



Item: 13.7

Subject: PROPOSAL FOR MINOR AMENDMENT TO SCHEDULE 1 TO
FACILITATE ERECTION OF A DWELLING AT WOLLUMBIN DRIVE
URUNGA

File/Index: Planning Proposal 14 (Land Use & Planning)

Presented by: Melanie Green, Strategic Planner

ALIGNMENT WITH DELIVERY PROGRAM

(CL) CIVIC LEADERSHIP

(CL.3) Council is proactive in representing the needs of our community.

(CL.3.3) The principles of social justice underpin our activities and decision making processes.

(CL.3.3.0) The principles of social justice underpin our activities and decision making processes - Other Activities.

**RECOMMENDATION**

That Council:

1. Resolves to prepare a planning proposal to remove the time limit for the legal erection of a dwelling house on proposed Lot 2 of Lot 1 DP 1078804 by amending the wording of Item 12 in Schedule 1 Use of certain land at Wollumbin Drive, Urunga of the Bellingen Local Environmental Plan (BLEP) 2010 as follows:

12 Use of certain land at Wollumbin Drive, Urunga

- (1) This clause applies to land described as proposed Lot 2 of the subdivision approved under 2013/DA-DA-00184 on Lot 1 DP 1078804 at 54 Wollumbin Drive, Urunga.*
 - (2) Development for the purpose of the erection of a dwelling house is permitted with consent on land to which this clause applies after registration of proposed Lot 2 with the NSW Land Registry Services.*
2. Resolves to forward the Planning Proposal to the Department of Planning & Environment in accordance with Section 56 (1) of the Environmental Planning & 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. Endorse the Engagement Strategy that has been proposed in this report for the public exhibition of the Planning Proposal.

EXECUTIVE SUMMARY

Schedule 1 (Item 12) – Use of certain land at Wollumbin Drive, Urunga to the BLEP 2010 enabled a two lot subdivision and the erection of a dwelling with development consent provided that consent for both was issued within 5 years from the commencement of this plan. The subdivision was approved and a deferred commencement development consent was issued for a dwelling on the vacant proposed Lot 2 within this timeframe. Operation of the development consent could not occur unless proposed Lot 2 was registered within 12 months of the date of issue of the consent. For various reasons out of the control of the property owners, the proponents were not able to meet the timeframe for completion of the deferred commencement requirements as specified in the consent. The development consent for the dwelling has hence lapsed and there is no longer a legal mechanism under the BLEP 2010 to approve a dwelling on proposed Lot 2.

The schedule amendment to the BLEP 2010 was originally included as a trade-off for the back-zoning of a large area of the land to E3 Environmental Management as part of the implementation of the 2007 GMS and subsequently the BLEP 2010. In view of the environmental gain that was won by virtue of the back-zoning, it is reasonable that Council assist the landowners with realising the benefit conferred by the schedule, particularly considering the subdivision has been approved and registration of the plan is expected to occur in the near future.

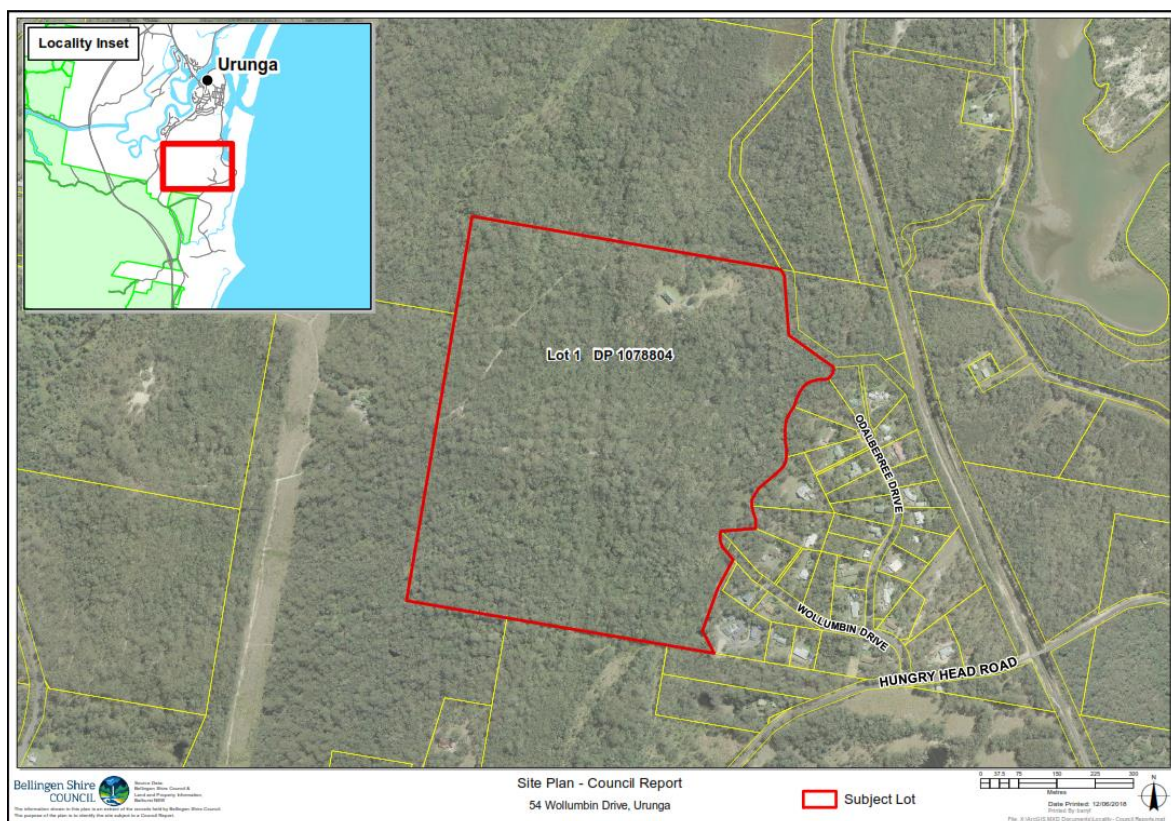


It is therefore recommended that Council resolve to prepare a planning proposal to remove the time limit for the legal erection of a dwelling house upon registration of proposed Lot 2 of Lot 1 DP 1078804 by amending the wording of Item 12 in Schedule 1 Use of certain land at Wollumbin Drive, Urunga of the Bellingen Local Environmental Plan (BLEP) 2010.

REPORT DETAIL

The Site

Lot 1 DP 1078804 (the land) is a predominately vegetated 49.8 hectare property (refer to map below) that is located between the North Coast Railway line and Giinagay Way. The land is developed with a dwelling house and a bed & breakfast establishment and has legal frontage to Wollumbin Drive.



Background

There is a long history of LEP amendments and development approvals in relation to the land. The property history that is of relevance to this report is outlined as follows:

Bellingen Local Environmental Plan (BLEP) 1990

Lot 1 DP 1078804 (the land) was created by a two lot subdivision of Lot 30 DP 806173 that was approved by Council under the provisions of Amendment no. 14 to the BLEP 1990 on the 27th November 2001.

Amendment no. 14 enabled a two lot subdivision of the property in compensation for the back-zoning of a section of the property from 1 (c1) Rural Small Holdings to 1(a2)



Secondary Agriculture. The subdivision approved by 2010/DA-00105 created a 49.8ha lot (Lot 1) and a 1.31ha lot (Lot 2).

Bellingher Shire Local Environmental Plan (BLEP) 2003

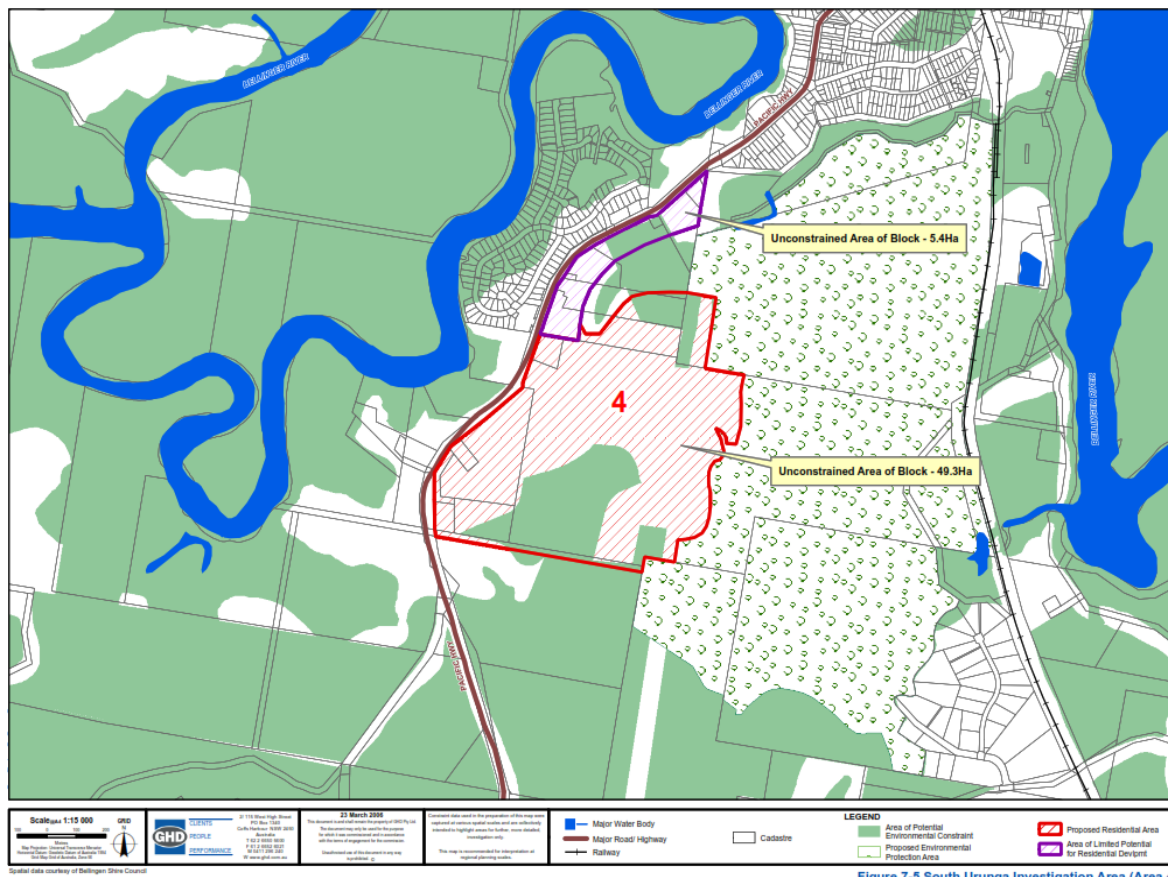
Under the BLEP 2003, Lot 1 DP 1078804 was zoned both 1(a2) Secondary Agriculture and the 2(b) Village. The 2 (b) Village section of the property, which comprised the majority of the land, was designated as an “excluded area” under the provision of Clause 49 – Subdivision of certain land within South Urunga. Clause 49 prevented subdivision of land to which this clause applied until such time as a development control plan (DCP) had been prepared for the area and a review of the adequacy of the Urunga Waste Water Treatment Plant and the Lower Bellingher Water Supply had been completed.

Bellingher Shire Growth Management Strategy (2007)

Preparations for the GMS commenced in 2003 with the draft GMS released in September 2005. The draft GMS proposed to back zone the section of the land zoned 2(b) Village to Environmental Protection (see map on following page) in recognition of the identified environmental values of the area, including habitat value, presence of threatened flora and fauna, proximity to SEPP 14 Wetland and Urunga Lagoon and presence of Endangered Ecological Communities. This rezoning would effectively prevent further subdivision of the property in the future.

The owners of the land lodged a submission in response to the draft GMS which requested that Council consider allowing them to excise another lot from their property in compensation for the loss of development potential from the property. This was considered as part of the final GMS preparation process and the following recommendation was made in the relevant part of Section 7.6 - South Urunga Investigation Area (Area 4) of the final GMS:

Council has repealed the previous Development Control Plan that applied to South Urunga in recognition of its incompatibility with current environmental legislation and it is considered that Council should also seek to rezone areas of land with high conservation value from 1(d) Investigation and 2(b) Village to 7(s) Special Emphasis Zone. It is recommended that Lot 1 DP 1078804 should be included within Schedule 6, Clause 12 permitting the subdivision of the subject land into 2 with the erection of a dwelling house being permissible on the resulting allotment.



Bellingen Shire Local Environmental Plan (BLEP) 2010

The majority of the land is now zoned E3 Environmental Management with a small triangular section of land adjoining the southern boundary zoned RU2 Rural Landscape. While a 200 hectare minimum lot size now applies to the entire property, there is provision in Schedule 1 to allow for a two lot subdivision of the property and erection of a dwelling on the newly created lot to reflect the recommendation of the GMS.

The wording of Item 12 of Schedule 1 is as follows:

12 Use of certain land at Wollumbin Drive, Urunga

- (1) *This clause applies to land at Wollumbin Drive, Urunga, being Lot 1, DP 1078804.*
- (2) *Development for the purpose of subdividing the land into 2 lots and the erection of a dwelling house on each of the lots is permitted with consent.*
- (3) *Development consent under subclause (2) must not be granted after 5 years from the commencement of this Plan (i.e. not after the 6th August 2015)*

Development Application to subdivide Lot 1 DP 1078804

A development application (2013/DA-00184) to subdivide the land was lodged by the property owners in December 2013. The application sought approval for the subdivision of Lot 1 DP 1078804 into 3 lots as follows:

- Lot 1: Common property allotment (0.3ha) to provide legal shared access to Wollumbin Drive,
- Lot 2: 1.3 ha vacant lot with a dwelling entitlement, and



Lot 3: 48.4ha lot containing existing dwelling and bed & breakfast establishment Maino Gabuna.

2013/DA-00184 was approved under delegation on the 16th October 2014. The approved plan is included at Attachment A to this report.

The development commenced within the maximum timeframe allowed by the BLEP 2010. An application for subdivision certificate has recently been lodged and is currently under assessment.

Development Application to erect a dwelling on proposed Lot 2 of Lot 1 DP1078804

A development application (2015/DA-00089) to erect a dwelling house on proposed Lot 2 was subsequently lodged with Council on the 10th July 2015. As proposed Lot 2 had not been registered at the time of assessment of the application and to ensure that the provision for the approval of a dwelling house on proposed Lot 2 did not expire, deferred development consent for the proposed dwelling was issued on the 30th July 2015 – a week before the expiry date of the provision in the BLEP 2010.

The deferred commencement consent specified that “The consent shall not operate until the applicant satisfied the Council as to the matter specified in conditions 2 and 3 of this consent”. Satisfaction of these conditions involved registration of proposed Lot 2.

The deferred commencement consent also specified that “The consent shall lapse if conditions 2 and 3 are not complied with within 12 months of the date of determination of this notice. If conditions 2 and 3 are complied with, the consent lapses 5 years from the date Council issues the operational consent”.

As registration of proposed Lot 2 had not occurred by the lapse date of the 30 July 2016, the development consent lapsed. There is now no legal mechanism to erect a dwelling on proposed Lot 2 of Lot 1 DP 1078804.

Request for preparation of planning proposal

The property owners of Lot 1 DP1078804 recently met with Council staff to raise their concerns about the expiry of Item 12 of Schedule 1 in the BLEP 2010 and to discuss ways to move forward in relation to the matter.

At the meeting, Council management gave a commitment that planning staff would prepare a Council report making recommendation for the preparation of a planning proposal to amend Item 12 of the BLEP 2010 to enable the erection of a dwelling on proposed Lot 2 as soon as possible.

This Council report is a direct outcome of that meeting.

Justification for proposed planning proposal

The schedule amendment to the BLEP 2010 was originally included as a trade-off for the back-zoning of a large area of the land to E3 Environmental Management as part of the implementation of the 2007 GMS and subsequently the BLEP 2010. In view of the environmental gain that was won by virtue of the back-zoning, it is reasonable that Council assist the landowners with realising the benefit conferred by the schedule, particularly



considering the subdivision has been approved and registration of the plan is expected to occur in the near future.

Details of proposed planning proposal

It is a recommendation of this report that Council resolves to prepare a planning proposal to remove the time limit for the legal erection of a dwelling house on proposed Lot 2 of Lot 1 DP 1078804 by amending the wording of Item 12 in Schedule 1 Use of certain land at Wollumbin Drive, Urunga of the Bellingen Local Environmental Plan (BLEP) 2010 as follows:

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What does Council need to do to commence the process of amending the BLEP?

Should Council resolve to prepare a planning proposal, Council Officers will prepare an explanation of, and justification for the proposed instrument under the provisions of Sections 55(1) and (2) of the Environmental Planning and Assessment Act 1979 (the Act).

This requires Council to address the following key matters.

- a statement of the objectives or intended outcomes of the proposed instrument,
- an explanation of the provisions that are to be included in the proposed instrument,
- the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117),
- if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones, heritage areas or flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument,
- details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

Once completed, the planning proposal will be forwarded to the DPE under the provisions of Section 56 of the Act, requesting that the Minister issue Council with a "Gateway determination". The issuing of a Gateway determination by the DPE would recognise that there are no fundamental policy objections to the planning proposal, confirm any necessary consultation that is required and allow Council to place the planning proposal on public exhibition. Should the DPE have concerns with the planning proposal then they would not issue a Gateway determination and Council would be required to address those concerns in order for the proposal to proceed.

In addition to Council resolving to prepare a planning proposal, it is also necessary for Council to indicate its intention (or otherwise) to exercise delegations for parts of the plan making process that have been issued to the General Manager. By opting to exercise



these delegations, Council removes an additional external referral from the plan making process and this leads to improved timeframes for the eventual making of the 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.”*

It is recommended, given the minor nature of this proposed amendment, that Council inform the Department of its intention to use its delegation to make the Plan.

BUDGET IMPLICATIONS

There is adequate budget allocation available to cover the cost of the planning proposal process, including advertising.

SUSTAINABILITY ASSESSMENT

If successful, the proposed amendment to the BLEP 2010 will simply enable lodgement of a development application to erect a single dwelling on a 1.3ha vacant lot within an existing rural residential area in Urunga. The suitability of the lot and the nominated building envelope for development for the purpose of a dwelling house has already been assessed by Council staff in the processing of assessing both the development application to subdivide Lot 1 and the development application to erect a dwelling on proposed Lot 2.

It is considered that there are no significant economic, environmental or social implications associated with the proposed planning proposal.

ENGAGEMENT

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.

A low impact planning proposal is a planning proposal that, in the opinion of the person making the Gateway determination, is:

- Consistent with the pattern of surrounding land use zones and/or land uses
- Consistent with the strategic planning framework
- Presents no issues with regard to infrastructure servicing
- Does not reclassify public land



It is submitted that the proposed Planning Proposal meets the criteria for a low impact planning proposal, for which a minimum exhibition period of 14 days is specified.

The Bellinghen 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 Bellinghen 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 4 – Lower impact – Local. This requires Council to “Inform and Consult” with the community.

It is therefore proposed that the following actions be undertaken to consult with the community.

- Advertise the Planning Proposal for a period of 14 days in the Bellinghen Courier Sun.
- 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.
 - Bellinghen Council Administrative Centre
 - Bellinghen Library
 - Urunga Library

ATTACHMENTS

13.7.A Approved subdivision plan (2013/AF-00264)



ITEM: 13.7
SUBJECT: PROPOSAL FOR MINOR AMENDMENT TO SCHEDULE 1 TO
FACILITATE ERECTION OF A DWELLING AT WOLLUMBIN DRIVE
URUNGA
FILE/INDEX: PLANNING PROPOSAL 14 (LAND USE & PLANNING)
PRESENTED BY: MELANIE GREEN, STRATEGIC PLANNER

053/18

RESOLVED (Cr Klipin/Cr Wright-Turner)

That Council:

1. Resolves to prepare a planning proposal to remove the time limit for the legal erection of a dwelling house on proposed Lot 2 of Lot 1 DP 1078804 by amending the wording of Item 12 in Schedule 1 Use of certain land at Wollumbin Drive, Urunga of the Bellingen Local Environmental Plan (BLEP) 2010 as follows:

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UNANIMOUS