

GENERAL MANAGER'S REPORT

ITEM 9.5 SF1751 101012 PLANNING PROPOSAL NAMBUCCA LOCAL ENVIRONMENTAL PLAN AMENDMENT NO. 10

AUTHOR/ENQUIRIES: Grant Nelson, Strategic Planner; Michael Coulter, General Manager

SUMMARY:

The purpose of this report is to ensure subdivision on Lots that contain split zones and different lot size may still be subdivided. This is particularly important in areas fringing Large Lot Residential and Rural Zones to ensure Council's Local Growth Management Strategy for Rural Residential Land can be implemented in accordance with its recommendations.

This report provides the Council with a summary of the results of the exhibition of the LEP amendment and recommends Council proceed with the LEP amendment as proposed.

NOTE: *This matter requires a "Planning Decision" referred to in Section 375A of the Local Government Act 1993 requiring the General Manager to record the names of each Councillor supporting and opposing the decision*

Recommendation:

- 1 That pursuant to Clause 59 of the *Environmental Planning and Assessment Act 1979* the Planning Proposal, associated documents and submissions be forwarded to Department of Planning and Infrastructure requesting that they seek the making of the Plan by the Minister.
- 2 That those persons/agencies who made submissions be advised of Council's decision.

OPTIONS:

Council may choose not to proceed with the LEP Amendment or amend the provisions.

DISCUSSION:

This LEP amendment will ensure the subdivision on Lots that contain split zones and different lot sizes may still be subdivided.

Council resolved to proceed with this LEP amendment on 15 March 2012. A planning proposal was prepared and forwarded to the Department of Planning for Gateway Determination. The Gateway Determination was received on the 8 May 2012 and indicated Council could proceed with the proposed amendment subject to an exhibition period of 14 days and consideration by NSW Rural Fire Service

Clause 4.1 of the Nambucca LEP 2010 provides for the subdivision of land in the Nambucca Shire. In brief this clause states that any Lot resulting from the subdivision of Land must not be less than the minimum lots size shown on the Lot Size Maps. This clause is reproduced in full below.

Clause 4.1 Minimum subdivision lot size

- 1 The objectives of this clause are as follows:
 - a to encourage efficient use of land,
 - b to ensure the subdivision layout is compatible with the desired future character of the locality,

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- c to ensure land zoned R5 Large Lot Residential is developed in accordance with the Council's strategic planning framework for Nambucca.
- 2 This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.
- 3 The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.
- 4 This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.
- 4A This clause does not apply in relation to the subdivision of land in Zone R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential or R4 High Density Residential:
 - a if the land contains an existing dual occupancy, or
 - b for the purpose of erecting an attached dwelling or a semi-detached dwelling, or
 - c if a single development application is made for the subdivision of the land into 2 lots and for the erection of a dwelling house on each of the 2 resulting lots.

On land containing a split zone with two (2) different Lot sizes the residue lot may not meet the minimum size requirements as required by the above clause, in many cases the residue portion may already be below the minimum size required by the Lot Size Map. Arguably, in some instances subdivision of split zoned land may be prohibited as residue allotments may be below the minimum lot size required.

The Clause proposed to rectify this issue allows a split zone subdivision to occur subject to a portion of land with the smaller lot size is attached to the residue lot. In a typical Rural Residential subdivision this would mean a 1HA portion of Rural Residential land would be attached to the residue Rural block.

The following clause was drafted in the planning proposal to be incorporated into the Nambucca LEP 2010. It is adapted from similar clauses in other LEP's approved by the Department of Planning and infrastructure.

4.1B Minimum Subdivision lot sizes for certain split zones

- 1 The objectives of this clause are as follows:
 - a to provide for the subdivision of lots that are within more than one zone and cannot be subdivided under clause 4.1
 - 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, village, business, industrial or special uses zone, and
 - b land in RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation or E3 Environmental Management zone.
- 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 or village, zone that has an area that is not less than the minimum size shown on the lot size map in relation to that land or land in a business, industrial or special uses zone that has an area not less than 1000m²; and
 - ii all of the land in RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation or E3 Environmental Management zone
 - 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

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CONSULTATION:

Council resolved to proceed with the LEP amendment on 15 March 2012. A planning proposal was prepared and forwarded to the Department of Planning for Gateway Determination. The Gateway Determination was received on the 8 May 2012 and indicated Council could proceed with the proposed amendment subject to an exhibition period of 14 days and consideration by NSW Rural Fire Service.

The NSW Rural Fire Service provided no objection to the proposed amendment and the planning proposal was exhibited from the 9 August to the 24 August 2012. During the exhibition period the Council received 1 submission from Mr Stewart Melville **[attached]**, details of the submission (summarised in *italics*) and a response to matters raised are provided below:

- 1 *The implementation of this proposal is extremely significant and could all too readily lead to citizen dissatisfaction to which they will have no recall. The current case by case approach to community involvement to amendments is not ideal.*

Response:

In regards to the Standard Instrument LEP a number of Local Government Areas have implemented amendments to ensure the standard instrument functions as it is intended. Land use zones and minimum lot sizes were designated during the preparation of the Nambucca LEP 2010 which was subject to a number of related workshops and community meetings. This proposed amendment will ensure these zones and lot sizes can be applied as intended.

- 2 *Disagree with the proposal being low impact and it lacks accountability.*

Response:

Similar amendments to this proposal have been implemented in various forms by a number of Councils as it is essentially correcting an anomaly with the Standard Instrument LEP which does not provide for lots that contain multiple lot sizes or zones. This is considered the core reason the planning proposal is low impact.

Further, Council's LEP 1995 contained a similar provision 12(2)b which allowed a lot smaller than the required lot size to be created for Rural Residential areas. Proceeding with the amendment would support Councils previous resolutions to apply a best fit transfer from the 1995 LEP into the standard instrument template.

- 3 *Page numbers not included on proposal therefore validity questioned.*

Response:

Council staff use a template to prepare planning proposals and will ensure future planning proposals include page numbering. However the lack of page numbering would not constitute an invalid planning proposal.

- 4 *Scotts Head residents have no comprehension of this proposal or Councils plans for the area and until such time this information is presented to the community in a clear and transparent way and receives agreement from the community this proposal should be placed on hold.*

Response:

The complexity of the issue and the existing planning system is not understated in this submission. When originally reported to Council the proposal had to be clarified further and an additional report was prepared to Council. However, it is re stated that this proposal is essentially allowing the zones and lot sizes to be

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implemented as intended in the LEP 2010

A review of the complex existing system is welcomed. The recently released Green Paper which discusses the new planning model to be developed by the Department of Planning and Infrastructure is placing emphasis on community involvement in strategic planning matters. It may be as a result of this that alternative consultation procedures are proposed. Nevertheless Council has met its statutory obligations for community consultation under the gateway determination for this proposal.

SUSTAINABILITY ASSESSMENT:**Environment**

The proposed LEP amendment will assist implementation of Council Strategies such as the Local Growth Management Strategy for Rural Residential Lands. The proposed amendment is giving effect to zoning and lot size provisions already adopted, therefore the environmental impact of this amendment is limited.

Social

The proposed LEP amendment will assist implementation of Council Strategies such as the Local Growth Management Strategy for Rural Residential Lands. The proposed amendment is giving effect to zoning and lot size provisions already adopted, therefore the social impact of this amendment is limited.

Economic

The proposed LEP amendment will assist implementation of Council Strategies such as the Local Growth Management Strategy for Rural Residential Lands. The proposed amendment is giving effect to zoning and lot size provisions already adopted, therefore the economic impact of this amendment is limited.

Risk

Should Council not adopted the provisions as proposed, planning decisions on split zoned land may be subject legal interpretation and challenge.

FINANCIAL IMPLICATIONS:**Direct and indirect impact on current and future budgets**

There are no direct budgetary implications. To the extent that it facilitates additional subdivision, there will be an increase to Council's rate base.

Source of fund and any variance to working funds

There is no impact on working funds.

ATTACHMENTS:

- 1 21796/2012 - Submission in relation to Planning Proposal - S Melville 0 Pages

TO: Strategic Planner (Grant Nelson)

Subject: Planning Proposal Nambucca Local Environmental Plan Amendment no. 10
Target Date: 24/10/2012
Notes:
Trim Reference SF1751 (25331/2012)

3609/12 **RESOLVED:** (Finlayson/Hoban)

- 1 That pursuant to Clause 59 of the *Environmental Planning and Assessment Act 1979* the Planning Proposal, Amendment No 10, associated documents and submissions be forwarded to Department of Planning and Infrastructure requesting that they seek the making of the Plan by the Minister.
- 2 That those persons/agencies that made submissions be advised of Council's decision.

For the Motion Councillors Morrison, Flack, Smyth, Finlayson, MacDonald, South and Hoban.(Total 7)
Against the motion Nil

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ACTION TAKEN BY OFFICER

ONGOING / COMPLETED

Completion date: _____

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