PLANNING PROPOSAL 17

Amendment to Bellingen Shire Local Environmental Plan 2010
Version 4 (October 2021) – Public Exhibition Version

Permit Community Title Subdivision of existing Multiple Occupancies

Bellingen Shire COUNCIL

Contents

Introduction

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.

Bellingen Shire Council resolved at its meeting of 24 February 2021 to prepare a planning proposal to permit the community title subdivision of existing Rural Landsharing Communities.

A Gateway Determination was issued by The NSW Department of Planning, Industry and Environment in respect of this matter on 19 May 2021.

Pre-exhibition consultation has occurred with relevant Government Agencies and Aboriginal Land Council’s and the comments received have been taken into consideration and addressed in Part 3 Section (D) of this document.

Council Resolution to Proceed with Planning Proposal 17

MINUTES

ORDINARY MEETING OF COUNCIL - Feb 2021
24 February 2021

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

RESOLVED (Cr Klipin / Cr Fenton)

That Council:

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

UNANIMOUS

RESOLVED (Cr Carter / Cr Harrison)
That Council bring item 11.1 forward for Cr Jenkins to be present.

UNANIMOUS

Gateway Determination 19 May 2021

Planning, Industry & Environment

Gateway Determination

***Planning proposal (Department Ref: PP-2021-2828)**: to permit the Community title subdivision of existing multiple occupancies*

I, the Director, Northern Region at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Bellingen Local Environmental Plan (LEP) 2010 to permit the Community title subdivision of existing multiple occupancies should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal must be updated to:
   (a) amend the proposed Project Timeline to correspond to the nine month timeframe of the Gateway determination; and
   (b) update Multiple Occupancy Map (Attachment 1 of the planning proposal) to include 913 Bowraville Road, Brierfield, as Item 31 in the relevant table and include on the map; and show all of Item 23.

2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:

   (a) the planning proposal must be made publicly available for a minimum **28 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 section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).

3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

   - NSW Rural Fire Service
   - Coffs Local Aboriginal Land Council
   - Bowraville Local Aboriginal Land Council
   - Nambucca Local Aboriginal Land Council
   - Dorrigo Plateau Local Aboriginal Land Council
   - Department of Planning, Industry and Environment - Biodiversity and Conservation Division
   - Department of Primary Industry - Agriculture

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 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 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 authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:

   (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
   (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
   (c) there are no outstanding written objections from public authorities.

6. The time frame for completing the LEP is to be **nine months** following the date of the Gateway determination.

Dated 19 day of May 2021.

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

Delegate of the Minister for Planning and Public Spaces

Acronyms

The following acronyms have been used throughout this report:

APZ	Asset Protection Zone
BLEP 2010	Bellingen Local Environmental Plan 2010
Council	Bellingen Shire Council
DCP	Bellingen Shire Development Control Plan 2017
DPIE	The NSW Department of Planning, Industry and Environment
E3	E3 – Environmental Management Zone
E4	E4 – Environmental Living Zone
LGA	Local Government Area
LHS	Bellingen Shire Local Housing Strategy 2020-2040
LSPS	Bellingen Shire Local Strategic Planning Statement 2020-2040
m	Metres
Minister	NSW Minister for the Department of Planning, Industry and Environment
MO	Existing Multiple Occupancy or Rural Landsharing Community
NSW	New South Wales
RFS	New South Wales Rural Fire Service
Section 9.1 Directions	Section 9.1 Directions by the Minister under the EPA Act (formerly Section 117 Directions)
SEPP	State Environmental Planning Policy

Site Context and Location

1.1 Location

There are 31 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 Attachment 1.

1.2 Description of the Subject Site and Surrounding Land

The majority of MO's are located within the E4 – Environmental Living Zone, which occurs exclusively within the Thora and Kalang Valleys. The E4 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 E4 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 E3 – 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 E3 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 E3 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.

Part 1 – Intended Outcomes

The objectives of the proposal are as follows.

To provide additional opportunities for people to obtain finance to invest in rural landsharing communities.

To improve the ability of individual dwellings on rural land sharing communities to contribute towards the maintenance of public infrastructure.

To permit the community title subdivision of existing multiple occupancy or rural landsharing communities in Bellingen Shire.

Part 2 – Explanation of Provisions

The proposed outcomes will be achieved by;

1. Inserting the following new 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.

(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.*

A consequential amendment will also need to be made to the relevant clause within BLEP 2010 that prescribes the circumstances where dwellings are permissible on land with rural zoning, so that lots created in accordance with Clause 7.11 will be recognised as having a dwelling entitlement.

This proposed amendment is included below.

2. Insert new subclause 4.2A(3)(aaa) to state as follows.

(aaa) a lot created in accordance with Clause 7.11

Part 3 – Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, strategic study or report?

Yes. The endorsed Bellingen Shire Local Housing Strategy 2020-2040 foreshadowed this Planning Proposal 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*.

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

Yes.

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.

Section B – Relationship to Strategic Planning Framework

3. Will the Planning Proposal give effect to the objectives and 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.

Strategic Merit considerations

Will it;

Give effect to the relevant regional plan outside of the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment;

Yes – see previous comment on the North Coast Regional Plan.

Give effect to a relevant local strategic planning statement or strategy that has been endorsed by the Department or required as part of a regional or district plan or local strategic planning statement; or

Yes – see comment on LSPS in response to Question 4 within this report.

Respond to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing strategic plans.

The planning proposal responds in part to concerns that have been expressed to Council regarding an inability to secure finance to build on, or buy into, an MO development 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.

The planning proposal also responds to the fact that since the establishment of most of the MO's within the Shire, the ability of Council to source funding for core infrastructure functions such as rural road and timber bridge maintenance has been limited by rate pegging legislation, relatively low rates of new development adding to the rate base of the Shire, and an ongoing inability to levy rates for over half of the geographical area of the Shire that is within National Park or Forestry Corporation estate.

In the circumstances, the potential of the planning proposal to fund additional infrastructure works through the creation of additional rateable assessments, with no actual increase in development potential, represents a prudent policy response to this funding predicament.

Site-specific merit considerations

Does the proposal have site-specific merit, having regard to the following?

• the natural environment (including known significant environmental values, resources or hazards) and

It is not practical, nor necessary, to undertake a site by site analysis of the environmental constraints that are relevant to existing MO's. As discussed within Section 1.2 of this planning

proposal, MO's exist in a variety of landscapes that have identified environmental values as well as exposure to a range of natural hazards, including most relevantly bushfire and flooding.

It is instead useful to contemplate what the implications of permitting the community title subdivision of existing MO's would be, and the extent to which this would result in more or less environmental impact, or exposure to natural hazards.

Council Officers recently undertook inspections of two existing MO's to inform the preparation of this planning proposal, looking at matters such as compliance with the terms of original development approvals for the establishment of the MO as well as specific DA's for the erection of dwellings on the approved MO. These inspections revealed that, over time, it is likely that existing MO's will have departed to some extent from the original bushfire requirements of the consents as vegetation has either grown back within Asset Protection Zones, landscape plantings have impinged upon these areas, and access tracks have deteriorated in terms of both trafficability and the maintenance of overhanging vegetation.

It was also observed that the performance of existing effluent disposal systems may have declined over time, necessitating repairs to land application areas and maintenance of septic tanks that have accumulated excess sludge.

The focus of the planning proposal on existing MO's means that most major environmental impacts associated with development have already occurred as the MO's have constructed common infrastructure such as access roads and people have then proceeded to construct individual dwellings.

There will however be some instances where;

- An MO consent has been commenced, but not all of the dwellings have been constructed, and the proposed LEP amendment would effectively permit the creation of a vacant allotment upon which a new dwelling could be constructed.
- Impacts will occur as MO's review the requirements of previous consents, re-establish Asset Protection Zones and repair infrastructure such as access tracks to comply with trafficability requirements for domestic and emergency service vehicles.
- Potential impacts will occur associated with the designation of new boundaries and the fenceline clearing entitlements that may be available to owners of land.
- Potential impacts will occur in the E3 & E4 zones due to vegetation removal exemptions within *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*, until such time as Council adopts provisions within the Bellingen Development Control Plan 2017 that regulate clearing in these zones.
- Potential impacts will occur where the RFS, in exercising their role as an Integrated Development Authority pursuant to Section 100B of the Rural Fires Act will determine that certain additional work is necessary to adequately cater for bushfire risk.

The re-establishment of APZ's or infrastructure previously approved or conditioned will not require new and additional justification with reference to contemporary environmental legislation, and it is considered that this process will be of significant value to relevant communities in terms of improving resilience to bushfire events, particularly in the context of the change in climate that has occurred since their establishment.

The creation of new vacant allotments (incorporating building sites approved under the MO approval) new boundary locations, and additional bushfire clearing will however require assessment with reference to contemporary environmental legislation. In some circumstances, this may render the project unviable from the perspective of the MO, particularly if it would trigger the Biodiversity Offsets Scheme.

Overall though, it is expected that the development consent process for subdivision will provide the opportunity to address any existing non-compliances with historic approval documents which will deliver benefits in terms of resilience to natural hazards such as bushfire and identifying and repairing things like effluent disposal systems, for the benefit of the natural environment.

It is also noted that the proposed clause to be inserted into BLEP 2010 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”.* This will require an analysis of the extent to which any subdivision layout would potentially lend itself to additional clearing of the land having reference to current regulatory regimes, but will also provide the applicants with an opportunity to propose potentially mitigating management measures that aim to preserve habitat.

• the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and

The focus of the planning proposal upon existing MO’s means that in the majority of cases the relationship between dwellings on the MO and any adjoining land uses have already been established, and it is therefore unlikely that a new suite of impacts will arise.

The key planning issue that is relevant in the rural landscape is the potential for land use conflict between dwellings and productive agricultural uses. It is considered that the development approval process that would be followed for the subdivision of existing MO’s would provide an opportunity for existing conflicts to be considered and potential opportunities to resolve those conflicts incorporated into the development approval. The proposed clause to be inserted within the BLEP 2010 requires both that;

the subdivision will not impair the use of the land for agriculture or rural industries

the subdivision is not likely to cause any land use conflicts with existing agricultural and other rural land uses being undertaken on neighbouring land

• the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

The focus of the planning proposal upon existing MO’s means that in the majority of cases there will be no additional impact upon infrastructure or services attributable to subdivision of the land. The planning proposal does however provide the opportunity for the levying of rates for each dwelling that is subdivided and this will improve the ability of Council to fund the road and bridge networks that service the rural landscape within which MO’s currently exist.

4. Will the Planning Proposal give effect to a Council's endorsed Local Strategic Planning Statement, or another endorsed local strategy or strategic plan?

Q4(a) Compliance with Bellingen Shire Local Strategic Planning Statement (LSPS)

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.

6.1	**Implement the Bellingen Shire Local Housing Strategy**	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.

Q4(b) Bellingen Shire Community Strategic Vision 2027

The key aspirations expressed within the Community Strategic Vision 2027 (CSV) are detailed in the extract below.

The planning proposal is consistent with the CSV in that it provides for the realisation of a greater range of housing opportunities within the Shire in a manner that does not have significant additional impacts upon our living environment, but that also provides improved financial opportunities for Council to maintain key transport infrastructure.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is considered consistent with applicable State Environmental Planning Policies (as shown in Table 2), namely:

Table 2 Compliance with State Environmental Planning Policies (SEPPs)

SEPPs (as at 8 March 2021)	Applicable	Consistent
State Environmental Planning Policy (Aboriginal Land) 2019	No	NA
State Environmental Planning Policy (Activation Precincts) 2020	No	NA
State Environmental Planning Policy (Affordable Rental Housing) 2009	No	NA
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	No	NA
State Environmental Planning Policy (Coastal Management) 2018	Yes	Yes
State Environmental Planning Policy (Concurrences and Consents) 2018	No	NA
State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017	No	NA
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	No	NA
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	No	NA
State Environmental Planning Policy (Infrastructure) 2007	No	No
State Environmental Planning Policy (Koala Habitat Protection) 2020 & 2021	Yes	Yes
State Environmental Planning Policy (Major Infrastructure Corridors) 2020	No	NA
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	Yes	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes	Yes
State Environmental Planning Policy No 21—Caravan Parks	No	NA
State Environmental Planning Policy No 33—Hazardous and Offensive Development	No	NA
State Environmental Planning Policy No 36—Manufactured Home Estates	No	NA
State Environmental Planning Policy No 50—Canal Estate Development	No	NA
State Environmental Planning Policy No 55—Remediation of Land	Yes	Yes
State Environmental Planning Policy No 64—Advertising and Signage	No	NA
State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development	No	NA

State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)	No	NA
State Environmental Planning Policy (Primary Production and Rural Development) 2019	Yes	Yes
State Environmental Planning Policy (State and Regional Development) 2011	No	NA
State Environmental Planning Policy (State Significant Precincts) 2005	No	NA
State Environmental Planning Policy (Urban Renewal) 2010	No	NA

Commentary;

State Environmental Planning Policy (Coastal Management) 2018

Only one existing MO is partly within the area covered by this SEPP. It is not expected that subdivision development outcomes will be contrary to the provisions of this SEPP.

State Environmental Planning Policy (Koala Habitat Protection) 2020 & 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, provided that new individual allotment boundaries are not placed in areas where boundary fenceline clearing exemptions will apply.

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

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 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.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The creation of additional lots within the E3 or E4 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 E 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 E 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.

State Environmental Planning Policy No 55—Remediation of Land

In general terms, the provisions of SEPP 55 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.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

As previously documented within this report, 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.

6. Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?

The Planning Proposal is consistent with applicable Ministerial Directions (as shown in Table 3) including:

Table 3 Compliance with Ministerial Directions

Directions (as at 24 February 2021)		Applicable	Consistent
1	**Employment and Resources**		
1.1	Business and Industrial Zones	No	
1.2	Rural Zones	Yes	Yes
1.3	Mining, Petroleum Production and Extractive Industries	Yes	Yes
1.4	Oyster Aquaculture	No	Yes
1.5	Rural Lands	Yes	Yes -see further comment
2	**Environment and Heritage**		
2.1	Environment Protection Zones	Yes	Yes -see further comment
2.2	Coastal Management	Yes	Yes -see further comment
2.3	Heritage Conservation	Yes	Yes
2.4	Recreation Vehicle Areas	Yes	Yes
2.6	Remediation of Contaminated Land	Yes	Yes -see further comment
3	**Housing, Infrastructure and Urban Development**		
3.1	Residential Zones	No	
3.2	Caravan Parks and Manufactured Home Estates	No	
3.3	Home Occupations	No	
3.4	Integrating Land Use and Transport	No	
3.5	Development Near Regulated Airports and Defence Airfields	No	
3.6	Shooting Ranges	No	
3.7	Reduction in non-hosted short term rental accommodation period	No	
4	**Hazard and Risk**		
4.1	Acid Sulfate Soils	Yes	Yes -see further comment
4.2	Mine Subsidence and Unstable Land	No	

Directions (as at 24 February 2021)		Applicable	Consistent
4.3	Flood Prone Land	Yes	Yes -see further comment
4.4	Planning for Bushfire Protection	Yes	Yes -see further comment
5	**Regional Planning**		
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	No	
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	
5.10	Implementation of Regional Plans	Yes	Yes
5.11	Development of Aboriginal Land Council land	No	
6	**Local Plan Making**		
6.1	Approval and Referral Requirements	Yes	Yes
6.2	Reserving Land for Public Purposes	Yes	Yes
6.3	Site Specific Provisions	No	Yes

Commentary - Direction 1.5 – Rural Lands

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.

(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. It only affects land with existing MO's upon it and includes two proposed sub-clauses requiring consideration of any impact upon agriculture.

(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.

(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 maters that will need to be addressed as part of any subdivision of the land.

(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.

(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.

(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.

Comment – Direction 2.1 – Environment Protection Zones

(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.

(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 *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017,* 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.

Commentary – Direction 2.2 – Coastal Management

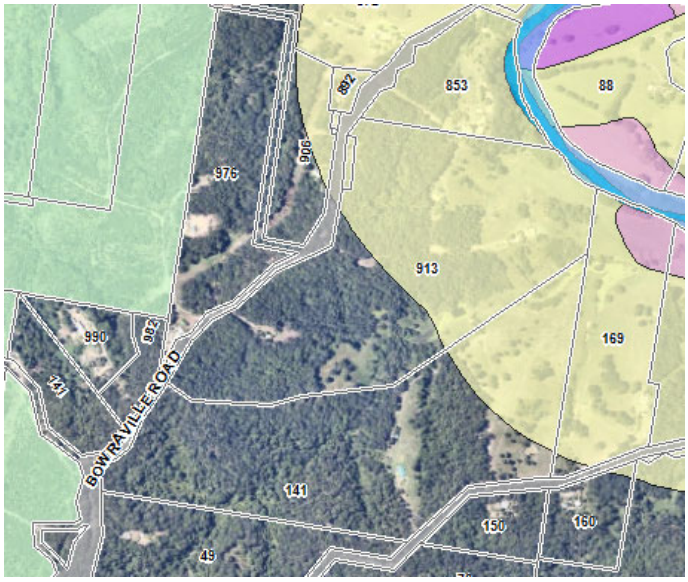
As previously documented, only one existing MO is partly within the area covered by the relevant SEPP. The relevant part of the land is within the coastal use area, and not within the more sensitive coastal locations mapped by the SEPP. The planning proposal will not allow for development outcomes that will be inconsistent with the key documents governing land use planning within the coastal zone, and as outlined in this Direction.

Commentary – Direction 2.6 – 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.

Commentary – Direction 4.1 – 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 4.1.

Commentary – Direction 4.3 – Flood Prone Land

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 Direction 4.3, the planning proposal does not rezone land, will not permit a significant increase in the development of the land and is considered to be consistent with the Direction. It is noted however that the current suite of development controls that are contained within Chapter & of the Bellingen Development Control Plan 2017 have not been developed with a mind toward facilitating the subdivision of existing MO's and that there will be instances where the application of current standards would be unworkable when applied to existing development layouts where key parameters such as common accesses are already established.

It will be necessary to contemplate amendments to the DCP to provide bespoke controls relevant to this planning proposal, however it is considered prudent to firstly await the outcomes of community and agency consultation to provide the opportunity for any further concerns to be addressed via this process.

Commentary – Direction 4.4 - 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.

Council acknowledges that it will be required to consult 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.

Preliminary consultation with the RFS was undertaken in an attempt to ascertain how the terms of previous approvals obtained on MO's would interact with the provisions of current legislation and the following advice was received.

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

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

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

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

The recent inspections undertaken by Council Officers of two existing Multiple Occupancy developments has revealed that common issues that may need to be rectified as part of an approval process for subdivision include things such as;

- vegetation growth within required bushfire asset protection zones,
- effluent disposal systems that are not performing to standard,
- maintenance of internal vehicular access to requisite all weather standards for domestic and fire fighting purposes,
- rectification of unauthorised building works through the "Building Information Certificate" process, and
- maintenance of appropriate sight distances at entry points to the public road network.

Procedurally then, it will be a mandatory requirement for anyone submitting a Development Application for the community title subdivision of an existing MO to complete an audit of all relevant development approvals issued to date in respect of the MO, and to document compliance or otherwise.

It is expected that this requirement will form part of a future amendment to Councils Development Control Plan (DCP) that will provide some additional detail regarding matters for consideration as part of the community title subdivision of an existing MO. As previously documented, this will be contemplated following the undertaking of community consultation for the amendment to BLEP 2010, noting that this process may raise relevant issues that will inform the final content of the DCP.

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

(1) 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.

(5) 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 4.4.

As the preliminary comments from the RFS indicate, opportunities to implement the current provisions of *Planning for Bushfire Protection 2019* would most likely be considered via ''a case by case merit assessment.'' In this respect, it is not possible to categorically state that the planning proposal would result in full compliance with *Planning for Bushfire Protection 2019* at this stage of the planning process.

Section C – Environmental, Social and Economic Impact

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

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.

8. Are there any other likely environmental effects as a result 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.*

9. 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.

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 – State and Commonwealth Interests

10. 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.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

The Gateway Determination required consultation with the following agencies.

NSW Rural Fire Service
Coffs Harbour & District Local Aboriginal Lands Council
Bowraville Local Aboriginal Land Council
Nambucca Local Aboriginal Land Council
Dorrigo Plateau Local Aboriginal Land Council
Department of Planning, Industry & Environment – Biodiversity & Conservation Division
Department of Primary Industry - Agriculture

Referrals were sent to each of those agencies between 27-28 May 2021. Council did not receive a response from any of the Land Councils. The views of government agencies are summarised below.

<u>NSW Rural Fire Service</u>

- 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 amendments to maps required in the Bellingen Local Environmental Plan 2010.

A map showing the location of existing MO's in Bellingen Shire is included as Attachment 1 to this planning proposal.

Part 5 – Community Consultation

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.

The Gateway determination has prescribed as follows with respect to this matter.

2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:

   (a) the planning proposal must be made publicly available for a minimum **28 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 section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).

3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

   - NSW Rural Fire Service
   - Coffs Local Aboriginal Land Council
   - Bowraville Local Aboriginal Land Council
   - Nambucca Local Aboriginal Land Council
   - Dorrigo Plateau Local Aboriginal Land Council
   - Department of Planning, Industry and Environment - Biodiversity and Conservation Division
   - Department of Primary Industry - Agriculture

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

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

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

Part 6 – Project Timeline (revised October 2021)

Task	Anticipated timeframe for completion
Date of Gateway Determination	19/5/2021
Complete technical information	19/5/2021
Government agency consultation (pre-exhibition)	2/7/ 2021
Public exhibition period	14/10/2021 – 12/11/2021
Consideration of submissions	17/12/2021
Report to Council to make the Plan	19/1/2022
Submit Planning Proposal to PCO for LEP drafting and publication	25/2/2022

Attachment 1 - Map Showing Location of Existing MO’s