



**BELLINGEN SHIRE COUNCIL
PLANNING PROPOSAL 11
(Version 1 – February 2016)**

Administrative amendment - 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.

THE PLANNING PROPOSAL

Pursuant to Section 55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), a planning proposal must be prepared before a draft Local Environmental Plan (LEP) amendment is made. The proposal must explain the intended effect of the draft LEP amendment and provide justification for the amendment. The proposal must address those matters identified by Section 55(2) of the EP&A Act, which is considered below. Council must then determine whether or not to proceed with the proposal.

History

Council resolved to support the proposal at its meeting of 16 December 2015. The relevant resolution is reprinted below and the report to Council is included as Attachment 1.

Item: 10.1

Subject: Planning Proposal 11 - Administrative amendment

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

Presented by: Daniel Bennett, Senior Strategic Planner

001/15

Resolved (Cr Klipin/Cr Harrison)

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.

UNANIMOUS

The need for the planning proposal was identified after Council recently provided advice on two development proposals that highlighted issues with Council's existing planning controls.

One part of the amendment proposes to rezone a small piece of land that is zoned Private Recreation in the vicinity of Cemetery Creek in Bellingham. 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 part of the amendment proposes to allow for routine boundary adjustments to occur when land is partially zoned as a Waterway.

Objectives

The objectives of the proposed LEP amendment are as follows:

1. To rectify a minor zoning anomaly in order to allow for the orderly development of land for residential purposes.
2. To allow certain land with a Waterway zoning to undertake boundary adjustments in the same manner as land without a Waterway Zoning.

Proposed provisions

The provisions of the proposed LEP amendment will include:

1. Rezone the parcel of land identified in the map below from RE2 – Private Recreation to R1 – General Residential.



2. 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

An Information Checklist, Project Timeline & Delegation Request Checklist are included as Attachments 2-4 in accordance with the requirements of 'A Guide to preparing planning proposals'.

SPECIFIC JUSTIFICATION FOR PLANNING PROPOSAL

A. Need for Planning proposal

Is the planning proposal a result of any strategic study or report?

The planning proposal is not the direct result of any strategic study or report, however it is relevant to note that both components of the proposal have been the subject of amendments to BLEP 2010 since its original gazettal.

Rezoning component

Council amended BLEP 2010 in May 2012 to rezone the Bellingen 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 Bellingen CBD and the associated services that would be available to future residents.

The small area of land to the south of the Bowling Club (the subject of this planning proposal) was not part of the original 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.

It is considered that the strategic justification that was accepted for the previous amendment remains broadly relevant for this part of the planning proposal.

Boundary adjustment component

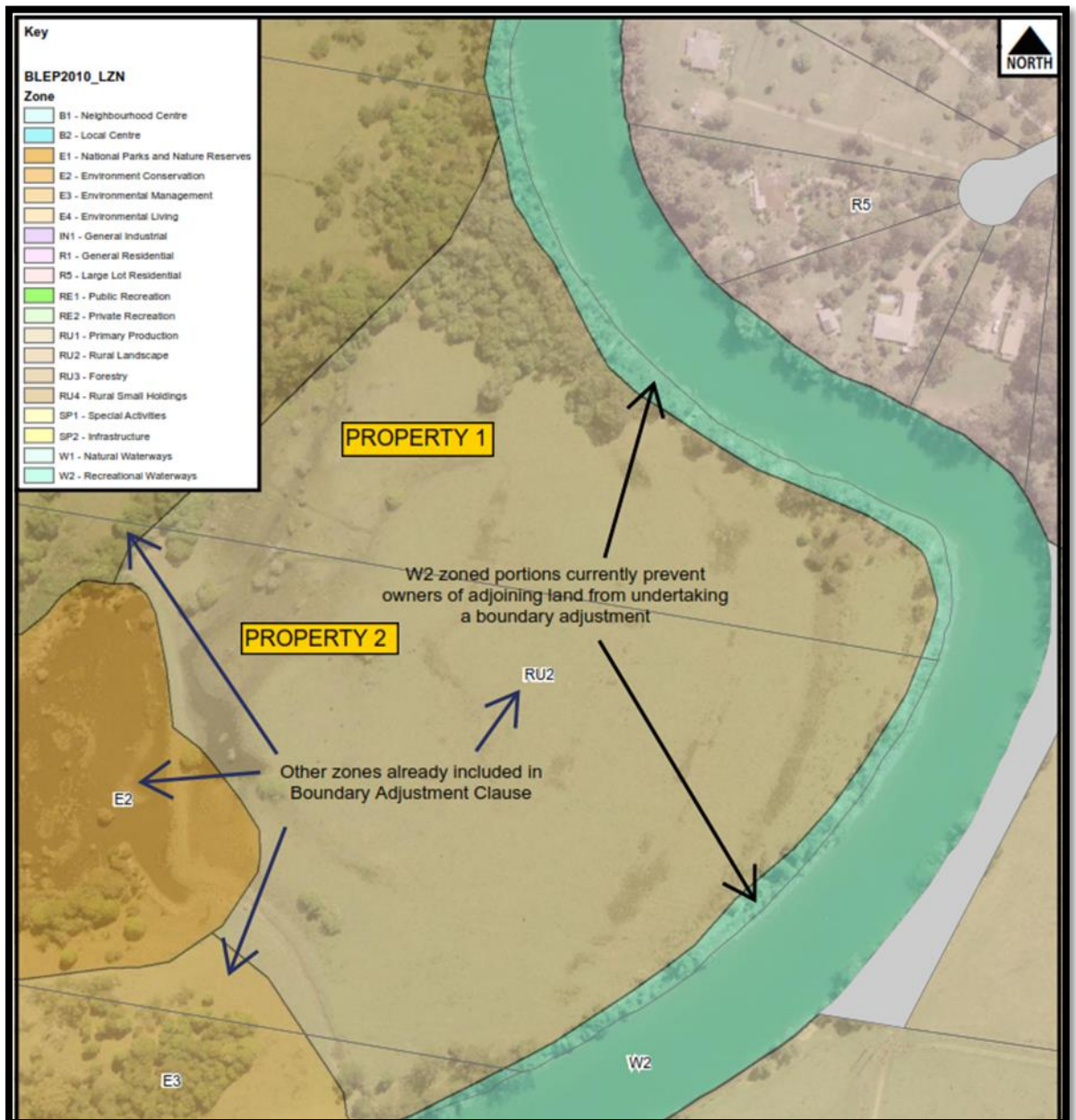
Council amended BLEP 2010 in February 2014 to include Clause 4.1AB Boundary changes between lots in certain rural, residential and environmental protection zones. This was to provide additional flexibility for landholders to undertake boundary adjustments in certain zones and was in response to the inflexibility of standard boundary adjustment provisions that existed in the State Government's Standard Local Environmental Plan Template.

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

It is considered that the strategic justification that was accepted for the previous amendment remains broadly relevant for this part of the planning proposal. If the waterway zones were included in subclause 2 of the existing boundary adjustment clause then this would simply 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.

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.



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 Bellingin Shire Development Control Plan 2010 (BDCP 2010).

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Rezoning component

- The permissible land uses within the existing RE2 Zone do not provide the opportunity for residential development, or ancillary components, to occur on the subject land.
- *Clause 5.3 – Development near zone boundaries*, does not currently apply to R1 and RE2 adjoining land. It is not considered that this clause should be amended to facilitate flexibility between these zones across the LGA as this proposal is specifically justified, and not indicative of a recurring issue.

Boundary adjustment component

Consideration has been given to the use of the following existing provisions to facilitate routine boundary adjustments involving waterway zones;

- Exempt development boundary adjustment provisions within State Environmental Planning Policy (Exempt & Complying Development Codes) 2008
- Clauses 4.1, 4.1AB, 4.1AC, 4.2, 4.6 & 5.3 of BLEP 2010.
- Clause 9 of State Environmental Planning Policy (Rural Lands) 2008

There is no scope to undertake routine boundary adjustments between land with a waterway zoning in these provisions.

Is there a net community benefit?

Rezoning component

The small parcel of land proposed to be rezoned has no significant value as recreational land for the community. By removing the obstacle to redevelopment of the site for residential purposes, a net community benefit will result as additional residential accommodation options become available to the community in a central and accessible location.

Boundary adjustment component

There are 327 lots throughout the Shire that have a waterway zoning and will potentially benefit from the outcomes of the amendment. As previously documented, the intent of the amendment 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.

Adequate controls exist within existing legislation to address any impacts on waterways and it is considered that a net community benefit will result from removing this obstacle to the reasonable adjustment of property boundaries.

B. Relationship to strategic planning framework

Is the proposal consistent with the objectives and actions contained within the Mid North Coast Regional Strategy?

The Mid North Coast Regional Strategy (MNCRS) provides a broad outline for the direction of future development in this region for the next 2 decades. Relevant outcomes and actions of the Mid North Coast Regional Strategy include:

4 Settlement & Housing

Actions:

Urban settlements

- Councils will plan for a range of housing types of appropriate density, location and suitability that are capable of adapting and responding to the ageing of the population.

Subdivision, houses and other uses in rural zones

- Local environmental plans will include minimum subdivision standards for rural and environment protection zones.
- Local environmental plans will include provisions to limit dwellings in rural and environmental zones.

Comment:

Rezoning component

The minor portion of RE2 zoned land represents a potential obstacle to redevelopment of the land for residential purposes. The land is well positioned to provide a valuable source of housing for the community.

Boundary adjustment component

There is no proposal to alter subdivision minimum lot sizes or to allow for increased numbers of dwellings in rural areas.

7 Environment & Natural Resources

Actions:

- Local environmental plans will protect and zone land with high environmental, vegetation, habitat, riparian, aquatic, coastal or corridor values for environmental protection.
- Subdivision and dwelling standards in local environmental plans will reflect the Rural Lands SEPP, the Regional Strategy and the objectives of the relevant zones.
- New development adjoining or adjacent to farmland, extractive resources, waterways, wetlands and areas with high value biodiversity will incorporate buffers to avoid land use conflict.

Comment:

Rezoning component

Adequate provision exists within BLEP 2010 and BDCP 2010 to protect the small area of riparian land from undesirable development outcomes, regardless of its zoning as either RE2 or R1.

Boundary adjustment component

The boundary adjustment clause will allow for greater flexibility to, for example, consolidate ownership of multiple waterway frontages into a single ownership, or increase buffer distances to existing agricultural operations.

8 Natural Hazards

Outcomes

- Future urban development will not be located in areas of high risk from natural hazards including sea level rise, coastal recession, rising water tables and flooding.

Actions

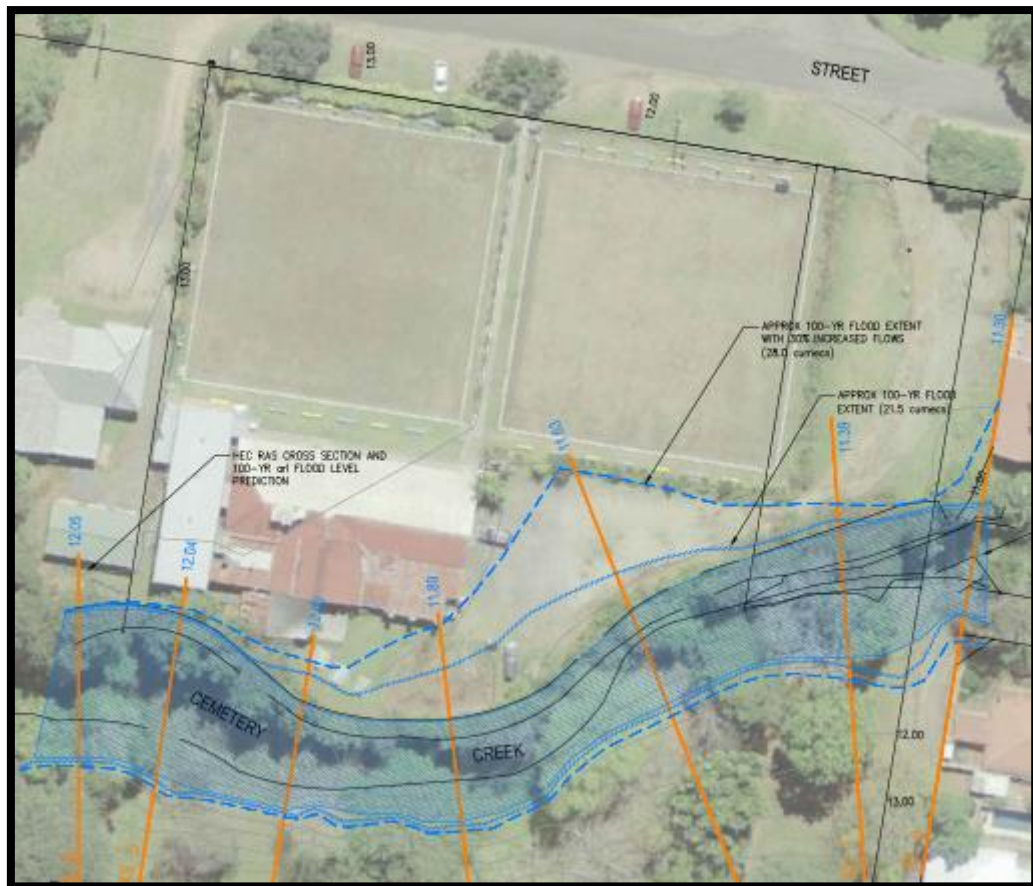
- In order to manage risk associated with climate change, councils will undertake flood investigations over lands with the potential to be affected by sea- level rise and inundation to ensure that risks to public and private assets are minimised.

Rezoning component

The subject land is currently subject to flooding in a 1% Annual Exceedance Probability (AEP) event and subject to development controls included in Chapter 8 of Council's Development Control Plan 2010. The land was the subject of a Flood Study for Cemetery Creek commissioned by Council in 1998, that specified a flood height of 12m for the development of a building on the bowling Club Site.

Council currently has on public exhibition a revised Flood Study for The Lower Bellinger & Kalang Rivers and the proponents have been requested to model additional scenarios for the site, including the effects of tailwaters from flooding of the Bellinger River and increased intensities of rainfall attributable to climate change.

The preliminary advice from Consultant is that the floodway extent is likely to remain confined to within the banks of the creek and that there is no significant increase in flood levels likely to result from climate change scenarios. These details are depicted in the following plan.



Given that the area involved in the rezoning proposal is unlikely to ever be developed for the purpose of residential accommodation, it is not considered that flooding is a significant issue in the circumstances.

Boundary adjustment component

An increased level of flexibility to undertake boundary adjustments in areas at potential risk from estuary inundation and flooding will not result in any increased level of risk in its own right.

9 Cultural Heritage

Outcomes

- The Region's places, precincts and landscapes of cultural heritage significance will be identified (where appropriate) and protected in planning instruments.

Rezoning component

The Bellinghen 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 Bellinghen 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.

Although the area of RE2 land the subject of this application is not technically subject to the Heritage Listing in BLEP 2010, it will be subject to the same prescriptions as the rest of the site when redevelopment is proposed.

A comprehensive Archaeological Assessment for the site was recently submitted as part of a Development Application to demolish structures on the site and this is included as Attachment 5 to this report. This demonstrates that the heritage values of the site will be carefully considered and protected throughout the course of any development that takes place on the part of land the subject of this planning proposal.

Is the proposal consistent with Council's strategic plans?

Growth Management Strategy:

There are no specific provisions within the GMS that relate to the Planning proposal. It does not propose any outcome that is contrary to the GMS.

Is the proposal consistent with applicable state environmental planning policies?

The planning proposal does not directly contradict any relevant SEPP. Boundary adjustments will be permissible on land that may be covered by the following SEPP's, however the amended Subclause 4.1AB(2) would not make compliance with the provisions of those SEPP's any more difficult.

- SEPP 14 (Coastal Wetlands)
- SEPP 71 (Coastal Protection)
- SEPP (Rural Lands) 2008

Is the proposal consistent with applicable Section 117 directions?

Section 117 directions are issued by the Minister for Planning and relate to various planning matters that must be considered when preparing a planning proposal. The directions relevant to the subject proposal are considered below.

Direction 1.2 (Rural Zones)

The planning proposal does not rezone rural land or increase the permissible density of development in a rural zone.

Direction 1.4 (Oyster Aquaculture)

The boundary adjustment component of the Planning Proposal will potentially result in future Development Applications in areas that adjoin Priority Oyster Aquaculture Areas. The Planning Proposal is considered to be consistent with Direction 1.4 as it will not result in adverse impacts on a Priority Oyster Aquaculture Areas or promote incompatible land uses adjoining these areas.

Direction 1.5 (Rural Lands)

This direction applies as the planning proposal will affect land within an existing rural or environment protection zone. The proposal is considered to comply with

this direction as it is consistent with the rural planning principles specified in SEPP (Rural Lands) 2008, give the additional flexibility that it provides landowners to reorganise property boundaries without residential densities and potential sources of conflict.

The Rural Planning Principles are reprinted below.

- *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- *in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

Direction 2.1 (Environment Protection Zones)

This direction applies when a relevant planning authority prepares a planning proposal that affects environmentally sensitive areas. The Planning Proposal is considered consistent with this direction as it does not reduce the environmental protection standards that apply to land.

Direction 2.2 (Coastal Protection)

This direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone.

There are no aspects of the Planning Proposal considered to be inconsistent with this direction as it does not act to increase the permissible densities of development within the coastal zone.

Direction 2.3 (Heritage Conservation)

A planning proposal must contain provisions that facilitate the conservation of heritage. As previously documented, the Bellingen Bowling Club site contains an Item of Archaeological Heritage however this is considered to be adequately protected by virtue of the existing listing in BLEP 2010, and the subsequent archaeological report that has been submitted.

Direction 3.1 (Residential Zones)

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed residential zone.

The proposed R1 zone adjoining the Bowling Club site in Bellingen is considered to be consistent with this direction. It will remove an unnecessary obstacle to the logical development of land for residential purposes when that land has exceptional access to physical and social infrastructure, as advocated for in the Direction.

Direction 3.4 (Integrating Land Use & Transport)

This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

The proposed R1 zoning of land in Bellingen will remove an unnecessary obstacle to the logical development of land for residential purposes. The land is ideally located with respect to the urban centre of Bellingen and a range of transport opportunities.

Direction 4.1 (Acid Sulfate Soils)

The proposal is considered consistent with the direction as it does not permit any significant increase in development on land that is likely to be subject to acid sulphate soils.

Direction 4.3 (Flood Prone Land)

The proposal is considered consistent with the direction as it does not permit any significant increase in development on land that is likely to be subject to acid sulphate soils or flooding.

Direction 4.4 (Planning for Bushfire Protection)

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.

Rezoning component

The small parcel of land proposed to be rezoned is not mapped as bushfire prone land and is not in close proximity to land mapped as bushfire prone land.

Boundary adjustment component

Land mapped as bushfire prone land will occasionally be the subject of boundary adjustments that are proposed under the revised terms of this clause. An increased level of flexibility in undertaking boundary adjustments will not compromise the sound management of these areas for bushfire purposes or result in any increased risk to life or property.

Direction 5.1 – Implementation of Regional Strategies

This direction applies as Bellingen Shire is included in an adopted regional strategy, this being the Mid North Coast Regional Strategy.

The objectives of the direction are to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in the regional strategies.

Planning proposals must be consistent with the regional strategy. A proposal may be inconsistent if the extent of inconsistency is of minor significance and the proposal achieves the overall intent of the regional strategy.

As noted previously in comments under the Regional Strategy section above, the proposal is considered to be consistent with the Mid North Coast Regional Strategy.

Direction 6.1 (Approval and referral requirements)

The planning proposal does not include any additional approval or referral requirements.

C. Environmental, social and economic impact

Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

It is unlikely that the planning proposal will give rise to development that will have an adverse impact upon critical habitat or threatened species, populations or ecological communities, or their habitats.

Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The environmental effects of the planning proposal will be minimal. They will be managed through the application of development controls that exist within BLEP 2010 and BDCP 2010. These controls address matters of likely relevance to both components of the planning proposal, such as development within proximity to watercourses.

How has the planning proposal adequately addressed any social and economic effects?

The planning proposal is not expected to result in any adverse social or economic impacts.

State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

The planning proposal seeks to optimise the use of public infrastructure through facilitating the development of land where this infrastructure already exists.

Views of State and Commonwealth authorities

Consultation with relevant state authorities will occur as relevant and where specified as part of the Gateway Determination.

Proposed Community consultation

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 Bellingen 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.
 - Bellingen Council Administrative Centre
 - Bellingen Library
 - Urunga Library

It is noted though that the gateway determination will ultimately specify the community consultation that must be undertaken on the planning proposal and Council will undertake consultation in accordance with the conditions of the Gateway Determination.

Delegations to make plan

Council recently accepted an offer of Delegation of Ministerial Functions to Council for the making of certain Local Environmental Plans. As such it is prudent at this point in the process to note whether Council intends to use delegations for the making of this Plan.

Given the locally specific and minor nature of this proposed amendment, Council resolved as follows regarding its intention to use its delegation to make the Plan.

“That Council resolves to advise the Minister of Planning & Infrastructure 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.”

PLANNING PROPOSAL 11
VERSION 1 ATTACHMENTS INDEX
FEBRUARY 2016

- Attachment 1 - The report to Council of 16 December 2015.
- Attachment 2 – Information Checklist
- Attachment 3 - Project timeline
- Attachment 4 – Delegation Request Checklist
- Attachment 5 – Archaeological Assessment – The Old Bellingham Cemetery Site,
Bellingham