

## Planning and Assessment

IRF19/7755

### Gateway determination report

<b>LGA</b>	Lismore
<b>PPA</b>	Lismore City Council
<b>NAME</b>	Amend Schedule 1 to allow an additional permitted use – general industry (limited to the manufacturing of concrete erosion mats) at 464 Broadwater Road, Dungarubba
<b>NUMBER</b>	PP_2019_LISMO_007_00
<b>LEP TO BE AMENDED</b>	Lismore Local Environmental Plan (LEP) 2012
<b>ADDRESS</b>	464 Broadwater Road, Dungarubba 2480
<b>DESCRIPTION</b>	Lot 3 DP 593867
<b>RECEIVED</b>	5/12/2019
<b>FILE NO.</b>	IRF19/7755
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to amend Schedule 1 of the Lismore Local Environmental Plan (LEP) 2012 to permit a general industry (limited to the manufacturing of concrete erosion mats) on part of the subject site.

### 1.2 Site description

The site, Lot 3 DP 593867, 464 Broadwater Road, Dungarubba, is located approximately 30kms by road south of Lismore (Figure 2). The land has an area of 42.21ha with frontage to Broadwater Road and is approximately 400m from Dungarubba Creek and 800m to the west from the Richmond River. The site is currently used for sugar cane and cattle farming and has been cleared of vegetation. The area required for the proposed use is 3.3ha and includes a portion of closed Crown Road. The applicant is investigating the purchase of this closed road portion. (Figure 1)



Figure 1 – Site Location

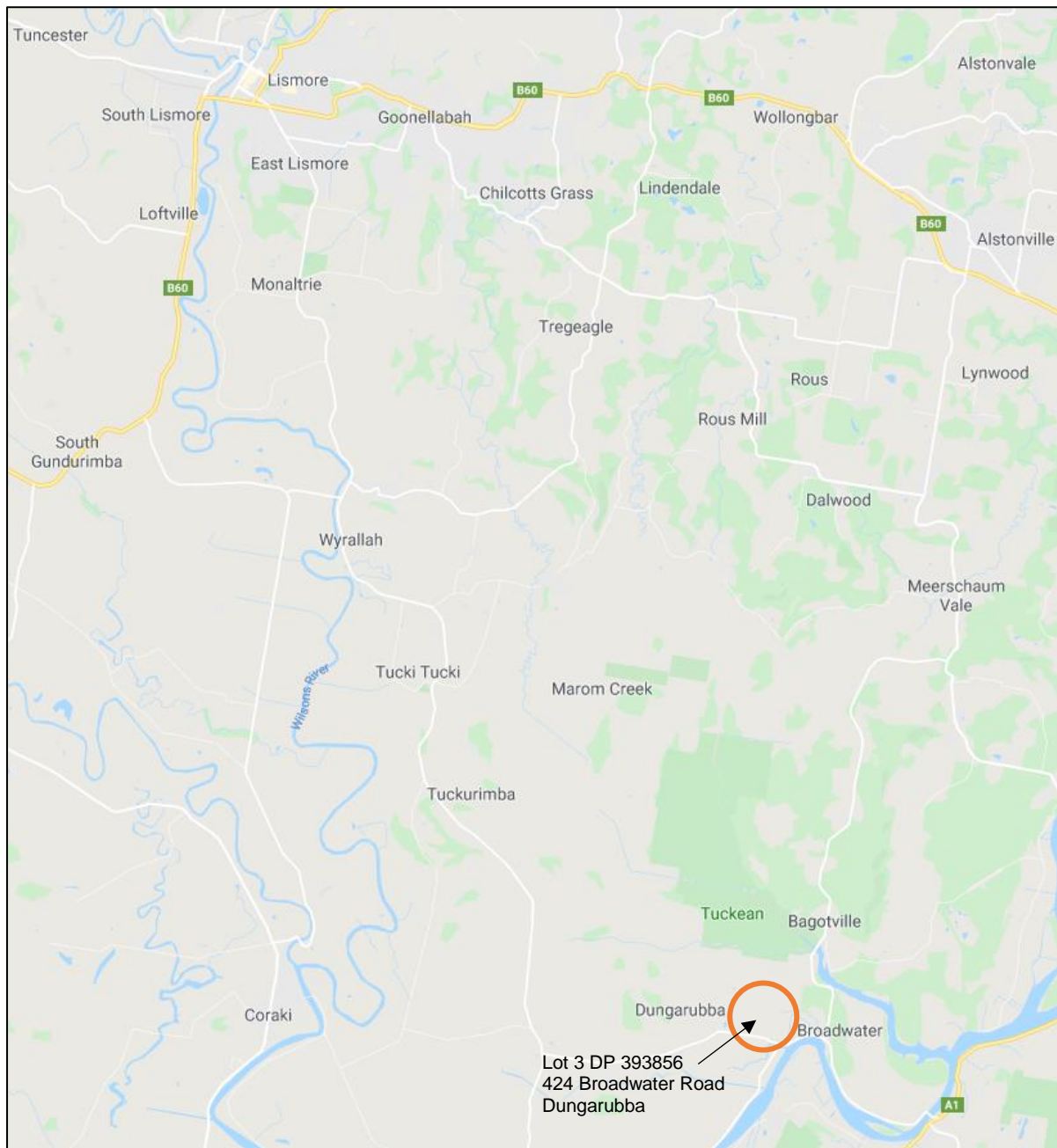


Figure 2 – Site Location in relation to Lismore

### 1.3 Existing planning controls

The Lismore LEP 2012 zones the site as RU1 (Primary Production) (Figure 3) with a minimum lot size of 40ha (Figure 4). The site contains class 3 acid sulfate soils (Figure 5) and is within the flood planning area identified in the LEP (Figure 6). The site is mapped as regionally significant farmland (Figure 7) by the Northern Rivers Farmland Protection Project (2005). There is no bushfire prone land and no koala habitat as the site is cleared of vegetation.

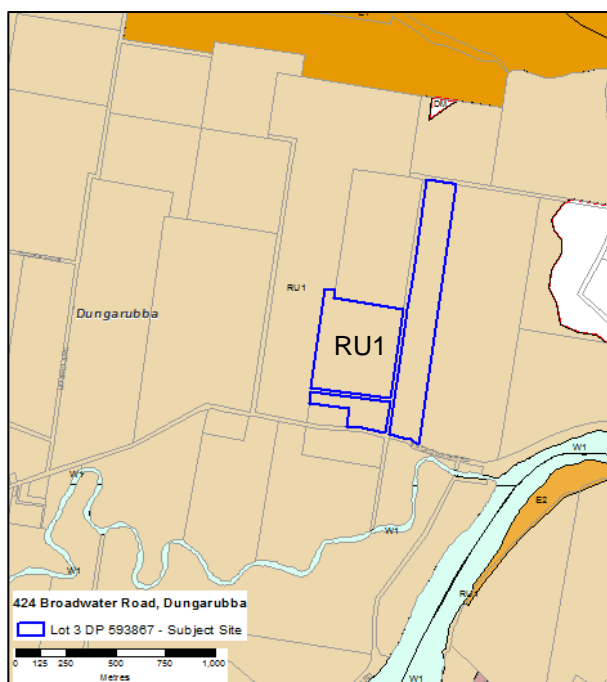


Figure 3 – Land Zoning

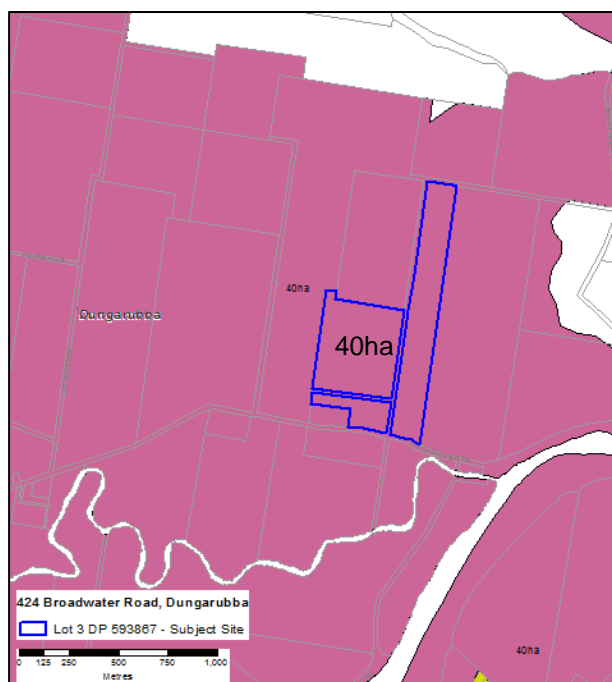


Figure 4 – Lot Size

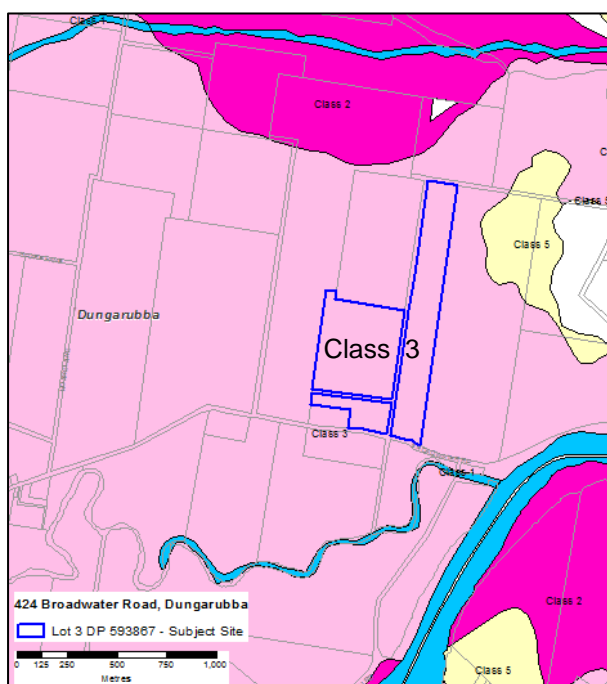


Figure 5 – Acid Sulphate Soils

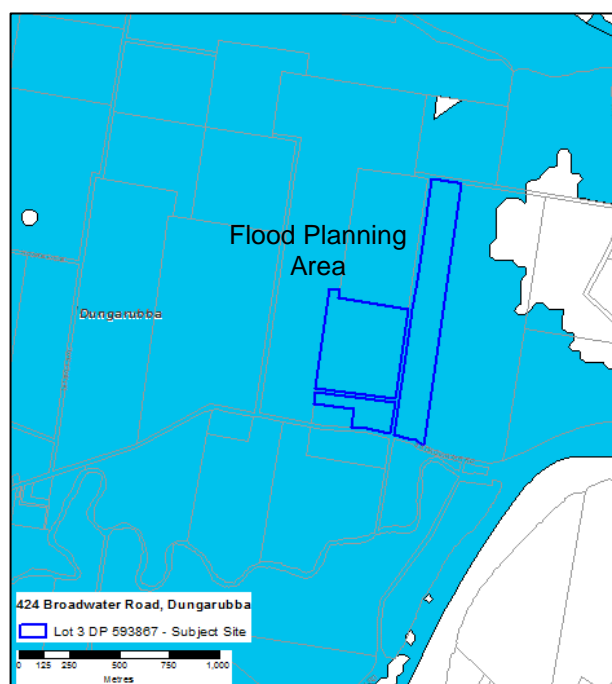


Figure 6 – Flood Planning Area



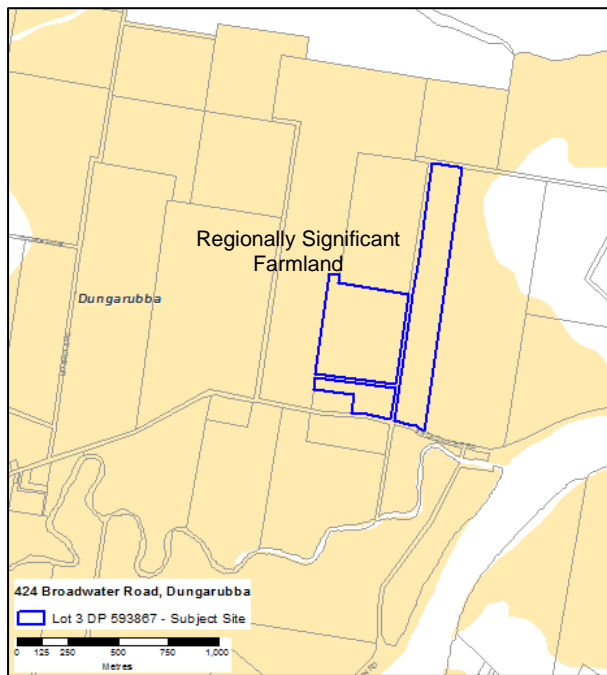


Figure 7 – Regionally Significant Farmland

#### 1.4 Surrounding area

The surrounding area is zoned RU1 Primary Production (Figure 3). Land uses in the area are primarily sugar cane cropping and cattle grazing with some rural dwellings. A rural lifestyle lot of 2 ha adjoins the land directly to the south at 444 Broadwater Road. There is an approved industrial activity to the west at 354 Broadwater Road (Lot 2 DP 8877) that manufactures concrete posts and is identified as Item 4 in Schedule 1 Additional Permitted Uses of the Lismore LEP 2012 (Figure 8).



Figure 8 – Aerial showing surrounding dwellings

### **1.5 Summary of recommendation**

It is recommended that the proposal proceed subject to conditions for the following reasons:

- there is currently no industrial land in the Lismore LGA providing the required size and flat area of 24m wide with a lineal length of 500m or greater required for production, nor is there any other suitable future land that has been identified in the Lismore Growth Management Strategy (GMS); and
- the proposal facilitates the development while keeping the RU1 Primary Production zone consistent with the surrounding agricultural land uses and farming activities.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The objective of the proposal is to amend Schedule 1 of the Lismore LEP 2012 to permit a general industry that will be limited to the manufacturing of concrete erosion mats on part of Lot 3 DP 593867, 464 Broadwater Road, Dungarubba. The proposal adequately outlines the objectives and intended outcomes.

### **2.2 Explanation of provisions**

The objectives of the proposal will be achieved by:

- amending Schedule 1 of the Lismore LEP 2012 to include a new item for part of Lot 3 DP 593867 enabling the proposed additional permitted use; and
- amending the Additional Permitted Uses (APU) Map in the Lismore LEP 2012 to identify the site.

The proposal adequately outlines the explanation of provisions to achieve the objective and intended outcomes.

There are no proposed changes to the zoning of the site or other development controls in the Lismore LEP 2012 applying to the site.

### **2.3 Mapping**

The proposal contains maps which adequately show the subject site and the area to which the APU will apply in the context of its surroundings. This mapping is adequate for public exhibition purposes. An APU Map consistent with the Standard Technical Requirements will need to be prepared before the making of the LEP amendment. There is an existing APU\_006B map showing part of Lot 3 DP 593867 within the mapping tile. The Department will work with Council to determine the best outcome for the new map preparation during the finalisation process.

## **3. NEED FOR THE PLANNING PROPOSAL**

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The proposal is not the result of any strategic study or report. The proposal has arisen as there is no industrial zoned land in the Lismore LGA, or identified in the Lismore GMS, that provides the unique size and flat area of 24m wide with a lineal length of 500m or greater required for production of the concrete erosion mats (Figure 9).



Figure 9 – Images demonstrating site requirements for erosion mat production

The production of concrete erosion mats is considered to be a General Industry under the Lismore LEP 2012 and is prohibited in the RU1 Primary Production zone.

The proposal considers the option of rezoning the subject lot to IN1 General Industrial which allows a General Industry, however it is not the preferred option since the surrounding land uses are predominantly agricultural and rural lifestyle. The applicant advises that the primary agricultural use of the land is intended to be maintained by planting the remainder of the site with macadamia trees.

The proposal acknowledges by keeping the RU1 Primary Production zone it is also consistent with the zone objectives:

- to encourage diversity in primary industry enterprises and systems appropriate for the area; and
- to enable a range of other uses to occur on rural land providing such uses do not conflict with existing or potential agriculture and do not detract from the scenic amenity and character of the rural environment.

The applicant had a pre-lodgement meeting with Council and due to the unique requirements of the proposed manufacturing of the concrete erosion mats, it was considered the most appropriate way to achieve the aims of permitting a General Industry (limited to the manufacturing of concrete erosion mats) was to enable a site specific use. This is considered appropriate.

## 4. STRATEGIC ASSESSMENT

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### 4.1 State

The planning proposal does not contain any matters of state or regional significance and is not inconsistent with the Premier's Priorities.

### 4.2 Regional / District

The planning proposal is inconsistent with the *North Coast Regional Plan 2036* (NCRP) as it does not develop successful centres of employment or protect and enhance productive agricultural lands.

This inconsistency is considered to be of minor significance as:

- the vast majority of the land (39ha) will remain in agricultural use;
- no existing or proposed industrial lands in the LGA are of an appropriate size to facilitate the proposal; and
- the *North Coast Regional Plan 2036* recognises that certain industries may need to be located away from existing centres due to their type, scale and nature.

### 4.3 Local

The proposal is consistent with the Imagine Lismore (Community Strategic Plan) 2017-202 (CSP). The CSP was developed and adopted by Council in accordance with the *Local Government Act 1993* and identifies the main priorities and aspirations for the future of the LGA for a period of 10 years. The proposal is identified as being consistent with the following objectives:

- our land use planning caters for all sectors of the community;
- ensure a diverse range of land use development opportunities are available; and
- monitor the Local Environmental Plan and amend as required in response to community and development industry need.

The principal aim of the Lismore GMS 2015 is to ensure enough land is available for industrial development in suitable locations in the Lismore LGA. While the Department approved GMS identifies that there is enough industrial zoned land to meet the projected needs of industrial uses until 2035, the unique size and flat area requirements of the proposal, mean that there is not any suitable land zoned IN1 and none identified within the GMS. It is therefore not anticipated that by allowing an APU on the subject site it is unlikely to have any adverse impact on the viability of industrial zoned land in the longer term and any inconsistency is considered to be of minor significance.

### 4.4 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant s9.1 Directions except:

#### 1.1 Business and Industrial Zones

The proposal is inconsistent with this Direction as it does not ensure new employment areas are in accordance with a strategy approved by the Department. Inconsistency is considered to be of minor significance as:

- the proposal affects only a small area (3.3ha) with the vast majority of the land (39ha) remaining in agricultural use;



- no existing or proposed industrial lands in the LGA are of an appropriate size to facilitate the proposal; and
- the *North Coast Regional Plan 2036* recognises that certain industries may need to be located away from existing centres due to their type, scale and nature.

### 1.5 Rural Lands

The proposal is inconsistent with this Direction as it affects land within an existing rural zone and is unable to satisfy all the requirements of the direction such as supporting farmers in exercising their right to farm. The inconsistency is considered to be of minor significance as the changes are will not adversely impact on the agricultural viability of the land as the vast majority of the site will be retained for ongoing agriculture use (proposed macadamia trees).

### 2.2 Coastal Management

The planning proposal is inconsistent with this Direction as it includes land mapped in State Environmental Planning Policy (Coastal Management) 2018 and does not include provisions which give effect to the objectives of the Coastal Management Act 2016, the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 and any coastal management program or coastal zone management plan. The inconsistency is considered to be of minor significance as the planning proposal relates only to an additional permitted use on 3.3hectares of land and the SEPP contains appropriate provisions that allow this issue to be adequately addressed at the development application stage if necessary.

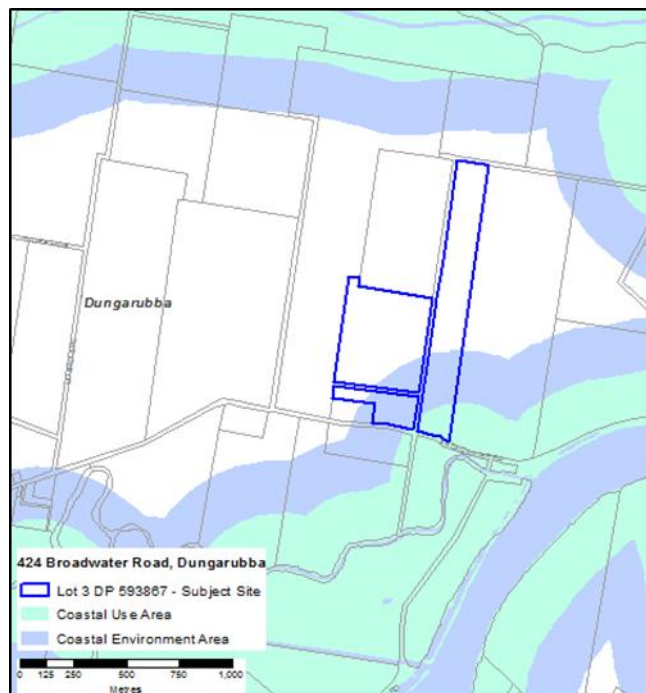


Figure 10 – coastal management areas – Coastal SEPP

### 4.1 Acid Sulfate Soils

The planning proposal is inconsistent with this Direction as it relates to land that contains acid sulfate soils on which an intensification of land use will be possible and is not supported by an acid sulfate soils study. The inconsistency is considered to be of minor significance as the proposal does not involve any soil disturbance and the



Lismore LEP 2012 contains existing provisions that allow this matter to be adequately addressed at the development application stage if necessary.

#### 4.3 Flood Prone Land

The proposal is inconsistent with the Direction as it permits an increase in the development potential of flood prone land. While the inconsistency is considered to be of minor significance due to the nature of the development involving minimal structures or landform changes, it is recommended that this Direction remain resolved until after consultation has been undertaken with the Biodiversity & Conservation Division to confirm the suitability of the proposal in relation to flooding.

#### 5.10 Implementation of Regional Plans

The proposal is inconsistent with the direction as it does not develop successful centres of employment or protect and enhance productive agricultural lands.

This inconsistency is considered to be of minor significance as:

- the proposal affects only a small area (3.3ha) with the vast majority of the land (39ha) to remain in agricultural use;
- no existing or proposed industrial lands in the LGA are of an appropriate size to facilitate the proposal; and
- the regional plan recognises that certain industries may need to be located away from existing centres due to their type, scale and nature.

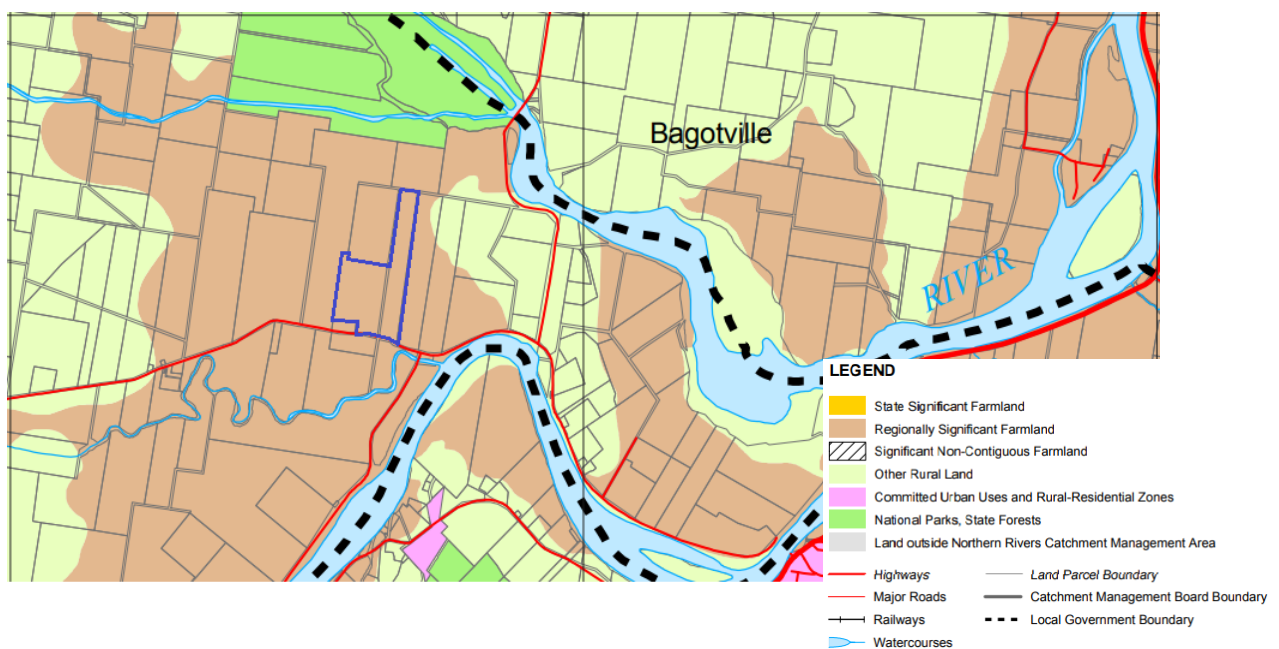


Figure 11 - Northern Rivers Farmland Protection Project – Final Recommendations, February 2005

#### 4.5 State environmental planning policies (SEPPs)

##### SEPP 44 – Koala Habitat Protection

This SEPP applies to the proposal as the Lismore LGA is listed in Schedule 1 of SEPP 44. The subject site has been previously cleared of vegetation and does not contain any core koala habitat. There is no vegetation proposed to be removed. The proposal is therefore considered to be consistent with the requirements of the SEPP.

## *SEPP 55 – Remediation of Land*

The SEPP requires a council to consider whether the land is contaminated and whether the land will be suitable for the intended purpose. The subject site is identified by Council as being potentially contaminated land resulting from the current sugar cane use. Council has considered the site history and proposed future use and has confirmed that the proposal is satisfactory and consistent with the requirements of the SEPP.

### **5. SITE-SPECIFIC ASSESSMENT**

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#### **5.1 Social**

No Aboriginal sites or places have been identified within 50m of the subject land. There are no heritage items listed in Schedule 5 of the Lismore LEP 2012.

The proposal is supported by a Land Use Conflict Risk Assessment (LUCRA) that has confirmed that the impact of the proposed development be low and can be adequately managed through development application process.

#### **5.2 Environmental**

The subject site has been previously cleared of vegetation and is currently used for cropping and grazing activities. The land is not identified as having any potential high environmental value by the *North Coast Regional Plan 2036*. The proposal is considered unlikely to have any detrimental environmental impacts on the subject site or surrounding area subject to appropriate requirements being applied at the development application stage.

The site is close to Dungarubba Creek, approximately 400m, and the Richmond River, approximately 800m. Due to this proximity, Council has recommended that the Natural Resource Access Regulator (NRAR) (Land and Water Division of the Department of Planning, Industry & Environment) be consulted on the suitability of the proposal. This is considered appropriate.

The proposal is removing from primary production 3.3ha of the total 42.21ha site area to facilitate the development. It is therefore recommended that the Department of Primary Industries be consulted on the suitability of the proposal noting that the land is identified as being regionally significant farmland (Figure 11).

#### **5.3 Economic**

The proposal will have a positive impact economically as there is proposed ongoing employment for six staff. The proposal does not displace any employment lands and will not negatively impact upon other employment centres or the existing use of the remaining land for primary production.

#### **5.4 Infrastructure**

The proposal identifies that three pre-mixed concrete trucks will be required per daily pour. Council has confirmed that the existing road network is suitable to cater for this low level of heavy vehicle movements. The existing Broadwater Road is a local collector road and is of good condition having a 7m wide sealed width. Wyrallah Road is a regional road and is also in a good to fair condition to service the facility in its function as a transport corridor. Due to this increase in heavy vehicle movements it is recommended that Transport for NSW (Roads and Maritime Services) be consulted on the suitability of the proposal.

No additional infrastructure or services will be required.

## **6. CONSULTATION**

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### **6.1 Community**

Council has advised that it intends to exhibit the planning proposal for not less than 28 days. Council has also advised that community consultation will involve an advertisement in a local newspaper and on Council's website. In addition, adjoining landowners will be notified in writing. This is considered satisfactory.

### **6.2 Agencies**

It is considered that Council should consult with:

- Transport for NSW (Roads and Maritime Services)
- DPIE (Department of Primary Industries)
- DPIE (Natural Resource Access Regulator)
- DPIE (Division of Biodiversity & Conservation Division)

## **7. TIME FRAME**

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The planning proposal includes a project timeline which estimates completion of the LEP amendment in June 2020. It is considered that a nine month time frame for completion of the LEP amendment would be appropriate.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council has requested that it be issued with an authorisation to exercise plan making functions. As the proposal deals only with matters of local significance it is considered appropriate that Council be provided authorisation to act as the local plan-making authority.

## **9. CONCLUSION**

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

- there is currently no industrial land in the Lismore LGA providing the required size and flat area of 24m wide with a lineal length of 500m or greater required for production, nor is there any other suitable future land that has been identified in the Lismore Growth Management Strategy (GMS); and
- the proposal facilitates the development while keeping the RU1 Primary Production zone consistent with the surrounding agricultural land uses and farming activities.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.1 Business and Industrial Zones, 1.5 Rural Lands, 2.2 Coastal Management, 4.1 Acid Sulfate Soils, and 5.10 Implementation of Regional Plans are minor or justified; and
2. note that the consistency with section 9.1 Direction 4.3 Flood Prone Land is unresolved and will require justification.

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

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
  - Transport for NSW (Roads and Maritime Services)
  - DPIE (Department of Primary Industries)
  - DPIE (Natural Resource Access Regulator)
  - DPIE (Division of Biodiversity & Conservation Division)
3. The time frame for completing the LEP is to be nine months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.



19/12/19

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14-1-2020

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