

Nambucca LEP 2010 Draft Amendment No 7 – Rural Tourist Accommodation.

Proposal Title : **Nambucca LEP 2010 Draft Amendment No 7 – Rural Tourist Accommodation.**

Proposal Summary : **The planning proposal seeks to enable small scale tourist and visitor accommodation developments on rural land. It is proposed to amend the land use table for zones RU1 Primary Production, RU2 Rural Landscape and R5 Large Lot Residential to permit the group term "Tourist and visitor accommodation" with consent, while prohibiting the individual sub-terms "backpackers accommodation", "hotel and motel accommodation" and "serviced apartments" in these zones.**

PP Number : **PP_2012_NAMBU_002_00**

Dop File No :

12/01099

Proposal Details

Date Planning : **06-Jan-2012**

Proposal Received :

LGA covered :

Nambucca

Region : **Northern**

RPA :

Nambucca Shire Council

State Electorate : **OXLEY**

Section of the Act :

55 - Planning Proposal

LEP Type : **Policy**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **The proposed amendment will affect all lots zoned RU1 Primary Production, RU2 Rural Landscape and R5 Large Lot Residential.**

DoP Planning Officer Contact Details

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RPA Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Mid North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :	0	Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

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

If No, comment :

Have there been meetings or communications with registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

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

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

Comment : **The statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to amend the Nambucca LEP 2010 to allow rural tourist facilities in zones RU1, RU2 and R5. The rural tourist facilities envisaged by the proposal are tourist cabin developments which will differ from "bed and breakfast accommodation" and "farm stay accommodation" by being detached from the principal dwelling and not necessarily ancillary to agricultural activities.**

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

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

Comment : **The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The proposed amendment to the land use table is the most appropriate method to achieve the objective of the proposal.**

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.4 Oyster Aquaculture

1.5 Rural Lands

2.2 Coastal Protection

2.3 Heritage Conservation

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

6.3 Site Specific Provisions

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

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

d) Which SEPPs have the RPA identified?

SEPP No 14—Coastal Wetlands

SEPP No 15—Rural Landsharing Communities

SEPP No 26—Littoral Rainforests

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP No 71—Coastal Protection

SEPP (Rural Lands) 2008

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

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

If No, explain : **Yes. See the assessment section of his report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

The proposed amendments to the Nambucca LEP 2010 are policy changes to the land use table that do not require changes to any maps.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The RPA considers that the proposal is a low impact proposal and that a community consultation period of 14 days is adequate. The Northern Region agrees that the proposed changes constitute a low impact planning proposal and a consultation period of 14 days is considered appropriate.

Additional Director General's requirements

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

If Yes, reasons :

Overall adequacy of the proposal

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

If No, comment :

The planning proposal satisfies the adequacy criteria by;

- 1. Providing appropriate objectives and intended outcomes.**
- 2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.**
- 3. Providing an adequate justification for the proposal.**
- 4. Outlining a proposed community consultation program.**

Proposal Assessment

Principal LEP:

Due Date : **July 2010**

Comments in relation
to Principal LEP :

The Nambucca LEP was made in July 2010. This planning proposal seeks an amendment to the Nambucca LEP 2010.

Assessment Criteria

Need for planning
proposal :

The planning proposal is not a result of any strategic study or report. The proposal seeks a means of achieving permissibility for tourist cabins in rural areas which were previously permissible under Nambucca LEP 1995.

The RPA considers that developments which constitute small cabins are an appropriate form of tourist accommodation in the rural and rural residential zones of Nambucca LGA. The envisaged developments are detached from the principal dwelling (unlike bed and breakfast accommodation) and are not ancillary to an agricultural pursuit on the land (unlike farmstay accommodation). There is currently no standard definition in the Nambucca LEP 2010 to address this type of development.

When Nambucca LEP 2010 was made Council relied upon the definition of "bed and breakfast accommodation" to enable rural tourist cabins. This was possible because the definition allowed guest accommodation in "a dwelling and any ancillary buildings".

**The previous definition of "bed and breakfast accommodation" was;
"bed and breakfast accommodation means tourist and visitor accommodation comprising a dwelling (and any ancillary buildings and parking) where the accommodation is provided by the permanent residents of the dwelling and:**

- (a) meals are provided for guests only, and**
- (b) cooking facilities for the preparation of meals are not provided within guests' rooms, and**
- (c) dormitory-style accommodation is not provided."**

The definition of bed and breakfast accommodation changed with the Standard Instrument (LEPs) Amendment Order in February 2011 (the SI Amendment). The definition for bed and breakfast accommodation is now;

"bed and breakfast accommodation means an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where:

- (a) meals are provided for guests only, and**
- (b) cooking facilities for the preparation of meals are not provided within guests' rooms, and**
- (c) dormitory-style accommodation is not provided."**

The new definition limits the guest accommodation to the existing dwelling and does not allow guest accommodation in "ancillary buildings".

The RPA intends to list the group term "Tourist and visitor accommodation" as permissible with consent in the RU1, RU2 and R5 zones. The inclusion of the group term would effectively permit the following individual sub-term land uses;

1. Backpackers Accommodation
2. Bed and breakfast accommodation
3. Farm stay accommodation
4. Hotel or motel accommodation
5. Serviced apartments

Council intends to prohibit "backpackers accommodation", "hotel and motel accommodation" and "serviced apartments" in these zones. "Bed and breakfast accommodation" and "farm stay accommodation" are currently permissible with consent in the RU1, RU2 and R5 zones.

The intent is to enable small scale tourist accommodation developments which do not fall within the definitions of any of the individual sub-terms to be permissible with consent under the broad land use heading of "tourist and visitor accommodation". Higher density or larger scale tourist accommodation will be prohibited in the rural areas by virtue of the prohibition of "backpackers accommodation", "hotel and motel accommodation" and "serviced apartments".

It could be argued that tourist cabins fall within the definition of "serviced apartments"; "serviced apartment means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents."

However the community expectation is that serviced apartments are a high density urban land use which is inappropriate in rural or large lot residential zones. No limits on the size or density of serviced apartment developments exist in the LEP.

Council does not want to permit "eco-tourist facilities" in the RU1, RU2 or R5 zones. Council believes the mandatory clause which is required for eco-tourist facilities is subjective and ambiguous and would be difficult to apply through the development application process. Council believes that development similar to eco-tourist facilities could be possible under the broader tourist and visitor accommodation definition without the limitations imposed by the mandatory eco-tourist facility clause. It is unlikely that eco-tourist facility would be an appropriate definition for the kind of tourist accommodation envisaged, since its location in RU1, RU2 or R5 zones will not necessarily be in an area of special ecological or cultural features.

The proposal to amend the land use tables for the RU1, RU2 and R5 zones is the most appropriate means of achieving the intent of the planning proposal. The alternative would be the introduction of a new definition to the Standard Instrument which is not an acceptable option.

The RPA states that the amendment will enable rural tourist facilities to be developed throughout the LGA which will have a positive effect on the economic environment of the local community. The tourist industry on the North Coast does make a significant contribution to the economic welfare of the community. LEP provisions which enable an expansion of the tourism industry will have a positive community benefit as a result of employment and visitor spending in the LGA.

Consistency with strategic planning framework :

Mid North Coast Regional Strategy (MNCRS).

While the proposal is generally consistent with the Strategy, some minor inconsistencies have been identified.

The Strategy includes the following outcome:

“Opportunities for smaller scale minimum-impact tourism ventures outside prime tourism development areas which relate to the landscape and the environment will be provided (page 26)”.

The proposed amendment will enable such small scale tourism ventures to be developed.

However, an action of the Strategy also sets principles for planning for tourist facilities. One of these principles is;

“No tourism development should be located near the Pacific Highway, except within towns.”

The proposal to make tourist and visitor accommodation permissible in rural zones could result in such development being located along the Pacific Highway. This inconsistency is considered to be of minor significance for the following reasons;

1. The intent of the proposal will result in only small scale tourist developments, the impacts of which will have negligible effects on the safe traffic movements of vehicles on the highway. These can be regulated at development application stage.
2. The upgrade and re-routing of the Pacific Highway through Nambucca Shire will eventually result in restricted vehicular access to the highway.
3. The proposal will prohibit higher intensity tourist accommodation such as hotel and motel accommodation, serviced apartments, and backpackers accommodation in rural zones.

The inconsistency with the strategy is of minor significance since the tourist development permitted in rural zones will be limited to small scale developments. In this instance the overall intent of the strategy to prevent larger tourist development outside of towns along the Pacific Highway will still be achieved.

The proposal is not inconsistent with the vision or objectives of the North Coast Regional Tourism Plan 2004-2007.

The proposal is not inconsistent with the RPA's local strategies or its community strategic plan.

SEPPs

The planning proposal is not inconsistent with any state environmental planning policies.

S117 Directions.

The planning proposal identifies the following S117 directions as being applicable to this proposal 1.2 Rural Zones, 1.4 Oyster Aquaculture, 1.5 Rural Lands, 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 6.1 Approval and Referral Requirements. The planning proposal identifies an inconsistency with direction 1.2. This is discussed below.

The Northern Region considers the following 117 Directions are applicable to the proposal, 1.2 Rural Zones, 1.5 Rural Lands, 2.2 Coastal Protection, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, 6.3 Site Specific Provisions.

Of the above s117 Directions the proposal is inconsistent with Directions 1.2, 4.1, 4.4, and 5.1.

Direction 1.2 Rural Zones is relevant to the proposal to permit tourist accommodation in rural zones. The direction states that a planning proposal shall not contain provisions which will increase the permissible density of land within a rural zone. The planning proposal aims to enable tourist and visitor accommodation in rural zones with development consent.

The direction provides that a planning proposal may be inconsistent with the direction if the inconsistency is justified by a strategy, a study, or is of minor significance. The potential increased density is considered to be of minor significance. There will be limited properties which take the opportunity to develop for tourist and visitor accommodation and these developments will be of a small scale. The RPA has identified the risk that tourist accommodation may be misused for residential accommodation and believes it can address this through regulatory action. This risk could be alleviated by the inclusion of provisions similar to those included in clause 7.8 of the Bellingen LEP 2010, as follows;

7.8 Tourism development in rural and environmental zones

(1) The objective of this clause is to encourage tourism development on land in rural and environmental zones in a way that does not adversely impact on agricultural production or the scenic or environmental values of the land.

(2) This clause applies to land in the following zones:

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape,
- (c) Zone RU4 Primary Production Small Lots,
- (d) Zone E3 Environmental Management.

(3) Development consent must not be granted to tourism development on land in a zone to which this clause applies unless the consent authority is satisfied that the development:

- (a) is, or will be, serviced by adequate access roads taking into account the scale of the development, and
- (b) will complement the rural or environmental attributes of the land and its surrounds,
- (c) will not have an adverse impact on agricultural production, amenity or the significant features of the surrounding natural environment.

(4) Development consent must not be granted to the erection of residential accommodation for the owners or managers of tourism development on land to which this clause applies unless that accommodation is a dwelling house that would be permitted to be erected on that land under clause 4.2A.

(5) Development consent must not be granted to the erection of residential accommodation or tourist and visitor accommodation on land to which this clause applies unless the erection of a dwelling house would be permitted on that land under clause 4.2A or Schedule 1.

(6) Despite any other provision of this Plan, development consent may be granted for only one development for the purpose of bed and breakfast accommodation on any lot.

(7) In this clause:

tourism development includes any of the following that is permissible in the zone to which the application applies:

- (a) bed and breakfast accommodation,
- (b) caravan parks,
- (c) cellar door premises,
- (d) charter and tourism boating facilities,
- (e) farm stay accommodation,
- (f) home industries,
- (g) information and education facilities,
- (h) kiosks,
- (i) markets,

- (j) recreation facilities (outdoor),
- (k) rural industries.

It is considered that the inconsistency of the proposal with Direction 1.2 has been adequately justified in accordance with the terms of the direction.

Direction 4.1 Acid Sulfate Soils is relevant to the proposal to permit tourist and visitor accommodation in zones RU1, RU2 and R5. The direction states that a planning proposal shall not propose intensification of land uses on land identified as containing acid sulfate soils unless a study assessing the appropriateness of the land has been completed. The proposal will enable tourist accommodation on land in rural zones, some of which contain acid sulfate soils. The inconsistency is considered to be of minor significance. Development for tourist accommodation is unlikely to have any significant impact on acid sulfate soils and any impact would be addressed in the development application process and subject to the provisions in the acid sulfate soils clause of the Nambucca LEP.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal to permit tourist and visitor accommodation in zones RU1, RU2 and R5. The direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a gateway determination has been issued. Until this consultation has occurred the consistency of the proposal with the direction remains unresolved.

Direction 5.1 Implementation of Regional Strategies is relevant to the proposal to permit tourist and visitor accommodation in zones RU1, RU2 and R5. The direction states that a proposal must be consistent with the regional strategy. The proposal to permit tourist accommodation in rural zones is inconsistent with the Mid North Coast Regional Strategy for the reasons discussed previously in this report.

The direction provides that a planning proposal may be inconsistent with the direction if the inconsistency is of minor significance or the proposal achieves the overall intent of the strategy. It is considered that the inconsistency is minor, and the overall intent of the Strategy's action to limit significant tourist accommodation in rural zones is maintained. The inconsistency of the proposal with the direction is considered to have been adequately justified.

The planning proposal is otherwise consistent with S117 directions.

Environmental social
economic impacts :

The planning proposal will not have any direct adverse impact on critical habitat or threatened species, populations or ecological communities, or their habitats. Similarly the planning proposal will not have any direct adverse effect on the natural, built or socio-economic environment.

The proposal does however have the potential for indirect effects on the natural and socioeconomic environments. Individual developments may have an impact on the natural environment as a result of clearing for access and bush fire protection, and effluent disposal. The impacts on the built environment will include land use conflict, traffic impacts and amenity. It is expected that the number of rural tourist accommodation developments will be relatively low and therefore these matters can be addressed by the development assessment process on a case by case basis.

The planning proposal has given consideration to social and economic impacts of the proposed amendment to the Nambucca LEP 2010. The RPA suggests that the social and economic impacts will be largely positive. It is expected that the number of properties which take the opportunity to develop for tourist accommodation will be limited however a viable development will contribute a positive impact to the economic environment of the community. There will be little cost to the community for services and infrastructure for potential tourist accommodation, and any cost can be alleviated by S94 contributions, and developer funded infrastructure upgrades, prior to operation of the development.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

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

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

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

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

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Council cover letter Nambucca LEP Amendment No 7.pdf	Proposal Covering Letter	Yes
Planning proposal Nambucca LEP Amendment No 7.pdf	Proposal	Yes
Council report Nambucca LEP Amendment No 7.pdf	Determination Document	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones**
- 1.4 Oyster Aquaculture**
- 1.5 Rural Lands**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**

6.2 Reserving Land for Public Purposes

6.3 Site Specific Provisions

Additional Information :

It is recommended that;

- 1. The planning proposal should proceed as a 'routine' planning proposal.**
- 2. The planning proposal is to be completed within 6 months.**
- 3. That a community consultation period of 14 days is necessary.**
- 4. That the RPA consult with the Commissioner of the NSW Rural Fire Services in accordance with the requirements of S117 Direction 4.4 Planning for Bushfire Protection.**
- 5. It is recommended that a delegate of the Director General agree that the inconsistency of the proposal with S117 Directions 1.2, 4.1 and 5.1 are justified in accordance with the provisions of the directions.**
- 6. Council should give consideration to the inclusions of provisions similar to those in clause 7.8 of the Bellingen LEP 2010. Such provisions are designed to prevent the misuse of tourist accommodation for permanent residential purposes, and to address potential adverse impacts on the environment and surrounding properties.**

Supporting Reasons :

The reasons for the recommendation are as follows;

- 1. The proposal has the potential to make a positive contribution to the economic welfare of the Nambucca LGA by enabling economically viable tourist accommodation on rural land.**
- 2. The impacts of the proposed small scale tourist accommodation developments on the natural, built and socioeconomic environments are expected to be negligible and manageable.**
- 3. The inconsistencies of the proposal with the strategic planning framework are of minor significance.**

Signature:



Printed Name:

JIM CLARK

Date:

11 January 2012