
DIRECTOR ENVIRONMENT & PLANNING'S REPORT

ITEM 10.7 SF1541 260712 PLANNING PROPOSAL - EXCEPTIONS TO MINIMUM LOT SIZES FOR CERTAIN RURAL SUBDIVISIONS

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

SUMMARY:

The purpose of this report is to obtain a Council resolution to pursue an Amendment to the Nambucca LEP 2010 to ensure that a subdivision resulting in a lot less than the minimum lot size may occur on rural land where it is related to a permissible land use and does not result in an additional dwelling entitlement.

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 Pursuant to the Clause 55 of the *Environmental Planning and Assessment Act 1979*, Council prepare a Planning Proposal to support the proposed clause identified in this report.
- 2 The Planning Proposal and associated material be submitted to the Minister for Planning for consideration under Clause 56 of the Act.
- 3 In the event that a negative Gateway Determination be received, Council pursue this with its local member and also the Minister for Planning and Infrastructure. The submissions should indicate the unnecessary red tape created by the existing arrangements and the stifling of permissible development which results from having to locate permissible uses on entirely inappropriate lot sizes. Further it should also be noted that the proposed amendment is consistent with what was previously possible under Council's former LEP 1995.

OPTIONS:

Council resolve not to pursue this amendment.

DISCUSSION:

On 16 September 2010 Council reviewed the recently gazetted Nambucca LEP 2010 and identified a number of anomalies and other future amendments to pursue in the LEP. One of these amendments was to incorporate a clause that would allow special purpose subdivision in Rural Areas. Essentially the clause would allow rural land to be subdivided below the minimum lot size where Council is satisfied the use of the land after the subdivision will be for an approved use other than residential accommodation.

Such clauses were common in NSW LEP's and an equivalent clause was present in the Nambucca LEP 1995. The reason such clauses were common is that there are a plethora of permissible uses in rural zones which don't require and/or cannot afford a large holding. For this reason it was considered reasonable to provide such a clause in the LEP 2010 and the matter was forwarded to the Department of Planning (DoP) for consideration. The gateway determination advised the matter could not proceed as the clause was not part of the standard instrument template.

No further action has been taken to pursue this amendment and to date any enquiries regarding this type of subdivision have been advised that they would require an LEP amendment to change the minimum lot size.

More recently the Armidale-Dumaresq Shire has placed their draft LEP 2012 on exhibition and it includes a local clause to permit subdivision of the type proposed in this report. As an LEP requires approval from the

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DoP for exhibition it appears the DoP may have reconsidered their position on these types of subdivisions or a local model provision to allow this type of subdivision has been developed.

It is recommended that Council support staff in the preparation of a planning proposal to incorporate the following clause in the LEP 2010 and the planning proposal and associated material be forwarded to the minister for gateway determination.

4.2A Exceptions to minimum lot sizes for certain rural subdivisions

- 1 The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of permissible uses other than for the purpose of dwelling houses or dual occupancies.
- 2 Land in a zone to which Clause 4.2 applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land, where the consent authority is satisfied that the use of the land after the subdivision will be the same use permitted under the existing development consent for the land (other than for the purpose of a dwelling house or a dual occupancy).
- 3 Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:
 - a the subdivision will not adversely affect the use of the surrounding land for agriculture, and
 - b the subdivision is necessary for the ongoing operation of the permissible use, and
 - c the subdivision will not increase rural land use conflict in the locality, and
 - d the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

CONSULTATION:

General Manager, Director of Environment and Planning

SUSTAINABILITY ASSESSMENT:**Environment**

This proposal amendment will not affect the way environmental issues are addressed in the Development application process.

Social

This proposal amendment will not affect the way social issues are addressed in the Development application process.

Economic

The proposal will not place any economic burden on Council. It will remove an unnecessary LEP amendment phase for some development applications – ensuring sustainable use of Council and developer resources.

Risk

Nil

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

Nil as the planning proposal will be prepared in-house

Source of fund and any variance to working funds

Nil

ATTACHMENTS:

There are no attachments for this report.

TO: Executive Assistant (Barbara Parkins)

Subject: Planning Proposal - Exceptions to Minimum Lot Sizes for Certain Rural Subdivisions
Target Date: 9/08/2012
Notes:
Trim Reference SF1541 (18762/2012)

3473/12 **RESOLVED:** (Finlayson/Ainsworth)

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- 2 The Planning Proposal and associated material be submitted to the Minister for Planning for consideration under Clause 56 of the Act.
- 3 That in the event that a negative Gateway Determination is received, Council pursues this with its local member and also the Minister for Planning and Infrastructure. The submissions would indicate the unnecessary red tape created by the existing arrangements and the stifling of permissible development which results from having to locate permissible uses on entirely inappropriate lot sizes. Further it should be noted that the proposed amendment is considered with what was previously possible under council's former LEP 1995.

For the motion: Councillors Hoban, Court, Ballangarry, Flack, Smyth, Finlayson, Ainsworth
and South (Total 8)
Against the motion: Nil

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ACTION TAKEN BY OFFICER

ONGOING / COMPLETED

Completion date: _____

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