



14 CIVIC LEADERSHIP

Item	14.4
Subject	Planning Proposals 23 and 25 – Rezone land at 261 South Arm Road, Urunga, from RU4 (Primary Production Small Lots) to R5 (Large Lot Residential) and Reduce Minimum Lot Size to 1ha on land zoned R5
Presented by	Daniel Bennett, Senior Strategic Planner

EXECUTIVE SUMMARY

Council has received a proponent initiated request to prepare a planning proposal that would act to rezone land at South Arm Road Urunga. The rezoning request primarily proposes to rezone land currently zoned as RU4 - Primary Production Small Lots to land zoned as R5 Large Lot Residential. The land that is proposed to be rezoned R5 would be subject to a 1ha minimum lot size and could potentially yield in the order of 7 lots if the rezoning proceeds and the land is subdivided. Council has previously resolved to support this proposal via Planning Proposal 23, however time delays with assembling additional information required by the Gateway determination has prompted the NSW Government to advise that Planning Proposal 23 should be withdrawn and a new proposal submitted.

The rezoning request has strategic support arising from a recommendation regarding this precinct that was included within the Bellingen Shire Growth Management Strategy 2007. In order for the landowners to act upon this recommendation it has been necessary for them to prepare and justify a Planning Proposal Request independently of Council, as the completion of this rezoning is not identified as matter that Council has resolved to proceed with utilising its own planning resources. The request that Council has received is generally well justified by the proponents, addresses relevant legislation and the relative constraints of the site, and addresses matters of concern previously identified by both Council and the Department of Planning Housing & Infrastructure (DPHI) during the process of considering Planning Proposal 23. On this basis, it is recommended that Council resolves to proceed with Planning Proposal 25.

RECOMMENDATION

That Council:

1. Resolves to withdraw Planning Proposal 23.
2. Resolves to amend the zone and lot size boundary as proposed to provide an orderly point of transition between the C2 Environmental Conservation Zone on the subject property, and the adjoining property to the north.
3. Resolves, subject to the amendment described in Point 2, to request the issuing of a Gateway Determination from the New South Wales Department of Planning & Environment in respect of Planning

Proposal 25 - Rezone land at 261 South Arm Road, Urunga, from RU4 (Primary Production Small Lots) to R5 (Large Lot Residential) and Reduce Minimum Lot Size to 1ha on land zoned R5.

4. Endorses the proposed engagement strategy for Planning Proposal 25 as documented within this report.

ATTACHMENTS

1. Planning Proposal 25 - Aboriginal Cultural Heritage Report
2. Planning Proposal 25 - Bushfire Assessment
3. Planning Proposal 25 - Coastal Design Guidelines Checklist
4. Planning Proposal 25 - Ecological Assessment
5. Planning Proposal 25 - Main Planning Proposal Report
6. Planning Proposal 25 - Wastewater, Contamination & Acid Sulfate Soils Report

PURPOSE

The purpose of this report is to advise Council of the submission of a proponent initiated rezoning request for land at South Arm Road, Urunga, to explain the content of the request, and to recommend that Council supports the request proceeding to the next stage of the planning process which is to seek a Gateway Determination from the NSW Government.

DISCUSSION

Background

Council has received a proponent initiated Planning Proposal Request (the request) submitted through the NSW Planning Portal. A Planning Proposal can be initiated by either Council or a proponent, however essentially the Council needs to be supportive of the request in order for it to proceed through the remaining stages of the planning proposal process. The request that has been received by Council relates to land on South Arm Road at Urunga and primarily proposes to rezone land that is currently zoned RU4 Primary Production Small Lots to R5 Large Lot Residential and to impose a 1ha minimum lot size over the land to be zoned R5. Council may recall that a similar proposal was submitted over adjoining land at 201 South Arm Road (Planning Proposal 21) which has now been finalised, and also that the proposal contemplated by this report was previously considered by Council at its meeting of 25 October 2023 (Planning Proposal 23), where it resolved to seek a Gateway Determination to allow it to proceed.

The Gateway Determination for Planning Proposal 23 required certain amendments to be made prior to pre-exhibition consultation with NSW Government Agencies. The amendments were not finalised until recently, which would mean that the timeframe nominated for completion of the Planning Proposal by DPPI (28 August 2024) would not be met. The DPPI are concerned at an Executive level with the amount of time taken to complete planning proposals. On this basis, they have advised Council that an extension to Planning Proposal 23 may not be supported given the time that it would take to complete the remaining stages of the Proposal, and that it may be preferable to withdraw Planning Proposal 23 and recommence the process through the submission of a new planning proposal.

The matter has been discussed with the proponent and it was agreed that a new Planning Proposal was likely to be the best way to progress this matter. This avoids the risk of Planning Proposal 23 potentially being terminated at a later point in time, and the delay that would result in terms of the progression of a new planning proposal.

The land the subject of the request was identified as being potentially worthy of a rezoning for rural residential subdivision in the 2007 Bellingen Shire Growth Management Strategy (the GMS). Whilst most of the rezoning recommendations that were made by the GMS were implemented with the introduction of the Bellingen Local Environmental Plan 2010 (the LEP), the landholdings at South Arm Road were considered to require some more detailed investigation before proceeding with any rezoning. This was principally related to the existence of several wetland areas in the vicinity which required more detailed consideration of any potential adverse impacts that may arise from future subdivision. Prior to being included in the GMS, much wider areas of land in the vicinity had previously been proposed for residential subdivision and were the subject of significant debate in the 1990's around what capacity should be reserved in the Urunga Sewage Treatment Plant for the eventual development of this land, relative to that needed for the development of the South Urunga area. The development plans never proceeded and the area of land that was considered by Council to be suitable for development was significantly constricted in the 2007 GMS as the realities of new legislation governing bushfire planning and threatened species conservation led to reconsideration of plans that were previously considered feasible.

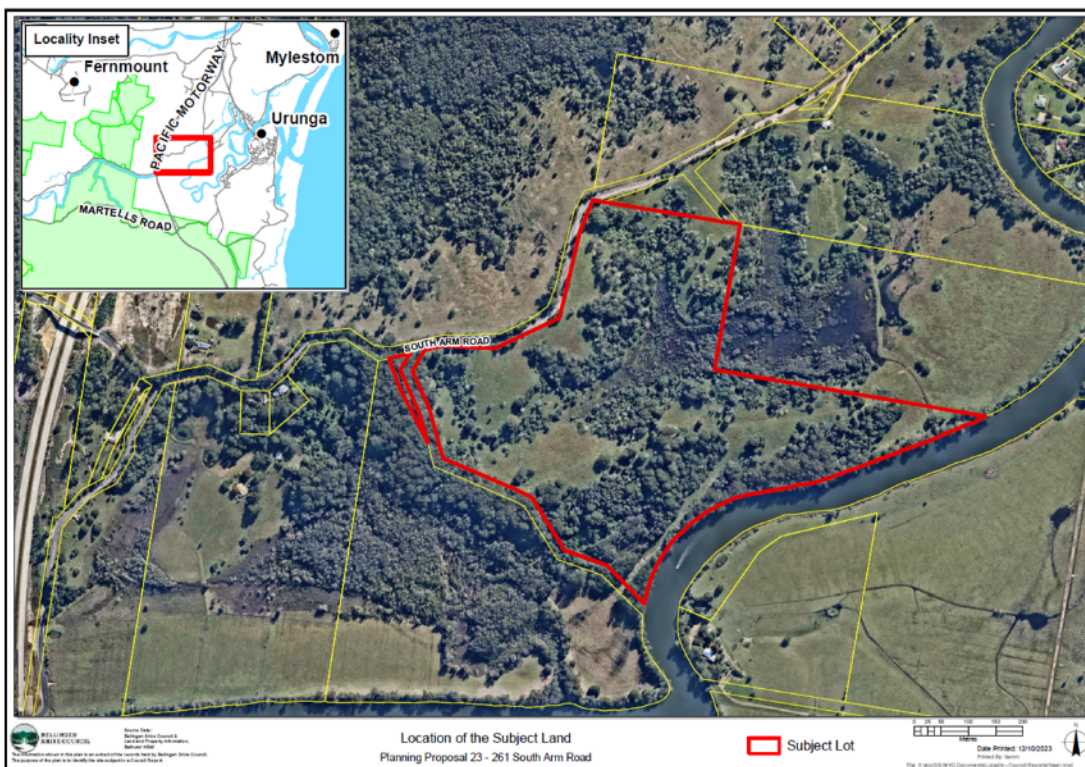
The landholding that is involved in this planning proposal was part of a much larger landholding that was owned by the Riddell family and which was split with the development of the new Pacific Highway. In recent years some of the dwelling entitlements that previously applied over those rural landholdings were effectively rescinded and relocated to the 5 lots between 172 and 200 South Arm Rd via a boundary adjustment process, and these lots are now mostly developed.

The proponents for this request have liaised with Council during the preparation of the request and the documentation submitted in support of the proposal is broadly consistent with the advice provided by Council regarding matters of concern that should be specifically addressed through the submission of specialist Consultant reports.

In order to ensure a more orderly transition between the C2 - Environmental Conservation Zone on the adjoining property to the north, and the land the subject of this planning proposal, a minor change to the C2 zoning included in the proposal (as submitted) is also considered necessary. This has been discussed with the proponents and the revised zoning scenario is shown in the map extracts below.

The Site

The land the subject of the request is shown in the following map.



The land that is proposed to be rezoned R5 generally runs south of a ridgeline area upon which South Arm Rd is located. Areas of development potential are generally located long several spurs that extend outwards towards the S and SE from the central ridge down towards areas of environmental constraint. Whilst the spur and ridgeline areas are primarily cleared of native vegetation and do not have significant slopes, there are areas of wetland vegetation on the lower slopes that represent significant constraints to development and are zoned C2 Environmental Conservation. The land is presently used primarily for the grazing of cattle.

The proposal

The key components of the request propose the following amendments to the Bellingen Local Environmental Plan

2010 (BLEP 2010).

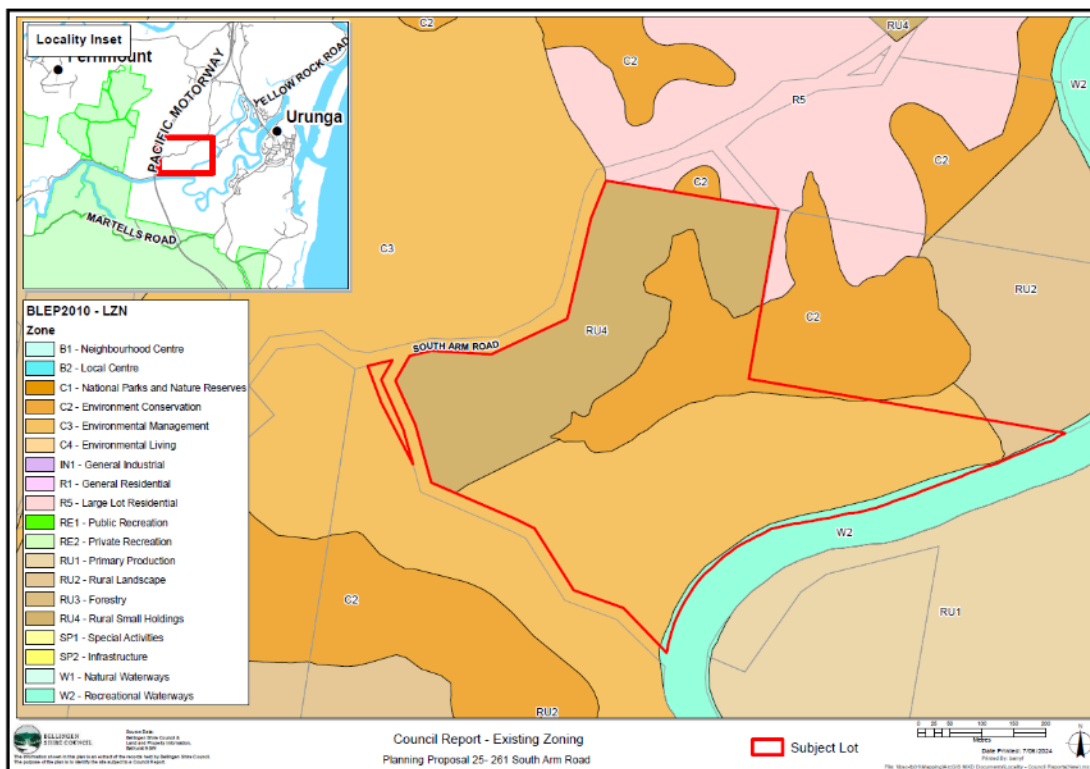
- Amend Land Zoning Map LZN_007B to provide an R5 (Large Lot Residential) zoning over the land as per the proposed zoning map included with the request.
- Amend Lot Size Map LSZ_007 to provide a 1ha Minimum Lot Size over the land to be zoned R5 and retain a 200ha Minimum Lot Size over all remaining land.

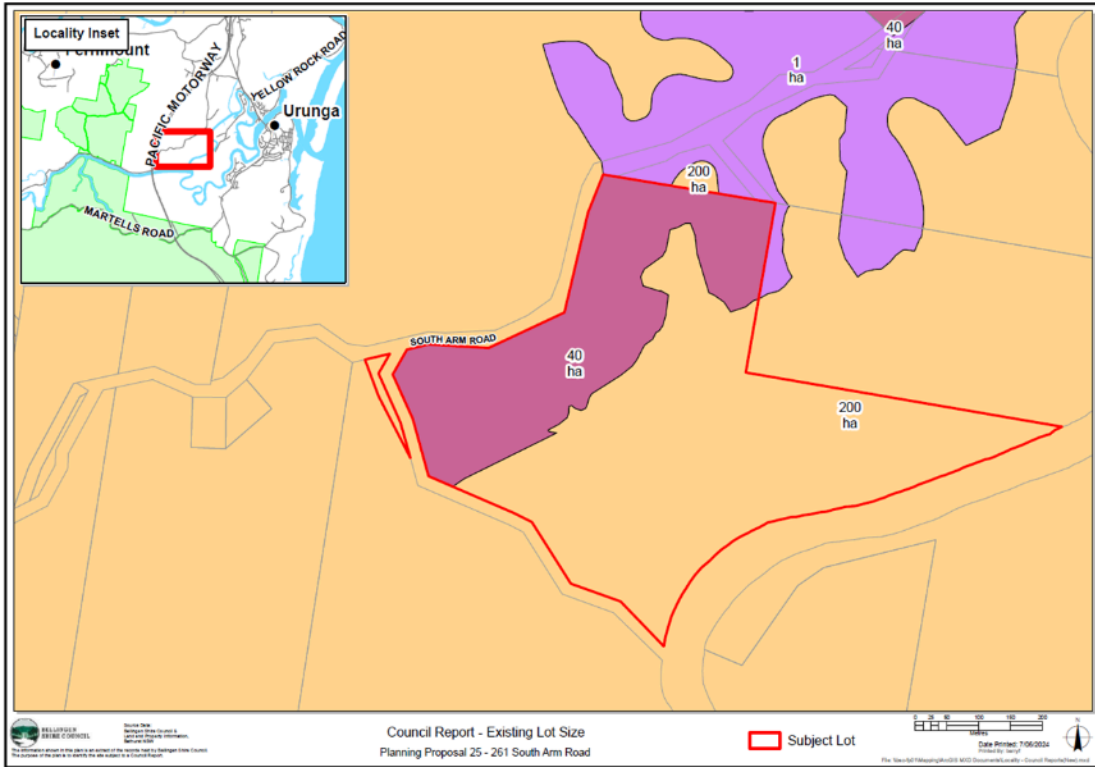
The main planning report that details the request is included in the Attachments this report (Ref: Planning Proposal 25 - Main Planning Proposal Report). The request is accompanied by a number of additional supporting studies and documents and these are also included as Attachments to this report.

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

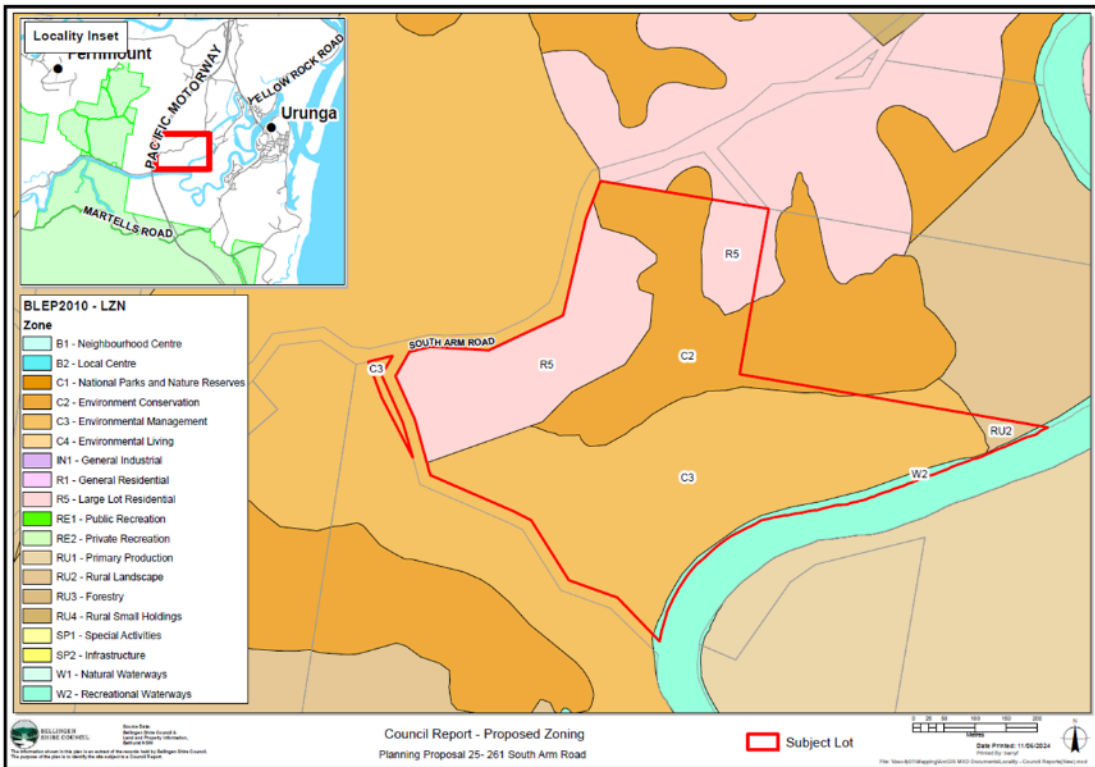
Following an initial review of the documentation submitted in support of the Planning Proposal Request, it is considered that the substantive aspects of the request are capable of support and that the request is sufficiently justified in terms of compliance with the NSW planning framework.

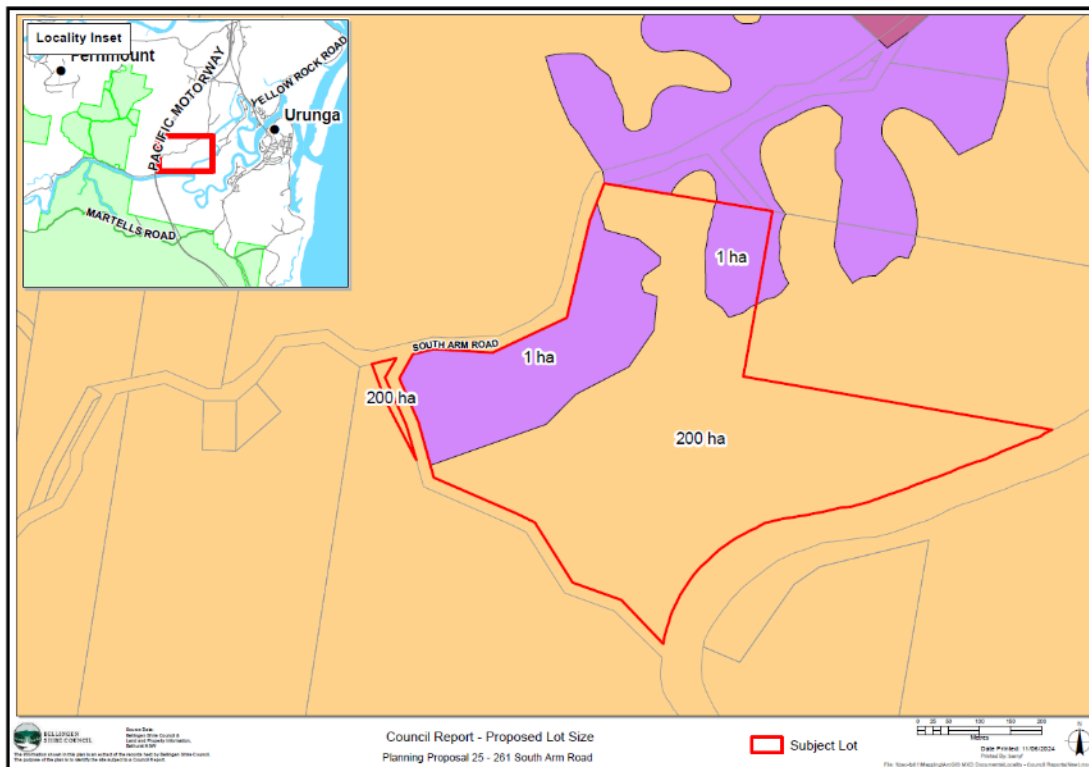
Existing Zoning and Lot Size





Proposed Zoning and Lot Size





Explanation of key components of the Planning Proposal

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

The request is not accompanied by a Development Application for the subdivision of the land and it is not required that Council make any detailed consideration of any potential subdivision layout that the proponents may be considering. Notwithstanding this, a concept subdivision layout has been prepared by the proponents that consider how the land could potentially be subdivided should the rezoning request proceed and this is included within the "Main Report" Attachment to this report. These concept plans indicate a layout that would deliver in the order of 7 R5 zoned lots.

How would the development connect back to existing infrastructure?

The key external infrastructure connections include South Arm Road for the primary vehicular access to the land. An alternative form of flood free vehicular access to the land is technically available via traversing a track across land at 356 South Arm Road which is owned by Transport for NSW and connects back to the Pacific Motorway Corridor. This access would only be available to emergency services vehicles, when vehicular access to the locality would be necessary during any temporary inundation of South Arm Rd. This type of scenario, which would involve providing a key to relevant local emergency services such as the SES, RFS & Police, was discussed at a Local Emergency Management Committee Meeting on 4 June 2024 and was considered generally feasible. Further consultation will occur with Transport for NSW regarding the viability of this proposal as part of the engagement process should Council resolve to seek a Gateway Determination.

The land is not connected to reticulated water or sewerage and there is no proposal to extend those services to the development site.

Other relevant matters addressed in the Planning Proposal Request

Ecological Impacts

The Planning Proposal request includes an assessment of the likely impacts that would accrue from the rezoning in terms of potential vegetation removal and any adverse impacts upon flora and fauna. This assessment was prepared

by an Ecological Consultant and is included as an Attachment to this report (Ref: Planning Proposal 25 - Ecological Assessment) .

In summary, the Consultants Report contends that;

- The ecological assessment did not identify any threatened flora or fauna species at the subject site.
- The proposed change of zoning would not impact upon wetland areas by way of land clearing or intrusion of roads.
- The rezoning would facilitate transition from cattle grazing on large parts of the property with likely improved outcomes for wetland areas.

In summary, it is considered that for the purposes of the rezoning request, the ecological assessment has reasonably confirmed those areas of high environmental value land that should be preserved from development through the retention of a C2 Environmental Conservation Zone and Council can be reasonably satisfied that development of the remaining areas of proposed R5 land will not have any significant adverse impact.

As previously noted, should Council resolve to proceed with the planning proposal it will be necessary to formally consult with the Biodiversity & Conservation section of the NSW Government who will also review the Consultants Report and provide feedback to Council.

Aboriginal Cultural Heritage

The Planning Proposal Request includes an assessment of the extent to which the development would likely impact upon aboriginal cultural heritage and this is included as an Attachment to this report (Ref: Planning Proposal 25 - Aboriginal Cultural Heritage Report). This assessment was prepared by appropriately qualified archaeologists, working in conjunction with representatives of the Coffs Harbour & District Local Aboriginal Lands Council.

The Consultants Report concludes that;

- The proposed rezoning of the Project Area is unlikely to impact on Aboriginal objects and will not impact on any known places or sites of cultural significance to the Aboriginal community. As such additional consultation and archaeological investigation is not required.
- An Aboriginal Objects Find Procedure should be implemented in terms of any topsoil removal on the southern ridgeline area.
- Appropriate protocols to be observed in respect of any potential Aboriginal Human Remains.

In summary, the Report offers no objection to the request based upon any observed likely impact upon cultural heritage values, however flags that any subsequent Development Application or construction process should observe appropriate procedures for that stage of the planning process.

Should Council resolve to support the Planning Proposal it is recommended that the Coffs Harbour & District Local Aboriginal Lands Councils is notified of the proposal and invited to provide further comment should they so desire.

Bushfire

The Planning Proposal Request includes an assessment of the extent to which the development would comply with the provisions of Planning for Bushfire Protection 2019 (which is the peak document governing development in bushfire prone areas) and this is included as an Attachment to this report (Ref: Planning Proposal 25 - Bushfire Assessment) . The bushfire assessment addresses an additional information request that was received from the NSW RFS as part of the consideration of Planning Proposal 21.

In summary, the Bushfire Risk Assessment concludes that based upon the bushfire safety assessment that was

undertaken, the planning proposal will be afforded a reasonable and satisfactory level of bushfire protection. Should Council resolve to proceed with the planning proposal it will be necessary to formally consult with the NSW Rural Fire Service who will review the Consultants Report and advise Council whether it is supportive of the proposal.

Wastewater, Contamination and Acid Sulfate Soils

The Planning Proposal Request includes an assessment of the extent to which the development would comply with the provisions of relevant standards governing Onsite Sewage Management Systems (OSMS) given that the land is not connected to reticulated sewerage. The potential for land contamination and disturbance of Acid Sulfate Soils was also considered as part of this assessment. This assessment was prepared by an appropriately qualified Consultant and this is included as an Attachment to this report (Ref: Planning Proposal 25 - Wastewater, Contamination & Acid Sulfate Soils Report).

In summary, the Consultants Report identifies that;

- The site has no significant Areas of Environmental Concern or Contaminants of Concern that would impact the proposed residential subdivision. Check sampling confirmed that shallow soil concentrations of heavy metals are very low and within expected background ranges, and no pesticide contamination is present.
- The ASS investigation confirmed a mapped low probability ASS risk only present in the low-lying wetland portion of the site which is well away from the proposed subdivision building envelopes.
- Having undertaken a minimum lot size and land capability assessment for the proposed subdivision of other land in the immediate vicinity EWC consider that there is the opportunity for the sustainable application of wastewater following subdivision of the existing properties into smaller lots. It is recommended that a Land Capability Assessment (LCA) is undertaken during development application for the subdivision. The LCA would be a detailed site and soil assessment to AS/NZS1547:2012 and present wastewater envelopes for each lot.

Based upon the outcomes of this assessment, it is considered that there are no fundamental issues with the request that would render it incapable of support by Council at this stage of the planning process.

What is the process to amend the LEP?

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



A resolution of Council is required to support the proposed amendment, following which Council Officers will complete the requisite steps on the NSW Planning Portal to submit to the NSW Department of Planning Housing & Infrastructure (DPHI) and request the issuing of a Gateway Determination.

Should Council request authorisation to make the Plan?

It is necessary for Council to consider whether it wishes to be the plan making authority for this planning proposal. This essentially means that the final decision as to whether the plan should proceed is made by the Council, rather than the NSW Government. There are guidelines that help to determine the circumstances where it is appropriate that Council assumes these functions. One of these circumstances is when the planning proposal would give effect to an endorsed local strategy.

Council requested that it be delegated as the plan making authority for Planning Proposal 21 on the adjoining land parcel, however this was not granted by the NSW DPHI for the following reason.

"I have determined not to authorise Council to be the local plan-making authority due to the number of issues requiring further assessment and consultation with State agencies and other organisations."

In the circumstances, it is considered unlikely that Council would be delegated as the plan making authority in respect of this matter for the same reasons so it is not proposed to request the relevant authorisation.

STRATEGIC ALIGNMENT

(PP2.1) Manage local planning to encourage and support affordable and diverse housing options
(LE3.4) Optimise land use to meet the social, environmental, and economic needs of the Shire
(CL2.1) Facilitate inclusive community consultation and stakeholder engagement

RESOURCING STRATEGY IMPLICATIONS

Planning Proposal Requests received by private developers attract processing fees that provide some degree of cost recovery for the time that Council Officers spend on moving the proposal through the various stages of the planning process. The proponents have paid the Stage 1 Fee of \$2,500. Should Council resolve to support the proposal and seek a Gateway Determination then the proponents will need to pay additional fees prescribed for the 2024-2025 FY to cover the remaining administrative work associated with finalisation of the proposal.

The proposal has the potential to deliver in the order of six (6) additional rateable assessments to Council should the Planning Proposal Request be supported and the land is ultimately subdivided.

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

ENGAGEMENT

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

The Bellingen Shire Community Participation Plan makes provision for site specific amendments to the BLEP 2010 and the following community participation requirements will be observed in respect of this matter:

- 28 day consultation period.
- Advertisement in local paper.
- Advertisement and provision of supporting documentation on Council website.
- Notify owners of site specific amendments.
- Notify adjoining owners of site specific amendments.
- Plain English Version.

Based upon consultation requirements stipulated in respect of Planning Proposal 21, It is also proposed to consult with the following additional stakeholders and / or Government Agencies.

- NSW Rural Fire Service.
- NSW State Emergency Service
- Department of Planning and Environment (Biodiversity and Conservation Division)
- Department of Primary Industries (Agriculture)
- Department of Primary Industries (Fisheries)

- NSW Crown Lands
- Coffs Harbour & District Local Aboriginal Land Council
- Transport for NSW

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

CONCLUSION

The Planning Proposal request that Council has received is considered consistent with the recommendations of the Bellingen Shire Growth Management Strategy 2007 , has addressed matters of concern that were identified in pre-lodgement discussions with the proponents and as part of the assessment of Planning Proposal 23, and has adequately addressed key matters of concern that are included within the NSW planning framework. It is acknowledged that a finer level of detail and justification will be required to justify any subdivision Development Application that may ultimately be submitted in respect of the land if it is rezoned, however it is considered that the proposed zoning outcome reasonably reflects the constraints of the land, which have been considered through the commissioning of the numerous specialist Consultant Reports that accompany the application.

Having regard to these factors it is considered that the request is worthy of support by Council and that Council should consequently request the issuing of a Gateway Determination in respect of this matter from the NSW DPE.