



Item: 10.1

Subject: PLANNING PROPOSAL 11 - ADMINISTRATIVE AMENDMENT

File/Index: Planning Proposal 11 (Land Use Planning)

Presented by: Daniel Bennett, Senior Strategic Planner

ALIGNMENT WITH DELIVERY PROGRAM

(CL) CIVIC LEADERSHIP

(CL.1) Council is an organisation that embraces business excellence.

(CL.1.4) Best practice, sustainability principles, accountability and good governance are incorporated in all we do..

(CL.1.4.1) Identify and respond to changes in National, State, regional and local landuse planning principles, statutes and guides.

RECOMMENDATION

That Council:

1. Resolves to prepare a Planning Proposal to undertake an administrative amendment to Bellingen Local Environmental Plan 2010, to rezone a parcel of land from RE2 Private Recreation to R1 General Residential, and to allow for boundary adjustments to be undertaken on land zoned as a Waterway.
2. 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.
3. 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.
4. Endorses the Engagement Strategy that has been proposed in this report for the public exhibition of the Planning Proposal.

EXECUTIVE SUMMARY

Council has recently provided advice on two development proposals that has highlighted the need for minor amendments to Council's existing planning controls. One amendment proposes to rezone a small piece of land that is zoned Private Recreation in the vicinity of Cemetery Creek in Bellingen. This land is not suitable for private recreation and poses an impediment to the orderly development of the land for the purposes of residential accommodation. The other amendment proposes to allow for routine boundary adjustments to occur when land is partially zoned as a Waterway.

This report describes the proposed amendments in more detail and recommends that Council proceed with the preparation of a planning proposal to amend Bellingen Local Environmental Plan 2010 (BLEP 2010).

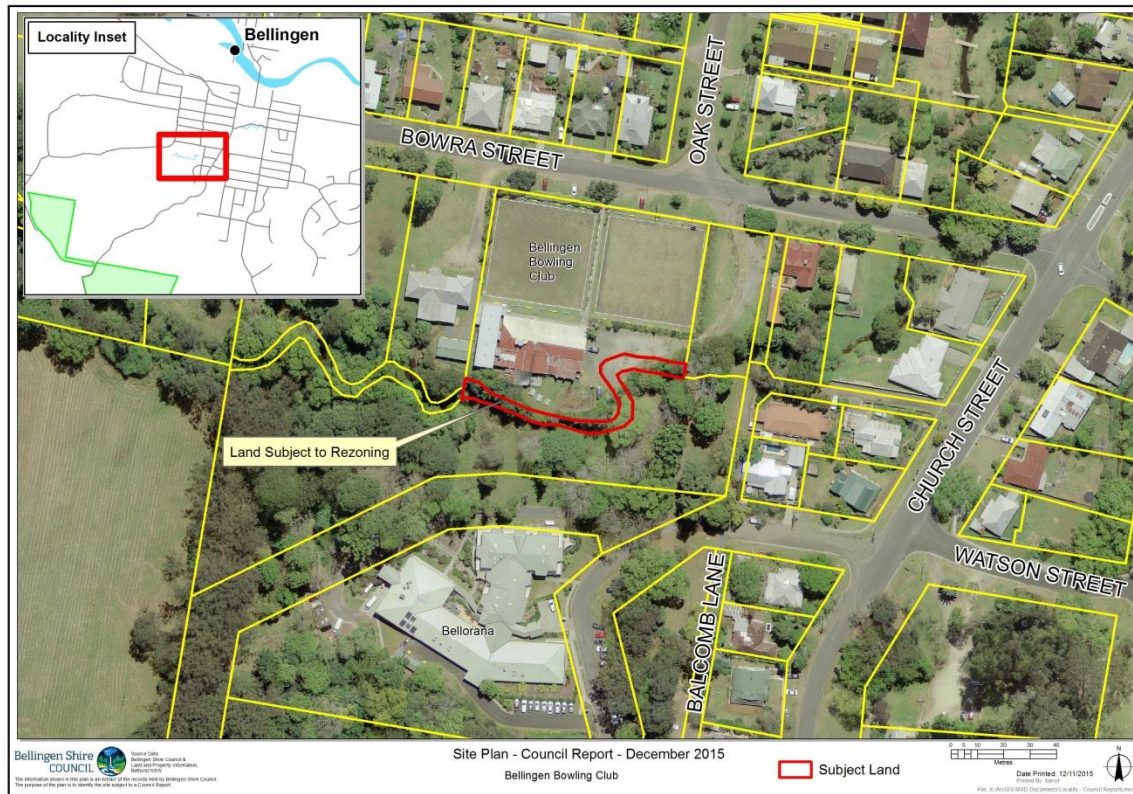
REPORT DETAIL



Proposed rezoning of land adjoining Cemetery Creek in Bellinghen

The Site

The subject site is generally along the southern boundary of the former Bellinghen Bowling Club. It is shown in the image below.



Background

Council amended BLEP 2010 in May 2012 to rezone the Bellinghen Bowling Club site from RE2 – Private Recreation to R1 – General Residential. This was at the request of the Bowling Club and was supported by Council in view of the sites close proximity to the Bellinghen CBD and the associated services that would be available to future residents.

A small area of land to the south of the Bowling Club was not part of the rezoning request and instead retained the RE2 – Private Recreation zoning. This was because it appeared that the RE2 zoning generally covered Cemetery Creek and would not act as a significant impediment to future development.

Since this time a detailed survey of the site has been undertaken by the new owners of the former Bowling Club site and the RE2 zoning has been identified as an issue in terms of the overall development of the site. This is because the RE2 zoning does not allow for residential uses of the type that are being investigated and the existing RE2 zone is partially over an existing carpark area that may be otherwise suitable for redevelopment.

Council Officers have overlaid the survey plan with a zoning extract to illustrate the area of land that is zoned RE2, and where it is actually located with regards to the legal boundaries of land and the existing location of Cemetery Creek. This image is included below, along with a photo of the carpark area.

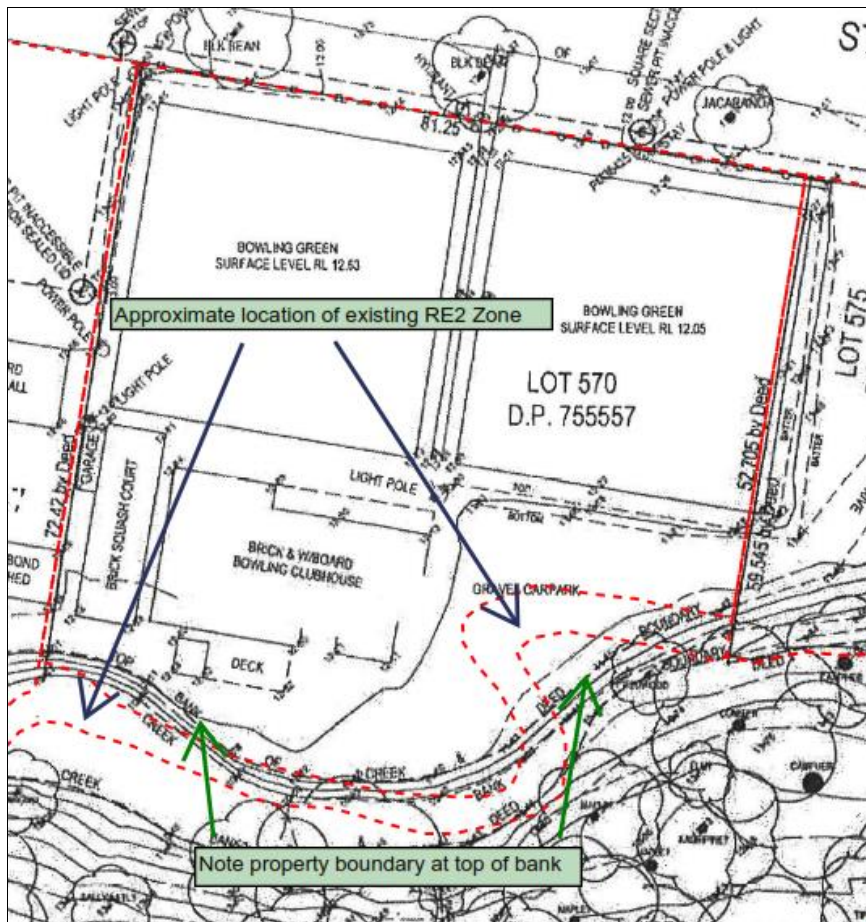


Figure 1: Location of RE2 Zone



Figure 2: Existing Carpark area with RE2 Zoning



The relevant points to note from these figures are;

- Most of the existing RE2 zone is below the bank of Cemetery Creek and preliminary advice indicates that this is Crown land.
- The part of the existing RE2 zone that is on the former Bowling Club site is primarily a gravelled carpark area, as opposed to intact riparian vegetation on the banks of Cemetery Creek.

Key issues that will need to be addressed in a Planning Proposal

Should Council resolve to proceed with preparing a planning proposal to rezone the land, the following key matters will need to be addressed in the planning proposal document.

Flooding

The subject land is identified as being prone to flooding by the 'Flood Study for Cemetery Creek – traversing Bowra, Church, Ford and Prince Streets – Bellingen May 1998', prepared by GR Consulting Civil and Structural Engineers.

Section 117 Planning Direction 4.3 – Flood Prone Land, regulates the rezoning of flood prone land and states that the rezoning of floodprone land from a Recreational Zone to a Residential Zone should generally not occur.

In view of the minor area of land concerned and its inability to be used for genuine private recreation purposes, it is expected that this inconsistency can be adequately justified in the planning proposal submitted to the Department of Planning and Environment (DPE). A preliminary review of the previous flood study for Cemetery Creek by de Groot and Benson Consulting Engineers and Planners also suggests that the area of RE2 zone within the existing carpark is likely to be classified as "flood fringe" rather than "floodway" and that the floodway is confined to within the banks of Cemetery Creek.

This is important as development restrictions on land classified as a floodway are significantly more onerous than on land classified as flood fringe, and the end result of the planning proposal will likely be that some degree of development is proposed on land within the carpark area.

Heritage

The Bellingen Bowling Club site contains an Item of Archaeological Heritage pursuant to the provisions of Schedule 5 of BLEP 2010. This is because the land was formerly part of the Bellingen Cemetery, before relocation to its present site in 1906.

Investigations that were undertaken into the history of the site in 2012 could not confirm that all graves were relocated to the new cemetery. Therefore, the potential remains that any excavation of the site could impact upon historic burials.

The area of RE2 land within the carpark area is already subject to the Heritage Listing in BLEP 2010 and will be subject to the same prescriptions as the rest of the site when redevelopment is proposed. This includes the submission of Heritage Management Documentation with any Development Application and the need to refer any proposal to the NSW Heritage Council for comment.

That part of the existing RE2 zone that comprises the bank and bed of Cemetery Creek is unlikely to be the subject of redevelopment pressure, given that numerous provisions within BLEP 2010 (eg: Clause 7.4 – Water) and other legislation (eg: Section 91 –NSW Water Management Act 2000) act to protect the integrity and functionality of watercourses such as Cemetery Creek.



Having regard to the above, there are no significant or additional heritage considerations that would need to be addressed in the planning proposal.

Crown Land

Preliminary inquiries suggest that the bed and banks of Cemetery Creek are Crown Land. It is proposed to consult with Crown lands to determine their position with respect to the proposed rezoning as both a landowner, and interested government agency.

The zoning of the land as R1 General Residential is considered to be generally consistent with the intent of *Planning Practice Note PN 10-001 – Zoning for Infrastructure in LEP's* which advocates for public infrastructure land to have the same “background” zone that has been selected for adjoining lands.

Whilst *Planning Practice Note PN-11-002 – Preparing LEP's using the Standard Instrument: Standard Zones* would suggest that an R1 zoning is not the most obvious choice for that part of the existing RE2 zone that comprises Cemetery Creek, a Public Recreation Zoning (RE1) is not appropriate for the creek due to its low value as a recreation resource. Furthermore, retention of the RE2 zoning is not viable as the land does not comprise a “significant parcel of privately owned land”, (as the Practice Note envisages for land with an RE2 zoning), and none of the rest of Cemetery Creek downstream of the site has an RE2 zoning. .

It should also be noted that the creek does not meet the criteria that were developed for the designation of a waterway zoning in BLEP 2010. These are discussed in more detail later in this report in conjunction with the proposal to amend the existing boundary adjustment clause. In this instance, BLEP 2010 adopts the default position that non tidal creeks, such as this one, are zoned the same as the land adjoining them.

Proposed amendment

Having regard to the matters discussed above, it is proposed to zone the subject land as Zone R1 – General Residential under the provisions of BLEP 2010.

Proposed Amendment to Boundary Adjustment Provisions to include Waterway Zones

The Site

It is not practical to include a map showing the location of every lot affected by the proposed amendment. There are however 327 lots throughout the Shire that have a waterway zoning and will potentially benefit from the outcomes of the amendment.

Background

Council amended BLEP 2010 in February 2014 to provide additional flexibility for landholders to undertake boundary adjustments in certain zones. This was in response to the inflexibility of standard boundary adjustment provisions that existed in the State Government's Standard Local Environmental Plan Template.

The existing boundary adjustment clause is reprinted below.

4.1AB Boundary changes between lots in certain rural, residential and environmental protection zones



(1) The objective of this clause is to permit the boundary between 2 or more lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.

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

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU4 Primary Production Small Lots,*
- (d) Zone R5 Large Lot Residential,*
- (e) Zone E2 Environmental Conservation*
- (f) Zone E3 Environmental Management,*
- (g) Zone E4 Environmental Living.*

(3) Despite clause 4.1(3), development consent may be granted to the subdivision of 2 or more adjoining lots, being land to which this clause applies, if the subdivision will not result in any of the following:

- (a) an increase in the number of lots,*
- (b) an increase in the number of dwellings on, or dwellings that may be erected on, any of the lots.*

(4) Before determining a development application 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 of land in any adjoining zone,*
- (e) any measures 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) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

Whilst this has proven to be of value to many landholders, the clause did not extend to include land that was zoned as a waterway. In Bellingen Shire, the following two waterway zones are included in BLEP 2010.

Zone W1 – Natural Waterways

Zone W2 – Recreational Waterways

The waterway zones were introduced into BLEP 2010 as part of the implementation of the State Government's Standard Local Environmental Plan Template. The logic that was used for zoning of land as a waterway is described below.

- The topographical extent of waterways were zoned up to tidal limits of the Bellinger and Kalang, after which the zoning of the rivers reverted to the background zoning of other land.
- The default zoning for tidal waterways was W2 – Recreational Waterway.
- The W1 – Natural Waterways zone was applied to areas with special environmental significance, most notably areas that were mapped with continuous or large portions of Estuarine Macrophyte Communities (eg: Mangroves, Saltmarsh or Seagrass).

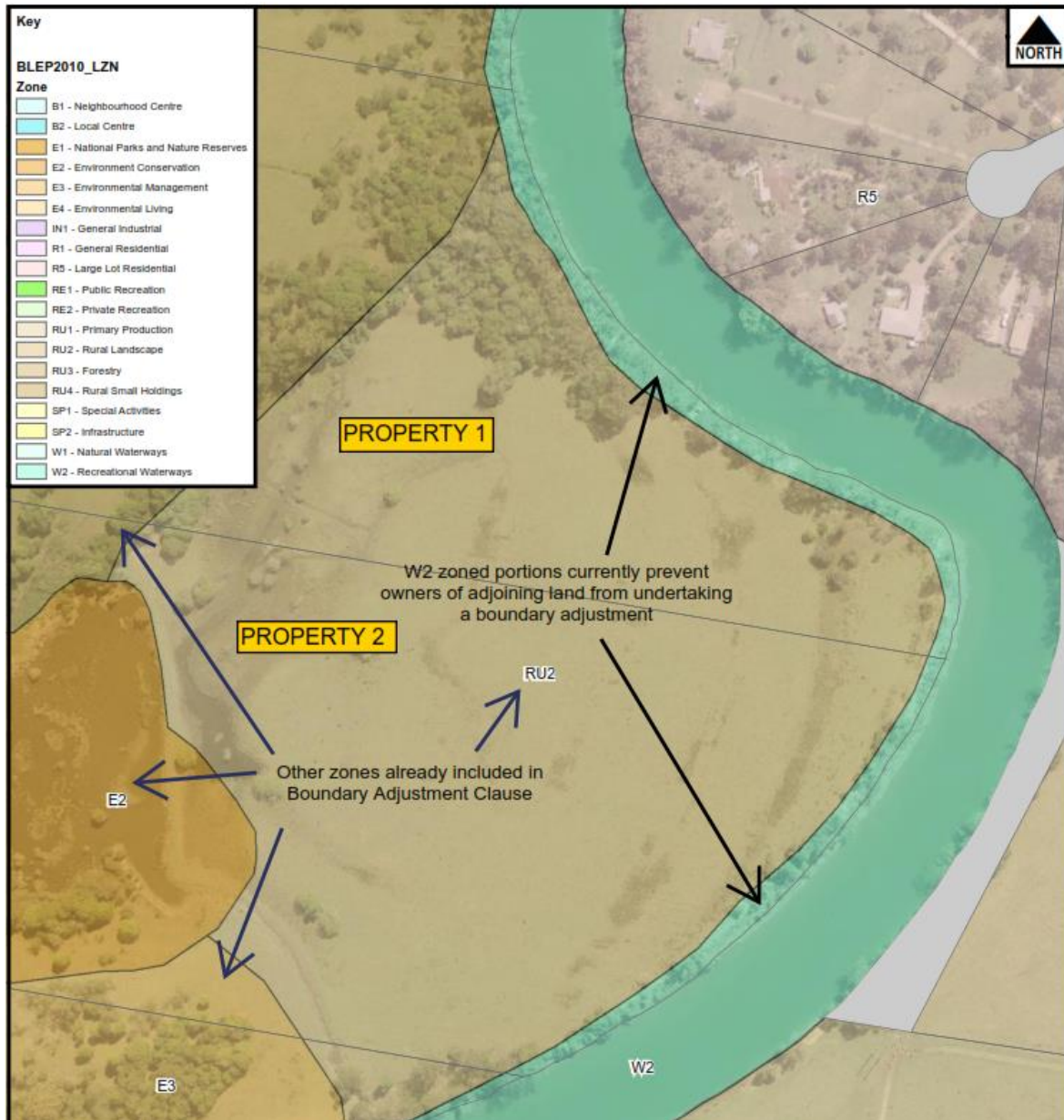
The topographical extent of the waterway frequently differs from the cadastral boundaries of land that are shown on maps such as the Local Environmental Plan. One reason for this is because waterways will move over time and until such time as land is resurveyed (as part of a subdivision proposal for example) the historic location of the waterway will remain. Another reason is that saltmarsh communities exist beyond the mean high water mark (MHWM) level, up until the highest astronomical tide level. The MHWM is often used as the basis for delineating a property boundary and therefore may not correspond with the mapped extent of the waterway.

The portions of land that are zoned as waterway on any given property will usually not be large enough to comply with the minimum lot size for subdivision / boundary adjustment that has been specified for land in the locality. If the waterway zones were included in subclause 2 of the existing boundary adjustment clause this would provide those landholders with part waterway zonings the same eligibility to undertake boundary adjustments that apply to other properties that have land in the specified zones. The intent of this is not to facilitate the excision of waterway zones for development related purposes, but to afford those landholders the same rights as others to undertake boundary adjustments.

It should be noted that there are a range of existing development controls that govern any development within proximity to a waterway that will continue to apply, and ensure that high levels of scrutiny and environmental protection are applied as part of the assessment process. This includes, for example, **Clause 7.4 Water** of BLEP 2010, and **Clause 3.6.1 (Land Suitability – Watercourses)** of Bellingen Shire Development Control Plan 2010 (BDCP 2010).



An example of two properties with part W2 zones is provided below. This illustrates the type of development scenario that is frustrated by the current operation of Clause 4.1AB and is proposed to be rectified by this planning proposal.



Proposed amendment

It is proposed to replace the existing Subclause 4.1AB(2) of BLEP 2010 with the following alternative.

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

(a) Zone RU1 Primary Production,



- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU4 Primary Production Small Lots,*
- (d) Zone R5 Large Lot Residential,*
- (e) Zone E2 Environmental Conservation*
- (f) Zone E3 Environmental Management,*
- (g) Zone E4 Environmental Living.*
- (h) Zone W1 Natural Waterways*
- (i) Zone W2 Recreational Waterways*

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

Council needs to resolve to prepare a planning proposal in order to proceed with the administrative amendment of BLEP 2010.

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

The planning proposal will need to be publicly exhibited. The cost of advertising can be met from existing budgetary allocations.

SUSTAINABILITY ASSESSMENT

The planning proposal will not result in any significant adverse environmental impact, however will remove minor and unintended obstacles to the reasonable development of land.

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 proposal is described as follows.

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. 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 4 (Lower Impact – Local). This requires Council to “Inform and Consult” the community.

Accordingly, it is proposed that the following actions be undertaken to consult with the community.



- Advertise the Planning Proposal for a period of 14 days in the Bellinghen Courier Sun (Note: The Planning Proposal does not affect any land on the Dorrigo plateau).
- Notify adjoining owners of the rezoning proposal of the proposed BLEP amendment.
- Place notice of the Planning Proposal on the Council 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

ATTACHMENTS

Nil