

Planning Services

IRF18/5029

Gateway determination report

LGA	Lismore
PPA	Lismore City Council
NAME	Rezoning non-urban deferred matter land – stage 1 (0 houses and 0 jobs)
NUMBER	PP_2018_LISMO_002_00
LEP TO BE AMENDED	Lismore Local Environmental Plan 2012
ADDRESS	The proposal applies to various non-urban lots in the Lismore local government area
DESCRIPTION	Various
RECEIVED	22 August 2018
FILE NO.	IRF18/5029
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The planning proposal seeks to amend the Lismore Local Environmental Plan (LEP) 2012 to apply Standard Instrument zones to the non-urban deferred land. The land was deferred following the then Minister for Planning's announcement of a review of the application of E zones and environmental overlays on the Far North Coast in September 2012.

The proposal seeks to rezone the deferred land to either E2 Environmental Conservation or E3 Environmental Management where agreement has been reached between Lismore City Council and the landowner, and rezone to RU1 Primary Production land where the landowner states the primary use is not environmental conservation or management or does not agree to an E zone.

The proposal is stage one of a two stage review of the deferred land. Stage one only applies to the non-urban areas of the LGA. Stage two will address the deferred land in the urban areas.

The proposal integrates the non-urban-zoned land that is deferred from the Lismore LEP 2012 into the LEP. It seeks to:

- apply E zones to land, where requested by a landowner, in accordance with the Northern Councils E Zone Review Final Recommendations Report;
- apply rural and special-use zones to land where the landowner did not request an E zone;

- amend the following maps that relate to the land due to its inclusion in the Lismore LEP 2012: land zoning; lot size; acid sulfate soils; drinking water catchment; flood planning; heritage; and potential rural landsharing community development;
- amend the land application map to incorporate the land into the Lismore LEP 2012; and
- update Schedule 5 Environmental Heritage to update a property description on a parcel of land, part of which is deferred land and is being rezoned RU1 by this planning proposal.

The private landowners of the deferred land were notified of the proposal and asked to confirm the primary use of the deferred portion of their lots (**Attachment G**).

Tables 1-24 in part 2 of the planning proposal list the subject land, the current and proposed zones, required map amendments and the primary use of land as identified by the landowner or Council.

The planning proposal is not consistent with the E Zone Review Final Recommendations Report, section 9.1 direction 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs and advice from the Secretary to councils outlining how the final report recommendations are to be implemented.

Land to which the planning proposal applies

The planning proposal applies to 209 non-urban lots within the Lismore local government area (LGA) (Figure 1). These lots have been grouped into 24 geographical sites. A map showing the location of the subject sites across the Lismore LGA is at Figure 1 below. A list of the subject properties is included in the planning proposal (pages 8-20).

Council received 108 responses from 147 private landowners confirming whether they wanted an environmental zone to apply to their land and what they considered the primary use of their deferred land to be. This is discussed further in this report.

Existing planning controls

For the land that is deferred from the Lismore LEP 2012, the Lismore LEP 2000 applies. The following LEP 2000 zones apply to the deferred land:

- 1(a) General Rural;
- 1(b) Agricultural;
- 1(r) Riverlands;
- 5 Special Uses;
- 7(a) Environmental Protection (Natural Vegetation and Wetlands); and
- 7(b) Environmental Protection (Habitat).

Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions requiring that the planning proposal is amended to be consistent with the E Zone Review Final Recommendations Report to:

- ensure the planning proposal implements the Government's policy for the zoning of rural and environmental land in the Far North Coast of NSW; and
- integrate the land-use planning requirements for non-urban land under a single LEP.

Figure 1 – Deferred Matter Overview Map

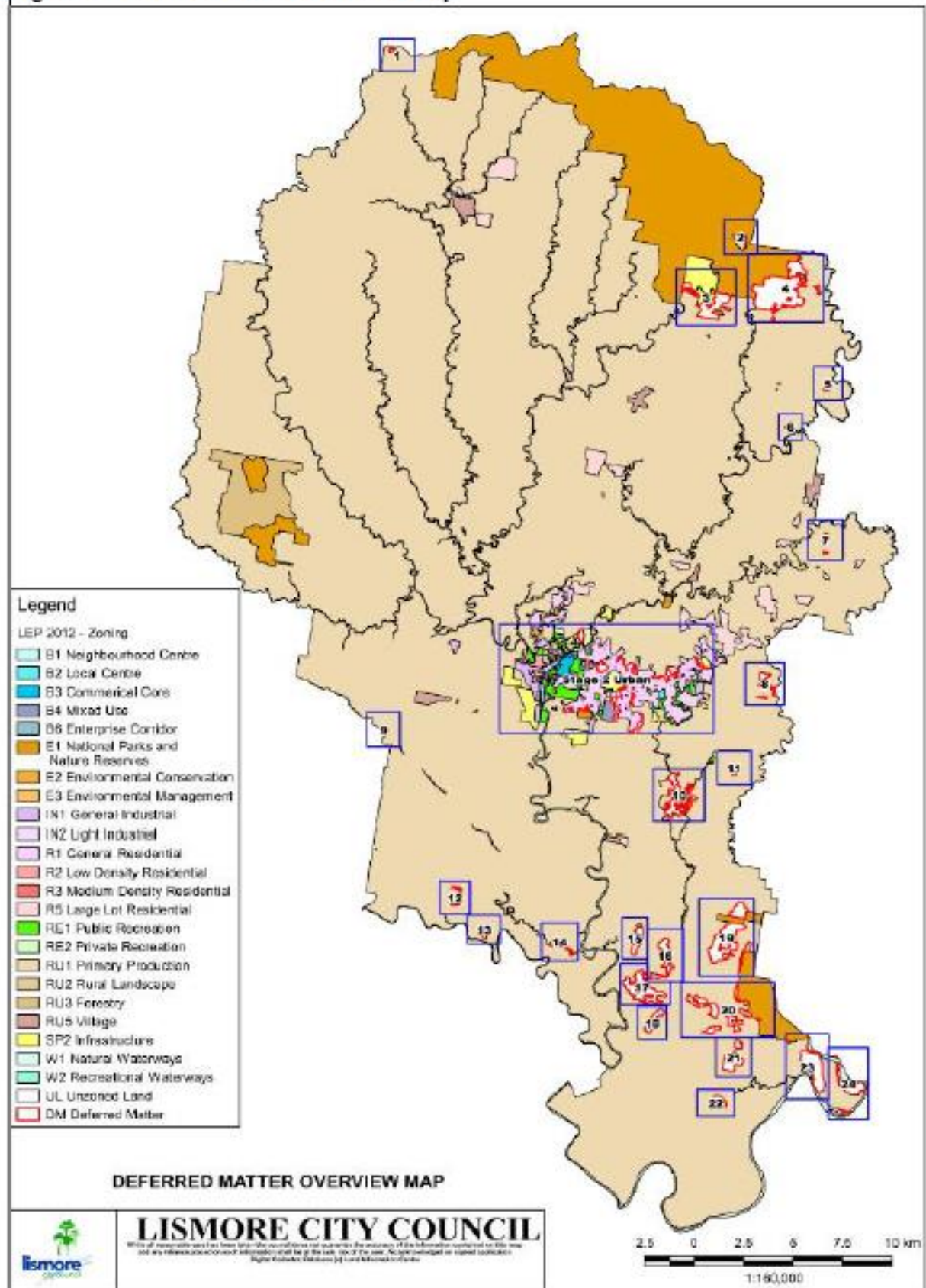


Figure 1: Deferred matter overview map.

PROPOSAL

Objectives or intended outcomes

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal. The objectives of the proposal are to incorporate non-urban deferred land into the Lismore LEP 2012.

Explanation of provisions

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved. The proposal will be implemented by:

- applying environmental protection zones to land where requested by the landowner. An E zone is applied if the land meets the vegetation criteria **(Attachment H)** in the E zone review final recommendations report;
- applying rural and special-use zones to land where the landowner did not request an E zone, consistent with Council's resolution not to support E zones on agricultural land;
- amending the following maps as relevant to the land due to its inclusion in the 2012 LEP: land zoning; lot size; acid sulfate soils; drinking water catchment; flood planning; heritage; and potential rural landsharing community development;
- amend the land application map to include the subject land in the Lismore LEP 2012; and
- update Schedule 5 Environmental Heritage to update the property description of Wendella – 143 Rocky Creek Dam Road, Dunoon due to a boundary adjustment.

SP2 Infrastructure zone

Some of the land owned by Rous County Council is proposed to have a water storage zone applied to part of the land. The SP2 zone reflects the current use of the land (dam infrastructure). The proposed SP2 zone is considered to be appropriate.

Mapping

The planning proposal includes maps that show all the properties in the LGA that are subject to the planning proposal and the proposed zones for these properties on land zoning (LZN) maps.

The planning proposal does not contain maps showing the consequential changes to other LEP maps resulting from the inclusion of the subject land into the LEP. These changes affect the following maps:

- minimum lot size (MLS);
- acid sulfate soils (ASS);
- drinking water catchment (DWC);
- flood planning (FLD);
- heritage (HER);
- potential rural landsharing community development (RCD); and
- land application (LAP) maps.

It is recommended that the Gateway determination include a condition that these proposed maps will be prepared and included in the planning proposal prior to community consultation.

Amendments to all map series including the LZN, MLS, ASS, DWC, FLD, HER, RCD and LAP maps will need to be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps prior to finalisation of the LEP.

NEED FOR THE PLANNING PROPOSAL

The planning proposal has arisen from Council's request to integrate deferred lands in accordance with the Northern Councils E Zone Review final recommendations report. In September 2012, the then Minister for Planning announced a review of the application of E zones and environmental overlays on the Far North Coast. Until the review was completed, land that had been proposed for an E2 or E3 zone was deferred from the Lismore LEP 2012. The final recommendations report was released in October 2015.

Council resolved in February 2017 to zone all deferred lands to RU1 Primary Production unless an E zone was requested by a landowner or formed part of a negotiated development outcome.

A planning proposal is the only way to incorporate the deferred land into the Lismore LEP 2012 and apply appropriate zones, development standards and other planning controls.

STRATEGIC ASSESSMENT

State

Northern Councils E Zone Review Final Recommendations Report

There are a number of differences between the planning proposal and the Northern Councils E Zone Review Final Recommendations Report.

Council resolved to not support the application of E zones to rural land unless requested by the landowner. Conditions recommended to be applied to the Gateway determination seek to resolve these inconsistencies and allow the proposal to proceed.

The final recommendations report sets out clear criteria and methodologies for the application of E zones. This was further supported by a section 9.1 direction requiring councils to be consistent with the adopted recommendations and letter from the Secretary (1 March 2016) providing further guidance on how to apply the final recommendations (**Attachment J**).

An assessment of the planning proposal against the final recommendations report is included at **Attachment E**. A summary of the key aspects of the final recommendations report follows as they apply to the planning proposal:

Split zoning

- The planning proposal applies to 209 lots.
- A rural zone is proposed on 198 lots or part lots.
- An E zone is proposed on 23 lots or part lots.

In some instances where an E zone is proposed on a lot, the lot contains other land that has either a rural or another zone reflecting the current use of the land. Split zoning of land is consistent with the final recommendations report.

Primary use of land

Council wrote to all landowners seeking advice to determine the primary use of the deferred matter land (**Attachment G**). The letter outlined that Council does not support the application of E zones on agricultural lands. A total of 147 letters were sent, with 108 respondents requesting a rural zone. Eleven requested an E zone and 36 landowners did not respond.

Several landowners confirmed their land as having a rural primary use despite the land containing what appears to be, in some cases, continuous and undisturbed vegetation, which did not appear to have any obvious use as agricultural land. The planning proposal has included these sites as rural without any review as required under the final recommendations report.

Council advised that a desktop assessment of primary use was undertaken for the 36 allotments where responses were not received from landowners. In accordance with Council's resolution, E zones were not applied to this land.

The approach taken by Council is not consistent with the final recommendations report. The final recommendations report requires that the primary use of the land is verified. It is recommended that the Gateway determination include a condition that all land proposed to be zoned rural have the primary use verified, if possible by site inspection, or alternatively by another means. Further consultation will be required with landholders following this verification process.

All the lots in the planning proposal that identified the primary use of land, by the landowner, as either environmental conservation or environmental management have had an E zone applied to the land, except for 81 Fox Road, Rosebank. The primary use of this lot was identified by the landowner as environmental management. However, the landholder requested a rural zone. This approach is inconsistent with the E zone review final recommendations report. This site should be verified against the vegetation criteria. If the vegetation attributes are found to meet the E zone criteria, it should be zoned either E2 or E3. A condition has been included in the Gateway determination to address this.

E zone criteria verification

The planning proposal includes three categories of land: land that has landowner agreement to an E zone; land that has a 7 zone that is proposed to be rezoned rural; and other land where a rural zone is to be applied.

Land owner agreement: Where landowner agreement has been obtained the land can be E zoned, this approach complies with the final recommendations report.

Zoning of existing environmental protection zones: Council has applied the primary use test to land zoned 7(a) Environmental Protection (Natural Vegetation and Wetlands) or 7(b) Environmental Protection (Habitat) under LEP 2000. The final recommendations report requires a vegetation assessment to determine which of these lands should have an E zone applied, not application of a primary use test. A condition is proposed to be included in the Gateway to achieve this outcome.

Other land: Land not zoned 7(a) or 7(b) is required to undergo a primary use test and if being used for environmental conservation or management purposes, a vegetation assessment determine the appropriate zone. A verification process needs to be undertaken for these properties to confirm and identify the primary use and determine which land needs a vegetation assessment. Conditions are proposed and applied to the Gateway in this regard.

Landowners request for E zones

Where an E zone has been requested by the landowner, Council has undertaken an on-ground vegetation assessment to confirm the vegetation types on the land (**Attachment H**). While this approach is not required to comply with the final recommendations report, there is no impediment to Council undertaking additional steps in this process. The proposal seeks to apply E2 and E3 zones to this land in accordance with the final recommendations report.

Regional

The planning proposal is consistent with the North Coast Regional Plan 2036. It does not identify new areas of urban land outside the growth area boundaries or on land subject to natural hazards. The proposal does not rezone important farmland to an urban zone.

Local

The planning proposal is consistent with Imagine Lismore (Community Strategic Plan 2017-2027). One of the actions of the strategic plan is to monitor the LEP and amend it as required. The proposal simplifies the land-use planning requirements for these deferred lands by enabling controls under a single LEP.

Section 9.1 Ministerial Directions

The following section 9.1 Directions are applicable to the proposal: 1.2 Rural Zones; 1.3 Mining, Petroleum Production and Extractive Industries; 1.5 Rural Lands; 2.1 Environment Protection Zones; 2.2 Coastal Management; 2.3 Heritage Conservation; 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs; 3.1 Residential Zones; 3.2 Caravan Parks and Manufactured Home Estates; 3.3 Home Occupations; 4.1 Acid Sulfate Soils; 4.3 Flood Prone Land; 4.4 Planning for Bushfire Protection; 5.3 Farmland of State and Regional Significance on the NSW Far North Coast; 5.10 Implementation of Regional Plans; 6.1 Approval and Referral Requirements; 6.2 Reserving Land for Public Purposes; and 6.3 Site Specific Provisions.

Of the above Directions, the proposal is considered to be inconsistent with Directions 2.1, 2.3, 2.5, 4.1 and 4.4. These are discussed below:

Direction 2.1 Environment Protection Zones

This Direction provides that a planning proposal must contain provisions that facilitate the conservation of environmentally sensitive areas and not reduce the environmental protection standards that apply to the land.

The planning proposal seeks to apply E2 and E3 zones to land where requested by the landowner. This approach follows the process in the final recommendations report. However, most of the deferred land, which was previously identified in the draft standard LEP as requiring an E zone, is proposed to be zoned rural.

The deferred land zoned 7(a) Environmental Protection (Natural Vegetation and Wetlands) or 7(b) Environmental Protection (Habitat) has not been assessed in accordance with the final recommendations report.

To ensure the outcomes of the final recommendations are applied consistently, a condition is recommended for the Gateway requiring Council to undertake an assessment of the land using one or more of the required methodologies to verify the attributes of vegetated areas and confirm that the land proposed to be zoned RU1 meets the criteria in accordance with the final recommendation report.

Until this verification process has been undertaken, the inconsistency of the proposal with this Direction remains unresolved.

Direction 2.3 Heritage Conservation

This Direction is relevant to the planning proposal. It provides that a planning proposal must contain provisions that facilitate the conservation of matters of environmental and Aboriginal cultural heritage significance. This proposal does not detract from the heritage protection provisions within the Lismore LEP 2012. As adequate provisions exist, the inconsistency with this Direction is justified as being of minor significance.

Direction 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs

This Direction provides that where a planning proposal proposes an E2 or E3 zone or an overlay and associated clause, the proposal must be consistent with the final recommendations report. Aspects of the planning proposal are not consistent with the final recommendation report. To achieve this, it is recommended that conditions be included requiring verification of the primary use of land and the verification of the '7' zones.

As compliance with the final recommendations report requires formal consultation with the landowners, it is considered that the consistency of the proposal with this Direction cannot be finalised at this stage. It is necessary to reassess the consistency of the proposal with this Direction after the further verification process and public exhibition have been undertaken and Council has had the opportunity to assess submissions made by landowners relating to the proposed zones.

Direction 4.1 Acid Sulfate Soils

This Direction provides that a planning proposal must not propose an intensification of land uses on land identified as having a probability of containing acid sulfate soils unless an acid sulfate soils study has been undertaken.

The planning proposal impacts on lands identified with acid sulfate soil risk classes 2-5. The Lismore LEP 2012 contains provisions to consider acid sulfate soils during development assessment. The zones proposed for the subject land will not result in an increase in development potential. The inconsistency with this Direction is therefore of minor significance and justified in accordance with the terms of the Direction.

Direction 4.4 Planning for Bushfire Protection

The proposal involves rural and environmental land, some of which could be bushfire prone. This Direction provides that the planning proposal authority must consult with the NSW Rural Fire Service (RFS), and the draft plan must include provisions relating to bushfire control. Consultation with RFS is required prior to public exhibition. Until this consultation has occurred with RFS, the inconsistency of the proposal with this Direction remains unresolved.

State environmental planning policies (SEPPs)

The proposal will affect land that is subject to several SEPPs. The proposal is not considered to be inconsistent with the provisions in any SEPPs.

The proposal is consistent with the rural planning principles in SEPP (Rural Lands) 2008 and it will not result in the rezoning of rural land to an urban zone or fragmentation.

Extensive agriculture will still be permissible on this land under an E2 or E3 zone.

SITE-SPECIFIC ASSESSMENT

Social

The integration of the subject land into the Lismore LEP 2012 will provide landowners with certainty of the land uses that are permitted on their land and will simplify the planning controls for the land.

Environmental

The proposal is not expected to have an adverse impact on critical habitat or threatened species, populations or ecological communities and their habitat once the verification process has been confirmed. Further work is recommended to ensure the proposed zones align with the current primary use of the land and that the land identified for environmental for its values is protected.

Economic

The proposal provides for the continuation of agricultural enterprises on rural-zoned land and the economic benefits of productive agricultural land no longer being constrained by zoning uncertainty.

The proposal is not expected to have negative economic impacts. The proposed zones do not result in significant changes to the development potential of the land, nor do they identify existing rural land for urban purposes. The integration of the subject land into the Lismore LEP 2012 will simplify the planning controls for the land.

CONSULTATION

Community

The planning proposal has indicated a 28-day community consultation period. In accordance with *A guide to preparing local environmental plans*, it is considered that the planning proposal is not low impact as it applies to many land parcels that have been deferred from the Lismore LEP for some time. A 28-day exhibition period is considered appropriate.

Consistent with the Secretary's letter of 1 March 2016, it is recommended that all landowners whose land is proposed to have an E zone applied to it be notified in writing of the proposal and the public exhibition arrangements. Landowners are also to be notified in writing when Council has considered any submissions to the proposal and has resolved to send the proposal to the Minister's delegate for finalisation.

Agencies

Office of Environment and Heritage (OEH)

Council referred the planning proposal to OEH for early consideration. OEH has raised concerns with the proposal due to its inconsistency with the final recommendations report (**Attachment I**). It is recommended the proposal be referred to OEH after a Gateway determination is issued and before public exhibition.

NSW Rural Fire Service (RFS)

As some of the rural land has the potential to be bushfire prone and to satisfy section 9.1 Direction 4.4 Planning for Bushfire Protection, referral to RFS will be required after a Gateway determination is issued and before public exhibition.

It is considered that Council should consult with the following agencies/organisations after issue of the Gateway determination and prior to public exhibition:

- NSW Crown Lands;
- Rous County Council;

- Ngulingah Local Aboriginal Land Council;
- Jali Local Aboriginal Land Council; and
- Bunjum Aboriginal Co-operative Ltd.

TIME FRAME

The planning proposal includes a project timeline that estimates the completion of the planning proposal in nine months. To ensure the planning proposal authority has adequate time to complete the verification process, the exhibition and reporting of the planning proposal, a time frame of 18 months is recommended.

LOCAL PLAN-MAKING AUTHORITY

Council has requested that the Department retain plan-making functions for this proposal. Consistent with the Secretary's letter of 1 March 2016, an authorisation to act as the local plan-making authority is not to be issued to councils where a planning proposal seeks to apply an E zone to land. This is to ensure a consistent approach to the finalisation of zoning decisions consistent with the E zone review final recommendations report. It is recommended that Council not be authorised to act as the local plan-making authority.

CONCLUSION

It is recommended that the planning proposal proceed subject to conditions to:

- ensure the planning proposal implements the Government's policy for the zoning of rural and environmental land on the Far North Coast of NSW; and
- integrate the land-use planning requirements for non-urban land under a single LEP.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 2.3 Heritage Conservation and 4.1 Acid Sulfate Soils are minor or justified in accordance with the terms of the Directions; and
2. note that the consistency with section 9.1 Directions 2.1 Environment Protection Zones, 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs and 4.4 Planning for Bushfire Protection are unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. Prior to agency consultation and public exhibition, the planning proposal is to be amended as follows:
 - a) the vegetation attributes of the land zoned 7(a) and 7(b) are to be assessed against the vegetation criteria in section 5 of the Northern Councils E Zone Review Final Recommendations Report. If this land is found to contain these environmental attributes, the land is to be zoned E2 or E3 accordingly;
 - b) the vegetation attributes of 81 Fox Road, Rosebank are to be assessed against the vegetation criteria in section 5 of the Northern Councils E Zone Review Final Recommendations Report. If this land is found to contain these environmental attributes, the land is to be zoned E2 or E3 accordingly;

- c) any other lots that are proposed to contain a rural zone are to have the primary use of land verified as per Northern Councils E Zone Review Final Recommendations Report:
- if the primary use is determined to be agriculture then a rural zone may be applied;
 - if the primary use is environmental conservation or management then the attributes of the land are to be assessed against the vegetation criteria in section 5 of the Northern Councils E Zone Review Final Recommendations Report and a zone applied accordingly; and
- d) prepare lot size, acid sulfate soils, drinking water catchment, flood planning, heritage, rural landsharing community development and land application maps and include them in the planning proposal.
2. The planning proposal should be made available for community consultation for a minimum of 28 days. Council is to write to each landowner subject to the planning proposal and advising of the proposed community consultation arrangements.
3. Consultation is required with the following public authorities:
- NSW Rural Fire Service;
 - Office of Environment and Heritage;
 - Ngulingah Local Aboriginal Land Council;
 - Jali Local Aboriginal Land Council; and
 - Bunjum Aboriginal Co-operative Ltd.
4. When Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, landowners whose land will be subject to an E zone are to be notified in writing of Council's decision and advised that they have 28 days to notify the Department if they would like the Chief Planner to review the proposed zoning of their property.
5. The time frame for completing the LEP is to be 18 months from the date of the Gateway determination.



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