

8.3 PROPOSED LOCAL ENVIRONMENTAL PLAN (LEP) AMENDMENT – SECONDARY DWELLINGS, SPLIT ZONE CLAUSE, RURAL BOUNDARY ADJUSTMENTS AND SCHEDULE 1 INCLUSION
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File/Index: Planning/Planning Local Environmental Plans 2010/Planning Proposal 7
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REPORT SUMMARY:

The purpose of this report is to obtain Council's support for the preparation of a planning proposal to:

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

REPORT DETAIL:

Secondary Dwellings in Rural Zones

In 2009 State Environmental Planning Policy (Affordable Rental Housing) (AHSEPP) introduced Secondary Dwellings (commonly referred to as Granny Flats) as a way of increasing the supply and diversity of affordable housing in NSW. Provision for secondary dwellings was also written into the Standard Instrument Local Environmental Plan.

As such AHSEPP 2009 and Bellingen Local Environmental Plan (BLEP) 2010 permit the construction of secondary dwellings or 'granny flats' in most residential zones.

A secondary dwelling is by definition no greater than 60m² in area or a specified % of the total floor area of the principle dwelling. They can be occupied by any person and offer a range of social and sustainability benefits such as encouraging greater levels of urban consolidation and allowing for transition in dwelling size as people move through age and family cycles.

A secondary dwelling is a self-contained dwelling:

- (a) Established in conjunction with another dwelling (the principal dwelling), and
- (b) On the same lot of land as the principal dwelling (not being an individual lot in a strata plan or community title scheme), and
- (c) May be located within, or attached to, or separate from, the principal dwelling.

In preparing BLEP 2010, Council resolved to permit secondary dwellings in Rural Areas.

However prior to the exhibition of draft BLEP 2010 the Department of Planning and Infrastructure (DPI) issued a conditional section 65 Certificate (provision certifying the exhibition of the draft LEP by the Director General) requiring:

"Secondary dwellings" are to be listed as prohibited development in the land use table for zones RU1, RU2, RU4 and R5.

In order to progress BLEP 2010 in a timely fashion, Council agreed to this change with the intent that an amendment be pursued following gazettal of the Plan. In this vein Council staff were aware that the Department was intending to review their position with regard to the

permissibility of secondary dwellings in rural zones and that there were a number of Council's in the State seeking the same provision.

It is important to understand the State wide application of this provision, given the governments' purported position that the reason why we have a standard instrument is to ensure consistency of provisions across the state between the various LGAs. Of the 28 LEPs we are aware of in the state made under the standard instrument provisions that contain rural zones, 17 permit secondary dwellings in rural zones or 61% across the state. There are also a number of draft LEP's that also allow for secondary dwellings in rural zones including Gosford City Council and Hills Shire.

In addition a recent review of AHSEPP 2009 concluded that although secondary dwellings should not be permissible in rural zones through a state provision within the SEPP, individual LGAs may consider permissibility where Council considers it is warranted.

As such, now that BLEP 2010 has been gazetted and the Department has had a clear policy shift with respect to this matter, it is time to again seek inclusion of secondary dwellings as a permissible use in rural zones and to provide further clear justification as to why this should occur.

Justification

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.

Change to Bellingen Local Environmental Plan 2010

It is proposed to amend the Land Use Table for zones; RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots, to list secondary dwellings as 'Permitted with consent'.

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); and
- 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 limited to a maximum ten (10) percent variation to lot sizes. It makes no provision for a merit based assessment which in some cases would facilitate a boundary adjustment greater than 10% leading to environmental gains or increased agricultural viability for some properties.

As with the provision of secondary dwellings in rural zones, Council originally included 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 and that 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.

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.

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 was also 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 protection zones between lots where one or more resultant lots do not meet the minimum lot size.

Change to Bellingen Local Environmental Plan 2010

It is proposed to 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.

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.

Change to Bellingen Local Environmental Plan 2010

It is proposed to 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.*

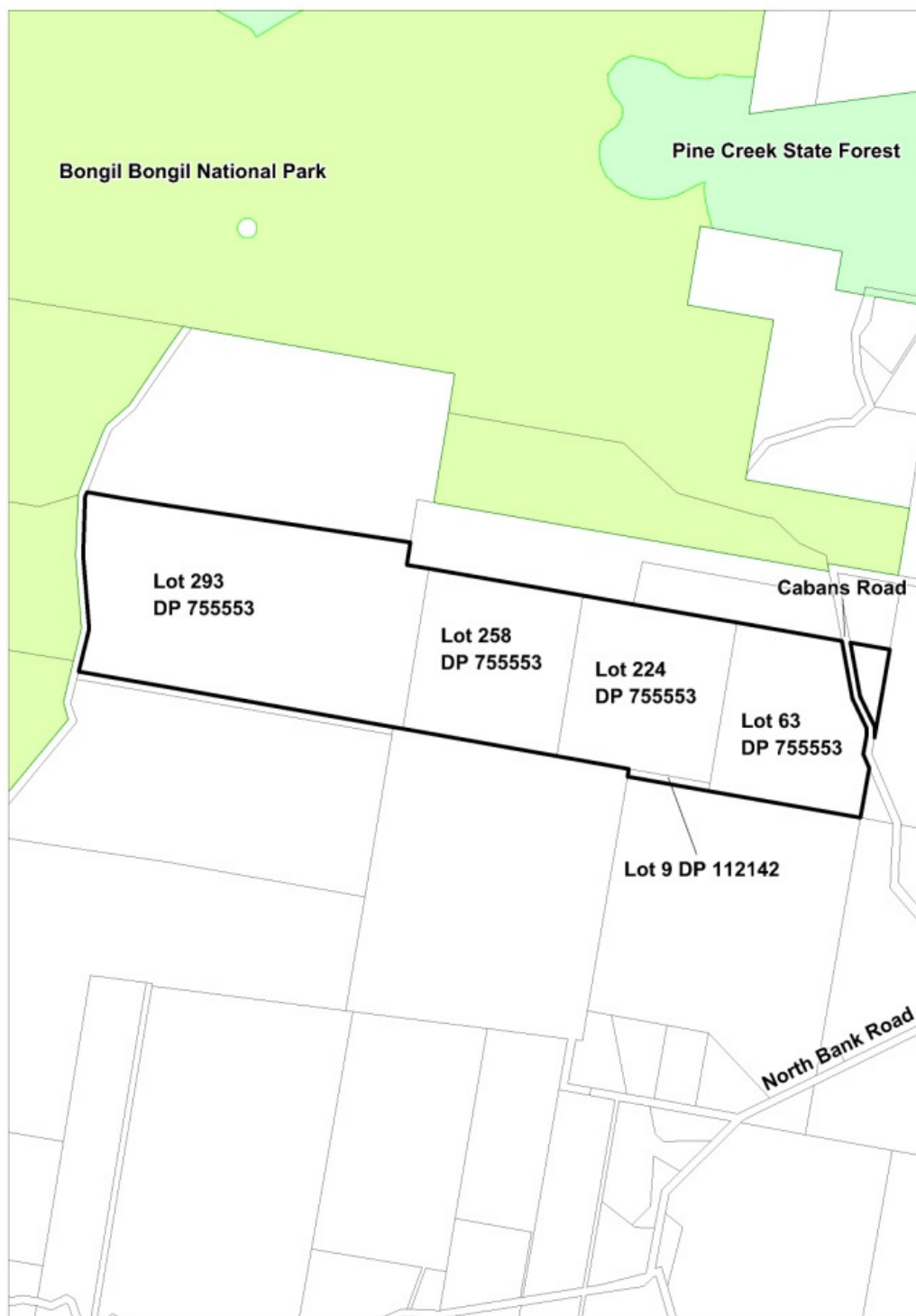
Permit the erection of a dwelling house on Lots 293, 258, 224 & 63 DP755553 (following their consolidation), 105 Cabans Road, Raleigh.

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 provision in Schedule 1 Additional permitted uses specifically allowing the erection of a dwelling on the land. Please refer to attachment 1 for a copy of the submission.

To provide some background with respect to the request and also 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 then owners of the 'existing holding' that would have had an entitlement prior to the inclusion of Lot 9.

Change to Bellingen Local Environmental Plan 2010

It is proposed to 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.

Proposed Community Engagement

For the purposes of preparing a planning proposal and submitting it to the Department of Planning and Infrastructure for a gateway determination, Council needs to indicate its intent with regard to 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, Dorriggo Library, Urunga Library and on Council's website. Notice of the exhibition should be placed in the Bellingen Courier Sun and the Don Dorriggo Gazette.

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

Delegation

Councillors may recall considering a report at the Ordinary Meeting of Council 28 November 2012 regarding Delegation of Ministerial Functions to Council for the making of certain Local Environmental Plans.

Council resolved as follows:

08.043/12

RESOLVED (Cr Scott/Cr Manning)

- (1) That Council advise the Minister for Planning & Infrastructure that it formally accepts the proposed delegations for plan making under the provisions of Section 59 of the EP & A Act 1979.
- (2) That, pursuant to Section 381(a) of the Local Government Act 1993, Council approve the delegation of plan making functions to the General Manager.
- (3) That Council advise the Minister for Planning & Infrastructure that the nominated Council Officer for the exercising of the proposed delegations for plan making is Liz Jeremy, General Manager.

As such it is prudent at this point in the process to include a recommendation for Council to determine their intention, or otherwise, to use delegations for the making of this Plan.

It is recommended, 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 that Council inform the Department of its intention to use its delegation to make the Plan.

BUDGETARY IMPLICATIONS:

The planning proposal for these amendments will be prepared in house. Council will incur a cost relating to the public advertisement of the planning proposal. This can be accommodated within existing budget allocations.

SUSTAINABILITY ASSESSMENT:

In addressing the sustainability or otherwise of the 4 proposed amendments to Bellingen Local Environmental Plan 2010 it is necessary to look at the justification behind the proposals. The ability for rural land owners to be able to undertake routine boundary adjustments is considered to be a sustainable approach to land management. It allows property owners to look at best practice when it comes to management of their farms whether that is protection of environmental values or agricultural viability of their farms. In this vein the provision of secondary dwellings in rural areas allows for succession planning, whilst allowing for controlled development in existing serviced and disturbed areas. This approach focuses on the sustainable management of our natural and agricultural resources.

The provision of Secondary dwellings also offers additional housing choice and more affordable options to address the various social needs of members in our community. They can be occupied by any person and offer a range of social and sustainability benefits by allowing for transition in dwelling size as people move through age and family cycles.

The split zone provision will allow for a merit assessment to be undertaken which in turn will allow for site specific sustainability assessments to be undertaken. It allows greater flexibility in subdivision design to achieve sound subdivision outcomes and environmental gains.

With respect to the schedule 1 inclusion, this report argues that it is sustainable to allow for the erection of a house on the land as the ability to erect a dwelling on the land will allow for the management of the land to be undertaken by people who reside on the land. The

provision will simply recognise the entitlement that historically existed and allow for a dwelling on a holding that historically had a dwelling.

The planning proposal is sustainable as it does not and will not impact significantly upon identified environmental values. It will allow for more economically viable and affordable housing development options in the Shire whilst ensuring that a merit based assessment of the impacts of any future development occurs.

ENGAGEMENT:

Having regard to the Community Engagement Strategy, it is considered that the planning proposal is appropriately categorised as having a Level 3 impact. A Level 3 impact and relevant considerations are described in the extract below.

Level 3 Lower Impact – Shire Wide Lower level impact on the whole or a large part of Bellingen Shire.	Inform Consult	It will not always be necessary to involve the community. For example, a review of needs may only require a survey, particularly if the community has been involved previously.
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The Engagement Matrix specifies a range of consultation options to be considered for Level 3 impact activities. The proposed options for the planning proposal are detailed below. It is also noted that there are specific requirements for public exhibition of a planning proposal contained within the *Environmental Planning & Assessment Act 1979* that must be observed in order to ensure the legality of the process and ultimate LEP amendment. It should be noted that in the event of any inconsistency between these proposed methods and those specified in the Gateway determination, the provisions of the Gateway Determination shall prevail.

Level of participation	Engagement method	Desirability category	Proposed engagement for ELS
Inform	Written correspondence	Essential	Notify affected landowners and immediately adjoining landowners.
Inform	Website information	Desirable	Place on Council website for duration of exhibition period.
Inform	Advert in Local Paper	Desirable	Place advertisement in Courier Sun & Don Dorrigo Gazette.
Consult	Public exhibition	May be appropriate	Place Draft planning proposal on public exhibition for 28 day period. Exhibit Draft planning proposal at Bellingen, Dorrigo & Urunga Libraries & Council Administrative Centre.

Department of Planning

Should Council decide to proceed with the Planning proposal, it will be referred to the NSW Department of Planning and Infrastructure (DPI).

The proposal will be assessed by the DPI, and then referred to the Government's LEP Panel which will decide whether or not to proceed with the proposal. Attachment 2 provides a flowchart of the LEP process.

SHIRE OF BELLINGEN 2030 COMMUNITY STRATEGIC PLAN ALIGNMENT:

The proposed amendments to Bellingen Local Environmental Plan 2010 most closely align with the following strategic direction within the Shire of Bellingen 2030 Community Strategic Plan.

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

OFFICERS RECOMMENDATION:

- (1) That Council resolve to amend Bellingen Local Environmental Plan 2010 to:
 - a. Amend the Land Use Table for zones; RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots, to list secondary dwellings as 'Permitted with consent'.
 - b. 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) where the land is zoned RU1 Primary Production, RU2 Rural Landscape, 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.

- c. 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.*

- d. 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.*
- (2) That pursuant to clause 55 of the Environmental Planning and Assessment Act 1979, Council staff prepare planning proposals that give effect to the above proposed amendments in accordance with clause 56 of the Act, and the Planning Proposals be forwarded to the Minister for Gateway Determination.
- (3) In the event that the Department of Planning and Infrastructure require minor changes or modifications to the above resolutions, the Planning Manager be authorised to concur with the required changes provided Council's intent in the above resolutions are achieved.
- (4) That Department of Planning and Infrastructure be advised that Council wishes to exercise its delegated authority and make the Plan in relation to Secondary Dwellings, Split Zone Clause, Rural Boundary Adjustments and Schedule 1 Inclusion.

ATTACHMENTS:

8.3A Letter from Denis Atkinson

8.3B Flowchart – Process to make a Local Environmental Plan

Attachments – 8.2A DWS 296277

8.2B DWS 335211

Report – DWS 337289

08.007/13

RESOLVED (Cr Manning /Cr Troy)

- (1) That Council resolve to amend Bellingen Local Environmental Plan 2010 to:
- Amend the Land Use Table for zones; RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots, to list secondary dwellings as 'Permitted with consent'.
 - 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:

- the subdivision will not create additional lots or the opportunity for additional dwellings, and*
- the number of dwellings or opportunities for dwellings on each lot after subdivision must be the same as before the subdivision, and*
- the potential for land use conflict will not be increased as a result of the subdivision, and*
- where the land is zoned RU1 Primary Production, RU2 Rural Landscape, 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.

- c. 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.

- d. 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.

- (2) That pursuant to clause 55 of the Environmental Planning and Assessment Act 1979, Council staff prepare planning proposals that give effect to the above proposed amendments in accordance with clause 56 of the Act, and the Planning Proposals be forwarded to the Minister for Gateway Determination.

- (3) In the event that the Department of Planning and Infrastructure require minor changes or modifications to the above resolutions, the Planning Manager be authorised to concur with the required changes provided Council's intent in the above resolutions are achieved.
- (4) That Department of Planning and Infrastructure be advised that Council wishes to exercise its delegated authority and make the Plan in relation to Secondary Dwellings, Split Zone Clause, Rural Boundary Adjustments and Schedule 1 Inclusion.

UNANIMOUS