



**BELLINGEN SHIRE COUNCIL
PLANNING PROPOSAL 7
(Version 1 – April 2013)**

**Secondary dwellings, split zone clause, rural boundary
adjustments and schedule 1 inclusion**

THE PLANNING PROPOSAL

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

History

Council resolved to support the proposal at its meeting of 27 February 2013. The report to Council and the relevant resolution is included as Attachment A.

Objectives

The objectives of the proposed LEP amendment are as follows:

1. Permit secondary dwellings to be approved in Rural Zones with the consent of Council.
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. To provide for the subdivision of lots that are within more than one zone.
4. To permit the erection of a dwelling house on Lots 293, 258, 224 & 63 DP755553, 105 Cabans Road, Raleigh.

Proposed provisions

The provisions of the proposed LEP amendment will include:

1. Insert “secondary dwellings” into Section 3 – Permitted with consent in the Land Use Tables for the zones;
 - RU1 Primary Production
 - RU2 Rural Landscape
 - RU4 Primary Production Small lots
2. Insert the following subclause under clause 4.1 Minimum subdivision lot size:

4.1AB Boundary adjustments of land in certain rural and environmental protection zones [local]

- (1) The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size and the objectives of the relevant zone can be achieved.*
- (2) This clause applies to land in the following zones:
Zone RU1 Primary Production
Zone RU2 Rural Landscape
Zone RU4 Primary Production Small Lots,
Zone R5 Large Lot Residential,
Zone E2 Environmental Conservation,
Zone E3 Environmental Management, and
Zone E4 Environmental Living.*
- (3) Despite Clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining allotments where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that:
(a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
(b) the number of dwellings or opportunities for dwellings on each lot after subdivision must be the same as before the subdivision, and
(c) the potential for land use conflict will not be increased as a result of the subdivision, and
(d) the agricultural viability of the land will not be adversely affected as a result of the subdivision.*
- (4) Before granting consent to development to which this clause applies the consent authority must be satisfied that the subdivision will not result in the fragmentation of any land zoned E2 Environmental Conservation and E3 Environmental Management unless adequate justification is provided that the net environmental value of the land will not be compromised.*

3. Insert the following subclause under clause 4.1 Minimum subdivision lot size:

4.1AC Minimum subdivision lot sizes for certain split zones

- (1) *The objectives of this clause are:*
- (a) *to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1, and*
 - (b) *to ensure that the subdivision occurs in a manner that promotes suitable land use and development.*
- (2) *This clause applies to each lot (an original lot) that contains:*
- (a) *land in a residential, business or industrial zone, and*
 - (b) *land in Zone RU1 Primary Production, RU2 Rural Landscape, Zone RU4 Primary Production Small Lots, Zone E2 Environmental Conservation or Zone E3 Environmental Management.*
- (3) *Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:*
- (a) *one of the resulting lots will contain:*
 - (i) *land in a residential, business or industrial zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
 - (ii) *all of the land in Zone RU1 Primary Production, Zone RU4 Primary Production Small Lots, Zone E2 Environmental Conservation or Zone E3 Environmental Management that was in the original lot, and*
 - (b) *all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.*

4. Include the following item in Schedule 1 Additional permitted uses:

Use of certain land at Cabans Road, Raleigh

- (1) *This clause applies to land at 105 Cabans Road, Raleigh, being Lots 293, 258, 224 & 63 DP755553.*
- (2) *Development for the purpose of a dwelling house is permitted with consent.*
- (3) *Development consent under subclause (2) must not be granted after 5 years from the commencement of this Plan.*

The Site Identification Map for the Schedule 1 Amendment is included as Attachment B to this planning proposal.

GENERAL JUSTIFICATION FOR PLANNING PROPOSAL

A general justification for the inclusion of each of the four elements of this planning proposal is included below.

In addition to this, the Department of Planning & Infrastructure (DP & I) have issued requirements for specific matters that must be addressed in all planning proposals. These are addressed following the general justification for each element.

Secondary Dwellings in Rural Zones

In order to justify the inclusion of secondary dwellings within the rural zones in Council's BLEP 2010 we must address the reasons why it was not originally supported by the Department.

As purported in the S65 Certificate:

"The conditions which prohibit secondary dwellings ... in rural zones are necessary to ensure consistency between Council's Comprehensive LEP and the North Coast Regional Environmental Plan and Mid North Coast Regional Strategy."

It is noted that with the gazettal of BLEP 2010 the North Coast REP ceased to apply to the Bellingen Shire, therefore its provisions are no longer applicable to LEP Amendments in the Shire.

As such the justification is limited to the Mid North Coast Regional Strategy (MNCRS). The MNCRS states in relation to rural dwellings:

'Local Environmental Plans will include provisions to limit dwellings in rural and environmental zones.'

Currently BLEP 2010 permits Dwelling Houses and Dual occupancies (attached) in Rural Zones. Permitting secondary dwellings which are restricted to 60sqm or 25% of the total floor area of the principal dwelling is only considered to be a minor addition to those dwellings already permissible. In addition the gazettal of BLEP 2010 saw the removal of rural workers dwellings from these zones. The removal at the time was done with the strategic intention that they be replaced with secondary dwellings as the controls that applied to secondary dwellings would better align with the MNCRS intent.

It is important to point out that one of our bordering Council's, Nambucca, just succeeded in amending its standard LEP to allow for the provision of secondary dwellings in the Rural Zones. Nambucca also includes provision for rural workers dwellings so the precedent with regard to what is considered 'limited' has been set for our region.

Council's DCP 2010 already contains provisions to guide the development of secondary dwellings in the Shire. It is anticipated that the impact of secondary dwellings in rural areas can be adequately managed through the development application process having consideration to guidelines such as the DPI 'Living and Working in Rural Areas handbook', a handbook for managing land use conflict issues on the NSW North Coast. In addition the development standards, such as the size

restriction applicable to secondary dwellings will in itself limit the number of dwellings in rural areas.

It is 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. They will provide for an alternate affordable housing option meeting the various social needs of our community.

The provision of secondary dwellings in rural zones is clearly reflected in the aspirations of the Community with Council's Community Strategic Plan containing the following aspiration:

"We have a mixture of affordable sustainable housing options for all in our community"

The basic assumption is that smaller dwellings will be more affordable to rent and/or purchase than larger dwellings.

Council's Social Plan Committee, following a presentation from Council's Strategic Planner, also recommended at its meeting of 9 February 2012:

'1. Council request Department of Planning for an amendment to Bellingen LEP 2010 to allow secondary dwellings in rural zones.'

This recommendation was subsequently reported to Council and endorsed.

Boundary Adjustments

Clause 4.1 of BLEP 2010 governs the subdivision of land, including boundary adjustments, and requires that the subdivision of land not be less than the minimum size shown on the Lot Size Map. The history associated with the subdivision provision in the Shire is broadly:

- Prior to BLEP 2010, BLEP 2003 made no provision for subdivision in the valley (land east of the escarpment) unless in a rural residential zone.
- BLEP 2003 allowed for boundary adjustments between rural lots on merit, where no additional lots or dwelling entitlements were created.
- Under BLEP 1990 the subdivision provisions varied through the course of its life from 40ha to 70ha and at its inception there were provisions for the creation of concessional lots i.e. 2ha minimum created from larger existing holdings.

The subdivision history in the Shire has resulted in a mix of lot sizes and with the resultant introduction, under BLEP 2010, of a 200ha minimum lot size in the valley, the majority of lots are well under the minimum lot size requirement for subdivision. It should be noted that the 200ha minimum lot size was only introduced as DPI would not permit Council to continue a simple prohibition of further subdivision in the valley.

What this means is that there is no current avenue for rural landowners to undertake boundary adjustments under BLEP 2010 because they cannot meet the minimum lot size provisions. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 does make provision for a minor realignment of

boundaries however these are proposed to be limited to a maximum ten (10) per cent variation to lot sizes. This would make no provision for a merit based assessment which in some cases would facilitate a boundary adjustment greater than 10% that might lead to environmental gains or increased agricultural viability for some properties.

As with the provision of secondary dwellings in rural zones, Council originally included a provision to address this abnormality concerning rural boundary adjustments in its draft standard instrument, however was advised by the Department to remove this provision. The Department considered such provision was covered by the Rural Lands SEPP. Further investigation revealed that this was not the case. There is no provision available for rural properties with a legitimate need to carry out boundary adjustments greater than 10% of the lot size to do so when existing dwellings or dwelling entitlements are involved.

This is a serious flaw of the Standard Instrument & Rural Lands SEPP that has been raised repeatedly with DPI, however no proposed solutions have been accepted or no alternative solutions developed by the Department. These concerns were expressed directly to DPI Officers from the legal branch at a meeting held to discuss the draft BLEP 2010 prior to its gazettal. As a result of the reluctance of the DPI head office staff to address this issue, rural landholders who wish to legitimately re-organise lot boundaries while retaining dwelling entitlements, in the majority of cases in Bellingen Shire (and ultimately other LGA's), are prevented from doing so due to the apparent urban bias of the Standard Instrument and the DPI's inflexible position.

Consequently, at its Ordinary meeting of 24 March 2010, Council resolved as follows.

(4) That Council express its strong dissatisfaction to the Department of Planning (DoP) with the Standard Instrument's lack of provision for legitimate rural boundary adjustments and request the urgent attention of DoP to rectifying this matter prior to the gazettal of the Draft BLEP 2009.

The DPI at the time of BLEP 2010's gazettal maintained its position but advised that they would review the position given that the matter had also been raised by other regional Council's. Council now has been advised by the DPI to pursue the inclusion of the boundary adjustment clause. We have been made aware that other Council's in the region have been successful in amending their instrument to include such a provision and Coffs Harbours Draft LEP 2013, which is currently on exhibition, included provision of a Boundary Adjustment Clause. The fact that the plan passed the s65 stage with the DPI indicates the Departments change of heart.

As such it is proposed to insert a subclause to permit boundary adjustments of land in certain rural and environmental protections zones between lots where one or more resultant lots do not meet the minimum lot size.

Include split zone clause to permit subdivision of lots that are within more than one zone

The introduction of the standard LEP instrument saw the planning system move away from the provision of clauses in LEPs to regulate development to spatial representation for the regulation of development. For example BLEP contains a general clause regarding subdivision, 4.1, that does not specify the subdivision minimum for the various zones but makes reference to a Lot Size Map. The Lot Size Map depicts the minimum lot size for the subdivision of land in the Shire.

The spatial representation of subdivision minimums via the Lot size map (as opposed to a specific clause) presented a series of problems where the subdivision minimum for an area was linked to the underlying land use zone for a lot, which in turn may have more than 1 land use zoning. This 'split zone' and corresponding subdivision minimum essentially sterilised the subdivision of some land, as provisions in the LEP prevented the creation of a residue lot (area not able to be subdivided).

For example an area of land may have a 1ha minimum which corresponds with the R5 zone and a 200ha minimum which corresponds with a RU1 zone. Currently under the LEP there is no provision to subdivide the land.

Council proposed to address this with the Department prior to the gazettal of BLEP 2010 via the provision of a subclause to 4.1 that addressed land parcels that had split zones/subdivision minimums. However, the Department informed Council that rather than simply insert a clause to pick up and address instances where this occurred, we had to go through and scrutinise the map layers and find those instances and then develop a site specific subdivision minimum to be depicted on the Lot Size map.

As such Council officers went through and scrutinised the map layer to find such instances and then developed a unique subdivision minimum for those areas. This resulted in a range of subdivision minimums, where the 'residue' or area not suitable to be subdivided had to have a unique minimum based on its area.

This process addressed the majority of occurrences, focusing largely on the release areas, however there are other instances that have not been picked up and nor can it be expected that every instance would be given the size and scale of the Shire. This is especially true given we have to rely on interrogation of the layers by the naked eye.

As such Council Officers are again attempting to address the split zone issue via a clause in the LEP. We have sought the Departments position on this and been advised that there are other Council's in the State that have had such a clause including Tamworth Regional Council.

The benefits of having such a provision in BLEP 2010 are multiple and would enable the facilitation of merit based assessment of subdivisions rather than their prohibition because of a mapping oversight.

The laborious task of allocating a unique subdivision minimum to address the inadequacies of the standard instrument, to take account of regional planning issues, is not considered to achieve sound strategic planning outcomes. Nor does it allow the flexibility in subdivision design to achieve sound subdivision outcomes and environmental gains, based on a merit site specific assessment.

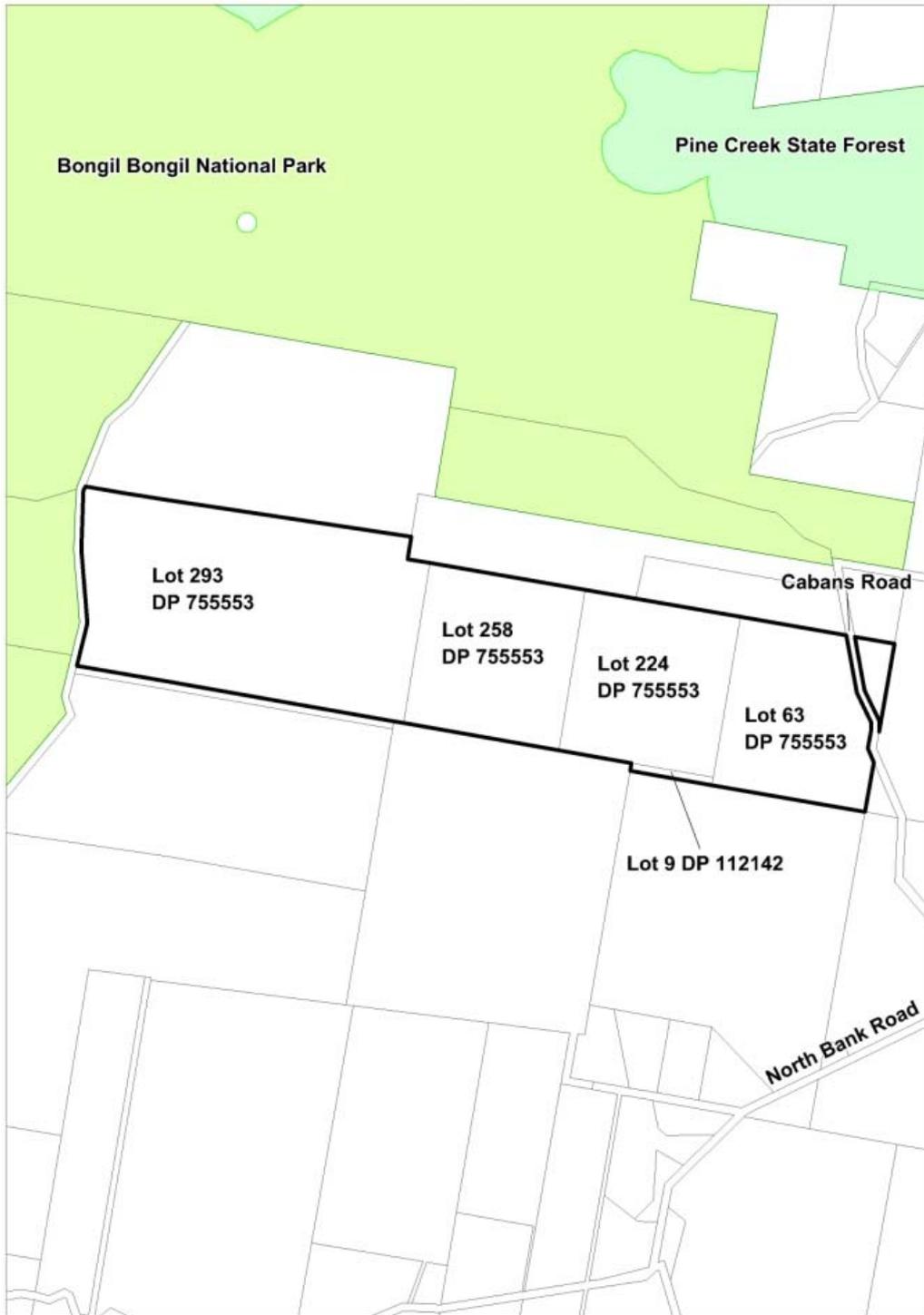
Permit the erection of a dwelling house on Lots 293, 258, 224 & 63 DP755553 (following their consolidation), 105 Cabans Road, Raleigh.

Council has received a submission from the owners of Lots 293, 258, 224 & 63 DP755553, 105 Cabans Road, Raleigh, requesting an amendment to BLEP 2010 to include a provision in Schedule 1 (Additional permitted uses) specifically allowing the erection of a dwelling on the land.

To provide some background to the request, and the history of the land as it relates to the permissibility of a dwelling, the following is provided.

- Clause 4.2A, Erection of dwelling houses on land in certain rural and environmental protection zones, governs whether or not land within the Shire has a 'dwelling entitlement'.
- The history of the land is such that the dwelling entitlement for the land sits with the 'existing holding'. The existing holding comprised Lots 293, 258, 224 & 63 DP755553 and Lot 9 DP112142. What this means is that individually none of these lots satisfy any of the provisions in clause 4.2A but if all the lots are held together in the one ownership they do and the land has a dwelling entitlement.
- The current circumstances are that Lot 9 DP112142 is no longer held as part of the 'existing holding' and as such the land no longer satisfies any of the provisions under clause 4.2A of BLEP 2010, and therefore does not have an entitlement.
- So the current owners are left with what is effectively the residue of the holding on which they cannot erect a house.
- The current owners advised that when they inherited the land they were of the understanding they were inheriting the 'existing holding'. However as detailed in the submission that was not the case and Lot 9, at the time, was sold to an adjoining land owner.

The following map, Figure 1, depicts the subject property.



As can be seen from the above map Lot 9 DP112142 is a small section of 'closed road' that was provided as an area grant and has a total area of only 4199m². It is reasonable in the circumstances to argue that a dwelling would have been permissible on the land, currently held in the one ownership, prior to the inclusion of the area grant (Lot 9) and that a dwelling should be permitted on the land.

Evidence has been provided in the form of a statutory declaration and a photograph that the land historically did in fact have a dwelling and associated farm buildings.

A resolution to permit a dwelling on the land is not considered to set a precedent for other land owners who have deliberately or inadvertently sold off portions of their existing holding to then apply for an entitlement. The reason for this is that Lot 9 is a section of closed road that does not and will not have an entitlement. Nor would it be possible to erect a dwelling on the land given the land use constraints present. It was part of an area grant given to the than owners of the 'existing holding' that would have had an entitlement prior to the inclusion of Lot 9.

SPECIFIC JUSTIFICATION FOR PLANNING PROPOSAL

A. Need for Planning proposal

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

The planning proposal is the result of continued monitoring of the effectiveness of the existing LEP document. It is not contrary to any strategic study or report.

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

There is no alternative measure that would deliver the outcomes sought by the planning proposal.

Is there a net community benefit?

There is a community benefit that accrues from the routine monitoring of the LEP for instances where it is not delivering reasonable and logical development outcomes.

The provision to include secondary dwellings in rural zones will provide a net community benefit through providing for improved housing choice and opportunities for family succession planning on farms throughout Bellingen Shire. The minor size of the resultant dwellings will not provide for significantly increased burdens upon other community infrastructure.

The existing situation with respect to boundary adjustments is logically indefensible and does not deliver any significant community benefit. The proposed LEP amendment will rectify this situation. The split zone clause is similarly minor in impact and will simplify the subdivision process for property owners who may have been overlooked in the allocation of minimum lot sizes to residue parcels.

The reasonable allocation of a dwelling entitlement to the original existing holding at Cabans Rd will allow for the effective use and maintenance of the land through permanent residential occupation.

B. Relationship to strategic planning framework

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

The Mid North Coast Regional Strategy (MNCRS) provides a broad outline for the direction of future development in this region for the next 2 decades. The relevant outcomes and actions of the Mid North Coast Regional Strategy include:

4. Settlement and Housing

Subdivision, houses and other uses in rural zones

Actions

- *Councils will maintain appropriate subdivision standards for rural zones consistent with the principles of the State Environmental Planning Policy (Rural Lands) 2008.*
- *Local environmental plans will include minimum subdivision standards for rural and environment protection zones.*
- *Local environmental plans will include provisions to limit dwellings in rural and environmental zones.*

Comment:

As previously documented, the LEP provides a range of measures that limit dwellings in rural and environmental zones including a prohibition of rural workers dwellings across all zones, the prohibition of anything beyond a single dwelling in the E4 Environmental Living Zone and the prohibition of detached dual occupancy across all rural zones.

The introduction of secondary dwellings as a permissible use in RU1, RU2 and RU4 zones will still effectively limit the style and number of dwellings in rural areas and is considered to be broadly consistent with this provision.

The Rural lands principles of the Rural Lands SEPP 2008 are listed below.

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The Rural Subdivision Principles are as follows:

- (a) the minimisation of rural land fragmentation,*

- (b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*
- (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*
- (d) the consideration of the natural and physical constraints and opportunities of land,*
- (e) ensuring that planning for dwelling opportunities takes account of those constraints.*

To not permit the subdivision of rural land by way of boundary adjustment between properties with existing dwellings and/ or dwelling entitlements is considered a breach of the principle contained within the SEPP as it frustrates a wide range of options for realising the potential of rural land.

Subject to the careful assessment of issues such as agricultural viability and land use conflict (via the development assessment process) it is possible to implement and uphold the principles of the SEPP and allow for flexible responses to changing circumstances. The LEP seeks to implement such a process for boundary adjustments without proposing any intensification of existing permissible development densities by way of subdivision.

The introduction of secondary dwellings as a permissible use in the rural zones is considered to provide for a range of social and economic benefits for rural communities. For example, it would allow for the younger generation of a farming family to occupy the principle dwelling on the land holding whilst allowing for the previous generation to also stay on the property, close to family support networks. Previous experience has indicated that this option is often not pursued if the second dwelling needs to be physically attached to the principle dwelling and the secondary dwelling provision will address this concern.

The confirmation of a dwelling entitlement for the land described at Cabans Rd will confirm the historic entitlement considered to exist for this property and allow for the ongoing settlement and use of rural land in the locality for agricultural purposes.

The incorporation of a split zone subdivision clause will not undermine the minimum lot size approach to rural subdivision that is advocated in the MNCRS, however will allow for the more effective treatment of residue land parcels on the fringe of areas with confirmed development potential.

7. Environment & Natural Resources

Actions

Subdivision and dwelling standards in local environmental plans will reflect the Rural Lands SEPP, the Regional Strategy and the objectives of the relevant zones.

Comment:

The planning proposal proposes a suite of minor amendments to permissible uses and subdivision provisions in rural zones. These will not erode the central planning position that has been implemented in BLEP 2010 (and advocated in the MNCRS & Rural Lands SEPP) concerning rural land uses and environmental protection.

8. Natural Hazards

Outcomes:

Future urban development will not be located in areas of high risk from natural hazards including sea level rise, coastal recession, rising water tables and flooding.

Appropriate planning provisions will be incorporated in local environmental plans consistent with the Floodplain Development Manual and council's risk management plan to minimise the risk from flooding and coastal erosion.

Actions:

Local environmental plans will zone areas subject to high hazard to reflect the limitations of the land.

Comment:

The planning proposal affects land that has been identified as subject to flooding at Cabans Rd. It is noted however that a significant area of the subject property is not affected by the 1% AEP flood. Development for a dwelling that is consistent with the provisions of Chapter 12 of Bellingen Shire DCP (Flooding & Riverine Processes) therefore appears viable on the subject property.

The land is also partially mapped as bushfire prone land in part, however adequate opportunity exists for the erection of a dwelling on land that is not mapped.

9. Cultural heritage

Outcomes:

The Region's places, precincts and landscapes of cultural heritage significance will be identified (where appropriate) and protected in planning instruments.

Comment:

The planning proposal does not involve any alteration to existing heritage listings or heritage listings in BLEP 2010, or affect any land with an existing listing.

Is the proposal consistent with Council's strategic plans?

Growth Management Strategy:

The Bellingen Shire Growth Management Strategy (2007) (the GMS) is the principal strategic plan that informs land use zonings and development potential in Bellingen Shire. The recommendations of the GMS have been largely implemented with the gazettal of BLEP 2010.

It is considered that the planning proposal is consistent with the GMS. It does not propose any new localities for development or any rezoning of land. The Schedule 1 addition for Cabans Rd does not propose any new increased density of development, but confirms and rectifies a historic situation.

Is the proposal consistent with applicable state environmental planning policies?

The planning proposal does not directly contradict any relevant SEPP.

The SEPP that is of principle relevance is the Rural Lands SEPP 2008, and this has been discussed in detail in previous sections of the report.

In summary, the proposed amendments do not act to introduce new entitlements that will jeopardise rural activities or involve any departure from the strategic land use planning approach undertaken in the GMS.

Is the proposal consistent with applicable Section 117 directions?

Section 117 directions are issued by the Minister for Planning and relate to various planning matters that must be considered when preparing a planning proposal. The directions relevant to the subject proposal are considered below.

Direction 1.2 – Rural Zones

This direction applies as the planning proposal will contain provisions (relating to secondary dwellings) that will increase the permissible density of land within a rural zone.

Variations to the terms of the direction are possible where the requested variation is;

- (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
- (d) is of minor significance.*

In this regard, it is submitted that the inclusion of secondary dwellings within the rural zones as a permissible use is not in fact contrary to the principle action within the MNCRS regulating rural dwellings. This states as follows.

Local environmental plans will include provisions to limit dwellings in rural and environmental zones

As previously documented, the LEP provides a range of measures that limit dwellings in rural and environmental zones including a prohibition of rural workers dwellings across all zones, the prohibition of anything beyond a single dwelling in the E4 Environmental Living Zone and the prohibition of detached dual occupancy across all rural zones. It is also noted that secondary dwellings will be limited in size to 60m² in area, further demonstrating consistency with the intent of this provision.

The acceptance by the Department of secondary dwellings in rural zones in other LGA's on the Mid North Coast is considered further evidence of their broad acceptability in terms of this direction and the strategic intent of the MNCRS.

Direction 1.4 – Oyster Aquaculture

Direction 1.4 applies to any planning proposal that proposes a change in land use which could result in:

- a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or
- b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease” in the national parks estate” and other land uses.

It is not considered that the planning proposal will adversely impact on any Priority Oyster Aquaculture Area.

Direction 1.5 – Rural Lands

This direction applies as the planning proposal will affect land within an existing or proposed rural or environment protection zone. In this instance, the planning proposal must be consistent with the rural planning principles and rural subdivision principles within SEPP (Rural Lands) 2008. These are reprinted below.

Comment:

These matters have been addressed in previous sections of the report.

Direction 2.1 Environment Protection Zones

This direction applies to any planning proposal. It requires that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas and that a planning proposal that applies to land within an environment protection zone must not reduce the environmental protection standards applying to the land.

Comment:

The planning proposal includes a provision that subdivision will not result in the fragmentation of any land zoned E2 Environmental Conservation and E3 Environmental Management unless adequate justification is provided that the net environmental value of the land will not be compromised.

Direction 2.2 – Coastal Protection

The Planning Proposal affects land within the coastal zone (given that it proposes controls to be introduced across the Shire) however it is not at odds with any specific aspect of this direction.

Direction 3.1 – Residential Zones

This direction applies because the planning proposal will affect land within an existing or proposed residential zone. It is not considered that the proposal constitutes significant residential development that would trigger this direction.

It is not considered that the planning proposal is contrary to this direction.

Direction 4.1 – Acid Sulfate Soils

This direction applies as land affected by the planning proposal at Cabans Rd is mapped as containing acid sulfate soils. The subject site has Class 2 acid sulfate soils occurring mostly underneath the extent of the 1% AEP flood level. This land is unlikely to be further excavated as part of any future development.

In this regard, it is considered that the planning proposal is of minor significance.

Direction 4.3 – Flood Prone Land

The Planning Proposal will broadly affect land across the Shire that will be subject to varying levels of influence from flooding. Land at Cabans Rd, the subject of the Schedule 1 amendment, is specifically subject to flooding however as previously mentioned is not considered to be at significant risk due to the presence of flood free land on the overall holding.

Overall, the proposal is considered consistent with the direction as it does not permit a significant increase in development on land that is likely to be subject to flooding.

Direction 4.4 – Planning for Bushfire Protection

This direction applies as land included within the planning proposal is mapped as bushfire prone.

A planning proposal must have regard to relevant legislation and avoid placing inappropriate developments in hazardous areas. As previously mentioned, land at Cabans Rd is mapped as partially bushfire prone, however adequate potential exists for the erection of a dwelling on land that is not mapped.

Overall, the proposal is considered consistent with the direction.

Direction 5.1 – Implementation of Regional Strategies

This direction applies as Bellingen Shire is included in an adopted regional strategy, this being the Mid North Coast Regional Strategy.

The objectives of the direction are to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in the regional strategies. Planning proposals must be consistent with the regional strategy. A proposal may be inconsistent if the extent of inconsistency is of minor significance and the proposal achieves the overall intent of the regional strategy.

As noted previously in comments under the Regional Strategy section above, the proposal is considered to be consistent with the Mid North Coast Regional Strategy.

C. Environmental, social and economic impact

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

It is not considered that the planning proposal will give rise to development that will have an adverse impact upon critical habitat or threatened species, populations or ecological communities, or their habitats.

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

Other likely environmental effects such as bushfire, flooding and acid sulfate soils have been addressed in previous sections. The overall effects of the proposal are likely to be inherently minor, given the minor extent of the changes that are proposed.

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

The proposal is considered unlikely to have any significant adverse social or economic effects. The provision to allow secondary dwellings in rural zones is expected to provide improved opportunities for generational transition into appropriate housing stock and positive social outcomes related to ageing in place.

It seeks to rectify what are widely acknowledged as faults of the existing Standard Instrument LEP. Specifically, the ability to rationalise property boundaries in rural areas to achieve desired outcomes, whilst still preserving the primacy of agricultural land uses in the relevant zone/s through the consent process.

It does not propose any significant departure from any agreed strategic planning direction.

D. State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

Adequate public infrastructure is available for the proposal. The proposal does not open up any new localities for development that would warrant detailed investigation of infrastructure availability.

Views of State and Commonwealth authorities

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

Proposed Community consultation

Having regard to the Department of Planning document “A guide to preparing local environmental plans”, should the planning proposal proceed, it is considered that community engagement should include the placement of the proposal on public exhibition for a period of 28 days at the Bellingen Administration Centre, Bellingen Library, Dorrigo Library, Urunga Library and on Council’s website. Notice of the exhibition should be placed in the Bellingen Courier Sun and the Don Dorrigo Gazette.

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

Delegations to make plan

Council recently accepted an offer of Delegation of Ministerial Functions to Council for the making of certain Local Environmental Plans. As such it is prudent at this point in the process to note whether Council intends to use delegations for the making of this Plan.

Given the local and regionally specific nature of this proposed amendment and the fact that it would not be considered to be of State Significance, Council hereby informs the Department of its intention to use its delegation to make the Plan.

ATTACHMENTS INDEX

ATTACHMENT A: Council Report

ATTACHMENT B: Site Identification Map for Schedule 1 Amendment - Lots 293, 258, 224 & 63 DP755553,105 Cabans Road, Raleigh.