

FOR ACTION

COUNCIL MEETING

14/10/2021

TO: Planner/Urban Designer (Pfister, Jackson)

Item Number: SC21/60
Subject: Planning Proposal - Application to Amend Coffs Harbour LEP 2013 to Reduce The Minimum Lot Size - Lot 1 DP 1163252 and Lot 1 DP 1210495, No. 19 Orara Street, Nana Glen and Housekeeping Amendment - Split Zone Clause and Dwelling Permissibility Clause - Pre-Exhibition
Target Date: 21/10/2021

Notes:

Resolution Number: 2021/252

RESOLVED (Cr Sally Townley / Cr Paul Amos)

That Council:

1. Initiate and forward a planning proposal (Attachment 1) to the NSW Department of Planning, Industry and Environment seeking gateway determination to reduce the minimum lot size for Lot 1 DP 1163252 and Lot 1 DP 1210495, No. 19 Orara Street, Nana Glen; and amend Clause 4.1A Minimum subdivision lot sizes for certain split zones and Clause 4.2B Erection of dwelling houses on land in certain rural and environmental protection zones of Coffs Harbour Local Environmental Plan 2013.
2. Request that the Secretary of the NSW Department of Planning, Industry and Environment issue a written authorisation to Council to exercise delegation of the plan making functions under section 3.36(2) of the Environmental Planning and Assessment Act in respect of the planning proposal.
3. Publicly exhibit the planning proposal and undertake government agency consultation based on the Gateway Determination issued by the NSW Department of Planning, Industry and Environment.
4. Note that a further report will be brought back to Council for consideration following public exhibition of the planning proposal.
5. Inform the landowners of the subject land and their consultant of Council's decision.

The Motion on being put to the meeting was carried unanimously.

CARRIED

SC21/60 PLANNING PROPOSAL - APPLICATION TO AMEND COFFS HARBOUR LEP 2013 TO REDUCE THE MINIMUM LOT SIZE - LOT 1 DP 1163252 AND LOT 1 DP 1210495, NO. 19 ORARA STREET, NANA GLEN AND HOUSEKEEPING AMENDMENT - SPLIT ZONE CLAUSE AND DWELLING PERMISSIBILITY CLAUSE - PRE-EXHIBITION

Author: Planner/Urban Designer

Authoriser: Director Sustainable Communities

MyCoffs: C.1 Liveable neighbourhoods with a defined identity

Attachments: ATT1 SC21/60 Planning Proposal - 19 Orara Street, Nana Glen & Housekeeping Amendment (Split Zone Clause & Dwelling Permissibility Clause)

EXECUTIVE SUMMARY

A proponent-led application has been received by Council to amend Coffs Harbour Local Environmental Plan (LEP) 2013 to facilitate subdivision of 19 Orara Street, Nana Glen for large lot residential purposes, including an amendment to two clauses which relate to split zone properties and dwelling permissibility in rural and environmental zones.

The purpose of this report is to seek Council's endorsement to initiate a planning proposal (Attachment 1) to amend Coffs Harbour LEP 2013 to reduce the minimum lot size of the large lot residential portion of 19 Orara Street, Nana Glen from 2ha to 8000m²; amend Clause 4.1A Minimum subdivision lot sizes for certain split zones; and amend Clause 4.2B Erection of dwelling houses on land in certain rural and environmental protection zones.

RECOMMENDATION:

That Council:

1. **Initiate and forward a planning proposal (Attachment 1) to the NSW Department of Planning, Industry and Environment seeking gateway determination to reduce the minimum lot size for Lot 1 DP 1163252 and Lot 1 DP 1210495, No. 19 Orara Street, Nana Glen; and amend Clause 4.1A Minimum subdivision lot sizes for certain split zones and Clause 4.2B Erection of dwelling houses on land in certain rural and environmental protection zones of Coffs Harbour Local Environmental Plan 2013.**
2. **Request that the Secretary of the NSW Department of Planning, Industry and Environment issue a written authorisation to Council to exercise delegation of the plan making functions under section 3.36(2) of the Environmental Planning and Assessment Act in respect of the planning proposal.**
3. **Publicly exhibit the planning proposal and undertake government agency consultation based on the Gateway Determination issued by the NSW Department of Planning, Industry and Environment.**
4. **Note that a further report will be brought back to Council for consideration following public exhibition of the planning proposal.**
5. **Inform the landowners of the subject land and their consultant of Council's decision.**

REPORT

Applicant:	Keiley Hunter Town Planning
Landowner:	Mrs SA Jenkinson & Mr BF Jenkinson
Land:	Lot 1 DP 1163252 and Lot 1 DP 1210495, No. 19 Orara Street, Nana Glen
Zone:	RU2 Rural Landscape, R5 Large Lot Residential and E2 Environmental Conservation

Description of Item:

A proponent-led application has been received by Council to amend Coffs Harbour LEP 2013 to reduce the minimum lot size for No. 19 Orara Street, Nana Glen; amend the minimum lot size clause for split zone properties; and amend the dwelling permissibility clause to facilitate subdivision of 19 Orara Street, Nana Glen for large lot residential purposes.

Council's Five Year Comprehensive Review of Coffs Harbour LEP 2013 identified issues with Clause 4.1A Minimum subdivision lot sizes for certain split zones. This review found that the clause does not cater for the subdivision of split zoned land where certain combinations of land use zones are present within the original lot, which is inconsistent with the objectives of this clause and the objectives of the land use zones contained within such lots.

The characteristics of 19 Orara Street, Nana Glen typify the issues raised in the comprehensive review of Coffs Harbour LEP 2013 for a number of split zoned properties within the Coffs Harbour Local Government Area (LGA). The proponent-initiated planning proposal presents an opportunity for Council to address the issues identified with the split zone clause, whilst facilitating the subdivision of 19 Orara Street, Nana Glen for large lot residential purposes (which cannot occur until such time as the issues with this clause are addressed).

The Subject Land

- 19 Orara Street, Nana Glen

Nana Glen is a hinterland village located approximately 27 km west of Coffs Harbour. The real property description is Lot 1 DP 1163252 and Lot 1 DP 1210495. The site has an area of 19.16 hectares and is a split zoned property comprising Zone RU2 Rural Landscape, Zone R5 Large Lot Residential and Zone E2 Environmental Conservation under Coffs Harbour LEP 2013.

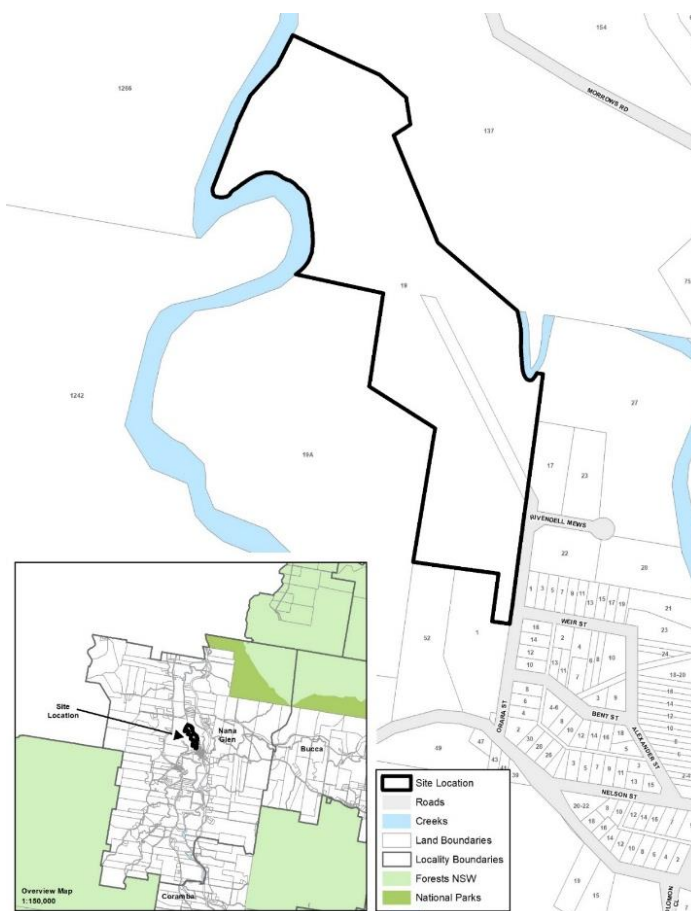


Figure 1: Location Map for 19 Orara Street Nana Glen

The purpose of this report is to seek Council's endorsement to initiate a planning proposal (Attachment 1) to amend Coffs Harbour LEP 2013 to reduce the minimum lot size of the residential portion of 19 Orara Street, Nana Glen from 2ha to 8000m²; amend Clause 4.1A Minimum subdivision lot sizes for certain split zones; and amend Clause 4.2B Erection of dwelling houses on land in certain rural and environmental protection zones.

Issues:

Issues associated with the planning proposal are detailed in Attachment 1 and summarised as follows:

- **19 Orara Street Nana Glen**

The characteristics of 19 Orara Street, Nana Glen typify the issues for a number of split zoned properties within the Coffs Harbour LGA. A significant portion of this land is within Zone R5 Large Lot Residential under Coffs Harbour LEP 2013. However, subdivision of this land for large lot residential purposes cannot occur until such time as the split zone clause within Coffs Harbour LEP 2013 is amended due to the current drafting of the clause (see discussion provided below in relation to the split zone clause).

- **Split Zone Clause**

The split zone clause within Coffs Harbour LEP 2013 enables the subdivision of lots that contain more than one zone. The drafting of this clause is complex and open to conflicting interpretations. The current working interpretation is that this clause does not enable the subdivision of a split zone lot where the original lot contains a combination of land within a residential zone, a rural zone and an environmental zone, despite the fact that the rural and environmental portions of the lot are fragmented and well below the minimum lot size for the zones.

This is not the intent of this clause, which is to provide for the subdivision of lots that are within more than one zone, provided that the resulting subdivision does not fragment resource lands further or compromise the continued protection and long-term maintenance of any land in an environmental zone.

The phrasing of the clause unintentionally precludes the subdivision of a large number of split zone properties within the Coffs Harbour LGA. For example, the current drafting of the clause specifies that, where a resulting lot contains land in a rural zone, the land in the rural zone in the resulting lots is not to be less than the 40ha minimum lot size for that land. Subdivision cannot be undertaken even if the resulting lot contains land within in a residential zone that meets the minimum lot size requirements and where the rural and environmental zones within the lot are already below the minimum lot size. This outcome is inconsistent with the objectives of this clause. This issue is currently preventing the subdivision of the residential portion of 19 Orara Street, Nana Glen for large lot residential purposes.

- **Dwelling Permissibility**

To minimise land use conflict within rural and environmental zones and to prevent impacts on environmental values, an amendment to Clause 4.2B of Coffs Harbour LEP 2013 is also proposed, as part of this planning proposal. This clause applies to the erection of dwelling houses on land in certain rural and environmental protection zones. The clause limits the erection of a dwelling house on land within a rural and/or environmental zone unless one of the exceptions provided by the clause is met.

One of these exceptions enables a dwelling to be erected on land within a rural and/or environmental zone if the lot was created under Coffs Harbour LEP 2013 (excluding a primary production lot for which a dwelling is prohibited). In this regard, the amendment to the split zone clause would unintentionally enable a dwelling to be erected, not just on the residential portion of a split zone lot, but also on the residual rural and/or environmental portions of the lot. This is not Council's intention, therefore an amendment to clause 4.2B is also proposed as part of this planning proposal to prevent this unintended consequence from occurring.

- **Summary of LEP Amendments**

A summary of the proposed LEP amendments to address the above issues is as follows:

19 Orara Street, Nana Glen

- Amend Coffs Harbour Minimum Lot Size Map (Sheet LSZ_005A) to change the Minimum Lot Size for Zone R5 Large Lot Residential, from 2 hectares to 8,000 m².

Split Zone Clause

- Amend Clause 4.1A Minimum subdivision lot sizes for certain split zones to:
 - o clarify that it applies to various combinations of land use zones within the original lot;
 - o ensure that residential portions of resulting lots comply with minimum lot size requirements;
 - o ensure that the urban portions of resulting lots (business, industrial, special purpose or recreation zone) are suitable for a use permitted in the relevant zone;
 - o ensure that where an original lot contains land within Zone RU2 Rural Landscape and a residential and/or urban zone, all of the land within Zone RU2 Rural Landscape is contained within one resulting lot to minimise fragmentation of rural land;
 - o ensure that where an original lot contains only Zone RU2 Rural Landscape and Zone E2 Environmental Conservation and/or Zone E3 Environmental Management, the land in the rural zone in resulting lots is not less than the 40ha minimum lot size to minimise fragmentation of rural land;
 - o ensure that the subdivision of split zoned lots will not compromise the continued protection and long-term maintenance of any land in Zone E2 Environmental Conservation or Zone E3 Environmental Management; and

- ensure that a dwelling cannot be lawfully created on residual land within Zone RU2 Rural Landscape and/or Zone E2 Environmental Conservation, and/or Zone E3 Environmental Management where there is a residential and/or urban zone within the resulting lot.

Dwelling Permissibility Clause

- Amend Clause 4.2B Erection of dwelling houses on land in certain rural and environmental protection zones to ensure that a dwelling cannot be lawfully created on residual land within Zone RU2 Rural Landscape and/or Zone E2 Environmental Conservation, and/or Zone E3 Environmental Management where there is a residential and/or urban zone within the same lot created under Clause 4.1A.

Further detail in relation to the proposed amendments are provided in the planning proposal (Attachment 1).

Options:

Council has a number of options available in relation to this matter. They include:

1. Resolve to adopt the recommendations of this report.
2. Resolve to undertake an alternative approach.

Option 1 is recommended as the suitable course of action.

Sustainability Assessment:

- **Environment**

Environmental sustainability issues have been considered and are addressed in Part 3 of the planning proposal (Attachment 1).

- **Social**

Social sustainability issues have been considered and are addressed in Part 3 of the planning proposal (Attachment 1).

- **Civic Leadership**

The planning proposal supports the vision of the MyCoffs Community Strategic Plan 'connected, sustainable, thriving' and will assist in achieving the objectives of the Plan by: attracting people to work, live and visit; and by undertaking development that is environmentally, socially and economically responsible.

- **Economic – Broader Economic Implications**

The creation of additional large lot residential land and the resulting development of that land has the potential to generate additional housing and employment opportunities within the Coffs Harbour LGA. In this regard, broad economic implications from the planning proposal are likely to be positive.

- **Economic - Delivery Program/Operational Plan Implications**

The recommendations contained within this report are unlikely to impact on Council's Delivery Program or Operational Plan given that the LEP amendment process is being undertaken as a business as usual process, funded through a proponent-initiated planning proposal.

Risk Analysis:

The request to amend Coffs Harbour LEP 2013 in relation to 19 Orara Street, Nana Glen accords with the Coffs Harbour Local Growth Management Strategy 2020 - Chapter 6 Large Lot Residential Lands, which states that applicant-initiated planning proposals may be lodged where reduced minimum lot size can be justified on existing land within Zone R5 Large Lot Residential. Council's Five Year Comprehensive Review of Coffs Harbour LEP 2013 (endorsed at Council's Ordinary Meeting of 10 December 2020) recommends that Clause 4.1A Minimum subdivision lot sizes for certain split zones and Clause 4.2B Erection of dwelling houses on land in certain rural and environmental protection zones, be amended to facilitate the subdivision of split zoned land that are inhibited by the current drafting of the split zone clause. The planning proposal is therefore considered to be of low risk to Council, as it is implementing an endorsed policy position of Council.

Consultation:

The NSW Department of Planning, Industry and Environment has been consulted in relation to the proposed LEP amendment. The department has indicated that a proponent-initiated LEP amendment is a logical way to progress initial amendments to the split zone clause within Coffs Harbour LEP 2013, noting that further refinement of this clause may be required at a later date due to the complexity of the clause to ensure that all split zone lot scenarios are addressed.

Should Council resolve to initiate the planning proposal and a gateway determination is subsequently issued by the NSW Department of Planning, Industry and Environment, the planning proposal is required to be exhibited in accordance with the determination and relevant planning legislation. Consultation with government agencies and other stakeholders may also be required if specified within the gateway determination. Consultation will be undertaken in accordance with Council's Community Participation and Engagement Plan 2019, as follows:

Project Stage	Inform	Consult	Involve	Collaborate
Pre-lodgement Discussions	x	x	x	
Initiate Planning Proposal	x	x		
Public Exhibition	x	x		
Post Exhibition Report to Council	x	x		
Post Endorsement Notification	x			

Place Score

In early 2019, Council undertook extensive community consultation using the Place Score place-making tool. This 'place experience' measurement tool enabled residents and visitors within the Coffs Harbour LGA to share what they most value in their neighbourhood and then to rate how their neighbourhood is performing against such values. The 2019 Place Score report was presented to Council on 11 April 2019. Nana Glen received a Place Score of 61, which is below the NSW average of 72 for liveability. The liveability improvement priorities identified by the Nana Glen community included the protection of the natural environment. The proposed amendment to Coffs Harbour LEP 2013 will assist in providing a small amount of additional housing opportunities in Nana Glen, whilst protecting the natural and built environment. More broadly, the proposed amendment to the split zone clause within Coffs Harbour LEP 2013 will facilitate development on split zoned land within the Coffs Harbour LGA, whilst protecting agricultural and environmental land.

Related Policy, Precedents and / or Statutory Requirements:

This planning proposal has been prepared in accordance with the Environmental Planning and Assessment Act 1979 and Regulation 2000. A number of other relevant policies and statutory documents have been considered in the preparation of the planning proposal.

Implementation Date / Priority:

Should Council resolve to initiate the planning proposal, it will be immediately forwarded to the NSW Department of Planning, Industry and Environment, requesting gateway determination. The timeframe for the completion of this planning proposal is governed by relevant planning legislation and internal processes within the NSW Department of Planning, Industry and Environment.

Conclusion:

The purpose of this report is to seek Council's endorsement to initiate a planning proposal to amend Coffs Harbour LEP 2013 to reduce the minimum lot size of the residential portion of 19 Orara Street, Nana Glen from 2ha to 8000m²; amend Clause 4.1A Minimum subdivision lot sizes for certain split zones; and amend Clause 4.2B Erection of dwelling houses on land in certain rural and environmental protection zones. Such amendments will enable the subdivision of 19 Orara Street, Nana Glen for large lot residential purposes. The proposed amendments to the split zone clause within Coffs Harbour LEP 2013 will facilitate the subdivision of land within split zoned lots that are currently precluded by the drafting of the clause. The proposed amendments accord with the North Coast Regional Plan 2036 and Council's adopted Local Growth Management Strategy 2020. Sufficient planning merit for the LEP amendments is provided within the planning proposal.