



Item	13.3
Subject	Planning Proposal 17 - Permit Community Title Subdivision of Existing Rural Landsharing Communities
Presented by	Daniel Bennett, Senior Strategic Planner

RESOLVED (Cr Klipin / Cr Fenton)

That Council:

1. resolves to prepare *Planning Proposal 17- Permit Community Title Subdivision of Existing Rural Landsharing Communities* and requests the issuing of a Gateway Determination from the NSW Department of Planning Industry & Environment in respect of this matter
2. endorses the proposed community engagement strategy, as documented in this report
3. resolves to request that the NSW Department of Planning Industry & Environment designates Council as the plan making authority in respect of this matter,

UNANIMOUS

RESOLVED (Cr Carter / Cr Harrison)

That Council bring item 11.1 forward for Cr Jenkins to be present.

UNANIMOUS



13 CIVIC LEADERSHIP

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Subject	Planning Proposal 17 - Permit Community Title Subdivision of Existing Rural Landsharing Communities
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ALIGNMENT WITH DELIVERY PROGRAM

(CL) CIVIC LEADERSHIP

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

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

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

RECOMMENDATION

That Council:

1. resolves to prepare *Planning Proposal 17- Permit Community Title Subdivision of Existing Rural Landsharing Communities* and requests the issuing of a Gateway Determination from the NSW Department of Planning Industry & Environment in respect of this matter
2. endorses the proposed community engagement strategy, as documented in this report
3. resolves to request that the NSW Department of Planning Industry & Environment designates Council as the plan making authority in respect of this matter,

EXECUTIVE SUMMARY

Council, as part of adopting the Bellingen Shire Local Housing Strategy 2020-2040, included an Action that proposed to amend the Bellingen Local Environmental Plan 2020 to permit the community title subdivision of existing Multiple Occupancy (MO) developments.

Action 8.3 is reprinted below:

8.3 Community Title Subdivision of existing Multiple Occupancies (MOs)

Multiple occupancies are also known as rural land sharing or intentional communities. An MO consists of one block of land with multiple people or families living on the land, having collective ownership of the site. Council will change planning controls to allow existing MOs the option to subdivide in a Community Title arrangement via an amendment to the Local Environmental Plan (LEP). CT subdivision will require infrastructure upgrades, including bushfire safety and access upgrades and these require further place-based investigation. This action does not seek to allow new MOs. Principles and planning controls relating to MOs will be further investigated as part of a Rural Lands Strategy.

The Action Plan provided that Council would commence this process within one year of adoption of the LHS.

This report proposes that Council commences the planning process of allowing existing Multiple

Occupancy developments to subdivide by using community title legislation.

REPORT DETAIL

1 Background

Council, as part of adopting the Bellingen Shire Local Housing Strategy 2020-2040, included an Action that proposed to amend the Bellingen Local Environmental Plan 2020 to permit the community title subdivision of existing Multiple Occupancy (MO) developments. Multiple Occupancies are now referred to as Rural Landsharing Communities within relevant legislation, but for the sake of consistency herein will be referred to as MO's.

Action 8.3 is reprinted below:

8.3 Community Title Subdivision of existing Multiple Occupancies (MOs)

Multiple occupancies are also known as rural land sharing or intentional communities. An MO consists of one block of land with multiple people or families living on the land, having collective ownership of the site. Council will change planning controls to allow existing MOs the option to subdivide in a Community Title arrangement via an amendment to the Local Environmental Plan (LEP). CT subdivision will require infrastructure upgrades, including bushfire safety and access upgrades and these require further place-based investigation. This action does not seek to allow new MOs. Principles and planning controls relating to MOs will be further investigated as part of a Rural Lands Strategy.

The Action Plan provided that Council would commence this process within one year of adoption of the LHS.

The decision to include this action was influenced by submissions received from numerous owners of existing MO developments, both in response to the public exhibition of the Draft Local Housing Strategy, but also in response to more targeted consultation undertaken by Council in 2017 regarding a suite of potential changes to rural planning policy. It is also relevant to note that there was an action within the 2007 Growth Management Strategy that provided general support for accommodating the conversion of multiple occupancy developments to community title, however this was subject to applications being made to Council, by the proponents, that would facilitate the necessary amendments to the BLEP 2010. Council did not receive any applications submitted in accordance with this action.

The relevant extract from the 2007 Growth Management Strategy is provided below:

11.1.2 Housing

Objective: To ensure housing can be provided for all sections of the Bellingen Shire community.

Implementation Strategy	Policy Action	Responsibility	Time-frame
Identify affordable housing throughout the Shire.	Prepare a affordable housing strategy.	Council and Government Agencies	Short - medium term
Accommodate conversion of multiple occupancy development to community title.	Council to assess applications for conversion of multiple occupancies on their merits	Council	Short term and ongoing

2 What are the arguments supporting the conversion of existing multiple occupancy

developments to community title?

Many MO's were established a long time ago, when groups of people built multiple dwellings on single rural blocks of land. These dwellings were affordable in nature, however were frequently built without the necessary approvals and did not comply with relevant planning or building stipulations. The planning system consequently developed legislation that provided the ability for these types of scenarios to be legally recognised and approved.

The enabling legislation recognised that MO's provided an important opportunity for affordable housing in rural areas. This is essentially because the costs of land acquisition can be spread across multiple parties and the ongoing costs associated with managing a property can be shared between occupants. For example, an MO with 10 dwellings on it does not pay 10 sets of rates, because the NSW rating system is based upon unimproved land value.

Notwithstanding these potential opportunities for cost sharing, the reality is that people who may wish to build or buy a house on an MO are often prevented from accessing finance to do so. This is because lending institutions view the lack of title to the dwelling (which is imparted by it being on its own lot rather than on a communally owned lot) as a lending risk. Perversely then, it prevents entry by people who cannot afford to buy in outright, and rewards those who can afford to buy in independently of lending institutions. Permitting the community title subdivision of existing MO's would allow people without accumulated assets the opportunity to become part of one, as it permits the creation of individual allotments within an overall community scheme for which finance becomes more readily available.

The other element of affordability that is relevant in the circumstances is the degree to which the broader rate paying community effectively cross-subsidises those who choose to live within an MO development. As alluded to above, this is because the rating system does not permit Council to levy one set of rates for each dwelling upon a parcel of land. The rate is levied based upon the value of the land parcel meaning that the owner of similar land next door to an MO, with only one dwelling on it, will pay essentially the same basic rate as the MO with 10 dwellings on it. Rating income funds core services provided by Council including things such as rural road and timber bridge maintenance, and Council is already limited in its ability to generate rating revenue by virtue of over half of the shire being unrateable. Permitting the community title subdivision of existing MO's would allow for the creation of individual allotments within an overall community scheme that would be able to be rated individually by Council and would therefore generate additional annual revenue to fund things like maintenance of the rural roads that MO developments rely upon for access. Uniquely, the opportunity to raise additional rating revenue in this circumstance essentially comes with no corresponding increase in demand upon services given that the dwellings, or the approval for the dwellings, already exist.

Councils' Chief Financial Officer advises that each additional lot that is created using the facilitative provisions of this planning proposal would deliver in the order of \$1140 annually to Council through the levying of additional rates.

3 How many MO's and dwellings could potentially benefit from this change

A historic audit estimated that there were in the order of 28 approved MO's with a total of 185 dwellings approved. However, not all of the approved dwellings have been constructed and it is not expected that every MO will avail themselves of the opportunity to subdivide.

4 What are some of the planning issues associated with the conversion of multiple

occupancy developments to community title?

The mechanism by which an MO development is converted to community title is via a Development Application submitted to Council for the subdivision of the land. At this stage, the legal framework to allow this form of subdivision does not exist within the Bellingen Local Environmental Plan 2010 and the recommendation presented to Council as part of this report would see this process commence.

The way in which other local government areas have permitted the subdivision of multiple occupancy developments has been to include an enabling clause within the LEP that prescribes the circumstances in which Council can permit the subdivision. Lismore City Council and Byron Shire Council are two examples of where this has been permitted to occur, and Attachment A to this report reprints these clauses for the information of Councillors. MO's usually involve some element of individual rights (normally linked to things like a shareholders dwelling and its curtilage) and some element of communal rights (normally linked to things like management of common assets such as roads, waste, environmental features etc..). The enabling Clause essentially then provides direction as to how these matters will need to be addressed in the new management structure that community title subdivision would permit.

Existing MO developments in Bellingen Shire are usually the subject of a large number of historic development consents or building approvals, each of which have conditions of consent that need to have been complied with. This usually involves an overarching development consent that approved the creation of an MO on that property in the first instance which confirms things like the total number of dwellings that are permitted to be constructed on the property, the sites where they can be constructed, the location of vehicular access points on to the public road networks, shared sections of internal road, property scale Bushfire Asset Protection Zones and other areas of common property that are to be collectively managed.

At the next level, individual development applications are then submitted to Council that endorse the construction of the specific dwelling that is to be erected on that particular site. This may then have a more specific set of consent conditions that relate more closely to the impacts of building a dwelling in that particular location.

Council Officers have recently undertaken an inspection of two existing Multiple Occupancy developments to gauge the extent to which they continue to comply with the terms of the original approvals issued by Council, and to gain an appreciation of things that may need to be rectified if an application for subdivision is submitted to Council. In general terms, there is a planning argument that demonstrable full compliance with all of the terms of the original approvals should not then necessarily trigger any need for additional upgrades as part of the simple act of subdivision. To the contrary, if the simple act of subdivision alone was deemed to be a reasonable trigger point to require significant upgrades to infrastructure then the attractiveness of this option to MO's may be diminished to the point that no-one will contemplate subdivision, and the allocation of resources towards completing the planning proposal becomes questionable. Like most things in land use planning, there is no simple answer to this question and it will depend upon context. The following preliminary advice received from the NSW RFS illustrates some of the principles that could inform a policy position on this matter.

"At community title subdivision we need to look at the MO DA approval compared to what is on the ground.

If the dwellings have been constructed as per the DA approval, then we would need to see how

the original approval conditions compare to today's standards and the level of compliance that is being achieved. RFS might seek to get a better bush fire protection outcome, recognising that an existing consent is in place (e.g. formalising APZs, providing a fire fighting water supply, improved access, upgrading the building). This would be a case by case merit assessment.

If dwellings have been constructed contrary to the MO DA approval or without consent there would be more of an expectation that compliance with PBP is required. This can be problematic (e.g. providing APZs, access, construction standard) as there are no concessions for illegal development in PBP."

This advice suggests that it will not be possible to provide a definitive policy position on whether or not additional works would be required as part of a subdivision approval, however it does establish the principle that demonstrated compliance or otherwise with the terms of original approvals should be the starting point from which any negotiations regarding upgrades are contemplated, and that it is within the interest of the MO to perform their own compliance audit and rectification process prior to submitting any DA for subdivision.

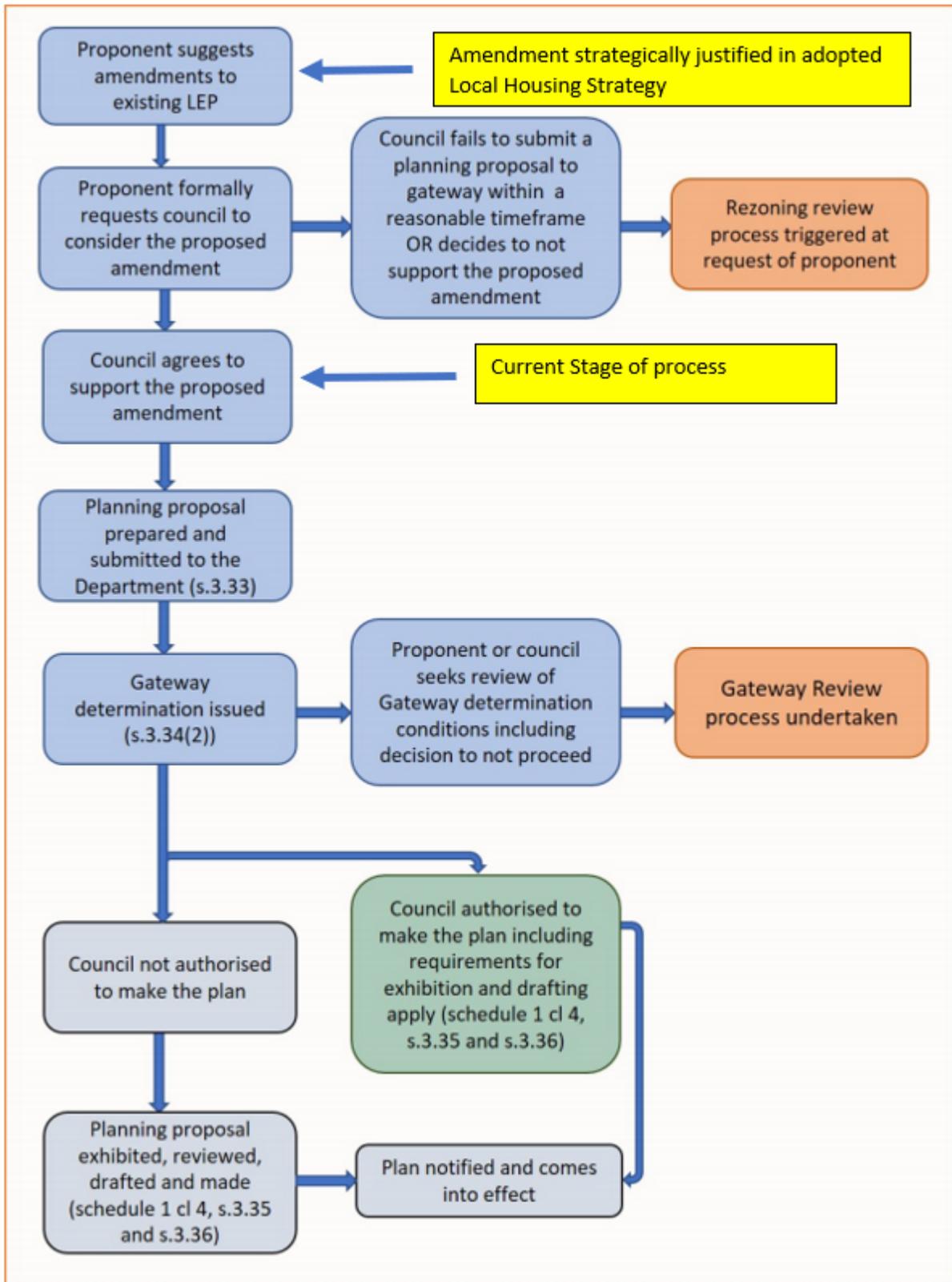
The recent inspections undertaken by Council Officers of two existing Multiple Occupancy developments has revealed that common issues that may need to be rectified as part of an approval process for subdivision include things such as vegetation growth within required bushfire asset protection zones, effluent disposal systems that are not performing to standard, maintenance of internal vehicular access to requisite all weather standards for domestic and fire fighting purposes, rectification of unauthorised building works through the "Building Information Certificate" process and maintenance of appropriate sight distances at entry points to the public road network.

Procedurally then, it will be a mandatory requirement for anyone submitting a Development Application for the community title subdivision of an existing MO to complete an audit of all relevant development approvals issued to date in respect of the MO, and to document compliance or otherwise. It is expected that this requirement would form part of a future amendment to Councils Development Control Plan (DCP) that will provide some additional detail regarding matters for consideration as part of the community title subdivision of an existing MO. This will be contemplated following the undertaking of community consultation for the amendment to BLEP 2010, noting that this process may raise relevant issues that will inform the final content of the DCP.

What is the process to amend the LEP?

The process for amending an LEP is shown in the following extract, adapted from the NSW Government Publication "A Guide to preparing Local Environmental Plans" to show prior, current and future stages.

A resolution of Council is required to support the proposed amendment, following which Council Officers will prepare the formal Planning Proposal Document to submit to the NSW Department of Planning Industry & Environment (DPIE).



BUDGET IMPLICATIONS

The completion of this planning proposal can occur within existing budgetary allocations for the Planning Services Team.

Should the proposal proceed, and MO developments obtain approval for the subdivision of their properties, then Council will be in a position to levy additional rating income as each lot with a dwelling will be capable of being rated separately. Currently, MO developments can only be rated as a single entity, notwithstanding that they contain multiple numbers of dwellings.

SUSTAINABILITY ASSESSMENT

Previous consultation undertaken with residents of MO developments in 2017 indicated that many would not avail themselves of the opportunity to subdivide if this was an option. There are a range of environmental, social and economic attractions to rural landsharing as it currently exists and it is expected that for many MO's this will continue to be the case.

For those properties who would like the opportunity to subdivide, the planning proposal would provide the opportunity for investment by people who would not otherwise be able to invest because of an inability to attract finance. The social and environmental benefits of communal living can continue to be expressed even if community title subdivision proceeds via the drafting of the enabling clause in the LEP. For example, the Lismore & Byron LEP clauses both require that at least one lot following the subdivision will comprise of association property to be used for the purposes of things like a recreation area, environmental facility, environmental protection works or agriculture, and it is proposed to incorporate similar provision in the case of Bellingen Shire.

ENGAGEMENT

The community consultation requirements for strategic land use planning matters are stipulated within the Bellingen Shire Community Participation Plan, relevant parts of the NSW Environmental Planning & Assessment Act 1979 (the Act) and the NSW Environmental Planning & Assessment Regulation 2000 (the Regulation). Ultimately, consultation requirements are then confirmed within any Gateway determination issued in respect of the proposal and these must be followed to ensure the legal validity of the planning process.

The Bellingen Shire Community Participation Plan does not make specific provision for a planning proposal of this nature however in the circumstances it is considered that the following community participation requirements are appropriate.

- * 28 day consultation period
- * Advertisement in local paper
- * Advertisement and provision of supporting documentation on "Create" website
- * Notify owners of existing MO's
- * Plain English Version

This proposed consultation strategy will be included within the Planning Proposal document forwarded to the NSW DPIE should this matter be supported by Council.

It is also necessary for Council to consider whether it wishes to be the plan making authority for this planning proposal. This essentially means that the final decision as to whether the plan should proceed is made by the Council, rather than the NSW Government. There are guidelines that help to determine the circumstances where it is appropriate that Council assumes these functions, and one of these circumstances is when the planning proposal would give effect to an endorsed local strategy. As previously discussed in this report, this planning proposal implements Action 8.3 of the endorsed Bellingen Shire Local Housing Strategy, and therefore it is appropriate that Council resolves to assume the relevant plan making functions.

ATTACHMENTS

1. Attachment A - Lismore & Byron examples of MO Community Title Subdivision Clauses