land at Coronation Park (Lot 2 DP864792) be amended in accordance with Council's previous resolutions under Nambucca LEP 1995 amendment no. 42 listed below:
- Zone Maps be amended to R1 General Residential;
 - Lot Size Maps be amended to 450sqm;
 - Height of Building Maps be amended to 8.5m; and
 - Floor Space Ratio Maps be amended to 0.55:1.
- c Lot 2 DP 1071503 Uriti Road Macksville be amended to include a height limit of 8.5m to reflect other R1 General Residential Land in the shire and previous resolutions of Council.
- d To ensure consistency with SEPP (Affordable Rental Housing) secondary dwellings be made a permissible use in the R5 Large Lot Residential Zone.
- f Clause 4.2 Rural Subdivision be amended or a new local provision be included to ensure that a subdivision resulting in a lot less than the minimum lot size may occur on rural land where it is related to a permissible land use and does not result in an additional dwelling entitlement.
- g That Council amend schedule 1 of the Nambucca Local Environmental Plan 2010 to enable Lot 11 DP 805157 Dudley Street, Macksville to be subdivided for the purpose of creating a three hectare(or similar sized) allotment for use as an educational establishment.

For the Motion: Councillors Court, Ballangarry, Flack, Smyth, Finlayson, Ainsworth, Moran,
South and Hoban Total (9)

Against the Motion: NIL

2429/10 **RESOLVED:** (Finlayson/Ainsworth)

- 3 The owners of land bounded by Wellington Drive, Lower Lee Street, Buckman Lane, and Bay Street Nambucca Heads, be advised that the maximum building height on this land is 8.5m and a copy of the DoP advice be provided to these owners. The owners should also be advised that if they wish to provide Council with a predetermined height limit based on sound design considerations, Council will consider a future planning proposal to amend the height limit.

For the Motion: Councillors Court, Ballangarry, Flack, Smyth, Finlayson, Ainsworth, Moran,
South and Hoban Total (9)

Against the Motion: NIL

Open Item in Minutes

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ACTION TAKEN BY OFFICER

ONGOING / COMPLETED

Completion date: _____

DIRECTOR ENVIRONMENT & PLANNING'S REPORT

ITEM 9.2 SF241 150910 NAMBUCCA LEP 2010 AS MADE ON 30 JULY 2010

AUTHOR/ENQUIRIES: Grant Nelson, Strategic Planner**SUMMARY:**

Nambucca Local Environmental Plan (NLEP) 2010 was gazetted on 30 July 2010. However, following exhibition of the draft NLEP, a number of amendments were made by the Department of Planning (DoP) before NLEP 2010 was made by the Minister for Planning. The purpose of this report is to identify the changes made to the draft plan exhibited by Council and recommend the preparation of planning proposals to address certain anomalies and/or amend some of the unacceptable changes in the final version of NLEP 2010.

RECOMMENDATION:

- 1 That pursuant to the clause 55 of the *Environmental Planning and Assessment Act 1979*, Council prepare a Planning Proposal for each of the following items as appropriate following further discussions with the Department of Planning, and the Planning Proposal/s be submitted to the Minister for Planning for consideration under clause 56 of the Act:**
 - a The following Land be reclassified from Community land to Operational land pursuant to clause 30 of the *Local Government Act 1993*:**
 - Part Lot 31 DP248561 Yarrawonga St;
 - Part Lot 40 DP711098 Kingsworth Estate; and
 - Lot 163 DP822649 Eungai (Eungai Pre School)
 - b That Council owned Operational Land at Coronation Park (Lot 2 DP864792) be amended in accordance with Council's previous resolutions under Nambucca LEP 1995 amendment no. 42 listed below:**
 - Zone Maps be amended to R1 General Residential;
 - Lot Size Maps be amended to 450sqm;
 - Height of Building Maps be amended to 8.5m; and
 - Floor Space Ratio Maps be amended to 0.55:1.
 - c Lot 2 DP 1071503 Uriti Road Macksville be amended to include a height limit of 8.5m to reflect other R1 General Residential Land in the shire and previous resolutions of Council.**
 - d To ensure consistency with SEPP (Affordable Rental Housing) secondary dwellings be made a permissible use in the R5 Large Lot Residential Zone.**
 - e Land at Matthew Street, Scotts Head be amended to include a 0.4:1 Floor Space Ratio in accordance with the Urban Design Strategy prepared by Bennell and Associates.**
 - f Clause 4.2 Rural Subdivision be amended or a new local provision be included to ensure that a subdivision resulting in a lot less than the minimum lot size may occur on rural land where it is related to a permissible land use and does not result in an additional dwelling entitlement.**
- 2 That the owners of the following land be advised that their land was not zoned R5 Large Lot Residential with a 1ha minimum Lot size as resolved by Council and the owners be provided with a copy of the advice provided by the DoP:**
 - Lot 103 and 105 DP819474 Wilson Road Congarinni (Pireki); and
 - Lot 2 DP 773170 166 Bald Hill Road (Taree Lands)

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- 3 The owners of land bounded by Wellington Drive, Lower Lee Street, Buckman Lane, and Bay Street Nambucca Heads, be advised that the maximum building height on this land is 8.5m and a copy of the DoP advice be provided to these owners. The owners should also be advised that if they wish to provide Council with a predetermined height limit based on sound design considerations, Council will consider a future planning proposal to amend the height limit.**

OPTIONS:

- 1 Council may resolve not to proceed with some or all of the recommendations made above.
- 2 Council may resolve to make additional planning proposals related to the other matters discussed in this report.

DISCUSSION:

Following exhibition of draft NLEP 2009 a number of amendments were made by the Department of Planning (DoP) before NLEP 2010 was made by the Minister for Planning. As such, the final version of the planning instrument (NLEP 2010) is not entirely consistent with draft NLEP 2009 as exhibited by Council.

Some of the changes made by the DoP have no material affect to the integrity of the planning instrument. However, it is considered that some other changes may be unacceptable and therefore warrant further consideration via planning proposals to address certain aspects of NLEP 2010.

Council is advised that many of the recommended amendments are administrative issues that can be incorporated into a single 'Administration' planning proposal. To ensure that these matters are not held up it is considered that some of the other proposed amendments may need to be addressed separately in individual planning proposals.

A comprehensive list of previous resolutions relating to draft NLEP 2009 and final outcome is **attached** for Council's information.

The following items are specifically presented for Council's consideration:

1 General Amendments of no material effect

The changes to the written instrument and maps contain a number of amendments that have no material effect in the application of NLEP 2010. Examples of these are:

- Nambucca LEP 2009 amended to Nambucca LEP 2010;
- Map Grid Referencing has been amended;
- Some of the Clause numbering and locations within the written document have been amended;
- Minor changes to the terminology have been made to the land use tables*; and
- Minor spelling and grammatical changes.

* As an example Self Storage Premises was removed from the table as Storage Premises was already included.

Planning Response

No action is required in relation to these types of amendments

2 Land Reclassifications

Council proposed to reclassify and rezone three (3) parcels of land in draft NLEP 2009. These were carried forward from LEP 1995 Amendment No 64.

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The three parcels of land are:

Lot 31DP248561 Yarrawonga St;
Part Lot 40 DP711098 Kingsworth Estate; and
Lot 163 DP822649 Eungai (Eungai Pre School)

The plan made by the Minister has given each of these parcels the appropriate zone but not included the reclassification of the land from community land to operational land under Schedule 4 of NLEP 2010.

The DoP provided the following advice in relation to this matter:

The three parcels of land listed in Part 1 of Schedule 4 which were to be reclassified operational have been omitted because the procedure for the public hearing was not in accordance with Section 68 of the Act in relation to the Nambucca LEP 2010. Council is encouraged to include this land in a planning proposal to amend the plan.

Although it is considered that adequate justification was put to the DoP to retain the respective parcels of land in Schedule 4, the DoP decided to delete their inclusion in the schedule for the reclassification of public land. In discussions with the DoP, Council was verbally advised that Parliamentary Counsel and DoP Legal had concerns that the public hearing was held under the previous LEP 1995 Amendment and not the Nambucca LEP 2010.

Planning Response

It appears that Council has no option but to undergo the reclassification process again. This will require another public hearing and exhibition of relevant materials

All reports on the matters have been prepared previously. However, funds will be required to obtain the services of an independent facilitator as Council staff are not permitted to facilitate a public hearing for the reclassification of land.

Because a public hearing is required it is recommended that a separate planning proposal should be prepared for this aspect of the proposed amendment to NLEP 2010

3 Coronation Park

Land at Coronation Park was rezoned and reclassified in August 2009 under NLEP 1995 Amendment No. 42. Having regard to submissions, Council resolved to zone the land 2(a) Residential (Low medium density). There was an error in the preparation of the LEP 2010 and the land is now zoned R3 Medium Density Residential. Further, the subject land does not have a Floor Space Ratio, height limit or minimum lot size under NLEP 2010.

Planning Response

It is recommended that Council prepare a planning proposal to amend the NLEP 2010 to include the following amendments to ensure consistency with Council previous resolutions:

- *Zone Maps be amended to R1 General Residential;*
- *Lot Size Maps be amended to 450sqm;*
- *Height of Building Maps be amended to 8.5m;*
- *Floor Space Ration Maps be amended to 0.55:1;*

In relation to the imminent sale of the land, Council's property officer has been advised of the anomalies and requested to include these provisions in the sale of the land to ensure the above standards are complied with. Further, upon Councils resolution to pursue the planning proposal, potential purchasers of the property can be made aware of the draft zone and proposed standards through 149 Planning Certificates.

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The proposed amendments to NLEP 2010 relating to the subject land (formerly within Coronation Park) may be included in "Administration" planning proposal.

4 Uriti Road Macksville

Based on a submission received during the exhibition period Council resolved to amend Lot 2 DP 1071503 Uriti Road Macksville from a rural zone to part residential and part environmental protection zone. This change has been endorsed by the DoP. However, an anomaly has occurred in that the Height of Buildings Map has not been changed.

Planning Response

The anomaly is a mapping error and should be rectified. A planning proposal should be submitted to amend the height limit in this location to 8.5m to be consistent with other R1 Zoned land in the shire.

The proposed amendments to NLEP 2010 relating to the subject land may be included in the "Administration" planning proposal.

5 The Rural Dwelling Entitlements (Clause 4.2A)

The Rural Dwelling Entitlement Clause (Clause 4.2A) has been replaced with the Standard Model Clause for Rural Dwelling Entitlements. Attached Dual Occupancies were previously covered by a separate provision. However, the DoP have modified the model clause to allow attached dual occupancies in rural zones and environmental protection zones. Attached dual occupancies were not previously permitted in environmental protection zones.

Planning Response

No further action is required on this matter.

6 Aboriginal Heritage Items

Aboriginal Heritage Items have been removed from the Heritage Schedule. The original draft LEP provided Aboriginal Heritage Items on the maps and the schedules of the written instrument. Prior to exhibition the DoP required Council to remove these items from the maps. The DoP has now also removed these items from Schedule 5 – Environmental Heritage.

Planning Response

No further action is required on this matter.

7 Complying Development

The draft LEP contained standard conditions for Building Height Surveys to be completed and submitted to ensure buildings did not exceed the permissible height of building. It also included a standard condition requiring certain detailed inspections to be carried out. Both of these conditions have been removed by the DoP from the complying development criteria under NLEP 2010.

Planning Response

No further action is required on this matter.

8 R5 Large Lot Residential Land that was not zoned in accordance with Councils Resolution

After a review of submissions received during the exhibition period of draft NLEP 2010, Council resolved to zone the following parcels (or part thereof) R5 Larger Lot Residential with a 1ha lot size.

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- Lot 103 and 105 DP819474 Wilson Road Congarinni (Pireki); and
- Lot 2 DP 773170 no. 166 Bald Hill Road (Taree Lands)

The DoP has not carried through these changes into the final NLEP 2010. A letter from the DoP includes the following advice:

- *The land at Wilson road, Congarinni North (lots 103 and 105 DP819474) has been given an RU2 Rural Landscape zone because the land is not identified for rural residential purposes in the Growth Management Strategy approved by the Director General and should not be zoned R5 Large Lot Residential.*
- *The land at 166 Bald Hill Road (lot 2 DP773170) has been given an RU2 Rural Landscape zone as exhibited because the land should not be zoned R5 Large Lot Residential until the flood investigation has been completed by council.*

Planning Response

The areas in question can be identified for consideration following the completion of the new flood study for Macksville and/or in the five (5) year review of the Rural Residential Release Strategy. It is recommended that the landowners be informed of the advice from the DoP regarding the final outcome of the LEP 2010 and no further action be taken.

9 R5 Large Lot Residential Land previously identified with a 1ha minimum lot size has been increased to either 2ha or 6ha.

Council exhibited all land proposed to be zoned R5 Large Lot Residential with a 1ha minimum lot size. The DoP has retained the 1ha minimum lot size for all allotments identified in the Rural Residential Strategy as a 'short term' release and the former 1(c) unconstrained land. The DoP advised that the amendment to the draft plan was to ensure that further subdivision potential was limited for land not included in the Rural Residential Land Release Strategy. **Attachment 2** shows the changes. In relation to this matter the DoP have provided the following advice:

The land zoned R5 Large Lot Residential which was not identified in the Growth Management Strategy – Rural Residential Component for immediate release has been given a 2 hectare minimum lot size to restrict further subdivision and maintain housing densities in these areas.

Planning Response

Having regard to the above, it is unlikely that the DoP will support a planning proposal to amend the 2ha minimum lot size for the subject properties. The DoP also put a 6ha lot size on Lot 682 DP 587357 Wards Road. This will limit any further subdivision potential of this lot. However, the DoP has not provided any explanation for this change.

It is recommended that Council take no further action regarding the affected properties at this stage. However, Council will have an opportunity to re-assess the need for the increased lot sizes in the five (5) year review of the Rural Residential Land Release Strategy

10 R5 Large Lot Residential Zone has been removed from the Rural and Environmental Dwelling Clause

The R5 Large Lot Residential Zone was originally included under the provisions of Clause 4.2A regarding the erection of dwellings in Rural and Environmental Zones. The new R5 zone is a residential zone and residential zones do not have a minimum lot size for the erection of a dwelling. The DoP has deleted the reference to the R5 zone from Clause 4.2A. The result of this change is that there is now no minimum lot size for the erection of a dwelling on existing undersized R5 zoned land. This means that an existing undersized rural residential lot (R5 Large Lot Residential) will have a dwelling entitlement, not previously available.

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The exclusion of the R5 zone from Clause 4.2A has resulted in an unintended consequence that creates a dwelling entitlement on existing undersized rural residential lots. It is considered that there would be very few allotments that fit this criteria. There may be some implications for old crown land or parish portions located in R5 zoned land that may now have a dwelling entitlement. However, any such lot will still need to demonstrate that adequate area is available for the erection of a dwelling, including the provision for on-site effluent disposal. In general it is considered that the implications are relatively minimal and therefore no further action is recommended.

11 Secondary Dwellings

Secondary Dwellings have been removed as a permissible use from the R5 Large Lot Residential Zone. This conflicts with the provisions of SEPP (Affordable Rental Housing) 2009, which permits secondary dwellings in the R5 Large Lot Residential Zone.

Throughout the development of the draft LEP, the DoP has indicated that land uses should be consistent with any SEPP. It is therefore uncertain why the DoP has made this amendment.

Planning Response

Although NLEP 2010 now makes a secondary dwelling a prohibited use, an applicant may still apply for this type of development under the provisions of the SEPP. Nevertheless, it is recommended that Council prepare a planning proposal to permit secondary dwellings in the R5 Large Lot Residential Zone. This will ensure consistency between the respective planning instruments.

It is recommended that a separate planning proposal should be prepared for this proposed amendment to NLEP 2010.

12 Matthew St Scotts Head

Land at Matthew St Scotts Head was exhibited in draft NLEP 2009 with an R1 General Residential zone; 6.5m Height Limit; and, a 0.55:1 FSR. These development standards were generally consistent with the existing provisions of NLEP 1995. The land in Matthew Street was also subject to an Urban Design Strategy prepared by Bennell and Associates. The provisions of the draft Strategy, which included a 0.4:1 FSR, were subsequently included and exhibited as part of the consolidated DCP 2010. The final version of the draft plan was amended to include the 0.4:1 FSR in accordance with the Strategy. However, the DoP did not retain this amendment in the final plan. In this regard the DoP has provided the following advice:

- *'The land in Matthew St Scotts Head has been given a Floor Space Ratio of 0.55:1 as exhibited, because it is not appropriate to reduce the floor space ratio applying to land without appropriate community consultation. Council is encouraged to include a floor space ratio of 0.4:1 in a planning proposal to amend the plan.'*

Planning Response

The provisions of the draft Strategy were included in the exhibited consolidated DCP and therefore it is considered that appropriate community consultation has been carried out and no submissions were received on this matter. Notwithstanding and having regard to the DoP advice, it is recommended that a planning proposal should be submitted to the DoP to reduce the FSR from 0.5:1 to 0.4:1 in accordance with Urban Design Strategy prepared by Bennell and Associates.

The proposed amendments to NLEP 2010 relating to the FSR for the Matthew Street precinct may be included in the "Administration" planning proposal.

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13 Wellington Drive Nambucca Heads

In accordance with a previous Council resolution a portion of land bounded by Wellington Drive, Lower Lee St, Buckman Lane, and Bay St Nambucca Heads, a local provision was included in the draft plan to provide a height limit relative to the 'Natural Ground Level' as determined by Council.

The DoP has not included the local provision to implement this height limit and provided the following comments:

- *'The specific means of measuring height of a building on land bounded by Wellington Drive, Lower Lee St, Buckman Lane, and Bay St Nambucca Heads has been omitted. The provisions were inconsistent with the means for measuring the height of a building contained under the Standard Instrument. Council is encouraged to undertake design work to determine the appropriate height of a building above the existing ground level and include this height in a planning proposal.'*

Planning Response

It is recommended that the owner of the land be advised that the draft local provision has not been included in NLEP 2010. The owners should also be advised that if they wish to provide Council with a predetermined height limit based on sound design considerations, Council will consider a future planning proposal to amend the height limit.

14 Dwelling permissibility in Business, Industrial Zones and Recreational Zones

The draft plan included the following objective within the B7; IN1; IN2, SP3; RE1 and RE2 zones:

'to enable the erection of a dwelling house where it is associated with or ancillary to another permissible use on the site'

The DoP has removed this objective from NLEP 2010 in the respective zones.

Planning Response

The DoP was of the opinion that Council did not need to specify ancillary uses as an objective and that dwelling houses in the respective zones can be considered as part of a development application under the Environmental Planning and Assessment Act. This means that Council will need to rely on development applications identifying a dwelling house as ancillary to another permitted land use in the business, industrial and recreational zones. It is not considered that any further action is required regarding this matter.

15 Subdivision of Approved Dual Occupancy

Clause 7.2 of draft LEP 2009 allowed subdivision of an approved dual occupancy regardless of the lot size of the land. This clause was replaced with a model provision and included as clause 4(A) of NLEP 2010.

Planning Response

The intention of the model provision meets the intention of the original draft clause and subsequent Council resolutions. As such, it is not considered that any further action is required.

16 Use of Certain Land at Mitchells Road Valla

Schedule 1 of the NLEP 2010 contains additional permitted uses on certain land. This schedule included certain land at Mitchells Road Valla (Lot 86 DP 755560) which has now been removed by the DoP from the gazetted plan.

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NLEP 1995 Amendment No 48 allowed the subdivision of land comprising an approved multiple occupancy development. The DA for the subdivision has been approved and therefore it is not necessary to include this land under Schedule 1 (Additional permitted uses) of NLEP 2010.

Other matters**A Clause 4.2 Rural Subdivision**

Clause 4.2 (3) of the Nambucca LEP 2010 contains provisions to allow subdivision of rural land to a size less than the minimum lot size, as long as the subdivision is for the purposes of **primary production**, and the resulting lot does not contain a dwelling or a dwelling can not be erected on that lot. This clause states the following:

'Land in a zone to which this clause applies may, with consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.'

The Nambucca LEP 1995 contained the following similar provision (Clause 12(2)(d)):

- 2 *Nothing in Subclause (1) prevents the Council from granting consent to an application to create a smaller lot:*
- d *'within Zone No 1(a1), 1(a2), 1(a3), 1(a4) or 7(a), for a permissible purpose other than agriculture, forestry, or a dwelling House'*

However, the main difference between these two (2) clauses is that the LEP 2010 clause allows a reduced lot size but it needs to be related to primary production where as the Nambucca LEP 1995 allowed the reduced lot size as long as it was associated with a permissible use in the zone.

Planning Response

Council has received two (2) enquiries regarding this provision since the LEP 2010 was made. The enquiries were regarding major infrastructure LGA including the Off River Storage Facility and a potential school development in Macksville. On both these occasions the new clause has provided complications to the development process, which would not have occurred under the Nambucca LEP 1995.

Although the clause contained within the Nambucca LEP 2010 is a standard clause applied throughout the state, it is recommended that Council resolve to prepare a planning proposal to amend clause 4.2 or include as a new land provision to allow subdivision to occur for development other than primary production.

The proposed amendment could something similar to the following:

'Land in a zone to which this clause applies may, with consent, be subdivided for the purpose of primary production or other use permissible in the zone, to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.'

Clause 4.2 Rural Subdivision –(Lot 11 DP 805157 Dudley Street Macksville)

Further to the above Council has now received a formal request from GEOLINK Planning consultants on behalf of The Trustees of the Roman Catholic Church to consider a Planning Proposal (rezoning) to establish a Catholic Primary school on Lot 11 DP 805157 Dudley Street Macksville NSW (see circulated document).

The proposed school will be a new campus of the St Patrick's Catholic Primary School, which is currently located at 78 Wallace St, Macksville. The Planning Proposal indicates that the existing school site is no longer suitable for the needs of the school, as the site:

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- Is of insufficient size to accommodate necessary upgrades and additions to school buildings to cater for current and predicted pupil numbers;
- Contains insufficient open space for the recreational needs of the students; and
- Is segregated/divided by Wallace Street severely reducing its functionality as a school and increasing safety risk of students and teachers.

The subject land is zoned RU1 Primary Production under the NLEP 2010. Educational establishments are permissible with consent in the RU1 zone.

The existing site is 12.79ha in size and in order to develop a school on the site it is necessary to subdivide the land to create a lot of 3ha. The 3ha lot will be used for the purpose of constructing and operating the educational establishment. However, as outlined above, there are no provisions within the NLEP 2010 to permit subdivision of the land.

The planning proposal aims at allowing a rural subdivision to occur below the minimum lot size if the resulting land is partly used for the development of an educational establishment. The planning proposal provides sufficient supporting information to initiate the planning proposal process with the DoP including:

- A flood investigation;
- Preliminary Geotechnical and Acid Sulfate Soils Investigation;
- Preliminary Acoustic Investigation;
- Traffic Investigation

There are a number of ways that the NLEP 2010 could be amended to allow the subdivision to occur, however the 2 preferred methods are to:

- 1 Amend clause 4.2 of the NLEP 2010 to allow subdivision for land to be developed for special purpose developments (previously discussed);
- 2 Amend Schedule 1 of the NLEP 2010 to enable Lot 11 DP 805157 Dudley St, Macksville to be subdivided for the purpose of creating a 3ha (or similar sized) allotment for use as an educational establishment.

This report recommends Council pursue both options.

By pursuing option 1 (Amendment to Clause 4.2) Council will align clause 4.2 with clause 12(d)(2) in Nambucca LEP 1995. It will also allow other similar developments to occur where the resulting residue land, potentially large portions can continue to be used and managed for rural purposes, in preference to large 'left over' remnants of unmanaged rural land.

The DoP may be hesitant in making an amendment to clause 4.2 of the NLEP 2010 (option 1) because such a variation to the standard instrument may have considerable implications for other LGA's. Therefore Option 2 which would create an additional permitted use on the land through Schedule 1 (as proposed by GEOLINK) presents an alternative option in case the amendment to the Standard Instrument clause is not permitted.

In respect of the planning proposal submitted by GEOLINK it is recommended that Council waive fees related to the processing of this proposal until a response is provided by the DoP in respect to option 1 (the amendment to the standard instrument Clause 4.2).

This is because if the DoP allow Council to proceed with an amendment to clause 4.2 then an amendment to schedule 1 will no longer be required. Alternatively, should DoP not allow council to proceed with an amendment to clause 4.2 then this planning proposal and other similar proposed amendments to Schedule 1 should be subject to regular fees for processing planning proposals.

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CONSULTATION:

Director of Environment and Planning
Manager of Planning
Property Officer

SUSTAINABILITY ASSESSMENT:**Environment**

The purpose of this report is to advise Council of the amendments made by the DoP to the final NLEP 2010. Environmental matters were considered during the preparation of the draft plan which was largely a transfer from the LEP 1995. None of the amended provisions affect the environmental aspects of the final NLEP 2010.

Social

The purpose of this report is to advise Council of the amendments made by the DoP to the final NLEP 2010. Social issues were considered during the preparation of the draft plan which was largely a transfer from the LEP 1995. None of the amended provisions to the planning instrument will have a bearing on any likely social impact issues.

Economic

The purpose of this report is to advise Council of the amendments made by the DoP to the final NLEP 2010. Economic matters were considered during the preparation of the draft plan which was largely a transfer from the LEP 1995. None of the amended provisions will have a significant affect on the economic aspects of the final NLEP 2010. However, some individual landowners may be affected by the amendments made by the DoP by reducing the potential future development/subdivision opportunities for some properties.

Risk

There is no risk associated with the implementation of NLEP 2010, as gazetted by the Minister.

FINANCIAL IMPLICATIONS:**Direct and indirect impact on current and future budgets**

Planning proposals will require funds for advertising, printing and a facilitator for the reclassification of land.

Source of fund and any variance to working funds

The Strategic Planning Budget (4010.360.408).

ATTACHMENTS:

- 1 20896/2010 - Lot Size changes to Rural Residential zoning LEP 2010
- 2 21868/2010 - Resolutions and Comments on LEP 2010