



## 11 PLACES FOR PEOPLE

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<b>Item</b>	11.2
<b>Subject</b>	Planning Proposal 16 - Rezone land at Endeavour Drive to E3 (Environmental Management) Zone and E4 (Environmental Living) Zone and permit Community Title Subdivision on the land zoned as E4 (Environmental Living) Zone.
<b>Presented by</b>	Daniel Bennett, Senior Strategic Planner

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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.1.4.2) Council's Planning and development assessment services provides advice and planning assistance and process Development Applications and other relevant applications

### RECOMMENDATION

That Council:

1. Resolves to prepare *Planning Proposal 16 - Rezone land at Endeavour Drive to E3 (Environmental Management) Zone and E4 (Environmental Living) Zone and permit Community Title Subdivision on the land zoned as E4 (Environmental Living) Zone* 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; and
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 has received a request from a private landowner to rezone land at the top of Endeavour Drive, Bellingen. The rezoning would facilitate the subdivision of part of the land, but conserve the majority of the land for environmental purposes. Council has given previous consideration to the rezoning request, and provided general support for the proposal in the Bellingen Shire Local Housing Strategy 2020-2040.

This report documents the specific details of the request, proposes a series of minor changes to the request as submitted, and recommends that Council proceeds to prepare a Planning Proposal to facilitate the rezoning proposal.

### REPORT DETAIL

#### Background

During the public exhibition phases of the Draft Local Housing Strategy, Council received submissions on behalf of the owners of land at the top of Endeavour Drive, Bellingen, requesting that Council give consideration to rezoning the land to permit the development of a community

title subdivision, designed to incorporate a range of ecologically sustainable features and provide a unique form of new housing opportunity within the Bellingen housing market. The request was reported to Council with a recommendation that Council provides broad strategic support for the concept by including it within Section 4.2 - Planning Proposals of the final Local Housing Strategy document. The request was included within the final document (which was ultimately endorsed by the NSW Government) and the discussion of the request that was included within the document, and that details the reasoning behind support for the concept, is included below for the information of Councillors.

*Rezoning Request – Land at end of Endeavour Drive Bellingen currently zoned RU1 (Primary Production) and E3 (Environmental Management).*

*Council received a request to rezone the subject land during the initial exhibition of the “Homes for Our Future” document in 2018. This request was carefully considered by Council at the time, and it was recommended that Council support the rezoning subject to the resolution of bushfire and sewer capacity issues.*

*The proposed rezoning would allow for a community title subdivision of the land to create approximately 80 lots, with most of the site being protected via the registration of a Biodiversity Stewardship Site over the property. The rezoning request is supported having regard to matters such as the environmental focus of the proposal, the community title status (which means key infrastructure such as roads are not owned or maintained by Council) and the potential to increase the variety of options for housing in the Shire.*

*Comments received from the NSW Department of Planning Industry & Environment have indicated that it would be appropriate to also stipulate that the land the subject of the community title subdivision should be designated as an E4 – Environmental Living Zone, in view of the proposed environmental focus of the development. The objectives of the E4 Zone seek to permit low-impact residential development in areas with special ecological, scientific or aesthetic values, and to ensure that residential development does not have an adverse effect on those values.*

*The application of the E4 zone is considered to have merit. It distinguishes the proposed development from the conventional “greenfield” offering that will remain available elsewhere within Bellingen and will assist in managing expectations regarding development in this area.*

*Accordingly, subject to the submission of an appropriately detailed and justified planning proposal request from the proponents, and registration of a Biodiversity Stewardship Agreement over the property, it is considered that the request is strategically consistent with the strategy and capable of support.*

Following the approval of the Local Housing Strategy the proponents were sufficiently encouraged to commission the preparation of a Planning Proposal request, including a wide range of supporting studies from relevant sub-consultants including Civil Engineers, Flora & Fauna Consultants, Bushfire Consultants, Aboriginal Heritage Consultants and Landscape Architects. In this instance, Council has advised the proponents that whilst the strategic intent of the request is generally supported, it was not a matter that Council was prepared to advance independently and that any decision to proceed would require them to complete the relevant supporting studies and documents to justify the request. Council also advised the proponents that it did not want to see a Development Application for the subdivision of the land submitted concurrently with the rezoning request given that timeframes to finalise rezoning matters are often considerably longer than development assessment matters, and it was not considered desirable to have a DA in the

system when there may be no actual capacity to determine the application given potentially unresolved strategic issues.

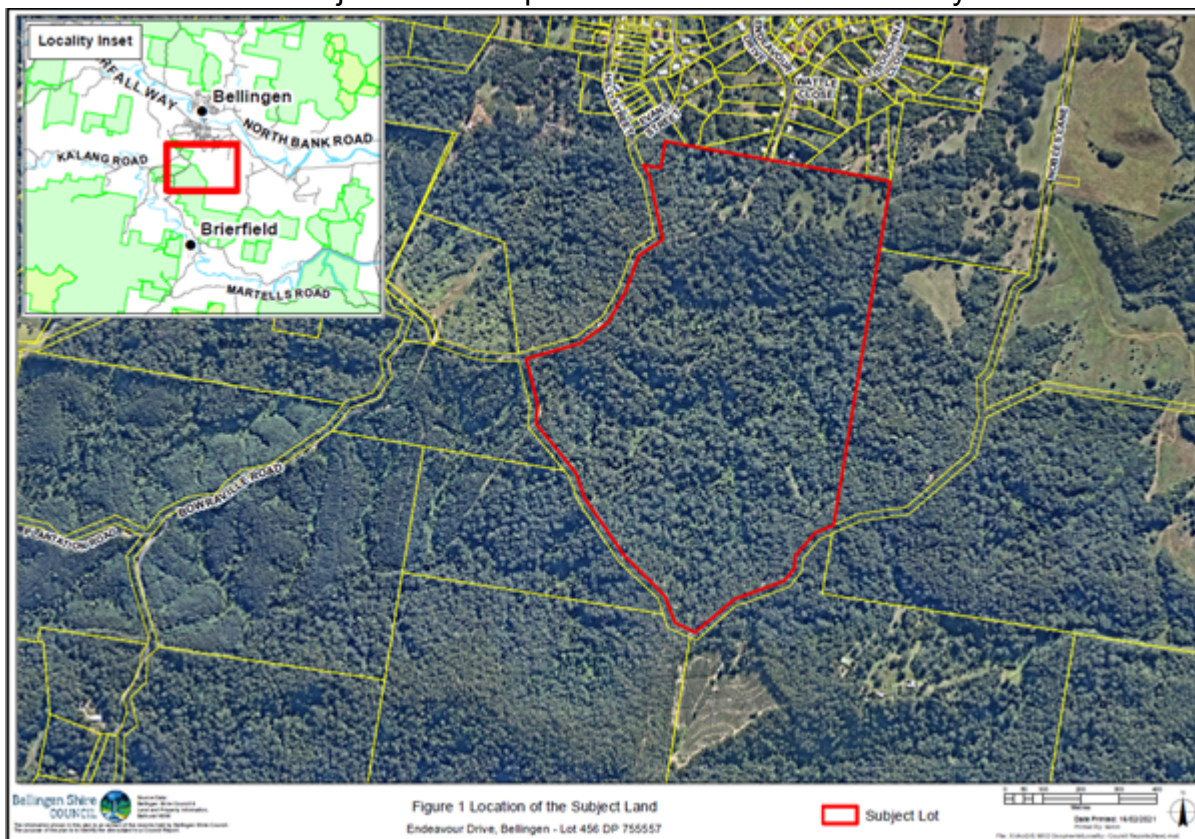
Council received the Planning Proposal request on 18 January 2021 and relevant Stage 1 fees were paid to enable the processing of the request on 9 February 2021 . Because the Planning Proposal is not scheduled to be completed by Council as part of its normal strategic planning program full fees are payable, in a staged manner by the proponents, amounting to \$8,460 in total.

It is important to note that the documentation submitted in support of the rezoning proposal does contain details regarding a potential lot yield from the land and a proposed layout showing roads and other key infrastructure, however Council is not making a decision on this at this stage of the planning process. The advancement of the design to this level of detail has been necessary for the proponents to consider and /or demonstrate how some of the key constraints of the site can be accommodated in order for Council to be satisfied that the locality in general is in fact suitable for the proposed rezoning, however this will likely change again should the rezoning proposal be supported and if, for example, additional stipulations emerge from the rezoning process and consultation with key stakeholders.

A Councillor workshop was held on 24 February 2021 to introduce Councillors to the main aspects of the rezoning request, and comments provided at that workshop have been considered in the preparation of this report and in the formulation of the recommendation that has been made to Council.

## The Site

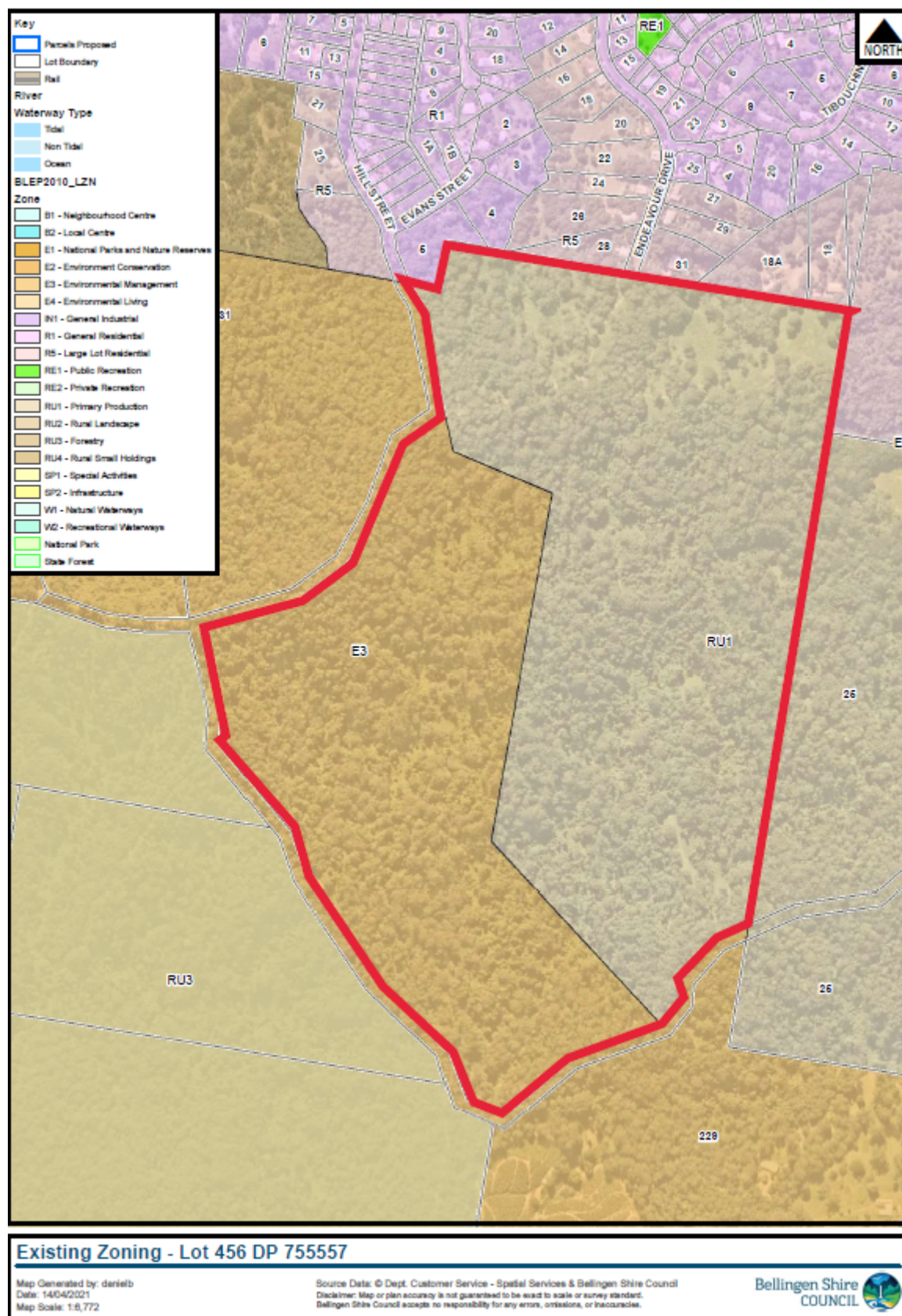
The land that is the subject of the request that has been received by Council is shown below.



The subject land is currently part zoned RU1 (Primary Production) and Part E3 (Environmental Management) and has a 200ha minimum lot size for subdivision. The land possesses a dwelling entitlement that would allow for the construction of a dwelling on the land and also benefits from a



Private Native Forestry Property Vegetation Plan that allows for forestry activities to be undertaken until 2026. The current zoning of the land is shown on the map extract below.



## The proposal

The key components of the request, as received by Council, propose the following amendments to the Bellingen Local Environmental Plan 2010 (BLEP 2010).

- Rezone the northern 17.13ha of the land from RU1 (Primary Production) to E4 (Environmental Living), and zone the rest of the land as E3 (Environmental Management).

- Amend the Lot Size Map to provide a 600m<sup>2</sup> minimum lot size for subdivision over that part of the land zoned E4.
- Include a Schedule Amendment to stipulate that the subdivision of the land that is zoned E4 must be via Community Title.
- Allow the part of the land that is zoned E3 to be subdivided off to form a separate lot with a dwelling entitlement and a Biodiversity Conservation Agreement will be registered over the land.

The Planning Proposal Request, as submitted to Council, is included in the Attachments this report.

Once Council receives a request to prepare a Planning Proposal, it then needs to form its own opinion as to whether or not it is willing to support the proposal. This is because Council is the planning proposal authority in respect of planning proposals submitted in its Local Government Area, and a proponent cannot assume these functions independently of Council.

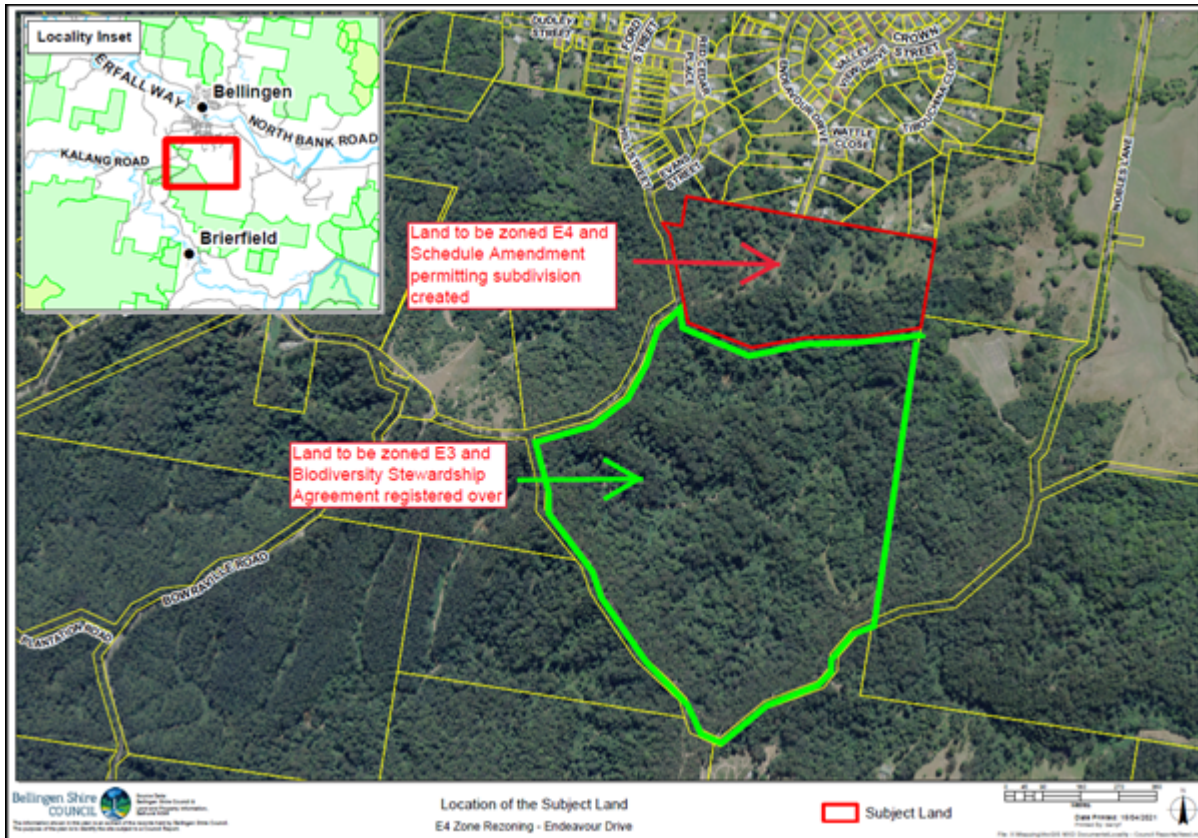
Following an initial review of the documentation submitted in support of the Planning Proposal Request, it is considered that the substantive aspects of the request are capable of support, however the mechanisms proposed to achieve the desired outcomes will need to be amended. Therefore, in order to support the advancement of the proposal it is recommended that the following provisions will instead form the basis of Planning Proposal 16. The Planning Proposal Request will need to be amended by Council should Council resolve to proceed as per this recommendation.

1 Rezone the northern 17.13ha of the land from RU1 (Primary Production) to E4 (Environmental Living), and zone the rest of the land as E3 (Environmental Management).

2 Include a Schedule Amendment to provide that;

- the subdivision of the land that is zoned E4 must be via Community Title Subdivision, with no "neighbourhood lot" created as part of the subdivision to be less than 600m<sup>2</sup> in area.
- the erection of a dwelling is permitted on any "neighbourhood lot" created as part of the community title subdivision of the land
- the land that is zoned E3 must be retained as "association property", managed in perpetuity for conservation purposes and a Biodiversity Stewardship Agreement shall be registered over that part of the land prior to the issue of any Subdivision Certificate for the creation of neighbourhood lots approved in accordance with this schedule.

The parts of the land proposed to be rezoned are shown below.

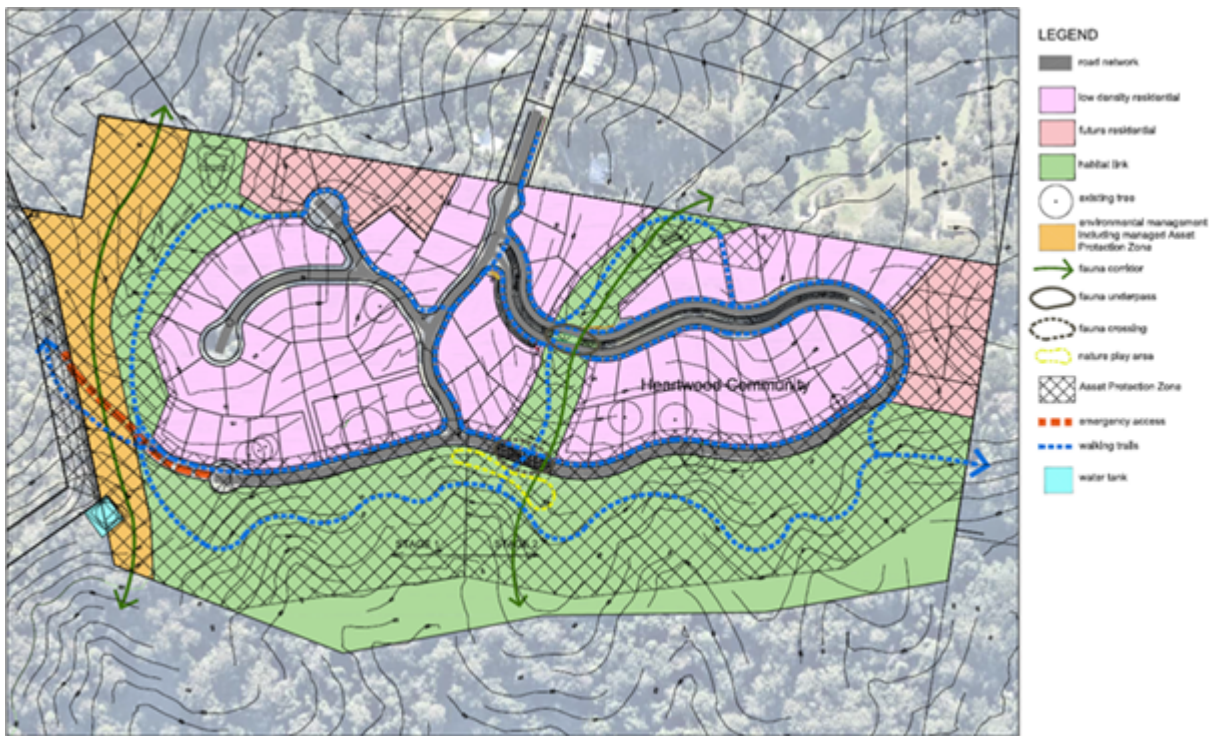


## Explanation of key components of the Planning Proposal

### What level of development is potentially facilitated by the Planning Proposal?

As discussed previously, Council is not currently considering a DA for the subdivision of the land, however a preliminary lot layout has been submitted with the Planning Proposal Request that shows in the order of 80 potential additional lots. The following diagram perhaps best illustrates the anticipated layout of development on that part of the site that is proposed to be zoned E4, showing those parts that would likely be roads, housing lots, wildlife corridors or asset protection zones.





### Why Community Title only?

The main reason why Council would only be supportive of a community title subdivision of the land is because the gradient of parts of the land would not allow for the construction of a road network that complies with the maximum limit of 16% slope that Council is willing to accept for new public roads. The reason why Council has this limit is because steeper roads generally have higher ongoing maintenance costs and obligations, and with community title subdivision the road network is instead owned and maintained collectively by the people who live there.

Another reason why community title is the preferred option for the development of this precinct is because it allows for the establishment and observance of unique design and management practices that reflect an overall theme for the development such as the design principles advocated in the Landscape Plan documentation, recommendations made by Geotechnical Engineers regarding the avoidance of slab on ground style buildings, and bushfire protection measures such as Asset Protection Zones.

Also, given that the proposal will involve extensive areas of non-developed land within the area of the proposed subdivision itself (such as drainage lines, wildlife corridors and asset protection zones) as well as the area to be zoned E3, a community title subdivision avoids these areas becoming Council assets and future maintenance burdens.

### How would the development connect back to existing infrastructure?

The key external infrastructure connections include;

- Endeavour Drive for the primary vehicular access to the land,
- Hill Street for alternative emergency vehicle access to the land and access to a proposed water tower necessary to service the development
- Connecting the development back to the existing reticulated water supply
- Providing new sewer pump stations within the development and new sewer mains to

connect back to the sewer network.

The Planning Proposal Request includes a Traffic Impact Assessment that, amongst other things, considers the additional traffic that would likely be generated on Endeavour Drive by 80 additional residential lots. This Assessment documents that the average existing traffic volume on Endeavour Drive is in the order of 300 vehicles per day (vpd), that the proposed development could result in an additional traffic volume of 600 vpd., and that the ultimate level of traffic generation would be well within the acceptable limits of capacity for an 8.0m wide local street. The proposed engagement strategy for the Planning Proposal, if supported by Council, will involve notification of all existing residents on Endeavour Drive, Wattle Close and George Hewitt Close.

It is also relevant to note that there is small section of land between the existing end of Endeavour Drive, and the land the subject of the rezoning request, that is owned by Council and would need to be created as a public road in order to provide legal access to the land. Council's Governance Team have advised that this land parcel (Lot 71 DP 785443) was considered as part of an Operational Land Review completed by Council in May 2017 that recommended that the land be dedicated as a public road, and therefore no objection would be offered to the use of the land for this purpose should development proceed.

The necessity for the rezoning to provide a connection back to Hill Street arises from bushfire planning provisions that require an alternative form of access to the development, and the need for Council to access other key infrastructure associated with the development. The development of the land would require the upgrade of Hill Street to a 5.5m wide gravel road, both leading up to the location of a proposed water tank to service the development, and connecting back to the edge of the current dedicated road reserve in the vicinity of Evans Street. The section of Hill Street that would need to be upgraded is not currently a dedicated Council Road and belongs to the Crown. The upgrading of the road will be conditional upon Council accepting ownership of that asset and therefore Council would need to be prepared for this eventuality, and ultimately prepared to make a resolution to acquire the land given that this function cannot be delegated to Officers pursuant to the provisions of Section 377 (1)(h) of the NSW Local Government Act 1993.

The Planning Proposal Request includes an Engineering Assessment that identifies water supply options to service the proposed development. Council Officers have identified that there may be a need for the proponents to provide additional water supply infrastructure beyond the subject land in order to provide sufficient levels of water pressure to the development site itself, but also to ensure that water pressure levels are not unacceptably impacted within existing areas serviced by the reticulated water supply. The proponents have elected not to complete some more detailed water modelling at this stage of the planning process, arguing that this should occur at later stages of the planning process such as DA assessment. Council's Development Engineer advises that an engineering solution will exist to address any water supply / pressure issues however whether or not this is acceptable from a development cost / feasibility perspective is another matter. In view of Council raising this issue with the proponents (including the use of our water model to analyse impacts) and the decision that has been made not to complete the relevant modelling, it is appropriate for Council to signal that it will not accept substandard infrastructure outcomes that may be offered by the proponent at DA stage in view of unforeseen cost or feasibility issues related to water supply.

The Planning Proposal Request includes an engineering assessment that identifies sewer supply options to service the proposed development. An option that is acceptable to Council has been identified, that involves the construction of a new sewer pump station/s within the development



site that will connect via a new sewer rising main on Hill Street to the existing sewer system that drains to the Ford Street pump station.

What level of native vegetation removal would be proposed and how is this to be addressed?

The development of the land within the area to be zoned E4 (Environmental Living) will involve the removal of native vegetation for the purpose of infrastructure construction, implementation of Asset Protection Zones and ultimately the construction of houses on the land. The Planning Proposal Request includes a Biodiversity Development Assessment Report (BDAR) that identifies that the development is expected to impact 12.6 ha of native vegetation consisting of three Plant Community Types and includes 9.09 ha of mapped preferred koala habitat, pursuant to the provisions of the Bellingen Shire Koala Management Strategy. Of the area of native vegetation proposed to be impacted 5.62 ha is proposed to be removed and 6.98 ha is proposed to be managed as an asset protection zone where ground layer vegetation (grasses and forbs) and approximately 30 percent of canopy vegetation will be retained.

The clearing activities that would be necessary to complete the development will require offsetting under the Biodiversity Offset Scheme (BOS) and it is expected that the proponents would need to source and retire 279 Ecosystem Credits and 61 Species Credits to meet their obligations under the BOS.

The Planning Proposal Request identifies that the proponents intend to register a Biodiversity Stewardship Agreement (BSA) over the part of the land that is proposed to be zoned E3 (Environmental Management). It is likely that this process will create credits that the proponents can then procure to meet their obligations to offset the clearing that will take place within the area that will be zoned E4, however it is not essential that the credits are sourced from this area. The permanent protection and management of the land to be zoned as E3 for conservation purposes is considered to be a defining and non-negotiable element of the planning proposal, and this must go beyond the mere zoning of the land.

Council has in recent years avoided the zoning of new land for development that requires significant clearing of native vegetation, however in this instance it is considered that there is potential to secure a significant conservation outcome through the protection of the land to be zoned as E3 given that there is an existing approval in place that allows for the logging of the property, which would be forfeited as part of the registration of a BSA over the land. It is also important to note that during fieldwork undertaken by the flora and fauna consultants they obtained camera footage of koalas utilising the land proposed to be zoned as E3 on 3 separate occasions, which further attests to the benefits that could accrue from the permanent protection of this habitat.

It is proposed to consult with the Biodiversity and Conservation section of the NSW Department of Planning, Industry and Environment regarding this planning proposal and particular comment will be sought regarding the proposed registration of a BSA over the property, the timing of this within the planning process and the level of certainty that exists regarding this proposal.

How visible would the development site be from certain vantage points?

The development site will be mostly visible from elevated vantage points to the north such as North Bank Rd & Ironbark Place and also from land around the junction of Waterfall Way & Crown Street. An extract from the Planning Proposal Request is reprinted below showing the

approximate location of the site when viewed from North Bank Road.



Approximate location  
of site when viewed  
from North Bank Road

The visual impact will involve the removal of vegetation, the installation of a water tower, and ultimately the construction of dwellings to the north of the ridgeline upon which the southern road is most likely to be constructed. The proposed road network that has been submitted will involve significant levels of landform modification in certain parts, in particular the lower split section road which could potentially have an 8m retaining wall between the upper and lower road section. Visibility of this road section will however be more limited as it is at a lower elevation within the development site and the topography of adjoining land would interrupt the view.

Ultimately, a fine grained analysis of the visual impact of the development can only be undertaken at the DA stage, however Council does need to accept that the development of the land, if the rezoning proceeds, will be visible from certain vantage points and that it will impinge to some extent upon the vegetated backdrop to the southern part of Bellingen that currently exists. It is submitted that this impact is broadly acceptable and will not significantly impact upon any particular views of the town.

#### Other relevant matters addressed in the Planning Proposal Request

The Planning Proposal Request includes an assessment of the extent to which the development would likely impact upon aboriginal cultural heritage. This assessment was prepared by appropriately qualified archaeologists, working in conjunction with representatives of the Coffs Harbour & District Local Aboriginal Lands Council. The assessment did not locate any artefacts within the areas considered more likely to contain aboriginal sites and considered that the ridgeline area was unlikely to have constituted a pathway. Should Council resolve to support the Planning Proposal it is recommended that the Bowraville and Coffs Harbour & District Local Aboriginal Lands Councils are notified of the proposal and invited to provide further comment should they so desire.

The Planning Proposal Request includes an assessment of the extent to which the development would comply with the provisions of Planning for Bushfire Protection 2019, which is the peak document governing development in bushfire prone areas. The entire site is mapped as bushfire prone land. Should Council resolve to proceed with the planning proposal it will be necessary to formally consult with the NSW Rural Fire Service who will review the Consultants Report and

advise Council whether it is supportive of the proposal. In summary, the Consultants Report identifies that the development, constructed to comply with the provisions of Planning for Bushfire Protection 2019 in terms of access roads, water supply and creation of Asset Protection Zones would actually improve the level of protection to existing lands at the urban interface to surrounding bushland. The Report notes that ongoing maintenance of Asset Protection Zones is critical and observes that the proposed community title status for the subdivision provides a desirable pathway for these considerations to be built into the requisite documents for the management of association property. The need for adequate levels of water pressure for fire fighting has been identified, and this will need to be demonstrated by the proponents in addition to normal domestic requirements.

The Planning Proposal Request includes a Landscape Plan prepared by a Landscape Architect that contemplates some of the design principles that are proposed to be built into the development. The landscaping embellishments will not be Council assets however the general theme for the development, which involves integrating with the natural features of the site, is considered appropriate for the proposed E4 (Environmental Living) Zoning of the land, and will improve the amenity of land designated as association property for the benefit of those who live there.

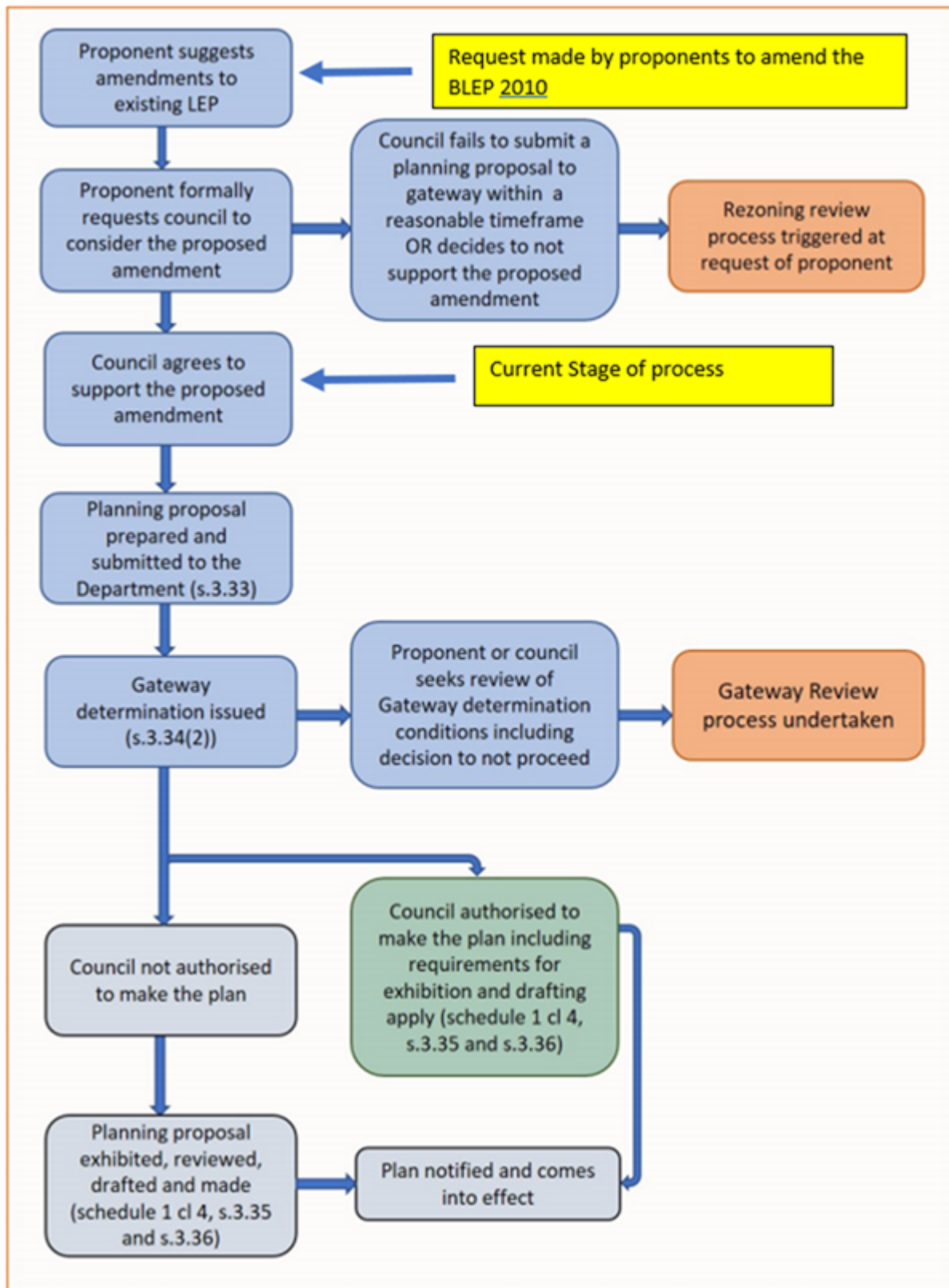
The Planning Proposal Request indicates that *"public access to the proposed road network, parks and open space areas will be created via S88B Right of Access Agreements"* and this is wholly supported as it will effectively ensure against the development evolving to become a gated community, and will provide the ability to link with other walking trails within the area.

### **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).





### Should Council request authorisation to make the Plan?

It is 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. One of these circumstances is when the planning proposal would give effect to an endorsed local strategy.

As previously discussed, this proposal was recognised in the adopted Bellingen Shire Local Housing Strategy 2020-2040 and it is therefore recommended that Council resolves to request that the NSW Department of Planning Industry & Environment designates Council as the Plan Making Authority in respect of this matter.

## **BUDGET IMPLICATIONS**

As previously discussed, Planning Proposal Requests received by private developers attract processing fees that provide some degree of cost recovery for the time that Council Officers spend on moving the proposal through the various stages of the planning process.

The proposal has the potential to deliver in the order of 80 additional rateable assessments to Council should the Planning Proposal Request be supported and the land is ultimately subdivided. The community title status of the development will mean that the majority of the infrastructure that is necessary to service the development will not be owned or maintained by Council, however certain infrastructure such as sewer pump stations, and the extended section of Hill Street will ultimately become Council assets, requiring ongoing maintenance.

Overall, the budgetary implications on Council are expected to be positive.

## **SUSTAINABILITY ASSESSMENT**

Council would be aware that Bellingen Shire, along with many other regional areas, are currently facing a range of social impacts related to a lack of housing availability and housing affordability problems. The proposed development is not targeted towards supplying affordable housing opportunities and is under no compulsion to do so.

The proposed development will however provide an increase in supply of housing lots, will add to the variety of housing opportunities that exist in the local market and will offer unique opportunities for social interaction within the development site. The development of the land within the proposed E4 zone will require the clearing of native vegetation however this part of the property is relatively disturbed when compared to the majority of the site which will be preserved in perpetuity, and collectively managed to improve its environmental value. The community title status of the development will limit the extent to which Council is responsible for infrastructure maintenance, whilst still delivering new rateable assessments that will assist Council more broadly with service provision and infrastructure maintenance.

Having regard to these factors, it is submitted that the Planning Proposal Request is sustainable in nature and warrants the support of Council.

## **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 makes provision for site specific amendments to the BLEP 2010 and the following community participation requirements will be observed in respect of this matter:

- \* 28 day consultation period
- \* Advertisement in local paper
- \* Advertisement and provision of supporting documentation on "Create" website
- \* Notify owners of site specific amendments
- \* Notify adjoining owners of site specific amendments
- \* Notify owners of land along Endeavour Drive, George Hewitt Close and Wattle Close
- \* Plain English Version

The following additional stakeholders and / or Government Agencies will also be notified.

- \* NSW Rural Fire Service
- \* Biodiversity and Conservation section of the NSW Department of Planning, Industry and Environment
- \* Bowraville Local Aboriginal Land Council
- \* Coffs Harbour & District Local Aboriginal Land Council

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

## **ATTACHMENTS**

1. Draft Planning Proposal 16 as submitted - Core Planning Proposal Request Document
2. Draft Planning Proposal 16 - Subdivision Layout Plan
3. Draft Planning Proposal 16 - Bushfire Report
4. Draft Planning Proposal 16 - BDAR
5. Draft Planning Proposal 16 - Engineering Assessment
6. Draft Planning Proposal 16 - Landscape Plan
7. Draft Planning Proposal 16 - Traffic Impact Assessment
8. Draft Planning Proposal 16 - Aboriginal Heritage Assessment
9. Draft Planning Proposal 16 - Pre Lodgement Meeting Notes





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<b>Item</b>	<b>11.2</b>
<b>Subject</b>	<b>Planning Proposal 16 - Rezone land at Endeavour Drive to E3 (Environmental Management) Zone and E4 (Environmental Living) Zone and permit Community Title Subdivision on the land zoned as E4 (Environmental Living) Zone.</b>
<b>Presented by</b>	<b>Daniel Bennett, Senior Strategic Planner</b>

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**RESOLVED (Cr Wright-Turner / Cr Harrison)**

That Council:

1. Resolves to prepare *Planning Proposal 16 - Rezone land at Endeavour Drive to E3 (Environmental Management) Zone and E4 (Environmental Living) Zone and permit Community Title Subdivision on the land zoned as E4 (Environmental Living) Zone* 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; and
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

Meeting adjourned 10.44am

Meeting resumed 10.50am

**12 LIVING ENVIRONMENT**

**13 CIVIC LEADERSHIP**