
GENERAL MANAGER'S REPORT

ITEM 9.7 SF1541 260315 PLANNING PROPOSAL - RURAL ROAD LAND SEVERANCE PROVISIONS

AUTHOR/ENQUIRIES: Grant Nelson, Strategic Planner

SUMMARY:

The purpose of this report is to advise Council of investigations undertaken in regards to an LEP amendment for the purpose of allowing rural properties divided by sealed roads to be subdivided. The report discusses preliminary advice received from the Department of Planning and Environment (the Department) regarding this matter.

RECOMMENDATION:

- 1 That pursuant to the Clause 55 of the *Environmental Planning and Assessment Act 1979*, Council prepare a planning proposal to support an amendment to the Nambucca LEP 2010 to allow land severed by a sealed rural road to be subdivided as outlined in the content of this report.**
- 2 The Planning Proposal and associated material be submitted to the Minister for Planning for consideration under Clause 56 of the Act. Council request the matter be referred to the Gateway panel for consideration.**
- 3 The results of the Gateway determination be reported to Council for further information.**

OPTIONS:

1. Council may choose to take no further action on this matter and advise interested landholders of the Departments response.
2. Council may resolve to review the Rural Residential Release Strategy in 2016.

DISCUSSION:

At present the subdivision of rural land is required to meet the minimum lot size being either 40Ha or 100Ha. The majority of the lots that are severed by a sealed road do not provide enough land to enable subdivision of this type, although minor variations are permitted to allow lot size variations up to 10%.

Individual landholders may apply for a site specific LEP amendment to reduce the minimum lot size on certain land subject to making application to Council at cost.

A brief investigation has been undertaken into the implications of a broader amendment to the Nambucca LEP in the form of a Local Provision to allow subdivision of land severed by a public road. The investigation has examined a number of issues associated with such a proposal including the purpose and intent of the amendment, the implications and the potential controls.

Landholder identified issues

Landholders have expressed concerns regarding access and management of land where it is split by a rural road. These concerns were expressed to a Local Member of Parliament and Council which has led to this investigation. The main concerns highlighted include the following:

- Rural activities are difficult to manage in a safe manner where access is required between land on opposing sides of the road

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- The value of the severed land for rural purposes is minimal due to size, and management constraints;
- Poor management of the severed land results in environmental issues such as erosion and weeds; and
- In many areas the severed land may be a logical extension to existing nearby rural residential land.

Typical constraints to undersized rural subdivisions include:

- Increase in dispersed rural settlement
- Safety of vehicle access on to rural roads
- Landuse conflicts with rural activities and small rural holdings
- Small lot sizes may have effluent disposal constraints
- Bushfire constraints; and
- Flooding constraints.

Legislative constraints to such an amendment would include:

- Mid North Coast Regional Strategy
- SEPP Rural Lands; and
- Relevant 117 Directions

Implications

The implications of a correctly drafted provision in the LEP that allows rural subdivision where the land is severed by public road is considered minimal if a number of guiding principles are applied. These principles are:

- The whole parcel (before the severance by road) must have an existing dwelling entitlement
- The land must adjoin part of continuous sealed road
- The land must have a suitable area of land that is not flood prone
- The land must be greater than 1Ha in size
- The land must have physical attributes to support subdivision and/or a dwelling
- The subdivision or future dwelling on the land must not result in unreasonable land use conflicts with surrounding rural activities.

An examination of the number of lots severed by a sealed public road has been undertaken and resulted in the following:

- There are approximately 103 lots severed by a sealed public road;
- No assessment has been undertaken on existing dwelling entitlements of these 103 lots;
- Approximately 14 of these are fully or substantially flood prone and unlikely to be suited to subdivision;
- 60 portions of the undersized lots were less than 1ha in size (it is noted that a multipart lot may be comprised of a number of different portions not all necessarily severed by a road). A visual estimate indicates that approximately 5-10 of these would be severed by a road and unsuitable to subdivision due to size shape and environmental constraints.

To minimize the impact of dispersed rural settlement and avoid servicing pressures in areas well outside of the town centres, further restrictions could be placed in the provisions. For instance the provision may only be applicable to areas within a certain distance of a residential or business zone in accordance with a map overlay. Outlying suburbs in shire that contribute to the 103 severed lot parcels include:

- Taylors Arm (23)
- Yarranbella/ Utungun (16)
- Missabotti and surrounds (13)
- South Arm (4).

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If we assume a reasonably high take up rate for this opportunity (approximately 80%) and take into consideration the analysis above it is estimated that an amendment of this nature could result in an additional 63 additional lots. Should we exclude outlying suburbs, potential lots could be reduced to an additional 22 lots.

Draft provisions

This clause would also be drafted to exclude outlying suburbs via the provision of an overlay map

- 1) The objective of this clause is to permit subdivision of rural lots that are severed by a sealed public road
- (2) This clause applies to land in any of the following zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape,
- (3) Despite clause 4.1 (3), development consent may be granted to the subdivision of one lot into two where:
 - (a) the existing lot is severed by an existing sealed public road; and
 - (b) the existing lot has a dwelling; and
 - (c) the resulting lot boundaries use the road as the boundary of the division;
 - (d) the resulting lots are a size greater than 1Ha; and
 - (e) the resulting lots have a suitable area available for future dwellings and access and access that are at or above the flood planning level for that land;
- (4) In deciding whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:
 - (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (d) whether or not the subdivision is likely to be incompatible with a use on land in an adjoining zone,
 - (e) any measure proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
 - (f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,
 - (g) whether or not the subdivision is likely to have an adverse impact on the environmental values or agricultural viability of the land.
- (5) This clause does not apply:
 - (a) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or
 - (b) where a resulting lot could itself be subdivided in accordance with clause 4.1.

Similar Provisions

A brief investigation into similar provisions elsewhere found that the Queensland Regional Plan (2009-2031) states the following:

- SE Queensland Regional Plan (2009-2031) permits the following:
 - The subdivision divides one lot into two where:*
 - a) the existing lot is severed by a road that was gazetted before second march 2006; and*
 - b) the resulting lot boundaries use the road as the boundary of division.*

Consultation

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In order to gauge the response to such an amendment, the results of the investigation and the draft provisions were forwarded to the Department for consideration. The response from the Department is provided at the end of this report.

The Department provided the following points of response:

- Councils Rural Residential Strategy and the introduction of secondary dwellings into rural zones provides for an adequate supply of dwellings in rural areas;
- Existing provisions in the Nambucca LEP 2010 allow for subdivision of rural areas but limit the potential for ad-hoc rural settlement;
- Should Council wish to pursue such an amendment it should be considered as part of an amendment to Councils Local Growth Management Strategy – Rural Residential Lands. Such an amendment should include a traffic assessment to determine volumes of traffic on roads being considered; the status of vegetation on the land and enough land to provide for appropriate bushfire protection; the presence of existing land uses and the impact such an amendment would have on these uses.
- If the amendment to the strategy is approved Council could rezone the land and amend the minimum lot size or apply the provisions drafted to an overlay map of the target areas generally being near to existing towns or existing rural residential areas.

The response letter concludes that the department considers that there are suitable provisions available to manage specific instances but individual amendments to the minimum lots sizes may be considered on site specific basis.

Planning Staff Comments

The response from the Department is clear to state 'that it considers there are adequate mechanisms to address the issue, however if Council wishes to pursue the matter further investigations and an amendment to the Local Growth Management Strategy would be required and it seems from the Departments view that a guarantee of a positive result cannot be provided.

Councils Options:

1 Do Nothing

Council may choose not to pursue the proposed amendment. Individuals wishing to subdivide the severed rural property can apply for a minimum lot size variation based on the individual merits of the property. Such an application would be at cost to the landowner and may require investigations to support the proposal.

2 Formalise a planning proposal and submit the draft provision 'as is'

Despite the Departments initial response, Council may choose to submit a formal planning proposal to the Department requesting the gateway panel determine if the proposal may proceed. The panel may have a different view to the north coast office of the Department. This occurred with Councils amendment to allow secondary dwellings in rural areas. The north Coast Planning office did not support the secondary dwelling amendment but the gateway panel allowed it to proceed subject to some additional information.

To prepare a planning proposal based on the initial investigations undertaken would not take a significant amount of resources, but Council would gain a firm view from the Department on the matter which could be considered further. It is noted that the Department has the ability to act under delegated authority of the Gateway Panel.

3 Council review the Local Growth Management Strategy Rural Residential land

Council's local growth management strategy rural Residential Land was last amended in 2010 and at the time Council indicated it would review the strategy after 5 years which will be in 2016.

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The strategy allowed for approximately 28 years supply of rural residential land within the short term release. The short term release was provided in the Nambucca LEP 2010. It is likely an additional release of Rural Residential land would be based upon the current construction rate and number of houses constructed since the strategy was first adopted and Council would need to determine where the additional release of rural residential land would occur. Council has been previously advised of the following potential release areas.

- Consolidation of existing rural residential areas. That is, Council could choose to allow for the further subdivision of existing rural residential areas that are limited by lot size constraints. When the LEP was made existing rural residential areas not identified as part of short term release area were provided with a lot size to limit subdivision potential. As an example areas in Scotts Head, Bowraville and Valla were provided with a 2Ha minimum lot size. If included as release areas these areas could be provided with a 1HA minimum lot size;
- New areas could be released that were identified as long term in the strategy and presently zoned rural; or
- The severed lot provision could be considered to introduce subdivision potential to additional land in the shire;

NOTE:

Should Council treat the severed road provisions as part of the broader rural residential strategy, many landholders who have held rural residential land for some time but were excluded from the short term release may find the introduction of new provisions concerning as it could detract further from their perceived future right to subdivide.

For this reason it is recommended Council resolve to proceed with option 1 or 2 above and deal with the issue separately to the Rural Residential Strategy.

Further, to review the strategy as suggested by the department and to complete it in a comprehensive manner addressing other lot allocation considerations would require significant resources from Council including staff time and finances to support studies such as the traffic investigation highlighted by the department.

CONSULTATION:

NSW Department of Planning and Environment
General Manager

SUSTAINABILITY ASSESSMENT:**Environment**

Provisions enabling additional subdivision in the shire would be required to give consideration to the environmental attributes of land and its surrounds.

Social

Provisions enabling additional subdivision in the shire would be required to give consideration to the social attributes of land and its surrounds

Economic

Provisions enabling additional subdivision in the shire would be required to give consideration to the economic attributes of land and its surrounds.

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Risk

The majority of submissions received during the preparation of the Rural Residential Strategy (> 100) were concerned that land they had purchased as an investment had lost its subdivision potential.

Should Council include additional land into the scope of the Rural Residential Strategy, landholders who had their subdivision potential deferred into the long term or had subdivision potential limited via lot size provisions would have concerns.

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

According to comments from the Department a review strategy to incorporate the drafted provisions would require a traffic investigation – highlighting any issues with traffic volumes on roads under consideration.

Source of fund and any variance to working funds

NIL

Service level changes and resourcing/staff implications

A review of the Rural Residential Release Strategy was not planned for at this time and it would be difficult to allocate time to such a review given other programs presently underway. A review of the Strategy was going to be considered some time during 2016. However no budget allocation has been allocated for supporting investigations that may be required such as a traffic assessment.

Staff have already allocated a significant amount of time to the preparation of the initial investigations included in this report. A significant allocation of staff time to this matter would detract from other programs and projects that have greater value to the community.

FOR ACTION

COUNCIL

26/03/2015

TO: Strategic Planner (Grant Nelson)

Subject: Planning Proposal - Rural Road Land Severance Provisions
Target Date: 9/04/2015
Notes:
Trim Reference SF1541 (8247/2015)

739/15 **RESOLVED:** (Ainsworth/Finlayson)

- 1 That pursuant to the Clause 55 of the *Environmental Planning and Assessment Act 1979*, Council prepare a planning proposal to support an amendment to the Nambucca LEP 2010 to allow land severed by a sealed rural road to be subdivided as outlined in the content of this report.
- 2 The Planning Proposal and associated material be submitted to the Minister for Planning for consideration under Clause 56 of the Act. Council request the matter be referred to the Gateway panel for consideration.
- 3 The results of the Gateway determination be reported to Council for further information.

Note Cr Flack requested that her vote be recorded against the resolution as she was opposed to the ad hoc creation of more rural residential (RU5) land and the ongoing incremental loss of agricultural land.

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ACTION TAKEN BY OFFICER

ONGOING / COMPLETED

Completion date: _____

(Please update once item is actually completed)

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