

Bellingen LEP 2010 (Amendment No 4) Secondary dwellings, Boundary adjustment and Split zone clauses, Sched.1

Proposal Title :	Bellingen LEP 2010 (Amendment No 4) Secondary dwellings, Boundary adjustment and Split zone clauses, Sched.1		
Proposal Summary :	Amend Bellingen LEP 2010 to: 1. permit secondary dwellings with consent in Rural Zones; 2. permit boundary adjustments of land in certain rural and environmental protection zones between lots where one or more resultant lots do not meet the minimum lot size; 3. provide for the subdivision of lots that are within more than one zone; and 4. amend Schedule 1 to permit the erection of a single dwelling house on Lots 293, 258, 224 & 63 DP755553, 105 Cabans Road, Raleigh.		
PP Number :	PP_2013_BELLI_001_00	Dop File No :	13/08100

Proposal Details

Date Planning Proposal Received :	09-May-2013	LGA covered :	Bellingen
Region :	Northern	RPA :	Bellingen Shire Council
State Electorate :	OXLEY	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :	105 Cabans Road		
Suburb :	Raleigh	City :	Postcode : 2454
Land Parcel :	Lots 293, 258, 224 and 63 DP 755553, to permit a dwelling on the land		
Street :			
Suburb :		City :	Postcode :
Land Parcel :	Zones RU1, RU2 and RU4s to permit secondary dwellings with consent		
Street :			
Suburb :		City :	Postcode :
Land Parcel :	Zones RU1, RU2, RU4, R5, E2, E3 and E4 to permit boundary adjustment relutting in lot(s) below the MLS		
Street :			
Suburb :		City :	Postcode :
Land Parcel :	Zones RU1, RU2, RU4, E2 and E3 to permit subdivision of lots with more than one zone applying		

Bellingen LEP 2010 (Amendment No 4) Secondary dwellings, Boundary adjustment and Split zone clauses, Sched.1

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Mid North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	1
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government
Lobbyists Code of
Conduct has been
complied with :

If No, comment :

Have there been
meetings or
communications with
registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting Notes : A single dwelling is being permitted on the combined lots at 105 Cabans Rd, Raleigh.

However, it is not possible at this stage to predict the impact on dwelling numbers in the rural areas as a result of permitting secondary dwellings; nor is it possible to calculate additional lot and/or dwellings that may result from the inclusion of the boundary adjustment and split zone lot subdivision clauses.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives adequately describes the intention of the planning proposal which is to amend the provisions of Bellingen LEP 2010 as they apply to secondary dwellings; boundary adjustment subdivision; split zone lot subdivision; and, dwelling permissibility under Schedule 1.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The intended method of achieving the objectives of the planning proposal is adequately addressed and summarised as being:**
1. List "Secondary dwellings" as permissible with consent in zones RU1 Primary Production and RU2 Rural Landscape in the LUT of Bellingen LEP 2010;
2. Insert clause 4.1AB Boundary adjustments of land in certain rural and environmental protection zones [local] to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size if the objectives of the relevant zone can be achieved;
3. Insert clause 4.1AC Minimum subdivision lot sizes for certain split zones [local] to facilitate subdivision of lots with more than one zone applying; and
4. Include a new item in Schedule 1 Additional permitted uses for use of certain land at Cabans Road, Raleigh.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones
1.4 Oyster Aquaculture
1.5 Rural Lands
2.1 Environment Protection Zones
2.2 Coastal Protection
3.1 Residential Zones
4.1 Acid Sulfate Soils
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **None of the proposed amendments require an amendment to any map sheet relating to Bellingen LEP 2010.**

Bellingen LEP 2010 (Amendment No 4) Secondary dwellings, Boundary adjustment and Split zone clauses, Sched.1

A non-statutory Site Identification map has been provided to identify the land which is to be added to Schedule 1, however, it will not form part of the final planning proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : The RPA considers that the draft planning proposal should be publicly exhibited for 28 days with notification of the exhibition being placed in the local print media.

This is considered appropriate in the circumstances.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : The planning proposal satisfies the adequacy criteria by:

1. Providing appropriate objectives and intended outcomes;
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes;
3. Providing an adequate justification for the proposal;
4. Outlining that community consultation will be undertaken;
5. Providing a project timeline; and
6. Providing an evaluation for the delegation of plan making functions.

The RPA has sought to use its delegation in this instance which is appropriate for this planning proposal.

The project time line of six months provided by Council is appropriate for this planning proposal as it involves the inclusion of agreed model provisions and a minor administrative correction.

Proposal Assessment

Principal LEP:

Due Date : **November 2013**

Comments in relation to Principal LEP : The Bellingen LEP was made in August 2010. This planning proposal seeks to amend Bellingen LEP 2010.

Assessment Criteria

Need for planning proposal : Recently certain planning provisions for rural areas have been included in other SI LEPs which were not available at the time of making of the Bellingen LEP in 2010. Bellingin Council is now seeking to have these provisions included in its LEP.

These include provisions for permissibility of secondary dwellings with consent in the rural areas; and subdivision relating to boundary adjustments and land within more than one zone.

Need for the PP:

1) Secondary dwellings with consent in the rural zones

The RPA has indicated there is a need to provide for an alternate affordable housing option in the rural areas. Secondary dwellings will also assist landowners looking at farm

Bellingen LEP 2010 (Amendment No 4) Secondary dwellings, Boundary adjustment and Split zone clauses, Sched.1

succession planning by allowing retiring parents and working family members to continue to reside on the land with a degree of separateness.

This is discussed under consistency with strategy.

2) Boundary adjustments

Bellingen LEP sets the Minimum lot size (MLS) for rural subdivisions in some areas at 200 Ha, effectively prohibiting subdivision in the valley where the majority of lots are under the MLS. However, at the time of drafting LEP 2010 Council wanted to facilitate boundary adjustment in certain circumstances and now that a model clause is available the RPA is seeking its inclusion in its LEP.

The inclusion of this provision is considered appropriate in the circumstances.

3) Split zoned lot subdivision

Council has indicated that as a result of some zone boundaries not being cadastre based, for example a zone that reflects a contour or vegetation boundary, some land has been sterilised from subdivision because it cannot meet the normal zone MLS.

Now that a model clause is available to address this issue, the RPA is seeking its inclusion to enable merit based assessment of such subdivisions. The model clause is particularly useful for residential, business or industrial land parcels which are yet to be developed and which include some small area of rural or environment protection zoned land. If the draft clause is included in the LEP, it may then be subdivided as long as the rural or environmental protection zoned land is wholly retained within one the new urban lots.

The inclusion of this provision is considered appropriate in the circumstances.

4) Additional item listing in Schedule 1 Additional permitted uses

The RPA seeks the inclusion of an additional item in Schedule 1 which will reinstate a dwelling entitlement for an "existing holding". The land owner of an existing holding (consisting of 5 lots) sold a small section of closed road (4199 sq m) to an adjoining land owner inadvertently nullifying his own existing holding status at the same time. Council is of the view that, as a dwelling would have been permissible prior to the closed road being granted to the first landowner it is acceptable to reinstate the dwelling entitlement now that the closed road no longer forms part of the existing holding. Further the holding historically had a dwelling and associated sheds.

The inclusion of this provision is considered appropriate in the circumstances.

Bellingen LEP 2010 (Amendment No 4) Secondary dwellings, Boundary adjustment and Split zone clauses, Sched.1

Consistency with strategic planning framework :

Consistency with local strategy

1) Secondary dwellings

Since the certification of Bellingen LEP 2010 the Department has reconsidered its position on secondary dwellings and is now of the view that it is a local matter for the Council to determine whether or not secondary dwellings should be provided for in the rural areas through its LEP.

The RPA is of the view that secondary dwellings will provide an alternate affordable housing option to meet the various social needs of the community based on the assumption that smaller dwellings will be more affordable to rent and/or purchase than larger dwellings. Further, it is also expected that secondary dwellings will be used by landowners looking at farm succession planning, catering for the retiring parents/family to continue to reside on the land as well as those wishing to accommodate family members such as grandparents or children who are yet to leave home.

Council's adopted local strategy (approved 2007) makes no reference to secondary dwellings because this form of development was not part of the provisions within the LEP at the time. It recommended that rural workers dwellings be removed from the LEP as being too restrictive and not reflecting the social needs of the community. It also recommended that the LEP retain attached dual occupancies for additional housing in the rural area.

Council has advised that the real concern at that time was not whether additional dwellings should be available in the rural areas but rather that the required nexus relating to rural workers dwellings was not appropriate in the circumstances. Consistent with this view, and to provide additional dwelling opportunities in the rural areas, Council seeks to add secondary dwellings to its rural zones.

The addition of secondary dwellings to the rural zones is considered a local matter not inconsistent with Council's approved local strategy.

2) Boundary adjustments and Split zoned lot subdivision

The addition of these model local clauses is not considered inconsistent with Council's local approved strategy. They will provide merit-based flexibility for certain rural subdivisions and are consistent with agreed planning provisions now included in other SI LEPs.

3) Additional item listing in Schedule 1 Additional permitted uses

This is an administrative correction of an historical anomaly. It results in one additional dwelling only.

Consistency with the Mid North Coast Regional Strategy

1) Secondary dwellings

The inclusion of secondary dwellings in the LEP is considered consistent with the recommendations of the Mid North Coast Regional strategy.

The Mid North Coast Strategy requires LEPs to include provisions to limit dwellings in rural and environmental zones. Clause 5.4(9) in Bellingen LEP 2010 restricts the total floor area of a secondary dwelling to 60 sq m or 25% of the principal dwelling whichever is greater. Further the Bellingen DCP 2010 section 2.6.4 Secondary dwellings further limits a secondary dwelling to having, among other things, only one bedroom.

2) Boundary adjustments and Split zoned lot subdivision

These are model local clauses that have been included in other standard instruments and their inclusion is not considered inconsistent with the regional strategy.

3) Additional item listing in Schedule 1 Additional permitted uses

This is considered an administrative response to a local planning matter.

Consistency with SEPPs and s117 Directions

Bellingen LEP 2010 (Amendment No 4) Secondary dwellings, Boundary adjustment and Split zone clauses, Sched.1

The RPA has nominated various SEPPs and s117 Directions for consideration with respect to this planning proposal. There appears to be no inconsistency between any of these SEPPs or Directions except for the following:

1) s117 Direction 1.2 Rural Zones

The addition of secondary dwellings to the draft LEP is inconsistent with this Direction which requires that a PP not increase the permissible density of land in a rural area. A PP may be inconsistent with this Direction if it is consistent with an approved local strategy. For the reasons outlined in the section "Consistency with local strategy" above it is recommended that the Director General (or Delegate) agree to this inconsistency as justified by the local strategy.

2) s117 Direction 4.1 Acid Sulfate Soils

The addition of the nominated item to Schedule 1 is inconsistent with this Direction which requires that a PP not propose intensification of land uses on land that is identified as having a probability of ASS unless the RPA has considered an ASS study. It may be inconsistent with this Direction if the inconsistency is of minor significance. Council has indicated that only part of the subject land is affected by ASS and there is sufficient area in the non-affected portion to locate a dwelling. The LEP already contains the model local provisions that will ensure these issues are considered. For these reasons it is recommended that the Director General (or Delegate) agree that this inconsistency is of minor significance.

3) s117 Direction Planning for Bushfire Protection

This Direction is relevant to the proposal and requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a gateway determination has been issued. Until this consultation has occurred the consistency of the proposal with this direction will remain unresolved. It is recommended that the Director General (or Delegate) note this inconsistency will require justification following consultation with the NSW Rural Fire Service.

Environmental social
economic impacts :

Environmental and social impacts of the PP:

1) Secondary dwellings with consent in the rural zones

Permitting secondary dwellings in rural areas will provide for a variety of housing opportunities creating obvious benefits to residents. The cumulative social and economic costs to the wider community of creating additional demand for uneconomic dispersed services may be tempered by the limits placed on the secondary dwelling through the LEP and DCP provisions relating to the size of secondary dwellings. In any case, it is a local matter for the Council to determine whether or not secondary dwellings should be provided for in the rural areas through its LEP.

2) Boundary adjustments and Split zoned lot subdivision

The addition of this clause will provide flexibility in subdivision which would otherwise not be available. The boundary adjustment clause will have positive benefits by facilitating farm adjustment . Dwelling opportunities under previous planning instruments will be preserved where boundary adjustments resulted in a loss of such opportunities.

The addition of the split zone lot subdivision provisions will enable the economic development of residential, business and industrial land that would otherwise not be able to be subdivided without an individual planning proposal for each case.

These are settled model local clauses that have been included in other standard instruments and will allow Council to consider subdivision for these purposes on its merits.

3) Additional item listing in Schedule 1 Additional permitted uses

As previously discussed, the inclusion of this item in Schedule 1 will reinstate a dwelling entitlement that previously existed and will provide positive social and economic benefit to the land owner.

Bellingen LEP 2010 (Amendment No 4) Secondary dwellings, Boundary adjustment and Split zone clauses, Sched.1

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **6 Month** Delegation : **DDG**

Public Authority **NSW Rural Fire Service**
Consultation - 56(2)(d)

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
2013-05-08 Bellingen s56 letter PP for Secondary dwellings Boundary adjustments Split zone lots.pdf	Proposal Covering Letter	Yes
Council Meeting 27 February 2013.pdf	Proposal	No
Planning Proposal - 7 Version 1 March 2013.pdf	Proposal	No
Site ID Map - Schedule 1 Amendment - Planning Proposal 7.pdf	Map	No
PP7 Attachment_1_-_Information_checklist.pdf	Proposal	Yes
PP7Attachment_4_-_Evaluation_criteria_for_the_delegation_of_plan_.pdf	Proposal	No
PP7Attachment_Timeline.pdf	Proposal	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **1.2 Rural Zones**
1.4 Oyster Aquaculture
1.5 Rural Lands
2.1 Environment Protection Zones
2.2 Coastal Protection

Bellingen LEP 2010 (Amendment No 4) Secondary dwellings, Boundary adjustment and Split zone clauses, Sched.1

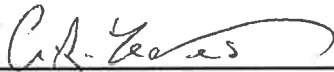
- 3.1 Residential Zones
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies

Additional Information : It is recommended that

1. The planning proposal proceed as a routine planning proposal;
2. The planning proposal should be completed in 6 months;
3. A community consultation period of 28 days is necessary;
4. The Director General (or Delegate) agrees that the inconsistency with s117 Direction 4.4 Planning for Bushfire Protection remains outstanding and will require justification following consultation with the NSW Rural Fire Service;
5. The Director General (or Delegate) agrees the inconsistency with s117 Direction 1.2 Rural Zones is justified by an approved local strategy and that the inconsistency with s117 Direction 4.1 Acid Sulfate Soils is of minor significance; and
6. An authorisation to exercise delegation to make the plan be issued to the RPA for this planning proposal

Supporting Reasons : The planning proposal will address various local issues in relation to providing additional dwelling opportunities in the rural area and permitting subdivisions not currently permissible in the Bellingen LEP 2010. Further, it will address an administrative dwelling entitlement anomaly.

Signature:



Printed Name:

GREG YEATES

Date:

17/05/2013