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**ITEM: 13.7**  
**SUBJECT: PLANNING PROPOSAL 12 - E4 (ENVIRONMENTAL LIVING) ZONE PERMISSIBLE USES REVIEW**  
**FILE/INDEX: PLANNING PROPOSAL 12**  
**PRESENTED BY: DANIEL BENNETT, ACTING MANAGER LAND USE SERVICES**

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**001/17**

**RESOLVED (Cr Fenton/Cr Carter)**

That Council:

1. Resolves to proceed with preparing a Planning Proposal to allow the following amendments to Bellingen Local Environmental Plan 2010 (BLEP 2010).
2. That the following uses are made permissible with development consent in Zone E4:
  - Secondary dwellings
  - Attached dual occupancies
  - Eco-tourist facilities
  - Tourist & visitor accommodation (with the exception of backpackers accommodation, hotel or motel accommodation and serviced apartments)
  - Home businesses
  - Rural industries
3. That Farm Buildings, within the meaning of State Environmental Planning Policy (Exempt & Complying Development Codes) 2008 are included as a category of exempt development in Schedule 2 – Exempt development, of BLEP 2010, when carried out within Zone E4
4. Resolves to forward the Planning Proposal to the Department of Planning & Environment in accordance with Section 56(1) of the Environmental Planning and Assessment Act 1979 and request the issuing of a Gateway Determination to allow for the exhibition of the proposed amendment.
5. Resolves to advise the NSW Minister for Planning that it considers the proposed amendment to be of minor significance and that it intends to use its delegations to permit the General Manager to make the Local Environmental Plan.
6. Endorses the Engagement Strategy that has been proposed in this report for the
7. public exhibition of the Planning Proposal

**UNANIMOUS**

**EXECUTIVE SUMMARY**

Council introduced the E4 (Environmental Living) Zone as part of the implementation of Bellingen Local Environmental Plan 2010. Since this time, Council has received requests to review the uses allowed in this zone, because they were seen to be unnecessarily restrictive.

Council recently consulted with the community regarding the E4 Zone. This report summarises the outcomes from that consultation and recommends that Council proceed with amending its Local Environmental Plan to permit a wider range of uses within Zone E4 (Environmental Living).

## **REPORT DETAIL**

### **Background**

Council introduced the E4 (Environmental Living) Zone in 2010 as part of the implementation of the Standard Instrument Local Environmental Plan. The E4 zone only applies in the Thora & Kalang Valleys and prohibits a number of other development types that would normally be permissible in rural areas. The prohibitions were introduced chiefly with a view towards restricting additional traffic impacts on Darkwood & Kalang Roads and to restrict the numbers of people that were isolated in these valleys during flood events.

Since the imposition of the E4 zone Council has received feedback from residents who believe that the E4 zone unnecessarily restricts them from carrying out activities that are permitted in other rural areas of the Shire. In addition to this, Council has received feedback regarding the consultation process that underpinned the adoption of the E4 Zone as part of the Standard Instrument LEP.

Recent community consultation with residents in the E4 Zone has confirmed that the majority of people who participated in an online survey, and attended consultation events at the Thora & Kalang Halls, believed that the existing zone prohibitions should be removed in order to permit the normal range of activities that are allowable in rural zones.

This report documents the outcomes of recent community consultation and proposes a policy response that broadens the range of uses that are permissible within the E4 Zone.

### **The E4 (Environmental Living Zone)**

The objectives of the existing E4 Zone, and the range of uses that are permissible in the zone under certain circumstances, are reprinted below.

#### *Zone E4 Environmental Living*

##### *1 Objectives of zone*

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- To ensure that residential development does not have an adverse effect on those values.*
- To provide for the continuation of low impact agricultural land uses on land with productive value.*
- To restrict the cumulative impact of traffic generating development upon the local road systems.*
- To restrict population numbers in areas isolated during flooding events.*

##### *2 Permitted without consent*

*Environmental protection works; Extensive agriculture; Forestry; Home occupations; Horticulture*

##### *3 Permitted with consent*

*Agriculture; Airstrips; Animal boarding or training establishments; Boat sheds; Building identification signs; Business identification signs; Community facilities; Dwelling houses; Emergency services facilities; Environmental facilities; Farm buildings; Flood mitigation*

*works; Helipads; Home businesses; Neighbourhood shops; Recreation areas; Research stations; Roads; Roadside stalls; Water recreation structures; Water storage facilities*

#### **4 Prohibited**

*Industries; Service stations; Turf farming; Warehouse or distribution centres; Any other development not specified in item 2 or 3*

### **Community Consultation Outcomes**

Council recently consulted with the community on the E4 Zone as part of the Rural Lands Planning Policy Review process. This consultation was originally scheduled to take place from Wednesday 19 April 2017 until 12 May 2017, however was extended until 29 May 2017 to allow additional time for interested parties to complete relevant surveys.

The consultation involved the sending of letters to owners of property in the E4 Zones, as well as meetings at the Thora & Kalang Halls (on 3 May 2017 and 4 May 2017 respectively) where members of the community were able to ask questions of Council Officers from 4-7pm. The public meetings were well attended and Council Officers received positive feedback from members of the community regarding the consultation process, particularly in view of concerns expressed regarding previous public consultation regarding the adoption of the E4 Zone.

To assist the discussion Council also prepared background papers, and a brief survey, that was able to be completed by interested parties on Council's engagement website, "CREATE". The following section documents responses to questions about the E4 Zone that were included in the online survey.

#### **Question 1: Do you live on land zoned E4 (Environmental Living)**

<b>Answer</b>	<b>Number of responses</b>	<b>% of responses</b>
Yes	42	47.7
No	29	33
Don't know	17	19.3
Total	88	100

#### **Question 2: If yes, did you know that your land had an E4 zoning prior to Council undertaking this survey?**

<b>Answer</b>	<b>Number of responses</b>	<b>% of responses</b>
Yes	28	54.9
No	23	45.1
Total	51	100

#### **Question 3: Have you ever been prevented from doing something that you wanted to do on your land because of the E4 Zoning?**

<b>Answer</b>	<b>Number of responses</b>	<b>% of responses</b>
Yes	26	40
No	39	60
Total	65	100

**Question 4: Do you agree with the current restriction on secondary dwellings, attached dual occupancies, new multiple occupancies and tourism development in the E4 Zone?**

Answer	Number of responses	% of responses
Yes	10	12.5
No	45	56.3
Partly	25	31.3
Total	80	100

<b>Summary of reasons supporting position on secondary dwellings, attached dual occupancies, new MO's and tourism development in Shire E4 (Environmental Living) Zone</b> <b>Rural Lands Planning Policy Review Survey</b>	
<b>Example comments supporting change in policy position</b>	<b>Example comments supporting status quo</b>
Potential exists to allow more subdivision – 5 acre subdivision pattern undesirable as too big to maintain and not big enough to generate income. Need for income to maintain roads could be met by allowing increased subdivision & building.	Bushfire issues need to be considered.
Done properly, low income housing options should be considered. We need more affordable housing options.	Potential over-extraction of water sources particularly in dry times.
More people on land improves ability to maintain and repair weed infestations.	Need to maintain integrity and beauty of area - this is one of the reasons why we moved here.
Support secondary dwellings & dual occupancies – MOS's too much impact.	Existing road is a problem
Restricted by dwelling entitlement provisions – this should also be relaxed.	Don't support large scale tourism
Zoning was brought in by stealth – inadequate consultation. Is discriminatory when compared to other rural areas and has reduced saleability of land. Air B&B has proceeded at same time.	Don't support Dual Occupancies and MO's because they don't pay additional rates.
Minor developments generally OK- depends on scale	
Flooding impacts can be managed and addressed.	
Restricting development on E4 land due to environmental reasons makes no sense compared to environmentally damaging logging occurring in these areas.	
We need housing – if road standards are an issue then get log trucks to pay their share.	
The valley could sustain more people without impacting the environment.	
MO's were designed to draw people to regional areas with affordable housing – see no reason	

to change.	
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**Question 5: Having regard to the nature of Kalang & Darkwood Roads, including their susceptibility to flooding, do you think that these areas can safely accommodate additional people or traffic?**

Answer	Number of responses	% of responses
Yes	47	54.7
No	22	25.6
Neutral	17	19.8

<b>Summary of comments regarding the ability of Kalang Rd &amp; Darkwood Rd to safely accommodate additional people or traffic</b> <b>Rural Lands Planning Policy Review Survey</b>	
<b>Example comments suggesting the road is not an issue in reviewing policy positions</b>	<b>Example comments suggesting the road is an issue in reviewing policy positions</b>
The time that people are flooded in is minimal & number of people affected irrelevant – if choose to live in Valley should be prepared. Supportive community exists – most people like flood events. Part of coming here is wilderness experience – part of this is hazards of weather. Should be greater emphasis on self-responsibility. Majority of residents have 4wd access to Bellingen during floods	Road is too narrow, pretty much single lane roads. Roads are not very good so more traffic is in fact downright dangerous. Locals drive them differently to non-locals.
Traffic has increased despite restrictions on zoning	Existing roads poor, Council has limited capacity to improve and shouldn't be putting increased pressure on them
Safe roads a function of proper building and maintenance – Council should do this and not spray hot mix which only lasts months. Better clearing of gutters, shoulders and culverts required to prevent blocking and erosive damage to roads.	6- 70km/h speed limit should be applied – no big logging trucks to use the road
Discriminates against other flood prone areas of the Shire and Nth Coast in general. Properties should be zoned on an individual basis.	Concern regarding orderly evacuation in bushfire events – what about bush fires?
If Council were concerned with roads would restrict logging – why restrict weekend visitor but allow 42 tonne trucks to barrel up and down road – 1000 car trips do less damage to road than 1 log truck. Get logging trucks to pay their share.	You can have a quiet crappy road but not a busy crappy road. Increased traffic generation associated with recent land sales up valley have increased traffic.
Darkwood Rd mostly tarred	Rivers barely running in heat of summer – extra people or traffic would endanger delicate ecosystem of area.
Don't mind if road is a bit lumpy and not like a highway – makes people slow down and small price to pay for living here. More development might make people more self-contained in valley and reduce need for car trips to town.	
Improve infrastructure, increase population, increase number of ratepayers.	

With improved and more regular maintenance & upgrades should not be an issue. Current works appreciated but historically under-resourced. Council should invest more in roads & bridges rather than bureaucratic office staff.	
Councils flood policy and the lack of a flood study are ridiculous – find a reasonable height to build to and don't worry about isolation.	

### **Question 6: Do you have any other suggestions regarding the suitability of the E4 Zone moving forward?**

#### **Summary of key suggestions regarding suitability of E4 Zone moving forward**

- Continue to buffer the National Park with E4 zone.
- Was good idea but can be revised as we move forward to allow for new development types.
- Change the allowable subdivision size (varying suggestions – 10 acres, 2ha, ha, 10ha, closer to town, 30 lots) – attract developer contributions (\$900,000) and ongoing rateable income (\$50,000)
- Larger areas are non-viable for conventional farming, smaller individually owned lots are well maintained and preserve amenity and control weeds.
- Reinstate previous zone and permissions – inadequate consultation and inequitable situation when compared to other rural areas.
- Allow farm sheds and carports without consent
- Zone properties individually having regards to constraints
- Restore building entitlements for properties
- Address restrictive flood controls – do a flood study
- Allow people to adapt and pursue work, housing and family outcomes without intervention by Council
- Allow for more population to sustain community, services, employment locally
- E4 just allow for transfer of land to tree changers – do more to encourage agriculture.
- Would like to see large farms stay large – land value for farmers to farm is driven up by increased development potential and pressure.
- If serious about retaining environmental zoning, stop logging as far greater impact caused by this.
- Granny flats provide important housing and social functions.
- Appreciate the limits on development that have kept area unique and pleasant – times will change but keep development to a slow pace with careful discussion
- Don't support any change to existing policy

#### **Commentary on community consultation**

The answers to questions 1-3 provide a general indication of the knowledge and understanding of the respondents completing the survey. They indicate that there was limited knowledge of the zoning of the land upon which a person lived and that, on at least 26 occasions, landowners within the E4 Zone claim to have been prevented from undertaking a form of development that was not permitted by virtue of the zoning.

Whilst the majority of respondents to the survey indicated that they do not support the current restriction on secondary dwellings, attached dual occupancies, new multiple occupancies and tourism development in the E4 Zone (ie: 56.3%), the survey results indicate that 31.3% of respondents only partly agreed, and 12.5% do not agree, which is indicative that there is not a universal desire for increased development densities in the zone.

Some of the other key issues raised by survey respondents include the relative impacts of forestry on the local environment and road network in comparison to any traffic increase that would be attributable to permitting relatively low impact development type such as secondary dwellings. With respect to the impact of heavy vehicles on the local road system, this is an entirely reasonable scenario to contemplate. For example, a truck with dual tyres loaded to 8.2 tonnes will cause 2250 times more damage to the road pavement than a car. A small increase in the load to 10 tonnes will cause 4500 times more damage to the road pavement or bridge structure than a car.

It is not proposed to address the State Governments regulatory approach to forestry as part of this report, however Council may continue to make separate representations regarding this matter via other means.

Other respondents requested that Council proceed with allowing land within the E4 Zone to be subdivided into smaller allotments, noting that this would provide for an increased number of lots and consequently, developer contributions and rateable assessments that would improve Councils ability to maintain local road infrastructure. Upon the advice of the NSW Department of Planning & Environment, any review of zone descriptions or subdivision minimum lot sizes cannot take place outside of the context of an overall review of Councils Shire wide Growth Management Strategy (GMS). The option to postpone the E4 review (until subdivision potential can be addressed via the GMS) was presented to Councillors at a workshop held on 6 September 2017 however it was considered preferable to proceed with reviewing the permissible uses in the short term, to address ongoing community feedback regarding the immediate impacts that this is having.

Several comments noted that if the roads were adequately maintained by Council then the level of traffic generation that would result from allowing a wider range of developments would not be a significant issue. The impact of additional traffic on the local road network was one reason underlying the original decision to introduce the E4 Zone. Councils Deputy General Manager Operations notes as follows regarding Councils ongoing infrastructure program in these localities, supporting the proposition that the road network should no longer be viewed as a driver for unnecessarily restrictive development outcomes.

The Council is responsible for the delivery and suitable maintenance of the public roads and bridge network. Both the Kalang and Darkwood valleys are no different in character and transport infrastructure challenges than the remainder of the Shire. In addition the Council has recently embarked on a road and bridge infrastructure improvement program funded from a Special Rate Variation.

Another reason underlying the original decision to introduce the E4 Zone was the level of flooding isolation experienced by residents in these valleys. Many of the comments received in response to the survey suggested that this is not a matter of significant concern to a generally well prepared community, and that many other areas in the Shire also experience temporary isolation during flood events.

In the circumstances, it is proposed to consult with the NSW State Emergency Service (SES) as part of any planning proposal to determine whether an additional number of people in these areas would pose an unacceptable burden on existing emergency services

organisations. Anecdotal evidence suggests that there has been ongoing improvement in flood warning systems that allow people more than adequate time to plan for flood events. Councils Development Control Plan provisions also ensure that any new development is not located on flood prone land. Indeed, some comments suggest that the conservative position that Council has adopted regarding flood heights is unnecessarily cautious and warrants further review.

It is also proposed to consult with the NSW Rural Fire Service regarding the degree to which they would view additional population generating development in these areas as an undesirable outcome. Bushfire hazard was raised as a reason to retain the existing policy position and it will be important to seek comment regarding the operational abilities of fire crews to respond to future emergency events in these areas.

A further concern that was expressed with respect to increasing the number of people in the valleys was the ability of the river/s to accommodate increased pressure on extraction. Given that it is not proposed to review subdivision permissibility as part of this process, the potential for the creation of additional riparian rights (that accompany new subdivisions with frontages to rivers) would not be an issue at this stage.

Similarly, the potential for significant increases in extraction associated with Multiple Occupancy Development is not an issue, given that the future permissibility of Multiple Occupancy Development in the E4 Zone (and Bellingen Shire more broadly) is not proposed to be dealt with at this stage. It was the view of Councillors, at a workshop held on 6 September 2017, that further deliberation on a range of matters (such as potential rating structures) was necessary before Council could adopt a policy position on Multiple Occupancy Development. This will however be given further consideration as part of the GMS process.

In conclusion, however, perhaps the most pervasive opinion that was received regarding the E4 Zone was that it does not allow for reasonable and equitable affordable housing options (such as secondary dwellings and dual occupancies) to be pursued by landowners in these zones. It was suggested that Council could simply reinstate the previous permissions that existed in the former zone, or allow for the same types of development that are permissible in other rural type zones within the E4 Zone. This option was discussed with Councillors at a workshop held on 6 September 2017 and was considered to be the best immediate option in the circumstances.

The following section therefore recommends a potential policy approach to Council regarding the E4 Zone that is capable of being pursued through an amendment to Bellingen Local Environmental Plan 2010 (BLEP 2010), independently of the Growth Management Strategy process.

### **Proposed Amendment to Bellingen Local Environmental Plan 2010**

It is recommended that Council proceed with preparing a Planning Proposal to allow the following amendments to Bellingen Local Environmental Plan 2010 (BLEP 2010).

- 1 That the following uses are made permissible with development consent in Zone E4.
  - a) Secondary dwellings,
  - b) attached dual occupancies,
  - c) eco-tourist facilities



- d) tourist & visitor accommodation (with the exception of backpackers accommodation, hotel or motel accommodation and serviced apartments)
- e) home businesses
- f) rural industries

- 2 That Farm Buildings, within the meaning of State Environmental Planning Policy (Exempt & Complying Development Codes) 2008 are included as a category of exempt development in Schedule 2 – Exempt development, of BLEP 2010, when carried out within Zone E4.

### **What does Council need to do to commence the process of amending the BLEP?**

Should Council resolve to prepare a planning proposal, Council Officers will prepare an explanation of, and justification for the proposed instrument under the provisions of Sections 55(1) and (2) of the Environmental Planning and Assessment Act 1979 (the Act).

This requires Council to address the following key matters:

- a statement of the objectives or intended outcomes of the proposed instrument
- **an explanation of the provisions that are to be included in the proposed instrument**, the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117)
- if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones, heritage areas or flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument
- details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

Once completed, the planning proposal will be forwarded to the DPE under the provisions of Section 56 of the Act, requesting that the Minister issue Council with a "Gateway determination". The issuing of a Gateway determination by the DPE would recognise that there are no fundamental policy objections to the planning proposal, confirm any necessary consultation that is required and allow Council to place the planning proposal on public exhibition. Should the DPE have concerns with the planning proposal then they would not issue a Gateway determination and Council would be required to address those concerns in order for the proposal to proceed.

In addition to Council resolving to prepare a planning proposal, it is also necessary for Council to indicate its intention (or otherwise) to exercise delegations for parts of the plan making process that have been issued to the General Manager. By opting to exercise these delegations, Council removes an additional external referral from the plan making process and this leads to improved timeframes for the eventual making of the plan.

Council resolved as follows at the Ordinary Meeting of Council 28 November 2012 regarding the Delegation of Ministerial Functions to Council.

#### ***"RESOLVED (Cr Scott/Cr Manning)***

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

It is recommended, given the minor nature of this proposed amendment, that Council inform the Department of its intention to use its delegation to make the Plan.

### **BUDGET IMPLICATIONS**

Adequate budgetary allocations exist to complete the planning proposal should Council resolve to proceed.

Should Council broaden the range of permissible uses, it is important to note that there will not be a rating mechanism that will be able to capture the additional impact that accrue to Council facilities from the additional numbers of dwellings or other traffic generating developments that may occur on land within the E4 Zone. This is because the NSW rating system is based upon the Unimproved Value of Land.

Notwithstanding this, it is now considered that the E4 Zone should not be subject to any significantly different policy position based on this fact alone, in comparison to the remaining rural areas of the Shire.

## **SUSTAINABILITY ASSESSMENT**

The proposed changes to the E4 Zone will result in a wider range of uses being permitted in the zone. Community consultation has revealed that the existing prohibitions are seen as unreasonably frustrating the pursuit of a range of desirable social outcomes in the E4 Zone such as affordable housing options. It is considered that the economic impact of facilitating a wider range of uses in the zone can be adequately justified having regard to improved infrastructure maintenance mechanisms that have been put in place by Council, and Councils existing suite of development controls will provide adequate safeguards to limit the environmental impacts of these types of development.

## **ENGAGEMENT**

The NSW Government publication "A guide to preparing local environmental plans" categorises planning proposals into "low impact proposals" or "All other planning proposals" for the purpose of determining the level of community consultation that should be undertaken.

A low impact planning proposal is a planning proposal that, in the opinion of the person making the Gateway determination, is:

- Consistent with the pattern of surrounding land use zones and/or land uses
- Consistent with the strategic planning framework
- Presents no issues with regard to infrastructure servicing
- Does not reclassify public land

It is submitted that the proposed Planning Proposal meets the criteria for a low impact planning proposal, for which a minimum exhibition period of 14 days is specified.

The Bellingen Shire Council Community Engagement Strategy was adopted by Council at its Meeting 22 February 2012, and revised on 24 June 2015. This strategy is designed to outline the approach Bellingen Shire takes towards engaging with our community.

Having regard to the Strategy, it is considered that the planning proposal would be appropriately categorised as Level 2 – High impact - Local. This requires Council to "Inform, Consult, Involve & Collaborate with the community.

Noting the specific consultation that has already taken place with the community by virtue of the Rural Lands Planning Policy Review process, it is proposed that the following additional actions be undertaken to consult with the community.

- Advertise the Planning Proposal for a period of 28 days in the Bellingen Courier Sun and the Don Dorriga Gazette.
- Notify owners of E4 land of the proposed BLEP amendment as part of the public exhibition of the Planning Proposal.

- Place notice of the Planning Proposal on the “Create” website for the duration of the exhibition period.
- Display the planning proposal, and relevant documentation, at the following locations for the duration of the exhibition period.
  - Bellinghen Council Administrative Centre
  - Bellinghen Library
  - Urunga Library
  - Dorrigo Library