

# PLANNING PROPOSAL 20

Amendment to Bellingen Shire Local Environmental Plan  
2010

Version 3 (August 2022) – Public Consultation

**Planning Proposal PP-2022-1535 to Permit Community  
Title Subdivision of existing Multiple Occupancies &  
prohibit establishment of new Multiple Occupancies**

Bellingen Shire  
COUNCIL



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## INTRODUCTION

### Background

Many Multiple Occupancies (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 requirements. 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.

Having regard to these factors, Bellingen Shire Council resolved at its meeting of 24 February 2021 to prepare Planning Proposal 17 to permit the community title subdivision of existing Rural Landsharing Communities.

A Gateway Determination was issued by The NSW Department of Planning and Environment (DPE) in respect of this matter on 19 May 2021. Council completed requisite agency

consultation, placed the proposal on public exhibition and was proceeding to finalise when advice was sought from the DPE regarding how the inconsistency between the prohibition on subdivision of MO's contained within Schedule 5 of State Environmental Planning Policy (Primary Production) 2021 and the intention of the planning proposal, would need to be resolved in the final drafting of the amendment.

Unfortunately, the legal advice obtained by the DPE confirmed that the inconsistency could not be resolved within the scope of Planning Proposal 17. An option did exist though to address the inconsistency by removing reference to the Bellingen Local Environmental Plan 2010 from the provisions of Schedule 5 of the SEPP. The effect of this however would mean that there would also be no remaining legal mechanism to approve any new MO's in the Shire, although Council could consider re-introducing a mechanism to approve new MO's as part of the development of a Rural Lands Strategy for the Shire.

Council considered this matter at its meeting of 23 March 2022, where it was resolved that Council seek to amend Planning Proposal 17 to remove BLEP 2010 from Schedule 5 as a first preference, given the potential time benefits when compared to starting again with a new planning proposal. The resolution also involved obtaining the necessary resolution of Council to prepare a new Planning Proposal, should this option not be acceptable to the DPE.

Correspondence was subsequently prepared for the attention of the Northern Regional Director of the DPE requesting that Council be permitted to amend the current planning proposal in preference to the preparation of a new planning proposal. The Regional Director advised Council, in correspondence dated 28 March 2022, as follows.

*I acknowledge the considerable work that Council has undertaken to progress the planning proposal to this stage, and confirm that the Department wish to work collaboratively toward an outcome as soon as practical. However, due to the change in scope of the proposal and in-line with the NSW Government's commitment to reduce timeframes, an alteration to the Gateway determination is unable to be supported. As such, Council is encouraged to withdraw the planning proposal as soon as possible prior to 20 May 2022.*

Correspondence was submitted to the DPE on 31 March 2022 withdrawing Planning Proposal 17, and the revised Planning Proposal 20 was formally submitted for a Gateway Determination on 28 April 2022.

Council received a Gateway Determination from the DPE on 27 May 2022 and this is reprinted within the planning proposal document. The Gateway Determination required agency consultation with NSW Rural Fire Service and the Department of Primary Industries – Agriculture in accordance with relevant Ministerial Directions.

Council has consulted with relevant agencies and no objection has been received to proceeding with the proposal. Responses are discussed in Part 5 of this proposal. This version of the planning proposal now therefore constitutes the public exhibition consultation version.

### Site Location & Context

There are in the order of 30 approved multiple occupancy or rural landsharing communities in Bellingen Shire (hereafter referred to as MO's) These are geographically distributed across the Shire, with 3 on the Dorrigo Plateau and several within the Bellingen Valley, however for the most part these are concentrated within the Thora and Kalang Valleys along Darkwood Road and Kalang Road respectively. A Map showing the known locations of approved MO's is included in Appendix A.

The majority of MO's are located within the C4 – Environmental Living Zone, which occurs exclusively within the Thora and Kalang Valleys. The C4 zone is characterised by long and confined river valleys, with multiple low level bridges that are subject to flooding and one principle road in and out. The valleys contain pockets of alluvial land that are mapped as Regionally Significant Farmland, however they are not characterised by large or intensive agricultural enterprises, valued instead for the high amenity of the natural environment and the opportunities to live in these areas. Many MO's within the C4 zone contain significant areas of natural habitat that are preserved from development and managed collectively to protect the environmental value of these areas. These areas can also be zoned C3 – Environmental Management, and are also occasionally mapped on the NSW Biodiversity Values Map.

MO's on the Dorrigo Plateau also occur on areas with significant environmental value, with two of the three MO's including an C3 Zoning and Biodiversity Values Map affectation, with the remaining one zoned RU2 – Rural Landscape, despite also containing land affected by the NSW Biodiversity Values Map.

MO's within the Bellinger Valley, including areas such as Boggy Creek, Summervilles Rd, Gleniffer, Valery Road, and Bellingen typically exist on land zoned RU2 Rural Landscape, however also frequently contain areas of environmental significance as recognised by the Biodiversity Values Map or the BLEP 2010 through part C3 zoning.

The fact that most MO's are established within rural landscapes that are not primarily cleared of vegetation means that they are also for the most part mapped as having bushfire prone land, by the Bellingen Shire Bushfire Prone Lands Map.

With the exception of MO's on the Dorrigo Plateau which are on land with a 70ha minimum subdivision lot size, all other MO's exist on land that has been allocated a minimum subdivision lot size of 200ha within the BLEP 2010.

### Pre-lodgement

The context for this planning proposal has been adequately established via the progress that was made, and consultation that was undertaken, on the previous Planning Proposal 17. In this regard, there is no need to undertake any additional form of pre-lodgement investigation or consultation.

**Agenda**

ORDINARY  
MEETING OF  
COUNCIL - March  
2022  
23 March 2022

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|                     |                                                                                                            |
|---------------------|------------------------------------------------------------------------------------------------------------|
| <b>Item</b>         | <b>14.2</b>                                                                                                |
| <b>Subject</b>      | <b>Planning Proposal 17 - Permit Community Title Subdivision of Existing Rural Landsharing Communities</b> |
| <b>Presented by</b> | <b>Daniel Bennett, Senior Strategic Planner</b>                                                            |

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**RESOLVED (Cr Fenton /Cr Cook)**

That Council:

1. Resolves to amend Planning Proposal 17 to remove Bellingen from Schedule 5 of State Environmental Planning Policy (Primary Production) 2021 (thereby prohibiting new MO's in the Shire) and seeks an amended Gateway Determination from the NSW Department of Planning & Environment in respect of this matter.
2. Resolves that should the NSW Department of Planning & Environment not be prepared to issue an amended Gateway Determination in respect of Planning Proposal 17, Council will discontinue Planning Proposal 17 and prepare a new planning proposal that would permit the community title subdivision of existing MO's while also removing Bellingen from Schedule 5 of State Environmental Planning Policy (Primary Production) 2021, thereby prohibiting new MO's in the Shire.
3. Endorses the proposed community engagement strategy outlined in this Report for any amended or new planning proposal prepared in respect of this matter.
4. That it be noted that council will consider the permissibility of rural land sharing communities as part of the preparation of rural land strategy.

UNANIMOUS

### Categorisation of Planning Proposal

Having regard to the provisions of the NSW Government Local Environmental Plan Making Guideline December 2021, it is submitted that Planning Proposal 20 is appropriately categorised as a “Standard” Planning Proposal.

#### Standard

A standard planning proposal refers to any one or more of the following proposed LEP amendment types, including an amendment:

- To change the land use zone where the proposal is consistent with the objectives identified in the LEP for that proposed zone
- That relates to altering the principal development standards of the LEP
- That relates to the addition of a permissible land use or uses and/or any conditional arrangements under Schedule 1 Additional Permitted Uses of the LEP
- That is consistent with an endorsed District/Regional Strategic Plan and/or LSPS
- Relating to classification or reclassification of public land through the LEP

### Determination of Local Plan Making Authority

This planning proposal proposes the amendment of a State Environmental Planning Policy in addition to the amendment of the BLEP 2010.

In these circumstances, Council has not been provided with delegation to make the LEP as the Local Plan Making Authority.





## Gateway Determination

***Planning proposal (Department Ref: PP-2022-1535): to permit Community title subdivision of existing multiple occupancies and prohibit new rural land sharing communities in Bellingen Shire Local Government Area***

I, the Director, Northern Region at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that amendment to the Bellingen Local Environmental Plan 2010 to permit Community title subdivision of existing multiple occupancies and State Environmental Planning Policy (Primary Production) 2021 to prohibit new rural land sharing communities in Bellingen Shire Local Government Area should proceed subject to the following conditions:

1. The planning proposal is to be updated to ensure all existing multiple occupancies are included on the Multiple Occupancy Map (Attachment 1) and associated table prior to community and agency consultation.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
  - (a) the planning proposal is categorised as standard, as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 20 working days; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021).

Exhibition must commence within six months following the date of the Gateway determination.

3. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:
  - NSW Rural Fire Service
  - Department of Primary Industries - Agriculture

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 working days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any



obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The planning proposal must be reported to council for a final recommendation within eight months from the date of the Gateway determination.
6. The LEP should be completed within 10 months from the date of the Gateway determination

Dated 27 day of May 2022.

A handwritten signature in black ink, appearing to read 'J. Gray', is positioned above the printed name and title.

Jeremy Gray  
Director, Northern Region  
Local and Regional Planning  
Department of Planning and Environment

Delegate of the Minister for Planning

## Current Stage of the Planning Proposal process



## PART 1 – OBJECTIVES & INTENDED OUTCOMES

### Objective

To amend the Belling Local Environmental Plan 2010 to permit the community title subdivision of existing multiple occupancies and to amend State Environmental Planning Policy (Primary Production) 2021 to remove BLEP 2010 from the operation of Schedule 5 of the SEPP, thereby removing the ability to establish new MO's in the Shire.

### Intended outcomes

- Provide additional opportunities for people to obtain finance to invest in rural landsharing communities.
- Improve the ability of individual dwellings on rural land sharing communities to contribute towards the maintenance of public infrastructure.
- Resolve the inconsistency between the subdivision aspirations of the planning proposal and the prohibition on subdivision of MO's currently contained within Clause 8 of Schedule 5 of the Primary Production SEPP.

## PART 2 – EXPLANATION OF PROVISIONS

### Intended Provisions

It is considered that the intended outcomes of Planning Proposal 20 can be achieved by the following 3 provisions.

#### **1. Inserting the following new proposed Clause 7.11 into the BLEP 2010.**

##### **Clause 7.11 - Minimum subdivision lot size for multiple occupancy or rural landsharing community development**

*(1) This clause applies to land that is being used, before the commencement of this clause, for the purposes of an approved multiple occupancy or rural landsharing community.*

*(2) Subdivision of land to which this clause applies under the [Community Land Development Act 1989](#) is permitted with development consent.*

*(3) The size of any lot resulting from a subdivision of land to which this clause applies may be less than the minimum lot size shown on the [Lot Size Map](#) in relation to that land if—*

*(a) the total number of neighbourhood lots following the subdivision does not exceed the number of dwelling sites approved under the development consent for the approved rural landsharing community that applies to the land being so subdivided, and*

*(b) at least one lot following the subdivision will comprise of association property to be used for the purposes of a recreation area, environmental facility, environmental protection works or agriculture, and*

*(c) there is no more than one dwelling erected on each resulting neighbourhood lot, unless that neighbourhood lot is a residue lot containing multiple dwellings approved by Council as part of the original approved multiple occupancy or rural landsharing community.*

*(4) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that—*

- (a) the subdivision will not impair the use of the land for agriculture or rural industries, and*
- (b) the resulting neighbourhood lots will accommodate the on-site disposal and management of sewage for any dwelling on that lot, and*
- (c) the subdivision will not have an adverse impact on the scenic amenity or character of the rural environment, and*
- (d) the subdivision is not likely to cause any land use conflicts with existing agricultural and other rural land uses being undertaken on neighbouring land, and*
- (e) appropriate management measures are in place that will ensure the protection and enhancement of the biodiversity of the land on both association property and neighbourhood lots, and*
- (f) the subdivision incorporates design measures to limit the creation of additional domestic and stock rights to take water from a river, estuary or lake*

*(5) In this clause—*

***approved multiple occupancy or rural landsharing community*** means development for the purposes of 3 or more dwellings and for which development consent has been granted.

**Note.**

*It is the applicants' responsibility to demonstrate that the development consent has not lapsed.*

***association property*** and ***neighbourhood lot*** have the same meanings as they have in the [Community Land Development Act 1989](#).

**2. Insert new subclause 4.2A(3)(aaa) in BLEP 2010 to state as follows.**

*(aaa) a neighbourhood lot created in accordance with Clause 7.11*

Explanation - This consequential amendment will also need to be made so that lots created in accordance with Clause 7.11 will be recognised as having a dwelling entitlement.

**3. Amend State Environmental Planning Policy (Primary Production) 2021 to remove the reference to Bellingen Local Environmental Plan 2010 from Schedule 5 (Clause 1(c)).**

## PART 3 – JUSTIFICATION OF STRATEGIC & SITE-SPECIFIC MERIT

### Strategic merit

#### Section A – The need for the planning proposal

1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The endorsed Bellingen Shire Local Housing Strategy 2020-2040 (the LHS) foreshadowed permitting the community title subdivision of MO's via Action 8.3 which 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 proposal to remove BLEP 2010 from Schedule 5 of the Primary Production SEPP has not arisen as a direct result of an endorsed LSPS, strategic study or report, however it is necessary in order to achieve the subdivision outcome sought by this planning proposal and foreshadowed in the LHS.

Council has resolved to reconsider whether new MO's should be permitted to establish in the Shire as part of the development of a Rural Lands Strategy.

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

In terms of achieving the subdivision outcomes sought by this proposal, an alternative strategy would be to amend the Lot Size Map for each property that has an MO approval and to stipulate an appropriate minimum lot size. This option is not favoured as it would require significant additional planning effort to research and apply an appropriate minimum lot size for each existing MO. It may also then necessitate the placement of property boundaries in undesirable locations that would unnecessarily impact upon environmental assets, rather than simply determining a boundary location and lot area that is cognisant of constraints.

It would also raise expectations regarding potential concessions to the current minimum lot size specification for subdivision in other rural areas.

Community Title legislation is an appropriate vehicle to permit subdivision of existing MO's as it provides a management structure for the ongoing collective management of shared infrastructure and environmental assets. Provisions permitting the community title subdivision of

MO's are included in both the Lismore and Byron Shire LEP's. The clause that is proposed as part of this planning proposal is based largely upon the clause that is included in the Lismore LEP 2012.

The removal of BLEP 2010 from Schedule 5 of the Primary Production SEPP is the only present mechanism that can resolve the inconsistency between the subdivision aspirations of the planning proposal and the prohibition on subdivision of MO's currently contained within Clause 8 of Schedule 5 of the Primary Production SEPP.

The prohibition on establishment of new MO's that this will entail could be addressed through the insertion of a comparable facilitative provision in the BLEP 2010, however it is appropriate that Council instead considers this strategically as part of the development of a Rural Land Strategy.

#### Section B – Relationship to the strategic planning framework

3. Will the planning proposal give effect to the objectives & actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The Planning Proposal is consistent with the North Coast Regional Plan. Specifically, Direction 23 aims to increase housing diversity and choice through the implementation of local housing strategies that introduce local planning controls to provide housing choice and diversity.

The planning proposal will increase the range of housing options available in the Shire and implements Recommendation 8.3 of the Bellingen Shire Local Housing Strategy 2020-2040.

4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary, or another endorsed local strategy or strategic plan?

The Planning Proposal is consistent with the following action contained in the LSPS, noting that Action 8.3 of the LHS specifically proposed permitting the community title subdivision of existing MO's.

|            |                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>6.1</b> | <b>Implement the Bellingen Shire Local Housing Strategy</b> | Council will implement the Action Plan contained within the LHS. The Action Plan proposes a wide range of measures to stimulate further housing supply, including partnerships, advocacy, educational materials, further studies, infrastructure upgrades and changes to planning controls. Council will allocate funding and resources to progressively implement the Plan, as part of the annual setting of priorities in the Operational Plan process. |
|------------|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The planning proposal is not contrary to any of the other planning priorities or actions contained within the LSPS.

5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

Council is not aware of any inconsistency with any applicable State and regional studies or strategies.

6. Is the planning proposal consistent with applicable SEPPs?

| <b>State Environmental Planning Policy (SEPP)</b>           | <b>Consistent?<br/>Yes / No / NA / See further comment</b> |
|-------------------------------------------------------------|------------------------------------------------------------|
| SEPP Biodiversity & Conservation (2021)                     | Yes – see further comment                                  |
| SEPP Building Sustainability Index: BASIX (2004)            | NA                                                         |
| SEPP Exempt & Complying Development Codes (2008)            | NA                                                         |
| SEPP Housing (2021)                                         | Yes                                                        |
| SEPP Industry & Employment (2021)                           | NA                                                         |
| SEPP 65 Design Quality of Residential Apartment Development | NA                                                         |
| SEPP Planning Systems (2021)                                | NA                                                         |
| SEPP Precincts – Regional (2021)                            | NA                                                         |
| SEPP Primary Production (2021)                              | No – see further comment                                   |
| SEPP Resilience & Hazards (2021)                            | Yes -see further comment                                   |
| SEPP Resources & Energy (2021)                              | Yes -see further comment                                   |
| SEPP Transport & Infrastructure (2021)                      | NA                                                         |

SEPP Biodiversity & Conservation (2021)

Bellingen Shire Council has prepared a Comprehensive Koala Plan of Management for the Coastal area of Bellingen Shire. This KPOM maps core koala habitat in those areas of the Shire with the most records of koala occurrence. Only one property with an approved MO on it is within this area.

Notwithstanding this, many MO's will contain koala habitat and this will require careful consideration as part of the design of any subdivision. Community title legislation provides good opportunities for the collective management of key habitat corridors on MO's, with new individual allotment boundaries being avoided where possible in areas where boundary fenceline clearing exemptions will apply.

The creation of additional lots within the C3 or C4 zones, with no change to the 200ha minimum lot size, will potentially permit a greater level of clearing in the absence of additional provisions within Councils Development Control Plan to govern clearing activities in C zones throughout the Shire.

Council is in the process of preparing a new Rural Lands Strategy for the Shire. This will contemplate appropriate policy positions that should be adopted with respect to clearing activities in C zones. The specific example of clearing on lots created by community title subdivision of existing MO's will be considered as part of this process, with additional limitations to be considered for MO's relative to other clearing that may be permitted within the relevant zones in pursuit of, for example, ongoing agricultural operations.

SEPP Primary Production (2021)

The proposed clause to facilitate community title subdivision requires the consideration of impacts on existing agricultural operations, consistent with the strategic intent of this SEPP.



An inconsistency between the provisions of this SEPP that prohibit the subdivision of an existing MO and the provisions of this LEP amendment that would act to permit subdivision has been identified. The mechanism that is proposed to address this inconsistency is to request the removal of BLEP 2010 from the operation of Schedule 5 of this SEPP.

Council has resolved to reconsider whether new facilitative provisions to enable MO's should be introduced as part of the development of a rural land strategy. This is an appropriate strategic process that can consider wider implications in terms of the desired mix of future rural land uses in the Shire.

#### SEPP Resilience & Hazards (2021)

In general terms, the provisions of Chapter 4 (Remediation of Land) of this SEPP are triggered in circumstances where there is a change in the use of land. Given that the focus of the planning proposal is on existing MO's, it is not expected that land use contamination will be an issue of significant concern as the fundamental use of the land will not alter.

#### SEPP Resilience & Hazards (2021)

Given that the planning proposal focuses on existing MO's, it is not expected that any additional constraint would be placed upon the use of land for the purposes anticipated by Chapter 2 (Mining, petroleum production and extractive industries) of this SEPP.

Furthermore, a review of the Mineral Resource Area Map adopted as part of the BLEP 2010 also confirms that no existing MO's are located within either an "Identified resource" area, or a "buffer zone", as depicted on this map.

7. Is the planning proposal consistent with applicable Ministerial Directions (Section 9.1 Directions)?

| <b>Direction</b>                                     | <b>Consistent?</b><br><b>Yes / No / NA / See further comment</b> |
|------------------------------------------------------|------------------------------------------------------------------|
| <b>Focus Area 1: Planning Systems</b>                |                                                                  |
| 1.1 Implementation of Regional Plans                 | Yes                                                              |
| 1.2 Development of Aboriginal Land Council land      | NA                                                               |
| 1.3 Approval and Referral Requirements               | Yes                                                              |
| 1.4 Site Specific Provisions                         | See further comment                                              |
| <b>Focus Area 2: Design &amp; Place</b>              |                                                                  |
| <b>Focus Area 3: Biodiversity &amp; Conservation</b> |                                                                  |
| 3.1 Conservation Zones                               | Yes – see further comment                                        |
| 3.2 Heritage Conservation                            | Yes                                                              |
| 3.5 Recreation Vehicle Areas                         | Yes                                                              |

| <b>Direction</b>                                                   | <b>Consistent?</b><br><b>Yes / No / NA / See further comment</b> |
|--------------------------------------------------------------------|------------------------------------------------------------------|
| <b>Focus Area 4: Resilience and Hazards</b>                        |                                                                  |
| 4.1 Flooding                                                       | Yes – see further comment                                        |
| 4.2 Coastal Management                                             | Yes -see further comment                                         |
| 4.3 Planning for Bushfire Protection                               | No – see further comment                                         |
| 4.4 Remediation of Contaminated Land                               | Yes -see further comment                                         |
| 4.5 Acid Sulfate Soils                                             | Yes – see further comment                                        |
| 4.6 Mine Subsidence and Unstable Land                              | NA                                                               |
| <b>Focus Area 5: Transport &amp; Infrastructure</b>                |                                                                  |
| 5.1 Integrating Land Use & Transport                               | NA                                                               |
| 5.2 Reserving Land for Public Purposes                             | NA                                                               |
| 5.4 Shooting Ranges                                                | NA                                                               |
| <b>Focus Area 6: Housing</b>                                       |                                                                  |
| 6.1 Residential Zones                                              | NA                                                               |
| 6.2 Caravan Parks & Manufactured Home Estates                      | NA                                                               |
| <b>Focus Area 7: Industry &amp; Employment</b>                     |                                                                  |
| 7.1 Business & Industrial Zones                                    | NA                                                               |
| 7.2 Reduction in non-hosted short term rental accommodation period | NA                                                               |
| 7.3 Commercial & Retail Development                                | NA                                                               |
| <b>Focus Area 8: Resources &amp; Energy</b>                        |                                                                  |
| 8.1 Mining, Petroleum Production & Extractive Industries           | NA                                                               |
| <b>Focus Area 9: Primary Production</b>                            |                                                                  |
| 9.1 Rural Zones                                                    | Yes                                                              |
| 9.2 Rural Lands                                                    | Yes – see further comment                                        |
| 9.3 Oyster Aquaculture                                             | NA                                                               |

#### 1.4 Site Specific Provisions

The proposed LEP amendment will introduce development controls that are specific to particular properties within the rural landscape (ie: those that contain an approved MO). Direction 1.4 aims to avoid the imposition of development controls specific to sites, preferring that zone based provisions and existing development standards are used to regulate intended land uses. In this respect, it could be considered that Planning Proposal 20 is inconsistent with this direction.

In the circumstances, it is submitted that this inconsistency is of minor significance and is necessary to support the rural planning aspirations of numerous planning documents and strategies. The application of a zone wide approach to permitting the community title subdivision of land would facilitate further subdivision of agricultural land, whereas this planning proposal restricts community title subdivision only to those properties containing an existing MO.

#### 3.1 Conservation Zones

Provision:

*(4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.*

Comment:

The focus of the planning proposal on existing MO's only, in addition to the incorporation of sub-clauses requiring consideration of impacts on biodiversity, are provisions facilitating the protection and conservation of environmentally sensitive areas.

Provision:

*(5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).*

Comment:

The planning proposal proposes the insertion of an enabling clause within the BLEP 2010 to permit the community title subdivision of existing MO's only. It does not act to amend or reduce any other current environmental standard applying to the land.

It has been previously acknowledged within this planning proposal that the act of subdivision could result in additional clearing activities however this planning proposal does not actually act to amend any existing standard in relevant legislation, as anticipated by this Direction. It may expose land to the operation of an existing standard contained within legislation such as the SEPP Biodiversity & Conservation (2021) however ultimately that adopted standard is in fact the adopted policy position of the NSW Government.

Having regard to the above it is submitted that the planning proposal is consistent with this Direction.

#### 4.1 Flooding

This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

Most MO's along Kalang Road and Darkwood Road will contain land that is flood prone. Council has adopted flood studies that designate 1% AEP & PMF flood levels along parts of each valley however flood extents are not mapped, and most MO's would have been established prior to the existence of these flood studies.

In terms of the specific requirements of Subclause (1) the following comments are provided.

Provision:

*(1) A planning proposal must include provisions that give effect to and are consistent with:*

*(a) the NSW Flood Prone Land Policy,*

*(b) the principles of the Floodplain Development Manual 2005,*

*(c) the Considering flooding in land use planning guideline 2021, and*

*(d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.*

Comment:

The NSW Flood Prone Land Policy, as summarised in Section 1.1 of the Floodplain Development Manual 2005, is reprinted below.

*"The primary objective of the New South Wales Flood Prone Land Policy, as outlined below, recognises the following two important facts:*

- Flood prone land is a valuable resource that should not be sterilised by unnecessarily precluding its development, and*
- If all development applications and proposals for rezoning of flood prone land are assessed according to rigid and prescriptive criteria, some appropriate proposals may be unreasonably disallowed or restricted, and equally, quite inappropriate proposals may be approved."*

The development parameters for existing MO's have already been set in terms of dwelling numbers, locations and key infrastructure such as common access points. In this respect, it is considered that the simple act of subdivision (without any increase in the density of development) should not be disallowed or restricted through application of flood controls that currently apply to new development. It is submitted that the planning proposal is consistent with the principles of the Floodplain Development Manual 2005 as it does not propose any increase in development potential on flood liable land.

In terms of the specific requirements of Subclause (2) the following comments are provided.

Provision:

*(2) A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Business, Industrial or Special Purpose Zones.*

Comment:

The planning proposal does not rezone land.

In terms of the specific requirements of Subclause (3) the following comments are provided.

Provision:

*(3) A planning proposal must not contain provisions that apply to the flood planning area which:*

*(a) permit development in floodway areas,*

*(b) permit development that will result in significant flood impacts to other properties,*

*(c) permit development for the purposes of residential accommodation in high hazard areas,*

*(d) permit a significant increase in the development and/or dwelling density of that land,*

*(e) permit development for the purpose of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,*

*(f) permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent,*

*(g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities, or*

*(h) permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.*

Comment:

The planning proposal does not include any provisions applying to the flood planning area that are nominated in Subclause (3).

#### 4.2 Coastal Management

Only one existing MO is partly within the coastal zone, as identified by Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021. The relevant part of the land is within the coastal use area, and not within the more sensitive coastal locations mapped by the SEPP. The planning proposal will not allow for development outcomes that will be inconsistent with the key documents governing land use planning within the coastal zone, and as outlined in this Direction.

#### 4.3 Planning for Bushfire Protection

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to, land mapped as bushfire prone land. As previously documented, most existing MO's are within areas that are mapped as bushfire prone land.

The Direction also requires consultation with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination, and prior to undertaking community consultation, and take into account any comments so made.

Council referred Planning Proposal 17 to the RFS as part of the process of complying with the Gateway Determination issued in respect of that planning proposal and received confirmation that they had no objection to the planning proposal. The RFS comments are provided below.

The proposal is to permit the community title subdivision of existing approved MO residential developments. The majority of these developments are on mapped bush fire prone lands.

Applications for Community Title subdivision should include

- Details of development consent;
- Compliance with that development consent including any bush fire requirements;
- Community Title plan to ensure each Community Titled lot has sufficient area to apply and existing bush fire requirements;
- Community Title statement to deal with the community title lot;
- Better bush fire outcomes.

The NSW RFS has no objection to the planning proposal and advises that future subdivision is to comply with the requirements of Planning for Bush fire Protection guidelines.

Given the circumstances of this planning proposal (which proposes nothing different in terms of permitting new development) it was requested that a variation to the requirements of this Direction is supported that does not require the further referral of this planning proposal however this has not been supported by the Gateway determination which requires additional consultation with the RFS.

Having specific regard to the following requirements of this Direction, the following preliminary comments are provided;

Provisions:

*The objectives of this direction are:*

*(a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and*

*(b) to encourage sound management of bush fire prone areas.*

*(2) A planning proposal must:*

*(a) have regard to Planning for Bushfire Protection 2019,*

*(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and*

*(c) ensure that bushfire hazard reduction is not prohibited within the APZ.*

Comment:

The planning proposal does not encourage the establishment of incompatible uses in bush fire prone areas given that it focuses on existing MO's only that are already established within the landscape. It will however provide an opportunity to revise and implement sound management practices as existing MO communities are required to reinstate bushfire protection measures that may have been required historically, or to upgrade certain bushfire protection measures depending upon the circumstances of the case.

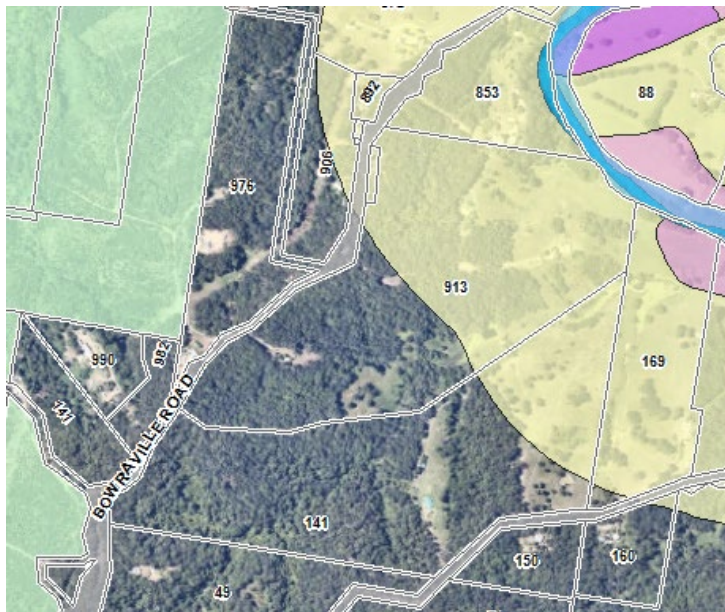
To this end, it is not introducing controls that will place additional inappropriate development in hazardous areas, but is instead providing an avenue for the renewed consideration of bushfire hazard and is therefore considered broadly consistent with the objectives of Direction 4.3.

#### 4.4 Remediation of Contaminated Land

The planning proposal does not include the placement of any land within a particular zone that would permit a change of use of the land within the meaning of this Direction.

#### 4.5 Acid Sulfate Soils

Only one part of one existing MO (at 913 Bowraville Rd – as shown below) is mapped as being subject to the Acid Sulfate Soils Map within the BLEP 2010.



That part of the land is within a Class 5 Area for the purposes of BLEP 2010, which prescribes that any works that meeting the following threshold would require the consent of Council

*“Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.”*

The planning proposal will not propose any intensification of land use, nor any likely activities that would meet the threshold described above, and is therefore consistent with Direction 4.5.



## 9.2 Rural Lands

Provision:

*A planning proposal to which clauses 3(a) or 3(b) apply must:*

*(a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Secretary of the Department of Planning and Environment, and any applicable local strategic planning statement*

Comment:

See previous comment with respect to North Coast Regional Plan & Bellingen LSPS 2020-2040.

Provision:

*(b) consider the significance of agriculture and primary production to the State and rural communities*

Comment:

The planning proposal considers the significance of agriculture to relevant parties. The subdivision provisions only affect land with existing MO's upon it and includes two proposed sub-clauses requiring consideration of any impact upon agriculture. The removal of the ability to establish new MO's will prevent conversion of rural land from agricultural purposes for housing opportunities.

Provision:

*(c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources*

Comment:

The planning proposal incorporates measures aimed at limiting any adverse impacts upon biodiversity. A sub-clause has also been included within the proposed enabling LEP clause that requires any subdivision to limit additional access to riparian water rights, so as to not add to the cumulative demands placed upon key water resources.

Provision:

*(d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions*

Comment:

Existing MO's occur on a range of different landscapes. There is no evidence that existing MO's are causing any significant adverse environmental impacts and the proposed enabling LEP clause provides further guidance as to matters that will need to be addressed as part of any subdivision of the land.

Provision:

*(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities*

Comment:

The planning proposal will not impede the pursuit of any relevant investment opportunities.

Provision:

*(f) support farmers in exercising their right to farm*

Comment:

The planning proposal proactively requires proponents to demonstrate that any subdivision will not impact adversely upon existing agricultural operations.

Provision:

*(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land uses*

Comment:

The planning proposal does not allow for additional residences beyond those already approved via the relevant development consent for the MO. The planning proposal requires an additional consideration of impact upon existing agricultural operations as part of any subdivision application.

#### Site-specific merit

#### Section C – Environmental, social & economic impact

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

The proposal does not affect the application of section 1.7 of the *Environmental Planning and Assessment Act 1979* in the planning process. The provisions of Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994* will apply to any development application.

It is possible that development pursued in respect of the planning proposal will impact upon the habitat of threatened species, however the proposed sub-clause 4(e) will require that *"appropriate management measures are in place that will ensure the protection and enhancement of the biodiversity of the land on both association property and neighbourhood lots, "*.

In addition, *Clause 7.5 Biodiversity* of the BLEP 2010 will also apply in the majority of instances, which will require subdivision layouts to be avoid, minimise or mitigate impact upon identified area of significant value.

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

The key environmental effects of the planning proposal relate to the potential clearing of vegetation. These have been sufficiently documented herein and measures proposed for management considered.

It is possible that works required to upgrade vehicular access, or clearing works that disturb the ground surface, could generate erosion if not properly managed, and that this would be to the detriment of water quality within adjoining watercourses. This can be adequately managed via appropriate conditions of development approval requiring the development and implementation of Soil & Erosion Sediment Control Plans.

Given that MO's are exclusively within non-sewered areas of the Shire they are reliant upon Onsite Sewage Management Systems for the disposal of effluent. As for bushfire compliance matters, the subdivision process will provide an opportunity to review the performance of existing systems and require any necessary upgrades as part of the development consent process. Sub-clause 4(b) of the proposed enabling clause requires Council to be satisfied that each neighbourhood lot will *accommodate the on-site disposal and management of sewage for any dwelling on that lot*.

10. Has the planning proposal adequately addressed any social and economic effects?

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. Permitting the community title subdivision of existing MO's would also 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.

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. This Clause will 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.

The proposal to remove BLEP 2010 from the operation of the Primary Production SEPP will at least temporarily (pending the completion of a Rural Land Strategy), remove an ability to establish new Multiple Occupancy developments in the Shire. Council has received very few

applications for new MO's in recent history and it is not expected that this will have any significant adverse social or economic impact that cannot be further considered as part of the completion of the Rural Lands Strategy.

Overall, it is expected that the planning proposal will not have any significant adverse social impact, however will provide a range of positive economic impacts as discussed.

#### Section D – Infrastructure (Local, State & Commonwealth)

##### 11. Is there adequate public infrastructure for the planning proposal?

Uniquely, the provisions of this planning proposal will enable subdivision development that comes with no corresponding increase in demand upon key public infrastructure such as roads given that the dwellings, or the approval for the dwellings, already exist.

The planning proposal will however allow for the generational of additional rating revenue that funds core services provided by Council including things such as rural road and timber bridge maintenance. Council is already limited in its ability to generate rating revenue by virtue of over half of the shire being unrateable and in this respect, the planning proposal will deliver positive benefits in terms of maintenance of public infrastructure.

#### Section E – State & Commonwealth Interests

##### 12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway Determination?

In this instance, Council has the benefit of knowing the views of key government agencies consulted as part of the Gateway Determination requirements stipulated for Planning Proposal 17. The views of agencies consulted as part of Planning Proposal 17 are documented and discussed below.

##### NSW Rural Fire Service

- *No objection – future subdivision to comply with the requirements of Planning for Bushfire Protection guidelines.*
- *DA's for community title subdivision should include;*
  - *Details of development consent and compliance with that consent including bushfire requirements.*
  - *Community title plan should show that each lot has sufficient area to apply any existing bushfire requirements.*
  - *Community title statement to deal with the community title lot.*
  - *Better bushfire outcomes.*

Comment:

Noted. Consideration will be given to the inclusion of the DA requirements in an amendment to the Bellingen Shire Development Control Plan 2017.

#### NSW Planning, Industry & Environment – Biodiversity & Conservation

- *The BCD does not raise an objection to the planning proposal as the environmental impacts arising from the proposal can be addressed as part of the development consent process and will trigger the Biodiversity Scheme if the proposal is likely to significantly impact threatened species, ecological communities or their habitat.*
- *BCD recommends that Council should adopt provisions within the Bellingen DCP 2017 to regulate clearing of native vegetation in environmental zones that is not otherwise authorised or regulated as a priority action.*
- *The Council should audit all multiple occupancies / rural land sharing communities to ensure environmental and bushfire protection measures are adequate, the current conditions of consent are being adhered to and to identify where remedial action is required.*

Comment:

Noted. As discussed earlier within this planning proposal, it is intended to contemplate a policy position on vegetation removal in environmental zones as part of the completion of the Rural Lands Strategy.

Whilst undoubtedly well intentioned, the advice that Council should commence a process of auditing all existing MO's and rectifying non-compliances lacks a level of awareness regarding the resourcing demands of undertaking such a process for a small Council. In the circumstances, it is considered that utilising the DA process for any subdivision application as an opportunity to audit compliance remains appropriate.

#### NSW Department of Primary Industries – Agricultural Land Use Planning

- *DPI Agriculture supports the planning proposal due to its consistency with the strategic planning framework. In addition we would appreciate the opportunity to comment on the rural lands strategy as it is developed.*

Comment:

Noted.

## PART 4 - MAPS

There are no mapping amendments associated with or necessary for this planning proposal. A map showing known locations of existing or approved MO's is however included as Appendix A to this planning proposal.

## PART 5 – COMMUNITY CONSULTATION

### Pre-lodgement consultation with stage agencies or authorities

As discussed in Section E.

### Any additional consultation with agencies or other key stakeholders

Additional consultation was required by the Gateway Determination with the NSW Rural Fire Service & Department of Primary Industries – Agriculture prior to public exhibition.

This consultation has occurred and responses are discussed below.

#### NSW Rural Fire Service

*The planning proposal is conditionally supported. The amendment to the LEP shall only apply to approved Multiple Occupancy developments.*

Comment:

Noted.

#### Department of Primary Industries – Agriculture

*DPI Agriculture has reviewed the Planning Proposal and provides in principle support to the proposal given the consistency with the strategic planning framework and inclusion of provisions to minimise impacts to agricultural production and operations.*

*It is understood that council has resolved to reconsider whether new facilitative provisions to enable new multiple occupancies should be introduced as part of the development of the rural land strategy (RLS). DPI Agriculture appreciates the continued opportunity to input into the development of the RLS.*

Comment:

Noted.

### Any community consultation undertaken

Council completed community consultation regarding Planning Proposal 17 between 14 October 2021 to 19 November 2021. Council received 8 submissions regarding this matter, with the majority of submissions supporting the proposal and being made by people who lived on an MO. It is not intended to discuss the submissions that were received in detail at this point in time given that additional community consultation will be required as part of this proposal. Any submission made as part of the initial consultation will however be considered in any further report to Council that discusses the outcomes of any second round of consultation and the authors of those submissions will be advised accordingly.

This version of the Planning Proposal is the public exhibition version which is being publicly exhibited from 13 August 2022 to 12 September 2022 as per the community consultation requirements for strategic land use planning matters stipulated within the Bellinger Shire Community Participation Plan, relevant parts of the NSW Environmental Planning &

Assessment Act 1979 (the Act), the NSW Environmental Planning & Assessment Regulation 2000 (the Regulation) and the specific requirements of the Gateway Determination.

This will involve the following.

- \* 28-day consultation period*
- \* Advertisement in local paper*
- \* Advertisement and provision of supporting documentation on Council' website*
- \* Notify owners of existing MO's and adjoining land owners*
- \* Notify previous submitters of amended planning proposal*
- \* Plain English Version*



## PART 6 – PROJECT TIMELINE

The DPE have conditioned the Gateway Determination to require completion of the planning proposal within 10 months of the issuing of the Gateway on 27 May 2022, and the reporting of the planning proposal to Council for a final recommendation within 8 months of the date of the Gateway. The timeframes below have been provided on this basis.

| <b>Stage</b>                                           | <b>Timeframe / date</b> |
|--------------------------------------------------------|-------------------------|
| Consideration by Council                               |                         |
| Council decision                                       | 23/3/2022               |
| Gateway Determination                                  | 27/5/2022               |
| Pre-exhibition & agency consultation                   | 29/7/2022               |
| Public exhibition                                      | 13/8/22 – 12/9/22       |
| Consideration of Submissions by Council                | 22/1/2023               |
| Submission to Department to make (if Council not LPMA) | 30/9/2022               |
| Obtain PCO Opinion                                     |                         |
| Gazettal of LEP Amendment                              | 27/3/2023               |

## APPENDICES

## Appendix A – Location of known or approved MO's