

**Nambucca Shire Council**

# **Matthew Street Scotts Head**

## **Planning Proposal**

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*Department of Environment and Planning  
Nambucca Shire Council*

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# 1.0 Preliminary

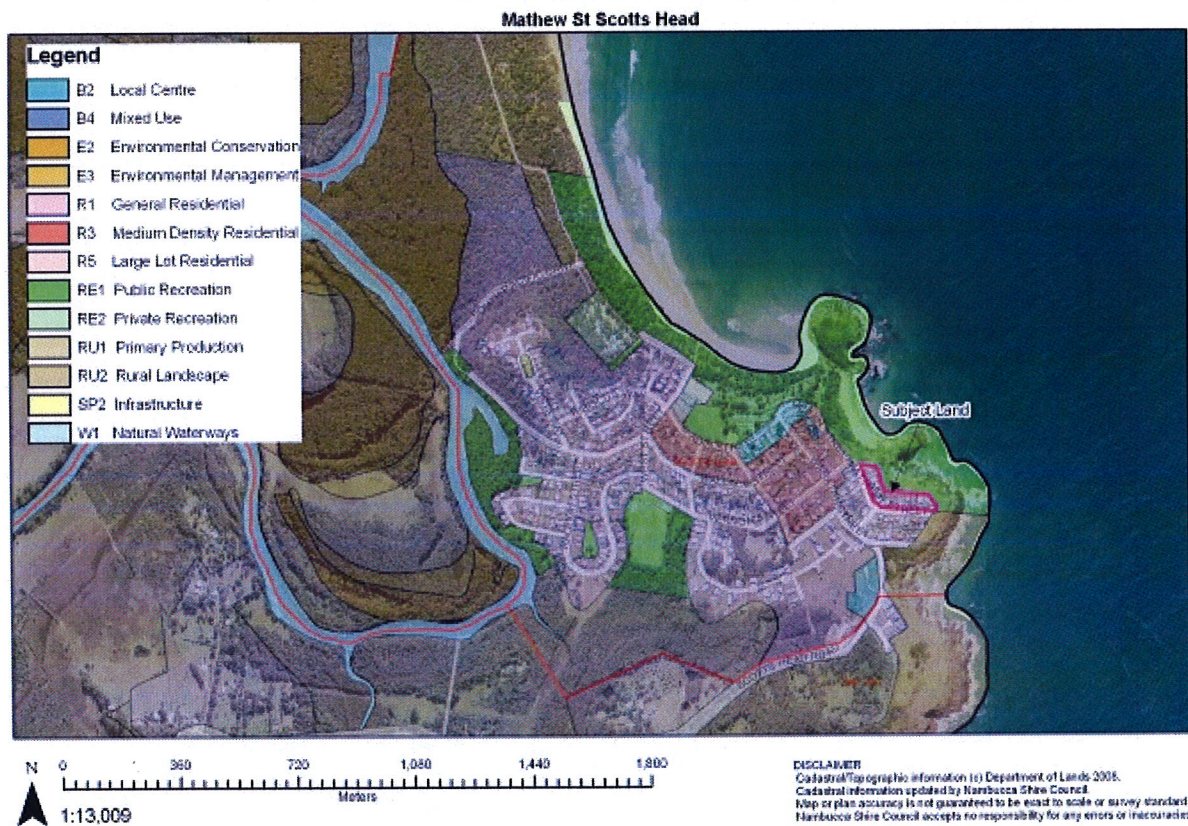
## 1.1 Context

This planning proposal has been drafted in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979*, and 'A guide to preparing planning proposals' (DoP, 2009). A gateway determination under Section 66 of the Act is requested.

## 1.2 Subject Land

The Planning Proposal applies to Lot 13 Section B DP 17707; Lot 12 Section B DP 17707; Lot 11 Section B DP 17707; Lot 10 Section B DP 17707; Lot 9 Section B DP 17707; Lot 8 Section B DP 17707; Lot 3 Section DP 548827; Lot 2 Section DP 548827; Lot 1 Section DP 548827; Lot 52 Section DP 1093411; Lot 51 Section DP 1093411; Lot 4 Section B DP 17707; Lot 3 Section B DP 17707; Lot 2 Section B DP 17707; Lot 1 Section B DP 17707; Matthew Street, Scotts Head.

Figure 1 – Local Context and Subject Land



### 1.3 Current Zoning and Use

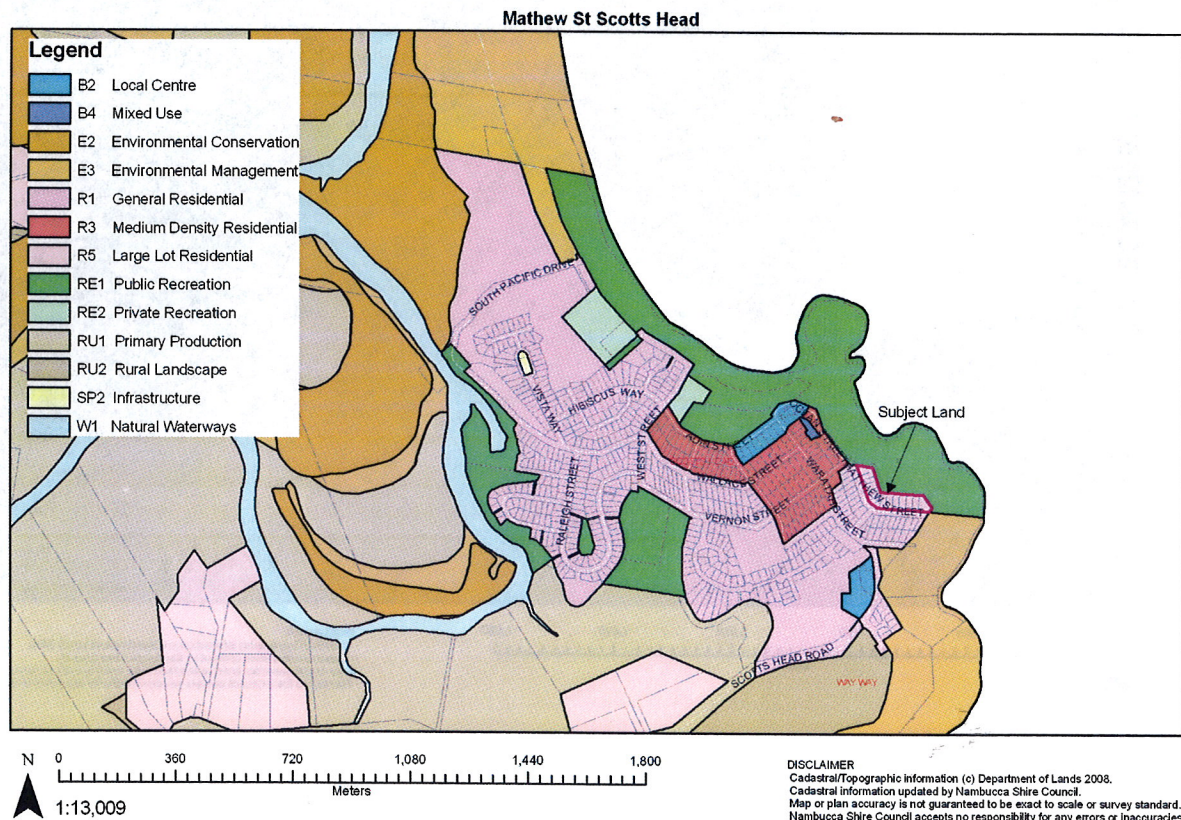
The subject land is presently zoned R1 General Residential it has a 6.5m Height Limit and a 0.55:1 FSR. These development standards are generally consistent with the existing provisions of NLEP 1995.

The Nambucca Development Control Plan 2010 (DCP) contains a site specific Urban Design Analysis for the subject land with specific design standards for the land. A copy of this analysis has been attached to this proposal. The recommended Floor Space Ratio for the subject land in the DCP is 0.4:1 which is in conflict with the LEP 2010 standard. The purpose of this Planning Proposal is to align the LEP standards with the DCP controls.

The land use over the subject land is residential and the dominate themes within the residential area as follows:

- The majority of dwellings appear to have been built in the 1970's and 1980's, with some original cabins still retained;
- Skillion and gable roofs predominate;
- Light weight wall and roof construction are more common than masonry; and
- Single storey dwellings comprise approximately 35% of the dwelling types.

**Figure 2 Nambucca LEP 2010 Land Use Zones**



## 1.4 Background

The Nambucca LEP 1995 and former DCP 3 Residential Development contain conflicting standards which resulted in contentious debate and community concern regarding recent development applications.

In brief, the Nambucca LEP 1995 permitted development on the subject land to 8m. Given the sensitivity of the subject land, DCP 3 allowed development to 5m at the front and 8m at the lower side of a proposed development.

These provisions were subject to recent land and environment Court decision where the resulting development height was approximately 6.2m. The main issue of the proceedings was permissible height and its relationship to view sharing.

Based on the results of these proceedings, Council engaged Bennell and Associates to prepare an Urban Design Analysis for the subject land (Attachment 2). The objective of this analysis was to provide sound planning principles and standards for incorporation into the LEP and DCP.

The height provisions of this analysis were incorporated into the LEP 2010 during exhibition. Unfortunately the 0.4:1 FSR was not included until after the exhibition was complete. That is, the final version of the draft Nambucca LEP 2010 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.'*

The provisions of the Urban Design Analysis, which included a 0.4:1 FSR, were subsequently included and exhibited as part of the consolidated DCP 2010 whilst council was awaiting gazettal of the Nambucca LEP 2010. During the exhibition period Council received no submissions in relation to the Urban Design Analysis for Matthew Street. Council has since adopted the DCP and Urban Design Analysis and it is presently being used by staff to assess relevant development applications.

Notwithstanding its incorporation into the DCP and having regard to the DoP advice, this planning proposal has been prepared to reduce the FSR on subject land from 0.5:1 to 0.4:1 in accordance with Urban Design Strategy prepared by Bennell and Associates.

It is noted that the subject land has recently been excluded from the provisions of the SEPP (Exempt and Complying Development Codes) 2008, which has also been a consideration during this process.

## **Part 1 Objectives or Intended outcomes**

The primary objective of this LEP Amendment is to:

To ensure development on Lot 13 Section B DP 17707; Lot 12 Section B DP 17707; Lot 11 Section B DP 17707; Lot 10 Section B DP 17707; Lot 9 Section B DP 17707; Lot 8 Section B DP 17707; Lot 3 Section DP 548827; Lot 2 Section DP 548827; Lot 1 Section DP 548827; Lot 52 Section DP 1093411; Lot 51 Section DP 1093411; Lot 4 Section B DP 17707; Lot 3 Section B DP 17707; Lot 2 Section B DP 17707; Lot 1 Section B DP 17707; Matthew Street, Scotts Head, occurs at an appropriate density giving effect to the Urban Design Analysis prepared by Bennell and Associates.

## **Part 2 Explanation of Provisions**

The objectives of the LEP amendment will be achieved by:

- 1 Amending the Floor Space Ratio Map to 0.4:1 on the subject land in accordance with the proposed Floor Space Ratio Map shown at attachment 1.

## **Part 3 Justification**

### ***Section A – Need for the Planning Proposal***

#### ***1 Is the Planning Proposal the Result of any Strategic study or Report***

The Planning Proposal is a result of or has been identified within the following Strategies:

- Urban Design Analysis Matthew St Scotts Head (Bennell and Associates, 2009); and
- North Coast Urban Design Guidelines (DoP, 2009);

#### ***2 Is the Planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?***

Yes, the design controls identified for the subject land within the Urban Design Analysis function as a whole. If only some of the standards are implemented the desired outcomes of the Urban Design Analysis will not be achieved.

Height has already been amended to 6.5m, through the LEP 2010, other design criteria are contained within the Nambucca DCP which has been adopted by Council. The only outstanding amendment is to ensure the Floor Space Ratio in the LEP is consistent with the FSR in the DCP and the urban Design Analysis. Therefore the FSR on the subject land needs to be amended to 0.4:1.

#### ***3 Is there a net community benefit?***

Council envisages that this planning proposal will result in the following net community benefits in consideration of the criteria set out in the NSW Department of Planning's 'draft Centres Policy - Planning for Retail and Commercial Development':

- A bulk and scale of future development that is consistent with the character of the area; and
- The reduced FSR along with other development controls will assist in optimising view sharing and providing view corridors between neighbouring properties; and
- Consistent Planning Controls within the DCP and LEP ensuring certainty for landowners and developers;

#### ***Implications of not proceeding at this time***

Should Council not proceed with the rezoning at this time development within the subject land will be subject to conflicting standards within the LEP and DCP.

## **Section B – Relationship to strategic planning framework.**

- 4** *Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy.*

Yes, The Mid North Coast Regional Strategy recommends neighbourhood planning principles be implemented within settlements such as Scotts Head, having regard to the North Coast Urban Design Guidelines. Councils Urban Design Analysis Matthew St Scotts Head has given regard to these guidelines and principles.

- 5** *Is the planning proposal consistent with the local Council's Community Strategic Plan, or other strategic plan?*

Yes, the planning proposal is consistent with the Urban Design Analysis Matthew Street Scotts Head and Nambucca DCP 2010.

- 6** *Is the Planning Proposal consistent with applicable state environmental planning policies (SEPP's)?*

Yes – see Appendix 1

- 7** *Is the planning proposal consistent with applicable Ministerial Directions (s117 directions)?*

Yes – see Appendix 2

## **Section C – Environmental, social and economic impact**

- 8** *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.*

No, the reduction of the FSR is likely to result in a reduced building footprint and therefore reduce environmental impact.

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

No.

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

The reduced FSR will, when combined with other development controls, provide for a more appropriate bulk and scale of development for the area. The resulting designs should be more acceptable to the local community whilst still providing adequate building envelopes for the subject land.

## **Section D – State and Commonwealth Interests**

- 11** *Is there adequate public infrastructure for the planning proposal?*

Yes.

- 12** *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

A gateway determination is yet to be issued. However it is expected that the only state government authority which should be consulted regarding this planning proposal is the

Department of Planning. As stated previously the Department of Planning has already identified their support for the lodgement of this planning proposal.

## **Part 4 Community Consultation**

The Urban Design Analysis Matthew St Scotts Head has already been exhibited through the Development Control Plan process and no submissions were received in relation to the proposed 0.4:1 FSR. The proposal is consistent with existing development controls.

The proposal is considered to be a low impact proposal in accordance with Section 4.5 of '*A guide to preparing local environmental plans*'. As such it is intended that exhibition period for the planning proposal will be a minimum of 14 days and the exhibition will be undertaken in accordance with Section 4.5 of '*A guide to preparing local environmental plans*'.



## **Appendix 1 - State Environmental Planning Policies**

The following State Environmental Planning Policies (SEPP) have been considered in the preparation of the planning proposal for Matthew St.

- **State Environmental Planning Policy No 71 – Coastal Protection**

The object of this policy is to provide for the protection and management of sensitive and significant areas within the coastal zone. Part of the subject land is located within the coastal zone. Therefore, in preparing the final LEP, Council must consider the natural, cultural, recreational and economic attributes of land within the coastal zone to ensure that public access to foreshore areas, Aboriginal heritage, visual amenity, coastal flora and fauna, coastal processes and cumulative impacts are addressed.

- **State Environmental Planning Policy – (Exempt and Complying Development Codes) 2008**

Streamlines assessment processes for development that complies with specified development standards. The policy provides exempt and complying development codes that have State-wide application, identifying, in the General Exempt Development Code, types of development that are of minimal environmental impact that may be carried out without the need for development consent; and, in the General Housing Code, types of complying development that may be carried out in accordance with a complying development certificate as defined in the [www.legislation.nsw.gov.au/xref/inforce/?xref=Type=act%20AND%20Year=1979%20AND%20no=203&nohits=y](http://www.legislation.nsw.gov.au/xref/inforce/?xref=Type=act%20AND%20Year=1979%20AND%20no=203&nohits=y) \t "\_blank.

Given the sensitive coastal location of subject land and Council Urban Design Analysis regarding design standards for the area, Council made successful application to the DoP to have this land excluded from the provisions of this SEPP. Council is awaiting the update of this SEPP for the exclusions to become operational.

## **Appendix 2 - Section 117 Directions**

A number of directions under Section 117 of the EP & A Act 1979 are relevant to this planning proposal.

### **2 Environment and Heritage**

#### **Direction 2.1 Environment Protection Zones**

The objective of this direction is to protect and conserve environmentally sensitive areas.

This direction applies when a council prepares a draft LEP.

What a council must do if this direction applies:

- a A draft LEP shall include provisions that facilitate the protection and conservation of environmentally sensitive areas.
- b A draft LEP that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP shall not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".

This Planning Proposal provides a reduced FSR and as such is likely to reduce the potential environmental impact associated with development of the land.

#### **Direction 2.2 Coastal Protection**

The objective of this direction is to implement the principles in the NSW Coastal Policy.

This direction applies to the coastal zone, as defined in the *Coastal Protection Act 1979*.

This direction applies when a council prepares a draft LEP that applies to land in the coastal zone.

A draft LEP shall include provisions that give effect to and are consistent with:

- a the *NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997*, and
- b the *Coastal Design Guidelines 2003*, and
- c the manual relating to the management of the coastline for the purposes of section 733 of the *Local Government Act 1993* (the *NSW Coastline Management Manual 1990*).

As stated previously the reduced FSR ratio provision is a result of the Urban Design Analysis Matthew St Scotts Head. The Urban Design Analysis has given consideration to Coastal Policies and Guidelines where necessary.

### **3 Housing, Infrastructure and Urban Development**

#### **Direction 3.1 Residential Zones**

The objectives of this direction are:

- a to encourage a variety and choice of housing types to provide for existing and future housing needs,
- b to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- c to minimise the impact of residential development on the environment and resource lands.

This direction applies when a council prepares a draft LEP that affects land within:

- a an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- b any other zone in which significant residential development is permitted or proposed to be permitted.

A draft LEP shall include provisions that encourage the provision of housing that will:

- a broaden the choice of building types and locations available in the housing market, and
- b make more efficient use of existing infrastructure and services, and
- c reduce the consumption of land for housing and associated urban development on the urban fringe, and
- d be of good design.

A draft LEP shall, in relation to land to which this direction applies:

- a contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- b not contain provisions which will reduce the permissible residential density of land.

This planning proposal meets the objectives of this direction.

## **6 Local Plan Making**

### **Direction 6.1 Approval and Referral Requirements**

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

A draft LEP shall:

- a minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and
- b not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the council has obtained the approval of:
  - i the appropriate Minister or public authority, and
  - ii the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General),
 prior to a certificate under section 65 of the Act being issued, and
- c not identify development as designated development unless the council:
  - i can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and
  - ii has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to a certificate being issued under section 65 of the Environmental Planning and Assessment Act 1979.

The planning proposal is consistent with this direction.

### **Direction 6.3 Site Specific Provisions**

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

This direction applies when a council prepares a draft LEP to allow a particular development to be carried out.

A draft LEP that amends another environmental planning instrument in order to allow a particular development proposal to be carried out shall either:

- a allow that land use to be carried out in the zone the land is situated on, or

- b rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or
- c allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

A draft LEP shall not contain or refer to drawings that show details of the development proposal.

Although this planning proposal contains a site specific FSR, the FSR is the result of an adopted Urban Design Strategy. The incorporation of these site specific standards do not rely on specific provisions in the LEP, rather they are incorporated into the NLEP 2010 FSR Maps.