



**BELLINGEN SHIRE COUNCIL
PLANNING PROPOSAL 13
(Version 1 – October 2017)**

BLUEBERRY REGULATION

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 proceed with the proposal at its meeting of 27 September 2017. The relevant resolution is reprinted below and the report to Council is included as Attachment 2.

ITEM: 13.1
SUBJECT: OPTIONS FOR THE POTENTIAL REGULATION OF BLUEBERRY GROWING IN BELLINGEN SHIRE
FILE/INDEX: RURAL LANDS PLANNING POLICY REVIEW
PRESENTED BY: DANIEL BENNETT, ACTING MANAGER LAND USE SERVICES

MOVED (Cr King/Cr Wright-Turner)

That Council:

1. Resolves to prepare a planning proposal specifying that development consent is required for the establishment of blueberry farms in Zones RU1, RU2, RU4 and E4, unless the farm complies with the following criteria, in which case it will be considered as a form of “exempt development”.

Blueberry farming is exempt development if it complies with following criteria.

- Blueberry plants & associated infrastructure (such as poles and netting) are located a minimum of 200m from any dwelling (not including a dwelling on the same property) and a minimum of 50m from any property boundary not held in the same ownership.
- Blueberry plants & associated infrastructure (such as poles and netting) are located the following minimum distances away from watercourses, based upon the Strahler method of stream ordering.

Stream Order	Minimum distance either side of watercourse
1st order	10 metres
2nd order	20 metres
3rd order	30m
4th order and greater	40m

- Where it is necessary to apply the setback distances specified in subclause b), and those setbacks are vegetated, the setback distances must be retained in their vegetated state, with the exception of the removal of any non-native species.
 - Blueberry plants & associated infrastructure such as poles and netting are not located within any area mapped as “core koala habitat” in any adopted Koala Plan of Management.
 - Any netting proposed for the protection of the crop must be black.
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 & Environment 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.

For: Cr King, Cr Fenton and Cr Wright-Turner.
Against: Cr Carter, Cr Harrison and Cr Jenkins.

CARRIED

Mayor King utilised his casting vote to vote for the motion meaning the motion was carried.

Objectives

The objectives of the proposed LEP amendment are as follows:

1. To address concerns regarding the environmental impact of blueberry farming in Bellingen Shire by requiring development consent for new blueberry farms in certain rural areas of the Shire, unless those farms are located to minimise their impact on the environment and surrounding properties.
2. To protect the contribution that is made to the local economy by agricultural activities, by ensuring that any regulatory option is quarantined to blueberry growing only, and does not impact upon other forms of horticulture or agriculture.

Proposed provisions

The provisions of the proposed LEP amendment will include:

The objectives of the proposed LEP Amendment are proposed to be met by implementing the following amendments to Bellingen Local Environmental Plan 2010 (BLEP 2010).

“Horticulture” will be made permissible with development consent in Zones RU1, RU2, RU4 and E4, however an additional category of “exempt development” will also be inserted into Schedule 2 of BLEP 2010.

This will make “horticulture” an exempt form of development in all instances, except for a blueberry farm that does not comply with the following exemption criteria.

Proposed exempt development criteria

Blueberry farming is exempt development if it complies with following criteria.

- a) Blueberry plants & associated infrastructure (such as poles and netting) are located a minimum of 200m from any dwelling (not including a dwelling on the same property) and a minimum of 50m from any property boundary not held in the same ownership.*
- b) Blueberry plants & associated infrastructure (such as poles and netting) are located the following minimum distances away from watercourses, based upon the Strahler method of stream ordering.*

<i>Stream Order</i>	<i>Minimum distance either side of watercourse</i>
<i>1st order</i>	<i>10 metres</i>
<i>2nd order</i>	<i>20 metres</i>
<i>3rd order</i>	<i>30m</i>
<i>4th order and greater</i>	<i>40m</i>

- c) Where it is necessary to apply the setback distances specified in subclause b), and those setbacks are vegetated, the setback distances must be retained in their vegetated state, with the exception of the removal of any non-native species.*
- d) Blueberry plants & associated infrastructure such as poles and netting are not located within any area mapped as “core koala habitat” in any adopted Koala Plan of Management.*
- e) Any netting proposed for the protection of the crop must be black.*

An Information Checklist, Project Timeline & Delegation Request Checklist are included as Attachments 1 ,3 & 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 has had regard to the findings of community consultation that was recently undertaken by Council regarding potential blueberry regulation in Bellingen Shire. The outcomes of this consultation are fully documented in the Council Report included as Attachment 2 to this proposal.

In summary, 65% of respondents to a survey undertaken as part of the Rural Lands Planning Policy Review supported an increased level of regulation of blueberries, however only 46% of respondents supported this if it meant that other forms of horticulture (e.g.: garlic growing, potatoes etc..) would then be captured as part of a consent mechanism.

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

It is acknowledged that the blueberry industry is making moves towards developing a revised code of practice to avoid adverse impacts on surrounding land uses, however there is no timeframe provided for finalisation at this stage, and no indication that this will compel any farmer to observe the provisions of that Code.

The planning proposal addresses a pervasive concern that reliance upon a voluntary Code of Practice does not provide an adequate level of protection to environmental assets or surrounding properties, and that State Government agencies are not adequately resourced to undertake environmental compliance.

For example, the recent release of the "Investigation into water compliance and enforcement 2007-17" by the NSW Ombudsman confirms the chronic under-resourcing of the compliance and enforcement roles regarding water extraction in NSW.

The proposed regulatory approach is considered to be the optimal means to provide some basic guidelines for the establishment of new blueberry farms, without the need to go through a development consent process.

B. Relationship to strategic planning framework

Prior to addressing the specific headings in “A Guide to preparing Planning Proposal” it is important to emphasise that the planning proposal is consistent with the highest level expression of strategic planning intent in NSW.

Specifically, blueberry growing is defined as “horticulture” under the Standard Instrument Principal Local Environmental Plan (SIPLEP). Horticulture is also defined as a type of “Intensive Plant Agriculture”.

Both definitions are reprinted below.

horticulture means the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include a plant nursery, turf farming or viticulture.

Note.

Horticulture is a type of intensive plant agriculture—see the definition of that term in this Dictionary.

intensive plant agriculture means any of the following:

- (a) the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),
- (b) horticulture,
- (c) turf farming,
- (d) viticulture.

Note.

Intensive plant agriculture is a type of agriculture—see the definition of that term in this Dictionary.

The SIPLEP is in effect, the highest level expression of State Government policy regarding what uses must be allowed in various zones and the way in which they should be permitted (e.g.: with development consent or without development consent).

Horticulture is currently permissible without development consent in Zones RU1 – Primary Production, RU2 – Rural Landscape, RU4 – Primary Production Small Lots, & E4 – Environmental Living in Bellingen Local Environmental Plan 2010 (BLEP 2010).

Should Council wish, to make horticulture permissible with development consent in these zones, there is no obstacle presented by the SIPLEP because it only requires that “intensive plant agriculture” is included as either “Permitted without consent” or “Permitted with consent” in Zones RU1 & RU4. It also allows Council to determine a local policy position in Zones RU2 and E4.

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

A summary table documenting the proposals compliance with the NCRP is provided below, with detailed commentary on relevant matters provided at the end of the Table.

North Coast Regional Plan – Statement of applicability to Planning Proposal 13			
Goal	Direction	Relevant (Yes/No)	Comment
Goal 1 – The most stunning environment in NSW			
	Direction 1 – Deliver environmentally sustainable growth	Yes	Complies
	Direction 2 – Enhance biodiversity, coastal and aquatic habitats, and water catchments	Yes	See comment below
	Direction 3 – Manage natural hazards and climate change	Yes	See comment below
	Direction 4 – Promote renewable energy opportunities	No	
Goal 2 – A thriving, interconnected economy			
	Direction 5 – Strengthen communities of interest and cross regional relationships	No	
	Direction 6 – Develop successful centres of employment	No	
	Direction 7 – Coordinate the growth of regional cities	No	
	Direction 8 – Promote the growth of tourism	No	
	Direction 9 – Strengthen regionally significant transport corridors	No	
	Direction 10 – Facilitate air, rail and public transport infrastructure	No	
	Direction 11 – Protect and enhance productive agricultural lands	Yes	See comment below
	Direction 12 – Grow agribusiness across the region	Yes	See comment below
	Direction 13 – Sustainably manage natural resources	Yes	See comment below
Goal 3 – Vibrant and engaged			
	Direction 14 – Provide	No	

North Coast Regional Plan – Statement of applicability to Planning Proposal 13			
Goal	Direction	Relevant (Yes/No)	Comment
communities	great places to live and work		
	Direction 15 – Develop healthy, safe, socially engaged and well connected communities	No	
	Direction 16 – Collaborate and partner with Aboriginal communities	Yes	See comment below
	Direction 17 – Increase the economic self-determination of Aboriginal communities	No	
	Direction 18 – Respect and protect the North Coast’s Aboriginal heritage	Yes	See comment below
	Direction 19 – Protect historic heritage	No	
	Direction 20 – Maintain the regions distinctive built character	No	
	Direction 21 – Coordinate local infrastructure delivery	No	
Goal 4 – Great housing choices and lifestyle options		No	
	Direction 22 – Deliver greater housing supply		
	Direction 23 – Increase housing diversity and choice		
	Direction 24 – Deliver well planned rural residential housing areas		
	Direction 25 – Deliver more opportunities for affordable housing		

Direction 2 – Enhance biodiversity, coastal and aquatic habitats, and water catchments

Action 2.1 of this direction requires Council to focus development to areas of least biodiversity significance within the region, and Action 2.2 aims to ensure that local plans manage water catchment areas to avoid potential development impacts.

It is submitted that the proposed exemption criteria will assist with implementing these actions through directing new farms away from Core Koala Habitat and from riparian zones, unless a careful consideration of impact is made via a Development Assessment process.

Direction 3 – Manage natural hazards and climate change

The Integrated Regional Vulnerability Assessment, undertaken by the Office of Environment & Heritage for the North Coast, has identified a range of climate change vulnerabilities in the region, and potential actions in response.

For example, Appendix C of this document discusses the expected physical responses to climate change and projects that it is very likely that there will be a “substantial increase in runoff depths, and the magnitude of high flows”, in summer.

When documenting regionally specific impacts, it is also stated that “higher rainfall is likely to increase sheet and rill erosion, leading to increased sedimentation of coastal floodplains.”

The planning proposal responsibly aims to direct blueberry farms away from riparian zones to avoid exacerbating the projected impacts of climate change on these areas.

Direction 11 – Protect and enhance productive agricultural lands

Direction 11 notes that agricultural activities such as horticulture are growing rapidly on smaller holdings across the North Coast and that local planning controls can help support these industries by identifying potentially suitable locations for small lot primary production.

The planning proposal is consistent with this direction in that it identifies those locations, on any property, where a blueberry farm can operate without the need for obtaining any further approval from Council.

By observing the nominated buffer zones, it is expected that the likelihood of conflict with neighbours, or inadvertent breaches of legislation will be minimised, thereby leaving farmers with more time to work on core farming activities and growing their businesses.

Direction 12 – Grow agribusiness across the region

This direction is not considered directly relevant to this planning proposal as it is more focused upon facilitating agricultural support industries.

Direction 13 – Sustainably manage natural resources

This direction is not considered directly relevant to this planning proposal, as it is more focused upon the use of natural, mineral and forestry resources.

Direction 16 – Collaborate and partner with aboriginal communities & Direction 18 – Respect & protect the North Coast’s Aboriginal heritage

Council acknowledges the importance of engaging with Aboriginal communities and will engage with relevant local aboriginal organisations as part of the public exhibition of the planning proposal.

The NSW Government recognise that riparian zones have high levels of landscape value when considering whether aboriginal objects are likely to be present. For example, Section 8 of the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales states as follows regarding landscapes that are likely to obtain objects.

“Aboriginal objects are often associated with particular landscape features as a result of Aboriginal people’s use of those features in their everyday lives and for traditional cultural activities. Examples of such landscape features are rock shelters, sand dunes, waterways, waterholes and wetlands. Therefore it is essential

to determine whether the site contains landscape features that indicate the likely existence of Aboriginal objects.”

The planning proposal seeks to provide a higher level of protection to landscape features such as waterways, waterholes and wetlands. In this respect, it is submitted that the planning proposal will help to respect and protect the North Coast’s Aboriginal Heritage.

Is the proposal consistent with Council’s strategic plans?

Growth Management Strategy:

Councils existing Growth Management Strategy was adopted in 2007. Its principle focus was on the investigation of potential residential and rural residential land release areas, however it did include a Chapter 9 that was entitled Rural Land Strategy. A copy of Chapter 9 is included as Attachment 5 to this report.

A review of Chapter 9, which was drafted prior to the introduction of the NSW Standard Instrument Local Environmental Plan, confirms that it did not make any explicit provisions regarding what types of agricultural uses should be permitted with, or without consent in the various rural zones in the Shire

Accordingly, the provisions that are proposed in Planning Proposal 13 are not contradictory to Councils existing Growth Management Strategy.

Is the proposal consistent with applicable state environmental planning policies?

A summary table documenting the proposals compliance with relevant SEPPs is provided below, with detailed commentary on relevant matters provided at the end of the Table.

State Environmental Planning Policies – Statement of applicability to Planning Proposal 13		
SEPP	Relevant (Yes/No)	Comment
1 – Development Standards	No	
14 – Coastal Wetlands	No	
21 - Caravan Parks	No	
26 – Littoral Rainforests	No	
30 – Intensive Agriculture	No	Relates to feedlots & piggeries only
33 – Hazardous & Offensive Development	No	
36 – Manufactured Home Estates	No	
44 – Koala Habitat Protection	Yes	See comment
50 – Canal Estate Development	No	
55 – Remediation of Land	No	
64 – Advertising & Signage	No	
65 – Design Quality of Residential Apartment Development	No	
70 – Affordable Housing (Revised Schemes)	No	
Affordable Rental Housing (2009)	No	
Building Sustainability Index: BASIX (2004)	No	
Educational Establishments & Child	No	

State Environmental Planning Policies – Statement of applicability to Planning Proposal 13		
SEPP	Relevant (Yes/No)	Comment
Care Facilities (2017)		
Exempt & Complying Development Codes (2008)	Yes	See comment
Housing for Seniors or People with a Disability (2004)	No	
Infrastructure (2007)	No	
Integration & Repeals (2016)	No	
Mining, Petroleum Production & Extractive Industries (2007)	No	
Miscellaneous Consent Provisions (2007)	No	
Rural Lands (2008)	Yes	See comment
State & Regional Development (2011)	No	
State Significant Precincts (2005)	No	
Vegetation in Non-Rural Areas (2017)	No	

SEPP 44 – Koala Habitat Protection

The planning proposal proposes to direct blueberry farms away from land that has been mapped as core koala habitat under Councils Comprehensive Koala Plan of Management for the Bellingen Coastal Area.

This is consistent with the central aim of the SEPP, which is to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas.

SEPP Exempt & Complying Development Codes (2008)

The proposed exemption for “horticulture” is not provided for elsewhere within this SEPP.

SEPP Rural Lands (2008)

Section 7 of this SEPP specifies a series of rural planning principles that must be observed in the exercise of plan making functions. These principles are discussed below, in the context of Planning Proposal 13.

The Rural Planning Principles are as follows:

(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,

Comment:

The planning proposal does not prohibit any form of agriculture. In most instances, no additional consent will be required to undertake agricultural activities in Bellingen Shire.

The NSW Governments central planning framework is the Standard Instrument Local Environmental Plan. This allows Councils to choose whether or not they require development consent for horticulture in the zones affected by this proposal.

The approach that Council has elected to pursue protects all types of horticulture from the need to obtain development consent, with the exception of blueberry farms that choose to locate in areas where there is a greater likelihood of impact to either surrounding properties, or the local environment.

It is considered that this approach will allow for the continuation of environmentally sustainable agricultural activities in Bellingen Shire.

(b) 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,

Comment:

The objectives of this planning proposal are to address concerns regarding a recent trend for the establishment of blueberry farms and to address some of the impacts that are being associated with this trend.

A further issue that has arisen in agriculture is an apparent lack of resources to undertake environmental compliance by key NSW Government agencies. The recent release of an "Investigation into water compliance and enforcement 2007-17" by the NSW Ombudsman confirms, for example, the chronic under-resourcing of the compliance and enforcement roles regarding water extraction in NSW.

This has prompted calls from the community for Council to introduce local planning controls, capable of local enforcement by Council Officers, if necessary.

Council recognises the central role that agriculture plays in the local economy, and this is reflected in Objective 2 of the planning proposal, which aims to ensure that any regulatory option is quarantined to blueberry growing only, and does not impact upon other forms of horticulture or agriculture.

(c) 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,

Comment:

The report that was presented to Council regarding this matter documented, and acknowledged, the role that agriculture plays in the local economy. For example, the Agriculture Forestry & Fishing Industry Sector (as a whole) added \$32 million value to the local economy in 2015/16. Of this \$32 million, \$30.5 million was attributable to agriculture alone. Furthermore, the Agriculture Forestry & Fishing Industry Sector (as a whole) currently generates the highest number of Full Time Equivalent jobs in Bellingen Shire, as of 2015/16.

(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,

Comment:

The proposed policy response respects the value of agricultural activity to the local economy and the important role that it plays in the social structure and identity of Bellingen Shire. It is not a broad brush reactive response to agriculture as a whole, but a selective refinement of existing policy.

Should a local government area consider that the economic benefits of a particular model of agriculture do not justify the potential environmental impacts of that activity, then it is reasonable to respond with a policy position that looks to address that disparity.

It is submitted that the proposed policy position effectively balances the social, economic and environmental interests of the community.

(e) 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,

Comment:

The planning proposal seeks to divert new blueberry farms away from environmental assets such as riparian zones, and core koala habitat. It does not seek to prohibit farms from establishing in these areas, however will require a more careful consideration of impact if it is proposed to locate within those areas. It is considered that this is a responsible and reasonable response to this planning principle.

(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,

Comment:

The planning proposal does not look to provide new opportunities for rural lifestyle, settlement and housing.

(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,

Comment:

The planning proposal does not look to provide new opportunities for rural housing.

(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

Comment:

The planning proposal is considered to be consistent with the North Coast Regional Plan. This has been addressed earlier in this planning proposal.

Is the proposal consistent with applicable Section 117 directions?

A summary table documenting the proposals compliance with relevant Section 117 Directions is provided below.

Section 117 Directions – Statement of applicability to Planning Proposal 13			
117 Category	117 Direction	Relevant (Yes/No)	Comment
Employment & Resources			
	1.1 – Business & Industrial Zones	No	
	1.2 – Rural Zones	Yes	Complies. Does not rezone existing rural land or include provisions that will increase the permissible density of land within a rural zone.
	1.3 – Mining, petroleum & Extractive Industries	No	
	1.4 – Oyster Aquaculture	No	Planning proposal would reduce potentially adverse impacts on Oyster aquaculture areas.
	1.5 – Rural Lands	Yes	<p>The planning proposal will, in accordance with Clause 3(a) of the Direction, affect land within an existing rural zone.</p> <p>Clause 4 of the Direction requires that a planning proposal to which clause 3(a) applies, must be consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008.</p> <p>It is considered that the planning proposal is consistent with the Rural Planning Principles. This has been addressed in a previous section of the planning proposal.</p>

Section 117 Directions – Statement of applicability to Planning Proposal 13			
117 Category	117 Direction	Relevant (Yes/No)	Comment
Environment & Heritage	2.1 – Environment Protection Zones	Yes	The planning proposal includes provisions that facilitate the protection and conservation of environmentally sensitive areas such as riparian corridors and core koala habitat.
	2.2 – Coastal Protection	Yes	Proposed provisions are consistent with relevant coastal planning guidelines.
	2.3 – Heritage Conservation	Yes	The planning proposal will positively impact upon the conservation of aboriginal cultural heritage, by virtue of the proposed setbacks to watercourses. Watercourses are recognised as landscapes that are more likely to contain evidence of aboriginal occupation.
	2.4 – Recreation Vehicle Areas	Yes	Complies
Housing, Infrastructure & Urban Development	3.1 – Residential Zones	No	
	3.2 – Caravan Parks & Manufactured Home Estates	No	
	3.3 – Home Occupations	No	
	3.4 – Integrating Land Use & Transport	No	
	3.5 – Development Near Licensed Aerodromes	No	
	3.6 – Shooting Ranges	No	
Hazard & Risk	4.1 – Acid Sulfate Soils	Yes	The planning proposal will affect land that is mapped as containing acid sulphate soils. In general terms, riparian zones in these areas are more likely to have acid

Section 117 Directions – Statement of applicability to Planning Proposal 13			
117 Category	117 Direction	Relevant (Yes/No)	Comment
			sulphate soils. The planning proposal will direct blueberry farms away from these areas.
	4.2 – Mine Subsidence & Unstable Land	No	
	4.3 – Flood Prone Land	Yes	The planning proposal will affect flood prone land. In general terms, riparian zones in these areas are more likely to be affected by flooding than other areas. The planning proposal will direct blueberry farms away from these areas.
	4.4 – Planning for Bushfire Protection	Yes	The planning proposal will affect bush fire prone land. Consultation with the Commissioner of the RFS will be required pursuant Clause 4 of this direction.
Regional Planning			
	5.1 – Implementation of Regional Strategies	No	
	5.4 – Commercial & Retail Development along the Pacific Highway, North Coast	Yes	No commercial or retail provisions are proposed. Complies.
	5.10 – Implementation of Regional Plans	Yes	Complies. Addressed elsewhere in this planning proposal.
Local Plan Making			
	6.1 – Approval & referral Requirements	Yes	Complies. No additional concurrence, consultation or referral requirements are proposed.
	6.2 – Reserving Land for Public Purposes	Yes	Complies. No land reserved for public purposes.
	6.3 – Site Specific Provisions	No	The planning proposal does not relate to a particular development proposal.

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 considered that the proposed planning proposal will have a positive impact in this regard.

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

The planning proposal is designed to reduce the environmental effects of blueberry farming in Bellingen Shire by directing farms away from areas of relatively high environmental value.

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

It is Council's experience to date that a blueberry farm that is established without due regard to its proximity to adjoining dwellings or property, has the potential to result in a range of undesirable social impacts. This includes the potential for ongoing conflict between neighbours, when the impacts of blueberry farming extend beyond the property boundary because there are inadequate buffer zones in place.

It is acknowledged that the planning proposal may result in a reduced level of interest in establishing blueberry farms in Bellingen Shire, and that the short term economic benefits of establishing those farms in Bellingen Shire would be foregone. Council is willing to forego those benefits in the long term interest of the environmental assets of Bellingen Shire and, furthermore, sees no reason why this planning proposal should give rise to concerns regarding precedent elsewhere.

State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

The planning proposal does not impact significantly upon public infrastructure.

Views of State and Commonwealth authorities

NSW Department of Primary Industries

Council has received correspondence from the NSW Department of Primary Industries raising their concerns with the planning proposal. This was received after Council resolved to proceed with the planning proposal, and a copy is included as Attachment 6 to this planning proposal.

Having regard to the matters raised in this submission, it is Councils view that the planning proposal can proceed without impacting upon any other forms of horticulture besides blueberries. This has been demonstrated in the "Proposed Provisions" section of this report.

The suggestion that Council uses the buffer zones in '*Living and Working in Rural areas*' on a case by case basis, and to minimise land use conflict, overlooks the fact that there is no compulsion for a blueberry farmer to have any regard to this guide in establishing a farm, nor any commitment from industry to using this as a guideline.

Also, it is considered relatively unlikely that, upon a situation of land use conflict emerging, blueberry farmers will voluntarily remove plantings and infrastructure as part of a discussion facilitated by Council around the Guidelines, and what a suitable buffer should have been, after the fact. It should also be noted that Bellingen Shire Council does not have the level of resourcing necessary to facilitate bespoke negotiations regarding each particular farm, and to mediate every potential breakdown in relations between neighbours that may occur into the future.

It is for this reason that buffer zones have been nominated as the most suitable land-use planning tool for Bellingen Shire. Compliance with the buffer zones will not require the submission of a Development Application, however any intention to extend into the buffer zones can still be considered by Council, in the context of the Land Use Conflict Risk Assessment Guide that is recommended by the Department.

Other

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

It is expected that consultation will be required with the following agencies.

Issue	Agency
Agriculture	NSW Department of Primary Industries
Agriculture	Local Land Services
Water	NSW Office of Water
Environment	NSW Office of Environment & Heritage
Pollution	NSW Environment Protection Authority
117 Direction 4.4 Planning for Bushfire Protection	NSW Rural Fire Service
Aboriginal Cultural Heritage	NSW Office of Environment & Heritage

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.

It is submitted that the proposed Planning Proposal meets the criteria for "All other planning proposals", for which a minimum exhibition period of 28 days is specified.

In addition to the NSW Government guidelines, 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 3 – Lower impact – Shire Wide. This requires Council to "Inform, Consult & Involve 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 Dorrigo Gazette.
- 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.
 - Bellingen Council Administrative Centre
 - Bellingen Library
 - Urunga Library
 - Dorrigo 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 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.”*

Given the minor nature of this proposed amendment, Council has resolved to use its delegations for the making of the Plan and to inform the Department of its intention to use its delegation to make the Plan.

A copy of the Evaluation Criteria for delegated authority has also been included as Attachment 4, in further support of Council’s adopted position on this matter.

PLANNING PROPOSAL 13

VERSION 1 ATTACHMENTS INDEX

November 2017

Attachment 1 – Information Checklist

Attachment 2 - Report to Council & Recommendation to proceed

Attachment 3 – Project Timeline

Attachment 4 – Evaluation Criteria for Delegated Authority

Attachment 5 – Rural Land Strategy

Attachment 6 – Department of Primary Industries correspondence

INFORMATION CHECKLIST

Attachment 1

> STEP 1: REQUIRED FOR ALL PROPOSALS

(under s55(a) – (e) of the EP&A Act)

- Objectives and intended outcome
- Mapping (including current and proposed zones)
- Community consultation (agencies to be consulted)
- Explanation of provisions
- Justification and process for implementation (including compliance assessment against relevant section 117 direction/s)

> STEP 2: MATTERS - CONSIDERED ON A CASE BY CASE BASIS

(Depending on complexity of planning proposal and nature of issues)

PLANNING MATTERS OR ISSUES	To be considered	N/A	PLANNING MATTERS OR ISSUES	To be considered	N/A
Strategic Planning Context			Urban Design Considerations		
• Demonstrated consistency with relevant Regional Strategy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	• Existing site plan (buildings vegetation, roads, etc)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Demonstrated consistency with relevant sub-regional strategy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Building mass/block diagram study (changes in building height and FSR)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Demonstrated consistency with or support for the outcomes and actions of relevant DG endorsed local strategy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	• Lighting impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Demonstrated consistency with Threshold Sustainability Criteria	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Development yield analysis (potential yield of lots, houses, employment generation)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Site Description/Context			Economic Considerations		
• Aerial photographs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Economic impact assessment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Site photos/photomontage	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Retail centres hierarchy	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Traffic and Transport Considerations			• Employment land	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Local traffic and transport	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Social and Cultural Considerations		
• TMAP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Heritage impact	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Public transport	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Aboriginal archaeology	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Cycle and pedestrian movement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Open space management	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Environmental Considerations			• European archaeology	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Bushfire hazard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	• Social and cultural impacts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Acid Sulphate Soil	<input checked="" type="checkbox"/>	<input type="checkbox"/>	• Stakeholder engagement	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Noise impact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Infrastructure Considerations		
• Flora and/or fauna	<input checked="" type="checkbox"/>	<input type="checkbox"/>	• Infrastructure servicing and potential funding arrangements	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Soil stability, erosion, sediment, landslip assessment, and subsidence	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Miscellaneous/Additional Considerations		
• Water quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>List any additional studies</i>		
• Stormwater management	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
• Flooding	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
• Land/site contamination (SEPP55)	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Resources (including drinking water, minerals, oysters, agricultural lands, fisheries, mining)	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
• Sea level rise	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

ITEM: 13.1
SUBJECT: OPTIONS FOR THE POTENTIAL REGULATION OF BLUEBERRY GROWING IN BELLINGEN SHIRE
FILE/INDEX: RURAL LANDS PLANNING POLICY REVIEW
PRESENTED BY: DANIEL BENNETT, ACTING MANAGER LAND USE SERVICES

MOVED (Cr King/Cr Wright-Turner)

That Council:

1. Resolves to prepare a planning proposal specifying that development consent is required for the establishment of blueberry farms in Zones RU1, RU2, RU4 and E4, unless the farm complies with the following criteria, in which case it will be considered as a form of "exempt development".

Blueberry farming is exempt development if it complies with following criteria.

- Blueberry plants & associated infrastructure (such as poles and netting) are located a minimum of 200m from any dwelling (not including a dwelling on the same property) and a minimum of 50m from any property boundary not held in the same ownership.
- Blueberry plants & associated infrastructure (such as poles and netting) are located the following minimum distances away from watercourses, based upon the Strahler method of stream ordering.

Stream Order	Minimum distance either side of watercourse
1st order	10 metres
2nd order	20 metres
3rd order	30m
4th order and greater	40m

- Where it is necessary to apply the setback distances specified in subclause b), and those setbacks are vegetated, the setback distances must be retained in their vegetated state, with the exception of the removal of any non-native species.
 - Blueberry plants & associated infrastructure such as poles and netting are not located within any area mapped as "core koala habitat" in any adopted Koala Plan of Management.
 - Any netting proposed for the protection of the crop must be black.
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 & Environment 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.

For: Cr King, Cr Fenton and Cr Wright-Turner.

Against: Cr Carter, Cr Harrison and Cr Jenkins.

CARRIED

Mayor King utilised his casting vote to vote for the motion meaning the motion was carried.

EXECUTIVE SUMMARY

In response to concerns regarding the impacts of blueberry farms in Bellingen Shire, Council has recently undertaken consultation to determine community attitudes to the potential regulation of blueberry growing in Bellingen Shire.

This report documents the outcomes of the community consultation and recommends that Council amend its Local Environmental Plan to regulate blueberry growing in Bellingen Shire. The recommended regulatory approach allows for blueberry growing to continue as a form of exempt development, provided certain criteria are met. If those criteria are not met, then blueberry growing will remain a permissible use of land, however will require the submission of a Development Application to Council in order to establish a new blueberry farm.

REPORT DETAIL

This report will address the following matters in order to arrive at a recommended course of action regarding blueberry growing in Bellingen Shire.

- 1) Background
- 2) What are the potential approaches that Council could adopt to address concerns regarding blueberry growing in Bellingen Shire?
- 3) Key matters informing the potential for a local regulatory response to Blueberry Growing
 - How has the State Government considered blueberry growing and its potential impacts through the planning framework and other relevant guidelines?
 - What has the blueberry industry done so far to promote best practice amongst growers?
 - What contribution is made to the Regional Economy by blueberry production?
 - What contribution does agriculture currently make to employment figures and economic activity in Bellingen Shire?
 - What do the community think regarding blueberry growing in Bellingen Shire?
- 4) Recommended policy position on Blueberry Growing in Bellingen Shire and factors justifying the recommendation

1. Background

Bellingen Shire Council first received complaints regarding blueberry farming in the Shire in late 2014. Since that time, the blueberry industry has continued to expand however most of this expansion has taken place around Coffs Harbour and Woolgoolga and, more recently, south towards Nambucca and to the north between Halfway Creek & Grafton.

Although there are only 3 blueberry farms in Bellingen Shire at this stage, there continues to be a level of concern expressed by the community regarding blueberry growing in general, and more specifically, regarding particular operations that have established in the Shire. The main concerns regarding blueberry farming include chemical spray drift, water pollution, water extraction, erosion and vegetation removal.

In view of these concerns, Council sought the views of the community on blueberry farming in Bellingen Shire as part of the recent Rural Lands Planning Policy Review process. In summary, 65% of respondents to a survey on this matter supported an increased level of regulation of blueberries, however only 46% of respondents supported this if it meant that other forms of horticulture (e.g.: garlic growing, potatoes etc..) would then be captured as part of a consent mechanism.

Since this time, motions contemplating the regulation of blueberry growing in Coffs Harbour and Nambucca local government areas have been presented to both of the respective Councils. At this stage, both those Councils have not elected to proceed with further regulation of the industry in their local government areas.

At both a Federal and State level, the preference of government appears to be for non-regulatory responses to issues of concern, active promotion of industry growth, the development of collaborative relationships between government agencies and industry, and the promotion of industry self-regulation through initiatives such as a Code of Practice.

The NSW Department of Primary Industries on 5 June 2017, following a Blueberry & Greenhouse Horticulture Development Workshop issued the following media release.

The NSW Department of Primary Industries (DPI) is actively working with industry, councils and state agencies to promote best practice for blueberry developments to avoid and reduce land use conflicts in the north coast region.

DPI Manager Agricultural Land Use Planning, Liz Rogers said a collaborative forum between state agencies, Local Government and the Australian Blueberry Growers Association recently held in Coffs Harbour was a great success.

“The DPI supports the sustainable growth of agricultural industries, including the blueberry industry in northern NSW, which contributes significantly to the local and regional economies,” Ms Rogers said.

“NSW accounts for more than 90 per cent of Australia’s blueberry production. The blueberry industry has grown significantly to meet the demand for fresh berries for the Australian domestic and the emerging Asian export markets.

“The key areas for discussion at the forum included communication and engagement between industry and government; informing operational practice and compliance; and identifying strategic long and short term actions for the future.”

Representatives from Bellingen Shire Council have actively participated in these various initiatives, including ongoing representation on the Blueberry & Greenhouse Horticulture Interagency Working Group, and attendance at the 5 June Workshop.

Anecdotally, the increased focus on industry support and promotion has occurred in parallel with a progressive removal of compliance resources from state agencies tasked with enforcing key legislation relating to matters such as water extraction and allocation and removal of native vegetation. This continues to fuel a perception that the State Government is unable, or unwilling, to enforce relevant legislation and that local authorities should consider intervening with a local policy response.

Accordingly, this report addresses the potential options for a local policy response to blueberry growing in Bellingen Shire.

2. What are the potential approaches that Council could adopt to address concerns regarding blueberry growing in Bellingen Shire?

There are a number of potential approaches to the regulation of blueberry growing in Bellingen Shire. These include;

- No further regulation
- All forms of horticulture to require development consent
- Blueberry farming only to require development consent
- Blueberry farming to be made permissible as “exempt development” provided that it complies with a set of predetermined criteria.

To effectively analyse the merits of these options, there are a number of matters that Council could consider.

The most relevant matters are documented in the next section of the report.

3. Key matters informing the potential for a local regulatory response to Blueberry Growing

How has the State Government considered blueberry growing and its potential impacts through the planning framework and other relevant guidelines?

Blueberry growing is defined as “horticulture” under the Standard Instrument Principal Local Environmental Plan (SIPLEP). Horticulture is also defined as a type of “Intensive Plant Agriculture”.

Both definitions are reprinted below.

horticulture means the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include a plant nursery, turf farming or viticulture.

Note.

Horticulture is a type of intensive plant agriculture—see the definition of that term in this Dictionary.

intensive plant agriculture means any of the following:

- (a) the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),
- (b) horticulture,
- (c) turf farming,
- (d) viticulture.

Note.

Intensive plant agriculture is a type of agriculture—see the definition of that term in this Dictionary.

The SIPLEP is in effect, the highest level expression of State Government policy regarding what uses must be allowed in various zones and the way in which they should be permitted (e.g.: with development consent or without development consent).

Horticulture is currently permissible without development consent in Zones RU1 – Primary Production, RU2 – Rural Landscape, RU4 – Primary Production Small Lots, & E4 – Environmental Living in Bellingen Local Environmental Plan 2010 (BLEP 2010).

Should Council wish, to make horticulture permissible with development consent in these zones, there is no obstacle presented by the SIPLEP because it only requires that “intensive plant agriculture” is included as either “Permitted without consent” or “Permitted with consent” in Zones RU1 & RU4. It also allows Council to determine a local policy position in Zones RU2 and E4.

The recently released North Coast Regional Plan (NCRP) continues to advocate the Governments position that productive agricultural lands are protected and utilised through the inclusion of *Direction 11: Protect & enhance productive agricultural lands*.

The NSW Government have also released a Right to Farm Policy that further enshrines the notion that farmers should be supported in exercising their right to farm (see Attachment 1), but also states that the NSW Government will “*work with local councils to identify any additional measures required to assist their efforts in best practice land use planning to address land use conflict issues.*”

One of the main threats to the ongoing use of productive lands is land use conflict. This especially occurs when the potential impacts of new (especially intensive) agricultural pursuits have not been adequately considered and planned for in the design, and ongoing operation, of that pursuit. In this regard, Council has received complaints that the impacts of certain blueberry farms on adjoining land uses have not been adequately considered in the layout and operation of those farms. It is also the case that land use conflict occurs when people buy in rural areas but are not sufficiently aware of the types of land uses that can occur in rural areas and the impacts that can arise from utilising land for agricultural purposes.

In most cases, the key issue underpinning the conflict is a lack of suitable buffers between more intensive pursuits and sensitive adjoining land uses.

The NSW Government have released several documents that advocate the use of buffers to sensitive adjoining land uses, and consider the potential impacts of intensive plant agriculture .

The key documents that are considered relevant to this discussion are discussed below.

Living & working in Rural Areas – A handbook for managing landuse conflict issues on the NSW North Coast (Published by NSW Department of Primary Industries 2007)

A buffer zone is an area of land that is set aside between one use and another, to allow for the impacts of one use on the other to be lessened by virtue of the distance between them.

Table 6 from this document summarises recommended minimum buffers for primary industries. This is partially reproduced below.

As can be seen, a minimum buffer of 200m is recommended between horticulture operations and rural dwellings. There is no setback specified to the property boundary for general horticulture, however there is a 50m setback specified for controlled environment horticulture. This is considered to be a reasonable point of comparison with blueberry growing, notwithstanding that there is a degree of concern regarding the extent to which matters such as chemical spray drift is being effectively “controlled” to limit off-site migration during application.

Table 6: Recommended minimum buffers (metres) for primary industries

(NB: The desirable buffer in the circumstances will be the separation distance and conflict avoidance strategy that protects: community amenity, environmental assets, the carrying out of legitimate rural activities in rural areas and the use of important natural resources.)

	Residential areas & urban development	Rural dwellings	Education facilities & pre-schools	Rural tourist accommodation	Watercourses & wetlands	Bores & wells	Potable water supply/ catchment	Property boundary	Roads
Piggeries ¹ Housing & waste storage	1000	500	1000	500	100	SSD	800	100	100
	Waste utilisation area	500	250	250	250	100	SSD	800	20
Feedlots ² Yards & waste storage	1000	500	1000	1000	100	SSD	800	100	100
	Waste utilisation area	500	250	250	250	100	SSD	800	20
Poultry ³ Sheds & waste storage	1000	500	1000	500	100	SSD	800	100	100
	Waste utilisation area	500	250	250	250	100	SSD	800	20
Dairies ⁴ Sheds & waste storage	500	250	250	250	100	SSD	800	100	100
	Waste utilisation area	500	250	250	250	100	SSD	800	20
Rabbits ⁵ Wet shed, ponds & irrig.	300	150	150	150	100	SSD	800	50	50
	Dry shed	120	60	120	60	100	SSD	800	20
Other intensive livestock operations ⁶	500	300	500	300	100	SSD	800	100	100
Grazing of stock	50	50	50	50	BMP	SSD	BMP	NAI	BMP
Sugar cane, cropping & horticulture	300	200	200	200	BMP	SSD	BMP	NAI	BMP
Greenhouse & controlled environment horticulture	200	200	200	200	50	SSD	SSD	50	50

NAI: Not an issue.

SSD: Site specific determination (no standard or simple buffer distance applies).

BMP: Best management practice to apply given site circumstances. Buffer and/or management practice should represent duty of care to the environment and the public and include measures necessary to protect bank stability, maintain riparian vegetation and protect water quality. The incorporation of best management practice measures in property and farm plans is encouraged.

STRC: Subject to relevant codes.

Buffer distances represent the recommendations of the North Coast Land Use Conflict Working Group following a synthesis of existing guidelines and policy. In some cases, specific and relevant guidelines may require larger buffers or lesser buffers than those prescribed may be appropriate in the circumstances.

Controlled activities on waterfront land – Guidelines for riparian corridors on waterfront land (NSW Department of Primary Industries – Office of Water 2012)

A riparian corridor is an area of land that is set aside either side of a watercourse to provide a level of protection to the watercourse and to preserve its functioning as a watercourse

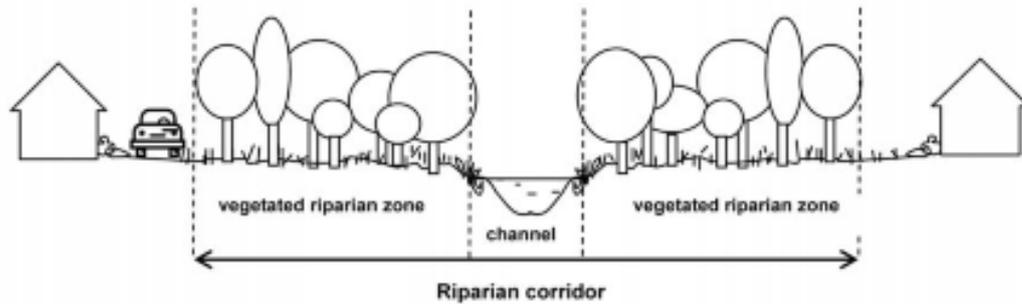
This document provides guidelines for the public and approval authorities regarding what riparian corridors should be preserved for different types of watercourses. The Guidelines are included as Attachment B to this report.

The Guidelines are used in conjunction with the requirement for landholders to obtain a "Controlled Activity Permit" (under the Water Management Act 2000) for certain types of activities if they occur within 40m of waterfront land.

In essence, the approach for riparian corridor management is that as a stream becomes more significant, so too should the setback between the stream and any development that may be proposed in its vicinity. This relies upon a system called the "Strahler System" which orders the stream based upon how many other streams flow into it.

The illustration below shows how stream order is determined, and the table shows the buffer widths that have been recommended by the Office of Water.

Figure 1. The riparian corridor



Riparian corridor widths

The Officer of Water recommends a VRZ width based on watercourse order as classified under the Strahler System of ordering watercourses and using current 1:25 000 topographic maps (see Figure 2 and Table 1). The width of the VRZ should be measured from the top of the highest bank on both sides of the watercourse.

Figure 2. The Strahler System

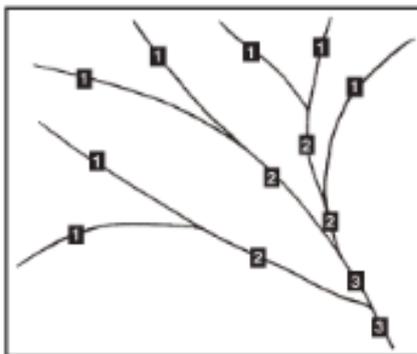


Table 1. Recommended riparian corridor (RC) widths

Watercourse type	VRZ width (each side of watercourse)	Total RC width
1 st order	10 metres	20 m + channel width
2 nd order	20 metres	40 m + channel width
3 rd order	30 metres	60 m + channel width
4 th order and greater (includes estuaries, wetlands and any parts of rivers influenced by tidal waters)	40 metres	80 m + channel width

It is considered that the work of DPI in nominating suitable buffers to different order watercourses is of significant value when determining a potential regulatory regime for blueberry growing.

For example, this could be used to nominate standards that must be observed in order to take advantage of an exemption from the need for a Development Application, or be used as best practice Guidelines to observe in the event that a Development Application was required.

NSW Department of Primary Industries Factsheets – “Preparing Intensive Plant Agriculture Development Applications” and “Assessing Intensive Plant agriculture Developments”
(Published by NSW Department of Primary Industries December 2011)

As previously documented, the SIPLEP provides clear provision for Council’s to determine whether they allow for “Intensive Plant Agriculture” as either “Permitted without consent” or “Permitted with consent” in relevant zones within the local government area.

To support Councils who choose to exercise their discretion to require consent, the NSW Department of Primary Industries have developed a series of Factsheets. These assist applicants, and consent authorities, in determining what the potential impacts of intensive agriculture may be and important matters that should be considered for intensive agricultural operations. These are included as Attachments C & D to this report.

The factsheets are valuable in that they provide an "off the shelf" framework that Council could adopt if it wished to require consent for the growing of blueberries, without needing to invest significant time and resources in framing its own set of development controls at this stage. Should Council determine that it wants to develop its own set of development controls at some point in the future, then this could take place through a future amendment to its Development Control Plan.

The existence of the fact sheets also provides a level of recognition, by the NSW Government;

- that the adoption of a regulatory approach to horticultural operations is an acceptable and normal option should local government wish to pursue it.
- of the level of planning that should be undertaken, in a best practice sense, to properly consider the environmental impacts of a horticultural operation and the way in which it should be mindful of the impacts that this may have on adjoining properties.

The items below are an example of just some of the matters that the DPI recommend should be addressed in a DA, as extracted from the Factsheet on 'Preparing Intensive Plant Agriculture Development Applications'

- *land use history on the site and an assessment of the potential impact of the subdivision on such land use*
- *local climatic conditions and the suitability / risks for the proposed intensive plant development*
- *existing and proposed vegetation (cropping areas, improved pastures, windbreaks, plantations, native vegetation remnants, riparian zones etc.)*
- *soils of the property and providing an overview of their suitability and value for the proposed use including soil testing results and an estimate of productive or carrying capacity*
- *environmentally sensitive features of the property such as wetlands, remnant vegetation, groundwater resources, important fish habitat, heritage items or places*
- *an assessment of the risk of contaminated land (e.g. due to previous chemical applications, dip sites, storage facilities) and how this will be managed*
- *ground and surface water resource quality, availability and relevant licence details. Include current water sharing plan and access conditions. This should document / tabulate the amount of water available from all sources (e.g. dams, bores, tanks, effluent re-use, town water and harvestable rights). This can be verified by a copy of all water licences setting out their volumes and conditions. For bores a copy of recent pump test showing water recovery should also be provided. For new horticultural developments evidence should also be provided of consultation with the NSW Office of Water.*
- *an overview of water quality test results relevant to irrigation methods and crop suitability*
- *research into the production systems proposed, the suitability of these for this location, available processing facilities in the region and market prospects. Where*

relevant this should include details of contracts to process or purchase food grown on site and proposed sales outlets.

- services (power, water, communications) and current farm infrastructure (e.g. dwellings, sheds, yards, fences, dams, bores, pumps, tracks, bridges). This should include an assessment of condition and suitability for the proposed development, and
- proposed adaptations, monitoring proposals and Environmental Management Plans to ensure environmental values are protected.

Soil & Water Management Practices for Blueberry Growers in Northern NSW (NSW Department of Primary Industries & Northern Rivers Catchment Authority – December 2008)

There are a wide range management practices documented in this publication that can be utilised to minimise the off-site impacts of blueberry growing. Given though that these are only advisory practices, there is no legal obligation to implement them. These are summarised below.

BMP	AREA	GOAL	PROCESS	GROWERS CAN
1	Managing run-on water	Diverting clean water	Build diversion banks	Maintain groundcovers
2	Minimising disturbance	Minimising erosion	Progressively disturb area	Choose the correct time of the year
3	Capturing water	Transfer water to drains	Build cross slope catch banks	Maintain cross slope banks
4	Groundcovers	Minimising disturbance	Re-establish quickly	Intensively manage
5	Irrigation design	Irrigation orchard design	Consult irrigation expert	Follow irrigation design
6	Moisture monitoring	Minimising runoff	Maximise water use	Use moisture monitoring devices
7	Nutrient management	Minimising nutrient runoff	Match plant nutrient demands	Use regular soil, leaf and water tests

In the case of some farms that have established within Bellingen Shire, certain management techniques were clearly not observed. For example, when undertaking bulk earthworks to establish the farms there was no progressive disturbance of earthworks to minimise disturbance and erosion, and the earthworks took place in the summer months where the potential for significant rain events was most significant.

Some concern has been expressed that the drainage solutions advocated in this publication direct run-off directly to watercourses, rather than firstly diverting those flow to a retention feature that would allow for water quality polishing prior to discharge into any natural systems.

Notwithstanding this, the document remains potentially valuable as another point of reference for Council if it wished to require consent for the growing of blueberries, without needing to invest significant time and resources in framing its own set of development controls. A copy is included as Attachment E to this report.

What has the blueberry industry done so far to promote best practice amongst growers?

Australian Blueberry Industry Code of Practice October 2013 (the Code). (Phillip Wilk, Industry Development Officer – Blueberries; in conjunction with Australian Blueberry Growers Association, NSW Government Primary Industries, Horticulture Australia Limited)

Although noting that blueberry orchards need to be managed to ensure that there are no adverse off site impacts on neighbours and the surrounding environment, the existing Code states that it *'is designed to identify key areas that need to be addressed in blueberry production rather than to be a prescriptive guide to sustainable management of blueberries in Australia.'*

The Code includes reference to many of the management practices included in the 2008 DPI Guide and is included as Attachment F to this report. In the event that the blueberry industry had observed all of the recommendations in the Code, it is possible that many of the complaints regarding matters such as soil erosion & spray drift would perhaps not have eventuated. In this regard, there is some doubt as to the Codes effectiveness at influencing the actions of farmers within the industry.

This has given rise to recent discussions regarding the need for a more effective position and stance to be taken by industry. This would emphasise the importance of sound environmental practice, and result in some degree of pro-active influence being asserted, by industry, on growers who do not observe relevant legal requirements or best practice farming techniques.

To this end, Blueberry Industry representatives attended a recent workshop at Coffs Harbour where the issue of a revised Code of Practice was discussed between all stakeholders. The summary report from this workshop is discussed below.

Blueberry & Greenhouse Horticulture Development Workshop, June 2017 Coffs Harbour, Notes & Insights. (NSW Government Department of Primary Industries)

The Notes & Insights Report is included as Attachment G to this report. Section 3b of the Report deals specifically with the development of a new Best Practice Guide / Code of Practice. Section 3b is reproduced below.

3b. Best practice guide / code of practice

The group were asked to explore the concept of a best practice guide for working in and with the industry. While this is clearly only one of numerous potential actions to enhance the industry it enabled the audience an opportunity to problem solve, create and build opportunities together. This will also contribute to work the Blueberry industry is currently undertaking to create a code of practice.

Implementation of this guide (particularly given it is supported by industry, and would be industry led) is likely to be an effective countermeasure to the small number of unconscionable producers currently trading in the region, particularly if it is linked to marketability of produce.

Workshop participants were asked three questions regarding a potential model of best practice: (1) What would be the purpose of a best practice guide? (2) What issues would it solve? And (3) How would it work? Results are shown below:

Question	Responses
What would be the purpose of a best practice guide?	<ul style="list-style-type: none"> • To ensure the long-term sustainability of the industry through social, economic & environment outcomes • Manage/minimise impacts • Measure impacts • Communication of Best Practice and community • Set agreed, consistent and achievable benchmarks • Allow for self-compliance • To establish a benchmark for sustainable industry growth into the future, across all growth phases of industry • Establish legislative obligations • All stakeholders need to be inv. In development • Consolidate Best Practice to ensure compliance regulatory framework
What issues would it solve?	<ul style="list-style-type: none"> • Manage/clarify expectations • Conflict • Environment protection • Maximise production • Sustain social licence • Reduce complexity • Improve certainty • Education tool • Allows compliance with Legislation • Communication • Clarification • Sets boundaries • Address community & industry expectations • An idea of what a good form looks like, how it works • Access to key regulations • Reduce risk of land use conflict • Inform planning decisions • Point of reference for influencing regulatory control • Proof of doing the right thing • User friendly, pesticide, green and clean • Demonstrates sustainability
How would it work?	<ul style="list-style-type: none"> • All Industry knows responsibility • Regularly updated • Industry Code of Practice > regulation • Implement through industry groups • Code of practice/MOU • By process of engagement • An incentive for compliance to the code for growers • Provide signposts for specific advice

Since the workshop, a meeting of the Blueberry Interagency Group has also been held at which Australian Blueberry Growers Association (ABGA) representatives provided an update on progress towards developing a Code of Practice. The Code of Practice would promote

best practice blueberry operations and given that 80-90% of the industry contributes to the ABGA, is likely to have a wide reach across industry.

Advice received from the ABGA on 9 September 2017 indicates that the draft Code of Practice is underway, however there is no timeframe provided for finalisation at this stage. This advice is reprinted below.

“We have made good progress on the Code of Practice. At the last Interagency Committee meeting we shared the table of contents, and received feedback from various parties which we have since addressed. We have basically finished the draft document. The next step is to consult with our members to ensure member buy in, following which we will continue consultation with members of the Interagency Committee and then look to releasing the document.”

The governance arrangements associated with any Code of Practice are, understandably, central to addressing community concerns regarding blueberry growing. For example, what will happen in the event that an “unconscionable producer” ignores recommended management techniques because it is only held in a voluntary code of practice and there are no punitive or other consequences for non-compliance.

What contribution is made to the Regional Economy is made by blueberry production?

A recent report commissioned by Regional Development Australia (on behalf of the NSW Government Department of Regional Industry & Development) made the following assertions regarding the blueberry industry on the north coast of NSW.

- *Generates more than \$250 million of revenue*
- *Employs more than 600 full-time employees*
- *Employs approximately 5000 seasonal workers*
- *Makes more than a billion dollar contribution to the regional economy, when the standard economic multiplier of 3.4 is applied to the industry in the Northern Rivers and Woolgoolga regions.*

Source: Blueberry Industry Business Barriers Review NSW Northern Rivers (Regional Development Australia – on behalf of NSW Government Department of Regional Industry & Development)

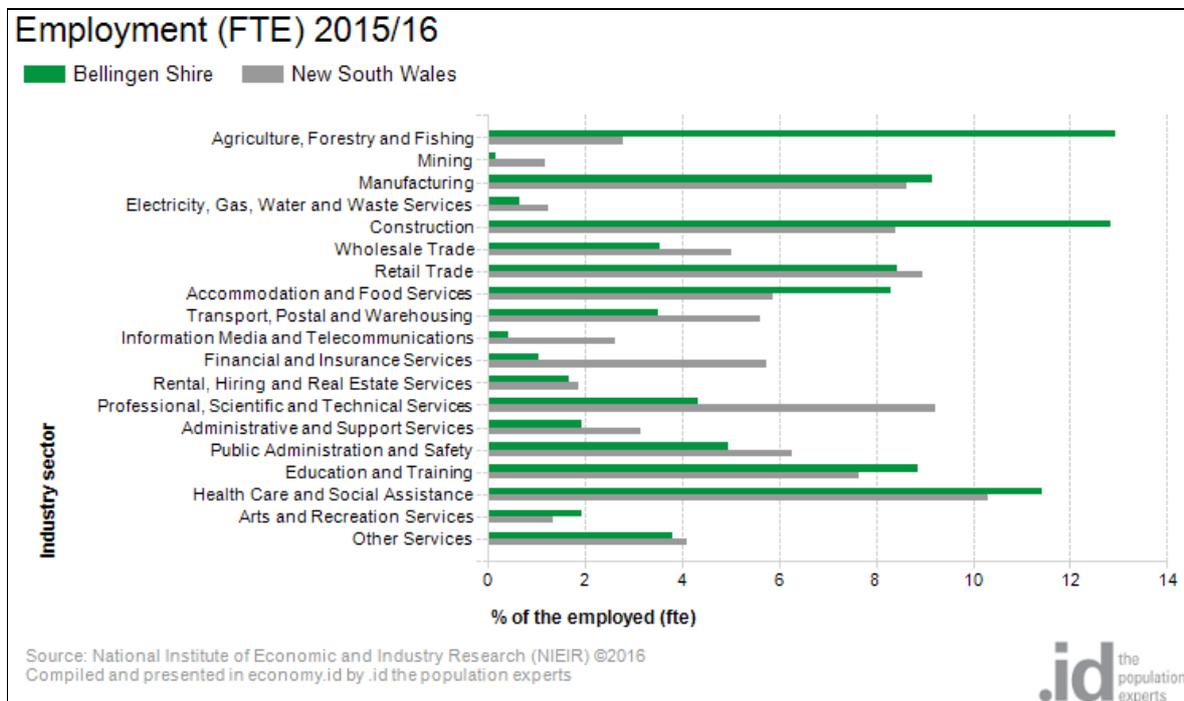
What contribution does agriculture currently make to employment figures and economic activity in Bellingen Shire?

Figures documenting the contribution made by the blueberry industry in Bellingen Shire to the local economy are not available, however the Agriculture Forestry & Fishing Industry Sector (as a whole) added \$32 million value to the local economy in 2015/16. Of this \$32 million, \$30.5 million was attributable to agriculture alone.

Value added by industry sector

Bellingen Shire - Constant prices	2015/16			2010/11			Change 2010/11 to 2015/16
	Industry	\$m	% New South Wales%	\$m	% New South Wales%	\$m	
Agriculture, Forestry and Fishing	32.0	8.8	1.7	36.2	12.3	2.1	-4.2
Mining	5.2	1.4	2.3	3.1	1.1	2.1	+2.1
Manufacturing	23.7	6.5	7.1	28.9	9.8	9.6	-5.2
Electricity, Gas, Water and Waste Services	6.9	1.9	2.9	7.4	2.5	3.2	-0.5
Construction	87.5	24.1	7.4	29.7	10.1	6.6	+57.7
Wholesale Trade	11.9	3.3	5.3	9.4	3.2	5.2	+2.5
Retail Trade	19.1	5.3	5.2	18.3	6.2	5.0	+0.8
Accommodation and Food Services	19.4	5.4	3.3	18.8	6.4	3.4	+0.6
Transport, Postal and Warehousing	10.0	2.8	5.1	9.4	3.2	5.2	+0.6
Information Media and Telecommunications	1.9	0.5	4.8	2.6	0.9	4.7	-0.7
Financial and Insurance Services	10.9	3.0	15.2	11.3	3.8	14.2	-0.4
Rental, Hiring and Real Estate Services	17.2	4.7	4.2	12.7	4.3	3.2	+4.5
Professional, Scientific and Technical Services	15.2	4.2	8.8	15.2	5.2	8.6	-0.1
Administrative and Support Services	7.8	2.2	3.6	8.4	2.9	3.8	-0.6
Public Administration and Safety	15.2	4.2	6.1	15.1	5.1	6.2	+0.1
Education and Training	25.8	7.1	5.7	24.7	8.4	6.1	+1.1
Health Care and Social Assistance	38.2	10.5	7.8	29.3	9.9	7.2	+8.9
Arts and Recreation Services	7.4	2.0	1.2	7.3	2.5	1.3	+0.1
Other Services	7.9	2.2	2.4	7.3	2.5	2.4	+0.6
Total Industries	363.2	100.0	100.0	295.4	100.0	100.0	+67.8

Figures documenting the number of people employed by the blueberry industry in Bellingen Shire are not available, however the Agriculture Forestry & Fishing Industry Sector (as a whole) currently generates the highest number of Full Time Equivalent jobs in Bellingen Shire, as of 2015/16.



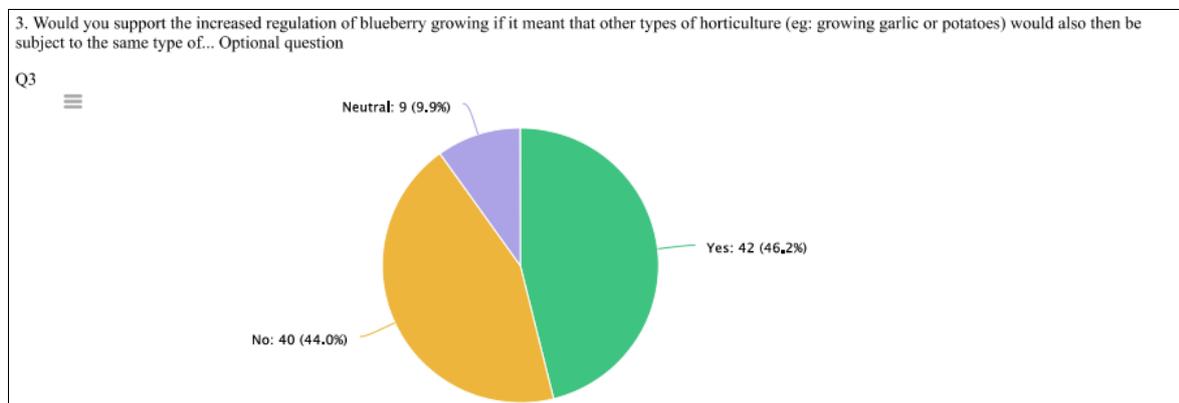
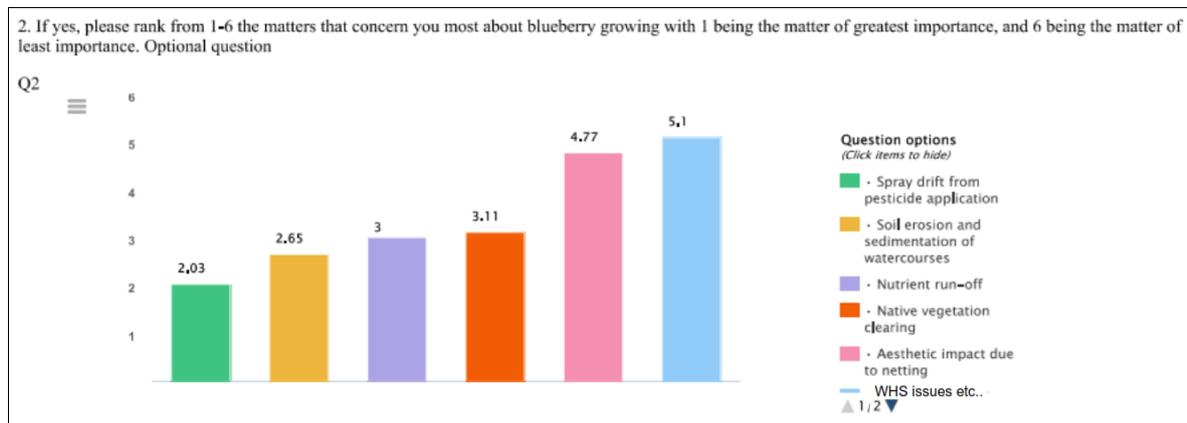
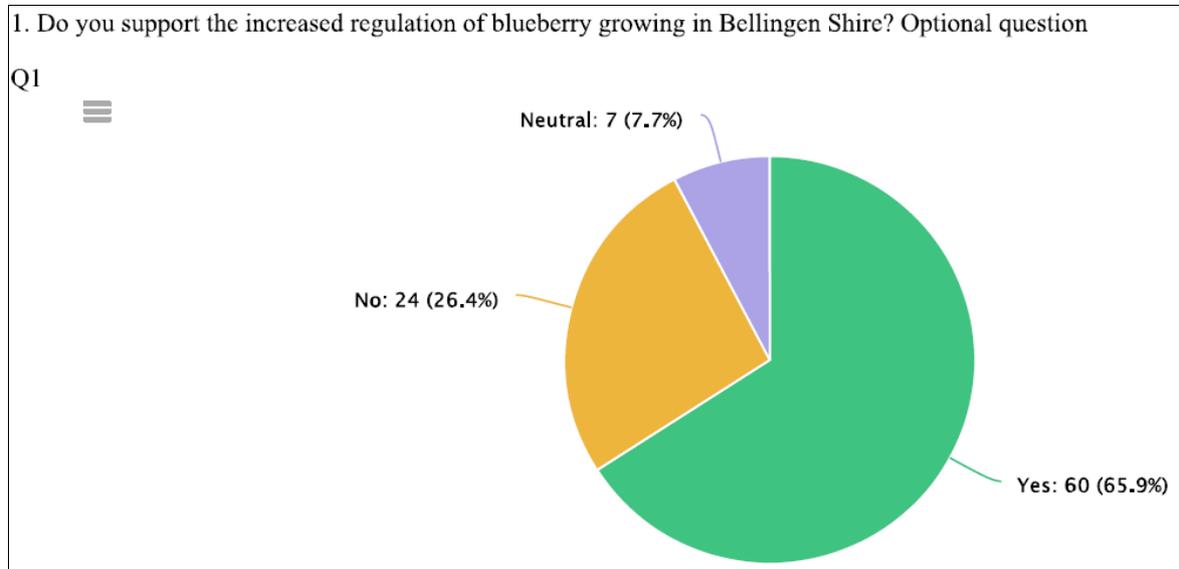
Both of these data sets are important to consider in the context of any regulatory response that proposes a “one size fits all” approach to regulation of agricultural activities, versus a specific policy response to those agricultural industries that are a source of concern to the local community.

For example, should Council consider that a uniform approach to regulating agricultural activities is warranted then it would need to be mindful of the potential impacts that a higher level of regulation would have on an industry sector that currently generates the most jobs in the Shire and generates in the order of \$30 million of revenue towards the local economy on an annual basis.

What do the community think regarding blueberry growing in Bellingen Shire?

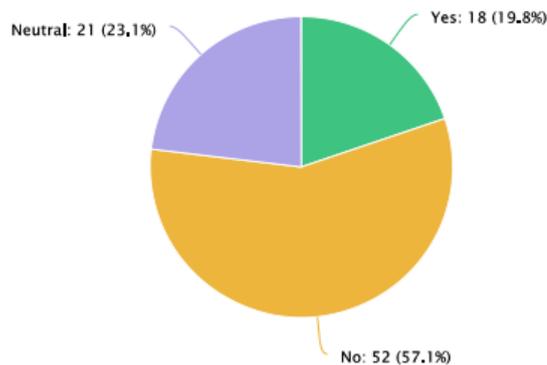
Council sought the views of the community on blueberry farming in Bellingen Shire as part of the recent exhibition Rural Lands Planning Policy Review process.

The following graphs provide an indication of the communities' opinions regarding blueberry growing in Bellingen Shire.



4. Do you think that Council should be doing more to encourage the expansion of the blueberry industry into Bellingen Shire? Optional question

Q4



In addition to Questions 1-4, Question 5 of the survey asked the question “Do you have any suggestions as to how the impacts of growing blueberries could be managed by Council?”.

A summary of comments received in response to this question is provided below.

Summary of comments regarding potential blueberry regulation Rural Lands Planning Policy Review Survey	
Comments supporting regulation	Comments supporting status quo
Should only be allowed if organic – pesticide application should be banned - conventional chemically assisted farming is the issue	Council should be encouraging local food with low food miles
Farms should be required to contour mounds across slop rather than downhill	Blueberry growing is already heavily regulated by numerous tiers of government.
Owners of blueberry farms should be required to provide suitable buffers to adjoining properties on their land	Council should concentrate on fixing roads etc. rather than harassing farmers.
Can lead to increased traffic generation	It is private land – people should be able to do what they want and Council should mind its own business
Should encourage alternative types of employment generation	More chemicals are used by Landcare when doing riverbank protection works
Needs strict and consistent enforcement of both existing legislation and new legislation designed to limit impacts.	Better communication between growers and the community would help
Irrigation and spray drift are major issues	Same as growing potatoes / cattle – as long as chemicals and sediment don’t leave the site should be treated same as any other type of agriculture.
Clearing of native vegetation is an issue	

In summary, 65% of respondents to the survey supported an increased level of regulation of blueberries, however only 46% of respondents supported this if it meant that other forms of horticulture (e.g.: garlic growing, potatoes etc..) would then be captured as part of a consent mechanism.

The matter of greatest concern to the community regarding blueberry growing was spray drift from pesticide application, which is a matter that is not actually regulated by local government. In this instance, the NSW Environment Protection Authority is the appropriate regulatory authority.

Comments in support of further regulation of the industry also re-iterated concerns regarding spray drift, run-off, clearing of vegetation and inadequate buffers between blueberry farms and adjoining properties. Other comments suggested that only organic blueberry farming should be permitted, however this is not a matter capable of realistic implementation or regulation by Council.

Comments supporting the status quo point to the existence of state government legislation that already regulates the industry, the benefits of local food production, the rights of private land ownership and the suggestion that Council should focus its attentions elsewhere, such as fixing roads.

4. Recommended policy position on Blueberry Growing in Bellingen Shire and factors justifying the recommendation

Having regard to the matters discussed in this report, it is recommended that Council resolves to prepare a planning proposal to amend Bellingen Local Environmental Plan 2010 in order to implement the following policy position on blueberry growing in Bellingen Shire.

That development consent is required for the establishment of blueberry farms in Zones RU1, RU2, RU4 and E4, unless the farm complies with the following criteria, in which case it will be considered as a form of “exempt development”.

Exempt development criteria

Blueberry farming is exempt development if it complies with following criteria.

- a) *Blueberry plants & associated infrastructure (such as poles and netting) are located a minimum of 200m from any dwelling (not including a dwelling on the same property) and a minimum of 50m from any property boundary not held in the same ownership.*
- b) *Blueberry plants & associated infrastructure (such as poles and netting) are located the following minimum distances away from watercourses, based upon the Strahler method of stream ordering.*

<i>Stream Order</i>	<i>Minimum distance either side of watercourse</i>
<i>1st order</i>	<i>10 metres</i>
<i>2nd order</i>	<i>20 metres</i>
<i>3rd order</i>	<i>30m</i>
<i>4th order and greater</i>	<i>40m</i>

- c) *Where it is necessary to apply the setback distances specified in subclause b), and those setbacks are vegetated, the setback distances must be retained in their vegetated state, with the exception of the removal of any non-native species.*
- d) *Blueberry plants & associated infrastructure such as poles and netting are not located within any area mapped as “core koala habitat” in any adopted Koala Plan of Management.*
- e) *Any netting proposed for the protection of the crop must be black.*

This policy position is considered to be a reasonable and practical position for Bellingen Shire Council to adopt for the following reasons:

- 1 *The policy does not unduly restrict agriculture within the Shire*

The proposed policy does not act to prohibit blueberry growing and provides an element of certainty for growers wishing to move into Bellingen Shire regarding Council's expectations. Rather than taking a definition based approach to regulation (that would crudely capture all forms of horticulture) the proposed position minimises the impact of the policy on agriculture more broadly, thereby recognising and protecting the important contribution that agriculture makes to local employment and economic activity.

It is acknowledged that the industry is making moves towards a greater level of self-regulation to avoid adverse impacts on surrounding land uses, however the proposed policy position provides Council with a fall-back position in the event that this does not occur.

2 *The policy relies upon, and is consistent with, existing work undertaken by the NSW Government*

The NSW Government have developed a wide variety of publications (as discussed in previous sections of this report) that point to the benefits of buffer zones between potentially incompatible land uses, and the kinds of matters that should be considered when planning an intensive horticulture operation. The recommended approach acknowledges the work that has been invested in this policy area by agencies such as the Department of Primary Industries and proposes a regulatory approach that is clearly provided for in key legislation developed by the Department of Planning & Environment, such as the Standard Instrument Local Environmental Plan.

3 *The policy is capable of simple comprehension by proponents, and enforcement by Council*

The proposed policy position is built upon a series of very simple tests to determine whether a blueberry farm can be considered as exempt development. This is mindful of concerns expressed by the blueberry industry that there are already a large number of legislative controls that need to be complied with and that Government, in general, should not introduce an additional layer of regulation that is difficult to comprehend.

On the contrary, it is more than likely that observation of the recommended buffers will actually reduce the likelihood of blueberry farmers inadvertently breaching other types of legislation. For example, the retention of a vegetated buffer zone to a watercourse would reduce the likelihood of sediment entering a watercourse during the crop establishment phase because it serves a filtering function.

From a resourcing perspective, Council also needs to be able to make simple objective determinations of compliance or non-compliance. The proposed exemption criteria will assist in this regard by not diverting scarce Council resources towards complex and time consuming investigations of compliance. This will allow regulatory officers to focus upon performing the core requirements of their position, such as assessing Development Applications.

4 *The policy is considered to be legally capable of implementation*

Preliminary discussions held with the Department of Planning & Environment have indicated that it is not necessary for Council, at this stage, to nominate the precise legal framework by which this policy position can be implemented in Bellingen Shire.

This is because the NSW Parliamentary Counsel can assist with drafting the requisite legal instrument.

Notwithstanding this, it is considered that an appropriate legal avenue does exist that could give effect to this policy position (if adopted by Council). This would involve making "horticulture" permissible with development consent in Zones RU1, RU2, RU4 and E4, and inserting an additional category of "exempt development" in Schedule 2 of BLEP 2010 that made "horticulture" an exempt form of development in all instances, except for a blueberry farm that did not comply with the nominated exemption criteria.

Alternatively, it is considered that a local clause could be inserted into BLEP 2010 that would give effect to the intended policy position of Council

5 *The policy gives effect to the strategic direction of Council and is a legitimate expression of local preferences for sustainable development*

Council has resolved to pursue a number of strategic directions as it works towards achieving its overall Community Vision.

Some of the directions that are considered to justify the proposed policy response include;

- *CL1.4 – Best practice, sustainability principles, accountability and good governance are incorporated in all that we do.*
- *CL 1.4.1 – Identify and respond to changes in National, State, Regional and local land use planning principles, statutes and guides.*
- *LE 1.1 – Our waterways are valued, protected and enhanced.*
- *LE2 – Our surroundings are quite and clean*
- *LE4 – We live sustainably and reduce our ecological footprint and contribution to climate change.*
- *LE 5 - We protect and enhance our biodiversity.*
- *Planning controls to improve our biodiversity and protect threatened species are developed and / or refined and adopted by Council as required.*
- *RE1 – We have meaningful work and vibrant businesses within our community*
- *RE 1.3 – Businesses within our shire are ethical and sustainable*
- *RE3.3 – Farming practices are financially and environmentally sustainable*
- *RE 3.4 – Agriculture is a valued part of our economy.*

The proposed policy response respects the value of agricultural activity to the local economy and the important role that it plays in the social structure and identity of Bellingen Shire. It is not a broad brush reactive response to agriculture as a whole, but a selective refinement of existing policy.

Should a local government area consider that the economic benefits of a particular model of agriculture do not justify the potential environmental impacts of that activity, then it is entirely reasonable to respond with a policy position that looks to address that disparity.

It is submitted that the proposed policy position will serve this function.

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

There are no direct budgetary implications for Council. The processing of the planning proposal can occur within existing budgetary allocations.

SUSTAINABILITY ASSESSMENT

This report has documented all relevant social, economic and environmental factors that underpin the recommendation to Council.

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 3 – Lower impact – Shire Wide. This requires Council to "Inform, Consult & Involve 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 Dorrigo Gazette.
- 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.
 - Bellingen Council Administrative Centre
 - Bellingen Library
 - Urunga Library
 - Dorrigo Library

Bellingham Planning Proposal 13 – Blueberry Regulation

The proposed project timeline for this Planning Proposal is 6 months.

Stage	Estimated completion date
Commencement (date of Gateway Determination)	22 December 2017
Obtaining technical information	12 January 2018
Government agency consultation	26 January 2018
Public exhibition period	9 March 2018
Consider submissions	30 March 2018
Council to consider submissions & Planning Proposal	18 April 2018
Anticipated date RPA will make Plan	27 April 2018
Anticipated date RPA will forward to Department for notification	4 May 2018

ATTACHMENT 4 – EVALUATION CRITERIA FOR THE DELEGATION OF PLAN MAKING FUNCTIONS

Checklist for the review of a request for delegation of plan making functions to councils

Local Government Area:Bellingen

Name of draft LEP:Planning Proposal 13 - Blueberry Regulation

Address of Land (if applicable):N/A

Intent of draft LEP: To require development consent for blueberry farms in rural zones unless they comply with a set of exempt development criteria

Additional Supporting Points/Information: None

Evaluation criteria for the issuing of an Authorisation	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
(Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)				
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?		N/A		
Does the planning proposal contain details related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N			
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	N			
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	N			
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	N			

Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?	N			
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?	N/A			
Is the planning proposal proposed to rectify an anomaly in a classification?	N			
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?	N/A			
Will the draft LEP discharge any interests in public land under section 30 of the Local Government Act, 1993?	N			
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?	N/A			
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?	N/A			
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?	N/A			
Spot Rezonings	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	N/A			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N/A			
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N/A			
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?	N/A			

Does the planning proposal create an exception to a mapped development standard?	N/A			
Section 73A matters				
<p>Does the proposed instrument</p> <p>a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;</p> <p>b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or</p> <p>c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?</p> <p>(NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A(1)(c) of the Act in order for a matter in this category to proceed).</p>	Y			

NOTES

- Where a council responds ‘yes’ or can demonstrate that the matter is ‘not relevant’, in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.



9. Rural Land Strategy

This chapter considers the rural land within the Shire. The rural lands are considered to be a significant part of the Shire and contribute to its productive potential for a wide range of agricultural uses as well as rural housing. The rural lands also make up the scenic rural landscape that is so valued by tourists.

9.1 Rural Land Uses

This section provides a discussion on the following land uses that have been identified in the research and discussions conducted in the formulation of this study as requiring specific management due to particular issues:

- ▶ Agricultural Uses
- ▶ Housing in Rural Areas
- ▶ Rural tourist facilities

A table at the end of this section summarises the uses and gives an indication of how they are to be dealt with in relation to the proposed land use zones.

9.1.1 Agricultural Uses

This section covers the various terms used to describe agriculture and sustainable agriculture. It has been included because it is considered that there is confusion and contradiction in the way that they are used in current rural planning documents.

The term “sustainable agriculture” has many connotations and is linked to the concept of Ecologically Sustainable Development, which embodies the 3 themes of Environment, Economics and Social.

A definition of sustainable agriculture in the ' Strategic Plan for Sustainable Agriculture - Sydney Region' is

“Agriculture that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends”

Another definition is provided by the Standing Committee on Agriculture of the Australian Agriculture Council Working Group on Sustainable Agriculture:

“Sustainable Agriculture is the use of farming practices and systems which maintain and enhance the economic viability of agricultural production; the natural resource base; and other ecosystems which are influenced by agricultural activities”

All of these definitions embrace the concepts of environmental and economic issues, but do not consider the social aspects of sustainable agriculture. These include the capacity of agriculture to meet the demands of the population for healthy and fresh food and fibre products, as well as its ability to have a minimal impact on the amenity and peace of mind of community members, thus reducing rural land use conflict.

A land use planning definition for sustainable agriculture, which incorporates the environmental, economic and social aspects of agriculture as a land use is as follows.



Sustainable Agricultural use of land means the use of land for animal boarding or training establishments, cattle feedlots, extensive agriculture, intensive horticulture, intensive livestock keeping establishments, opportunity feedlots or turf farming, which can be maintained and managed so that the land remains:

- environmentally sustainable (that is, environmental pollution and land degradation arising from the use is minimised);*
- socially sustainable (that is, land use conflict and loss of amenity of the surrounding area arising from the use is minimised); and*
- economically sustainable (that is, there is a capability of making a net farm profit from the use).*

Whilst the above definition can not be added to the new LEP, it provides suitable objectives for the RU1 Primary Production zone.

9.1.2 Housing in Rural Areas

Housing in rural areas takes four forms from a planning point of view and these are as follows:

- ▶ Dwelling Houses
- ▶ Dual Occupancies
- ▶ Multiple Occupancies
- ▶ Rural Workers accommodation

Dwelling Houses

The LEP does not provide for a dwelling-house on each and every allotment of land in the Shire. In this regard, it is consistent with State planning principles. The intent of the LEP is to provide the potential for the erection of a dwelling-house on land that complies with the criteria set out in Clause 50 (3) of the LEP. In **some** circumstances there exists justification for some of these allotments to be given a dwelling potential where such dwelling potential does not exist.

Properties identified for dwelling potential as part of Council's Rural Land Audit include:

- ▶ Lot 3 DP755541 (Parish of Dingle)
- ▶ Lot 3 DP 578284 and Lot 4 DP755542 (Parish of Dudley) - a dwelling-house, following consolidation of those allotments.
- ▶ Lot 23 DP755542 (Parish of Dudley)
- ▶ Lot 13 DP559561, 104 Gordonville Rd, Gleniffer.

The following properties were identified by the Rural Land Audit however due to the land use zoning the issue of dwelling potential shall be resolved through Amendment No 9 to BLEP 2003.

- Lots 483, 484 & 485 DP755557 (Parish of South Bellingen)
- Lot 139 DP755557
- Lot 130 DP755557
- Lot 80 & 388 DP755557
- Lot 129 DP755557



- ▶ Existing Use Rights:
 - Lot 2 DP845116, Whisky Creek Rd, Dorrigo
 - Lot 117 DP755551, 2660 Waterfall Way, Thora
 - Lot 227 DP752830, 206 Lower Bielsdown, Dorrigo
 - Lot 1 DP417324, 283 Roses Road, Bellingen
 - Lots 24 & 45 DP755543, 1128 Kalang Road, Bellingen
 - Lot 136 DP755551, Little North Arm Road, Thora
- ▶ Additional Properties
 - Lot 6 DP264514, 2239 Waterfall Way, Thora
 - Lot 234 DP752830, 26 Darley and Bains Road, North Dorrigo
 - Lot 7 DP264514, 2233 Waterfall Way, Thora
 - Lot 49 DP752813, 270 Whisky Creek Road, Dorrigo

In addition to those properties listed above Council has received legal advice from its solicitors that a specific amendment should be made to BLEP 2003 to address a number of abnormalities surrounding dwelling potential within the Shire. As such it is proposed that an amendment be made to Clause 50(3) of BLEP 2003 to permit dwellings on land the subject of a building approval for a dwelling, or extensions to a dwelling. An example of the clause may read:

"(u) is land subject to a building approval for a dwelling, or extensions to a dwelling, granted between [insert period]"

▶ **North Dorrigo.**

North Dorrigo is a rural centre approximately 10 km north of the town of Dorrigo. It has an existing subdivision pattern with a number of dwellings on the land at present. It is not serviced by a reticulated water or sewer system. Residents are reliant upon water from bores and rain tanks and effluent is disposed of on-site. Concern has been raised regarding the potential impact on bores if the number of dwellings increased. Current guidelines also prohibit the disposal of effluent within 200 metres of a bore. The construction of a reticulated water and sewer system for the village would be expensive and would need to be borne by existing residents. Given the fact that North Dorrigo is over 5 km from the services and facilities within Dorrigo and for the reasons outlined above it is not recommended that a dwelling right be given to each of the lots.

Dual Occupancies

Dual occupancy, in its most traditional form, is the construction of a second dwelling on a property for accommodation of a family member (either aged or young people) and is commonly referred to as a granny flat.

The concept of a dual occupancy is to have the second dwelling as a small addition to the house or be a smaller building and not to be as large as the main dwelling. However this has not occurred and in both urban and rural situations, 2 new dwelling houses (of equal size) can be constructed side by side on a single lot. In an urban context, there has been the ability to subdivide these 2 dual occupancies. This has caused a considerable amount of community unrest where it has been proposed in new urban release



areas where such small lots were not planned. In rural zones, dual occupancies are often required to be attached by use of a garage / carport or breezeway. However the outcome is often one long building whose bulk and scale is not consistent with the rural streetscape character that consists of residential buildings and sheds separated by large spaces.

Provisions exist within the North Coast Regional Environmental Plan for the erection of an attached second dwelling on rural land, only for purposes other than to accommodate rural workers. Such provisions can be incorporated into the new LEP.

Multiple Occupancies

There are 25 approved Rural Land Sharing Communities (multiple occupancies (MO) in the Shire with a total of 193 approved dwelling sites. Since the reintroduction of SEPP 15, Council has received only two applications. The first application involves the addition of two dwelling sites to an already approved MO. The second involves the establishment of a new MO with three dwelling sites. Both applications are pending.

Council officers has received a few enquiries regarding the community title subdivision of existing MOs. Preliminary advice from the DOP has indicated that any such subdivision would require a rezoning of the land. In light of this, Council is not prepared to support community title subdivision where it is inconsistent with the criteria used for determining suitable rural-residential land. The DOP has also advised that Rural Land Sharing Communities remain a significant form of affordable housing on the Mid North Coast and allowing community title subdivision of these lands would mean a significant reduction in the amount of available affordable housing stocks.

If multiple occupancies are to continue in the future then the type of controls and guidelines that are offered by SEPP 15 need to be strictly adhered with to ensure Council is not allowing defacto rural residential development. Development controls like those offered by SEPP 15 ensure that the overriding principles and objectives of MOs are achieved and people have a clear expectation and an understanding of what they are entering into. Furthermore, amendments to Section 94 Contributions Planning offer new opportunities for Council to ensure that MO developments make appropriate contributions to infrastructure etc relative to their impact.

Council has resolved to assess applications for conversion of Multiple Occupancies to Community Title on their merits. Council will investigate other models adopted by other Councils within the region and undertake stakeholder and public consultation on the matter to allow further consideration of the issue.

Rural Workers Accommodation

Rural workers accommodation are additional dwelling houses that are permitted only to house people who are required to work on a property. They are required for mainly intensive forms of agriculture or large extensive agricultural holdings which need more than one family to operate them.

They have become defacto dual occupancies in some areas where the use has changed so that there is no longer a need for the employment of a worker on the land. They have also been a reason given for subdivision of rural land. The option exists to abolish them completely as they are not considered necessary in the current context where settlements are close by and farm workers have access to transportation. This is considered to be the appropriate course of action.



9.1.3 Rural Tourism

Farmgate Sales

Farmgate sales or roadside stalls occur throughout the rural lands and are defined in the LEP as follows:

roadside stall means a building or place not exceeding 20 square metres in floor space or area, respectively, where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail.

They are generally permitted in rural zones. They have the potential to cause traffic hazards if they are located too close to the road and if there is not sufficient area for the cars to pull off the road completely. There is a need therefore to provide some guidelines for them.

Rural Tourist Development

It is recognised that rural tourism can provide a boost to the economic development in the rural area. There is a need therefore to encourage it by ensuring that the planning controls have sufficient flexibility in them.

The current provisions in the Bellingen LEP for tourist related developments are ambiguous and contradictory. The source of the problem is the definition of the term ‘tourist facility’ which is defined as follows:

“tourist facility means an establishment providing for holiday accommodation or recreation and may include a boatshed, boat landing facilities, camping ground, caravan park, holiday cabins, hotel, houseboat, marina, motel, playground, refreshment room, water sport facilities or a club used in conjunction with any such activities, but does not include a total destination resort”.

It can be seen that this includes a number of other uses which are separately defined in the LEP. Of note are the terms ‘camping ground’, ‘caravan park’, ‘hotel’, ‘motel’ and refreshment room (restaurant). Total destination resorts are defined separately and do not conflict with these uses.

Each of the zones treats these differently and in a contradictory manner. All permit tourist facilities with development consent but prohibit some of the component parts of them. This is shown in Table 9-1.

Table 9-1 Treatment of Tourist Facility in each zone

Zone	Prohibitions
1(a1) Agricultural Protection	Motels and Refreshment Rooms
1(a2) Secondary Agriculture	Hotels
1(c1) Rural Residential	Tourist facilities
1(c2) Small Holdings	All permitted
1(c3) Rural Settlement	All permitted
2(a) Residential	Hotels
2 (b) Village	All permitted
7(s) Special Emphasis	All except tourist facilities

Source: Bellingen LEP 2003



It can be seen that in each of these zones, although the specific uses are prohibited by themselves, they are permitted as a tourist facility. Case law interprets such a situation as permitting the use where there is an ambiguity in the zoning table where a use is prohibited under one definition and permitted under another. So it can be seen that the prohibitions in certain zones are in fact ineffective. These contradictions can be remedied as part of the new LEP in line with the Standard LEP template.

The adoption of the term 'tourist accommodation' will enable the matter to be simplified. It can cover such activities as cabins, farmstays and ecotourism facilities that are currently being provided in the rural areas. It also deals with the issue of the length of stay.

9.2 Rural Lot Sizes

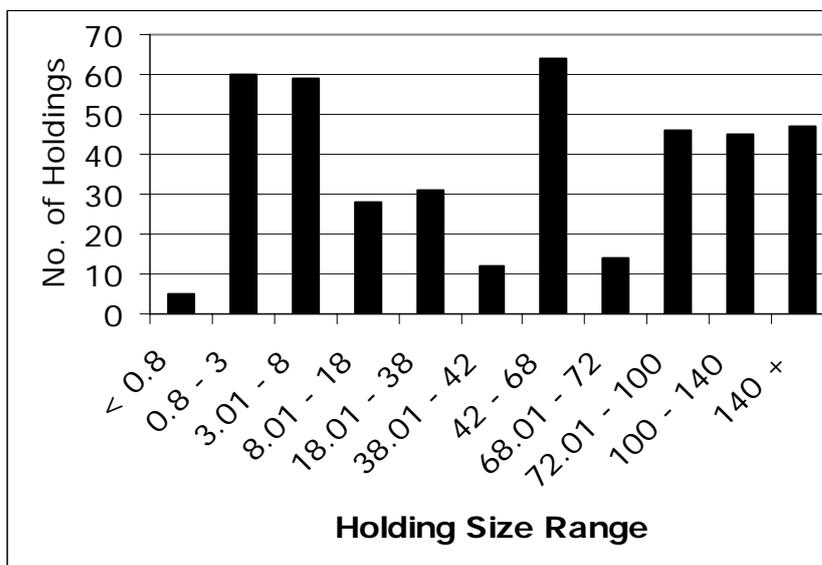
During the community consultation there was a desire to see the minimum lot size reduced from 70 ha to 40 ha on the Dorrigo Plateau. The reasons given were that it is not very productive land and it therefore can sustain more subdivision. It should be noted that the issue of subdivision minimums is related to two components. The first is the capability of the land to sustain the smaller holding size and the other is the provision of services to the area, which is usually provided in an adjoining town or village.

There are a number of issues that have to be taken into consideration when considering the most appropriate subdivision minimum for the proposed rural landscape designation. They are as follows:

- ▶ Current fragmentation and holding pattern
- ▶ Potential to increase the fragmentation
- ▶ Number of potential subdivisions at the current minimum
- ▶ Impact on the ability to provide services and facilities
- ▶ The impact on the ability to do boundary adjustments

Figure 9-1 shows the number of holdings in each range of holding sizes. This illustrates the existing fragmentation of the rural land on the plateau. It can be seen that there are a large number of holdings less than 18 ha and in the 42 to 68 range. It is also significant to note the numbers greater than 72 ha.

Figure 9-1 Existing holding pattern on Dorrigo Plateau



The first matter to consider is whether the current minimum is adequate and whether it should be decreased or increased. The best way to gain an indication of this is to analyse the current holding pattern and assess the number of potential lots that could be created if all current holdings were subdivided to the existing minimum in the LEP, which for the current Rural zone on the plateau is 70 ha. A range of holding sizes below this is then also analysed. The results for this can be seen in Figure 9-2. It can be seen that at the current subdivision minimum there are still 151 lots that can be created. If the minimum is lowered to 40 and 20 ha the additional lots are 443 and 1207 respectively. The analysis can also provide the average holding size of the area which is currently 68 ha whilst the median is 44 ha. This suggests that there are a number of holdings that are less than the minimum of 70 ha already.

There are a number of options associated with the rural lot sizes. They are discussed below:

- ▶ *Decrease the minimum lot size.* Decreasing the minimum lot size will allow for a larger number of lots to be created. This can have an impact on the amount of traffic (each rural lot generates between 6 to 8 vehicle trips per day for the average family), pressure to seal unsealed roads, potential increase in pollution in surrounding streams, potential loss of vegetation and habitat and extra demand on the services and facilities provided by the Council.
- ▶ *Increase the minimum lot size.* This will stop any further subdivision occurring and depending on the new minimum, can allow for some subdivision.
- ▶ *No change in the minimum lot size.* This will keep the environmental attributes as they are and will not create any more lots than are permitted at present.
- ▶ *Variable minimum lot sizes across the LGA.* This is an option that can allow various parts of the LGA to have some more subdivision. It needs to be assessed in relation to the potential environmental, social and economic costs and benefits to ensure that it does not create problems for future generations.

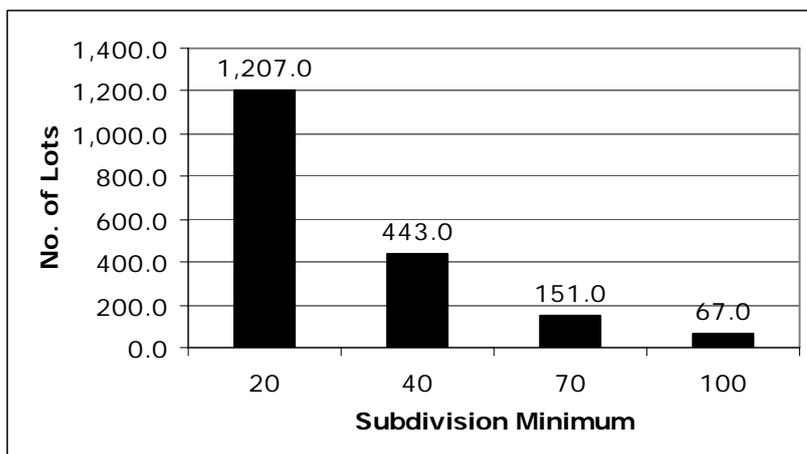


Figure 9-2 Rural subdivision scenarios on Dorrigo Plateau

Having regard to the above discussion and the potential additional lots that would result from a reduction in the lot size as well as the current oversupply of suitable land in Dorrigo, it is not considered that there is any need to reduce the minimum subdivision size on the plateau.



Department of Primary Industries



Office of the Director General
DGPO17/119

17 OCT 2017

Ms Liz Jeremy
General Manager
Bellingen Shire Council
PO Box 117
BELLINGEN NSW 2454

Attention: Daniel Bennett, Strategic Planner

Dear Ms Jeremy

Proposed LEP amendments affecting horticultural industries

I wish to raise my concerns that Bellingen Shire Council has resolved to prepare a planning proposal requiring blueberry developments to seek consent in rural zones. This will cause significant and negative impact to many local horticultural enterprises not just those enterprises which produce blueberries. This is because the definition of the land use of 'horticulture' within the planning framework covers a broad range of fruits and vegetable products. As such I do not believe that the proposed amendments are minor in nature and I have requested my staff raise this issue directly with the Department of Planning & Environment.

Additionally, the inclusion in the LEP amendments that some developments be exempt if the development proposal is consistent with particular buffer distances is of concern. The buffer distances were taken from Chapter 6 of the 'Living and Working in Rural Areas - A handbook for managing land use conflict issues on the NSW North Coast'. The Living and Working in Rural Areas handbook is a useful resource for local councils, agencies and industry but it is only a guideline and should be used in its intended manner. Any decision about appropriate buffers for a development should take into account the nature of each proposed site and potential for land use conflict risk and not be standardised in the Local Environmental Plan.

I strongly encourage Bellingen Council to use the Department of Primary Industries' (DPI) Land Use Conflict Risk Assessment Guide to help determine appropriate buffer distances and to minimise land use conflict. This guide can be found at www.dpi.nsw.gov.au. DPI is currently reviewing current information around buffer distances and will make this available in a statewide form by early 2018 for use by industries and councils.

NSW DPI will continue to work with industry and councils to progress actions that prevent land use conflict. For example, the Australian Blueberry Growers Association is currently finalising the Blueberry Industry Code of Conduct. I look forward to seeing both industry and council work together to deliver effective solutions that result in beneficial outcomes for both industry and the community.

Yours sincerely

SCOTT HANSEN
DIRECTOR GENERAL