



Nambucca Shire Council

**Planning proposal Nambucca
LEP Amendment No 10
Minimum subdivision lot sizes
for certain split zone lots**

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*Department of Environment and Planning
Nambucca Shire Council*

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1.0 Preliminary

1.1 Context

This Planning proposal has been drafted in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979*, and 'A guide to preparing planning proposals' (DoP, 2009). A gateway determination under Section 66 of the Act is requested.

1.2 Subject Land

This Planning proposal applies to all land located in the Nambucca Shire Council Local Government Area.

1.3 Current Zoning and Use

This Planning proposal applies to all zoned land in the Nambucca LEP 2010 as prescribed in the draft clause.

1.4 Background

The purpose of this planning proposal is to ensure subdivision on lots that contain split zones and different lot size may still be subdivided. This is particularly important in areas fringing Large Lot Residential and Rural Zones to ensure Council's Local Growth Management Strategy Rural Residential Land can be implemented in accordance with its recommendations.

Clause 4.1 of the Nambucca LEP 2010 provides for the subdivision of land in the Nambucca Shire. In brief this clause states that any Lot resulting from the subdivision of land must not be less than the minimum lot size shown on the Lot Size Maps. This clause is reproduced in full below.

Clause 4.1 Minimum subdivision lot size

(1) *The objectives of this clause are as follows:*

- (a) *to encourage efficient use of land,*
- (b) *to ensure the subdivision layout is compatible with the desired future character of the locality,*
- (c) *to ensure land zoned R5 Large Lot Residential is developed in accordance with the Council's strategic planning framework for Nambucca.*

(2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*

(3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

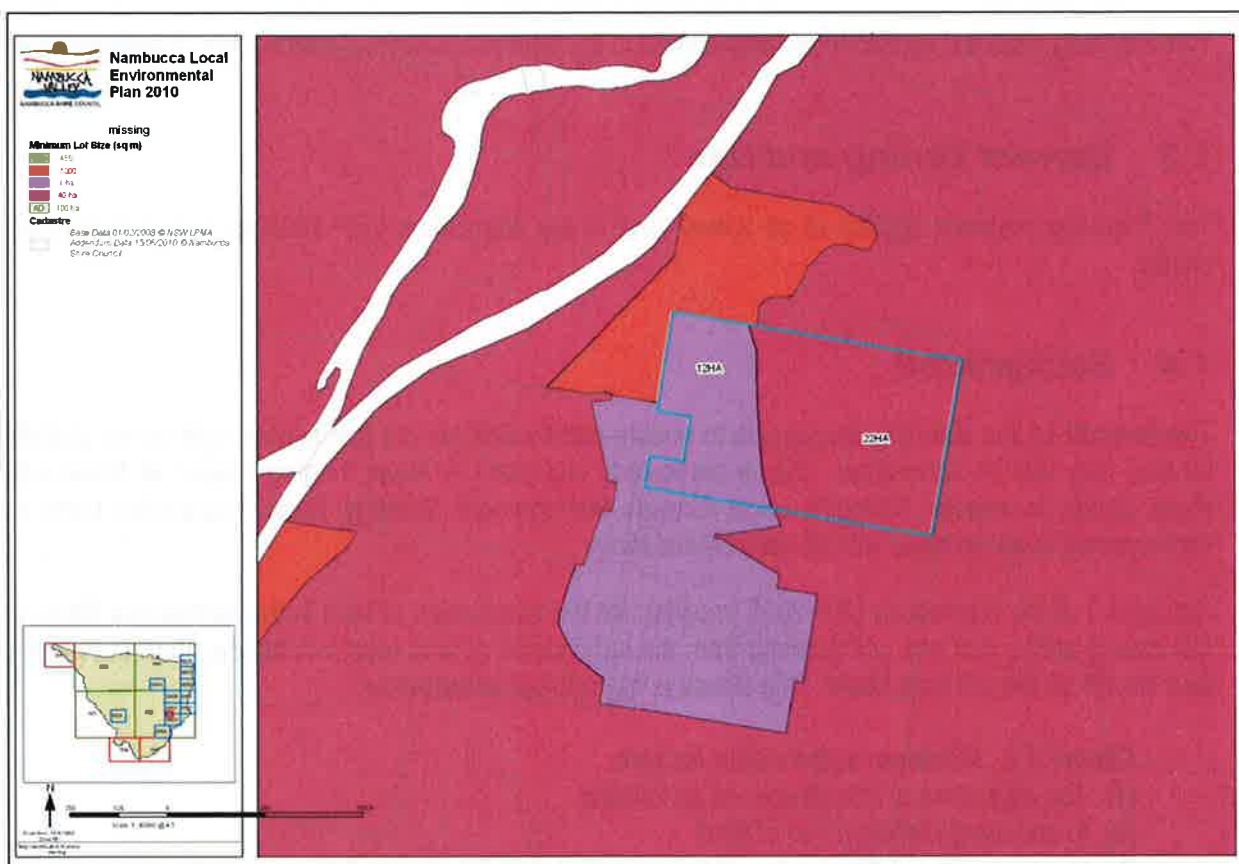
(4) *This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.*

(4A) *This clause does not apply in relation to the subdivision of land in Zone R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential or R4 High Density Residential:*

- (a) *if the land contains an existing dual occupancy, or*
- (b) *for the purpose of erecting an attached dwelling or a semi-detached dwelling, or*
- (c) *if a single development application is made for the subdivision of the land into 2 lots and for the erection of a dwelling house on each of the 2 resulting lots.*

The issue with this clause is that on land containing a split zone with two (2) different lot sizes the residue lot may not meet the minimum size requirements. It is anticipated that in many cases the larger lot size portion of a lot may already be below the minimum required by the Lot Size Map.

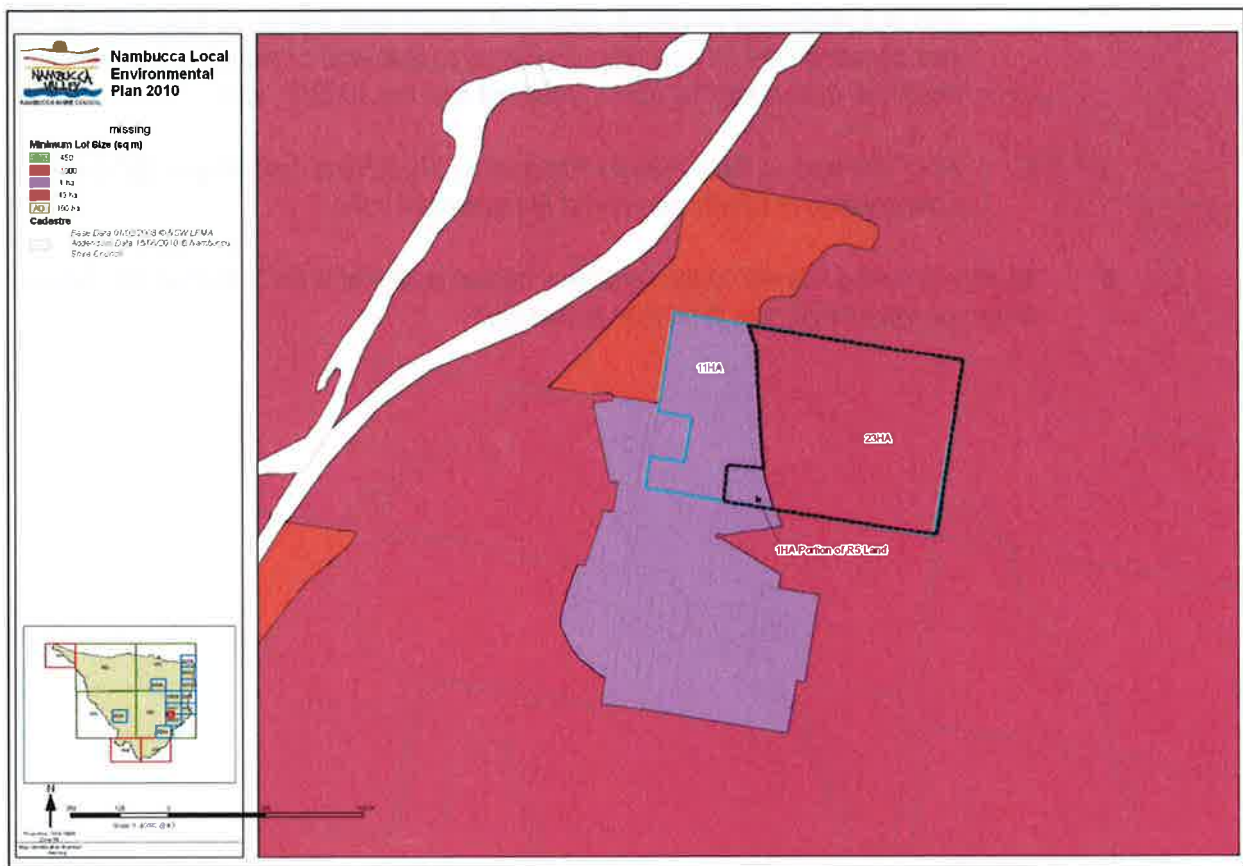
In the example below an R5 Large Lot Residential and RU2 Rural lot is split between 1HA and 40Ha minimum lot sizes. As shown the 12Ha-R5 portion has the potential to be subdivided into 12-1HA Lots, whereas the residue 22Ha of rural land is restricted to 40Ha in size. Arguably the subdivision of the land may be prohibited as any lot created containing the rural portion of land would be less than the minimum lot size.



This has been highlighted as an issue with the standard clause and a number of Councils have adopted provisions to address this matter.

Such clauses adopted to rectify this issue allow a split zone subdivision to occur as long as the residue lot contains a portion land from the primary subdivided land that is not less than the minimum lot size.

The following figure shows how the described clause may progress subdivision in the example. Please note this figure is not drawn to scale.



Council already has a provision in the Nambucca DCP 2010 to give effect to these types of subdivisions, however it needs to be re-examined and applied at the LEP level to ensure it is effective.

Council has considered split zone clauses adopted by other Councils which give effect to split zone subdivision and prepared this planning proposal with these previously endorsed provisions in mind. The following is the draft clause prepared for insertion into the Nambucca LEP 2010. It is also provided as **Appendix 1**.

- 1 *The objectives of this clause are as follows:*
 - a *to provide for the subdivision of lots that contain more than one zone and cannot be subdivided under clause 4.1*
 - b *to ensure that the subdivision occurs in a manner that promotes suitable land use and development*
- 2 *This clause applies to each lot (an original lot) that contains:*
 - a *land in a residential, village, business, industrial or special uses zone, and*
 - b *land in RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation or E3 Environmental Management zone.*
- 3 *Despite clause 4.1 development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:*
 - a *one of the resulting lots will contain:*

- i land in a residential or village zone that has an area that is not less than the minimum size shown on the lot size map in relation to that land or land in a business, industrial or special uses zone that has an area not less the 1000m²; and*
 - ii all of the land in RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation or E3 Environmental Management zone.*
- b all other resulting lots will contain land that has an area that is not less than the minimum size shown on the lot size map in relation to that land*

Part 1 Objectives or Intended outcomes

The primary objective of this LEP Amendment is to:

1. Ensure lots that contain multiple minimum lot sizes can be subdivided where one of the minimum lot sizes can be achieved.
2. Where part of a lot does not contain minimum lot size, ensure that resulting lots have an adequate amount of appropriately zoned land to allow development consistent with the associated urban land use.

Part 2 Explanation of Provisions

The objectives of the LEP amendment will be achieved by an amendment to the Nambucca LEP 2010 which includes an additional provision that:

1. *Ensures objectives of the amendment align with the Intended Outcomes;*
2. *Appropriately identifies land to which the amendment will apply;*
3. *Ensures that the new provisions do not conflict with other clauses of the Nambucca LEP 2010;*
4. *That permits split zone subdivision to occur where appropriate conditions are met. These conditions being that one lot contains all of the larger lot size and the minimum amount of the smaller lot size required by the lot size map or the clause;*

The proposed amending provision is provided in **Appendix 1**.

Part 3 Justification

Section A – Need for the Planning proposal

1 *Is the Planning proposal the result of any strategic study or report*

This planning proposal rectifies an anomaly with the Standard Instrument LEP which makes it difficult to subdivide lots with varying lot sizes. Council's Local Growth Management Plan Rural Residential Land was approved in 2009. This plan identifies a substantial amount of unconstrained land suitable for Large Lot Residential development. The subsequent zoning of Large Lot Residential land in the Nambucca LEP 2010 aligned to lot boundaries and roads where possible, but in many instances split zone lots were made to align with constraints or other land features.

For similar reasons as identified above Council's Local Growth Management Strategy Employment lands, and Nambucca LEP 2010 have resulted in some split zone lots in Industrial and Business zoned lands.

As stated in the background of this proposal, the subdivision of split zone lots can be difficult under the provisions of the Nambucca LEP 2010. The purpose of this amendment is to ensure these split zone portions of the land can be subdivided in accordance with Council's approved Local Growth Management Strategies.

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

The planning proposal is the best way to achieve the intended outcomes as it is based on similar provisions approved by the Department of Planning and the Minister for other local government areas.

3 *Is there a net community benefit?*

Yes, there is a net community benefit by ensuring subdivision can occur in accordance with approved Local Growth Management Strategies.

Implications of not proceeding at this time

Should LEP amendment not proceed at this time, Council may encounter difficulties in progressing subdivisions in accordance with approved strategies.

Section B –Relationship to strategic planning framework

4 *Is the Planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?*

Yes – The Mid North Coast Regional Strategy requires each Council to prepare local growth management strategies. The proposed amendment will assist Council in implementing components of its local growth management strategy.

5 *Is the planning proposal consistent with the local Council's Community Strategic Plan, or other strategic plan?*

Yes, refer to previous comments in regards to Council's local growth management strategy components.

6 *Is the Planning proposal consistent with applicable State Environmental Planning Policies (SEPP's)?*

Yes – see Appendix 2

7 *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

Yes – see Appendix 3

Section C – Environmental, social and economic impact

- 8 *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 is allowing development to occur in accordance with approved Council strategies, land zonings and lots sizes which during their preparation gave consideration to the *Threatened Species Conservation Act 1995* and relevant sections of the *Environmental Planning and Assessment Act 1979*.

- 9 *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?***

Environmental effects of any development applications associated with this amendment will be given consideration during the environmental assessment process under Section 79C of the *Environmental Planning and Assessment Act 1979*. No direct environmental impacts will result from this planning proposal.

- 10 *How has the planning proposal adequately addressed any social and economic effects?***

As stated previously the proposed amendment is giving effect to Council's Local Growth Management Strategies, which have been endorsed by Council and the Department of Planning. These strategies have given consideration to social and economic impacts in providing recommendations.

Section D – State and Commonwealth Interests

- 11 *Is there adequate public infrastructure for the planning proposal?***

Yes, these matters have also been given consideration during the preparation of the Local Growth Management strategies. Where necessary contribution plans will be developed to support population growth and infrastructure provision.

- 12 *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?***

The planning proposal is yet to be determined by the Gateway Panel. Upon determination the relevant consultation will be undertaken and further advice will be provided in this part at that time.

Part 4 Community Consultation

The proposal is considered to be a low impact proposal in accordance with Section 4.5 of '*A guide to preparing local environmental plans*'. As such it is intended that the exhibition period for the planning proposal will be a minimum of 14 days and the exhibition will be undertaken in accordance with Section 4.5 of '*A guide to preparing local environmental plans*'.

The proposal is essentially rectifying an anomaly to ensure split zoned lots can be subdivided without complications.

Appendix 1 – Proposed Amendment

The following is the draft clause prepared for insertion into the Nambucca LEP 2010. It is intended to insert the clause as clause 4.2C.

- 1 *The objectives of this clause are as follows:*
 - a *to provide for the subdivision of lots that contain more than one zone and cannot be subdivided under clause 4.1*
 - b *to ensure that the subdivision occurs in a manner that promotes suitable land use and development*
- 2 *This clause applies to each lot (an original lot) that contains:*
 - a *land in a residential, village, business, industrial or special uses zone, and*
 - b *land in RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation or E3 Environmental Management zone.*
- 3 *Despite clause 4.1 development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:*
 - a *one of the resulting lots will contain:*
 - i *land in a residential or village zone that has an area that is not less than the minimum size shown on the lot size map in relation to that land or land in a business, industrial or special uses zone that has an area not less the 1000m²; and*
 - ii *all of the land in RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation or E3 Environmental Management zone*
 - b *all other resulting lots will contain land that has an area that is not less than the minimum size shown on the lot size map in relation to that land*

Appendix 2 - State Environmental Planning Policies

All State Environmental Planning Policies (SEPP)s have been considered during the preparation of this Planning proposal. However as the Planning proposal is essentially allowing the Nambucca LEP 2010 to be implemented as it was made no SEPPs are specifically relevant.

Appendix 3 - Section 117 Directions

A number of directions under Section 117 of the EP & A Act 1979 are relevant to this planning proposal.

1 Employment and Resources

Direction 1.1 Business and Industrial Zones

The objectives of this direction are to:

- a encourage employment growth in suitable locations,
- b protect employment land in business and industrial zones, and
- c support the viability of identified strategic centres.

This direction applies when a council prepares a draft LEP that affects land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).

A draft LEP shall:

- a give effect to the objectives of this direction,
- b retain the areas and locations of existing business and industrial zones,
- c not reduce the total potential floor space area for employment uses and related public services in business zones,
- d not reduce the total potential floor space area for industrial uses in industrial zones, and
- e ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.

This planning proposal will support development of existing employment zoned lands in accordance with the existing land use zones and the local growth management strategies.

Direction 1.2 Rural Zones

The objective of this direction is to protect the agricultural production value of rural land.

This direction applies when a council prepares a draft LEP that affects land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

A draft LEP shall:

- a not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.
- b not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).

A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are:

- a justified by a strategy which:
 - i gives consideration to the objectives of this direction,
 - ii identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular site or sites), and

- iii is approved by the Director-General of the Department of Planning, or
- b justified by an environmental study prepared in accordance with section 57 of the *Environmental Planning and Assessment Act 1979* which gives consideration to the objectives of this direction, or
- c in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- d is of minor significance.

This planning proposal will support development of existing rural zoned land in accordance with the existing land use zones and the local growth management strategies.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

This direction applies when a council prepares a draft LEP that would have the effect of:

- a prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or
- b restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.

In the preparation of a draft LEP affected by this direction, the council shall:

- a consult the Director-General of the Department of Primary Industries (DPI) to identify any:
 - i resources of coal, other minerals, petroleum or extractive material that are of either State or regional significance, and
 - ii existing mines, petroleum production operations or extractive industries occurring in the area subject to the draft LEP, and
- b seek advice from the Director-General of DPI on the development potential of resources identified under (4)(a)(i), and
- c identify and take into consideration issues likely to lead to land use conflict between other land uses and :
 - i development of resources identified under (4)(a)(i), or
 - ii existing development identified under (4)(a)(ii).

The planning proposal is consistent with this direction.

Direction 1.4 Oyster Aquaculture

The objectives of this direction are:

- a to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered when preparing a draft LEP,
- b to protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.

In the preparation of a draft LEP affected by this direction, the council shall:

- a identify any Priority Oyster Aquaculture Areas and oyster aquaculture leases outside such an area, as shown on the maps to the Strategy, to which the draft LEP would apply,
- b identify any proposed land uses which could result in any adverse impact on a Priority Oyster Aquaculture Area or oyster aquaculture leases outside such an area,
- c identify and take into consideration any issues likely to lead to an incompatible use of land between oyster aquaculture and other land uses and identify and evaluate measures to avoid or minimise such land use incompatibility,
- d consult with the Director-General of the Department of Primary Industries (DPI) of the proposed changes in the preparation of the draft LEP, and
- e ensure the draft LEP is consistent with the Strategy.

The Planning proposal is consistent with this direction. Development applications lodged with Council will be required to give appropriate consideration to the provisions of SEPP 62 Sustainable Aquaculture.

Direction 1.5 Rural Lands

The objectives of this direction are to:

- a protect the agricultural production value of rural land,
- b facilitate the orderly and economic development of rural lands for rural and related purposes.

This direction applies when:

- a a council prepares a draft LEP that affects land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or
- b a council prepares a draft LEP that changes the existing minimum lot size on land within a rural or environment protection zone.

What a council must do if this direction applies

- a A draft LEP to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.
- b A draft LEP to which clause 3(b) applies must be consistent with the Rural Subdivision Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.

This Planning proposal will support development of rural land in accordance with the existing land use zones and the local growth management strategies. The Planning proposal is consistent with this direction.

2 Environment and Heritage

Direction 2.1 Environment Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas.

This direction applies when a council prepares a draft LEP.

What a council must do if this direction applies:

- a A draft LEP shall include provisions that facilitate the protection and conservation of environmentally sensitive areas.
- b A draft LEP that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP shall not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "*Rural Lands*".

The planning proposal is consistent with this direction. It allows land to be subdivided in accordance with the local growth management strategies and existing land use zones.

Direction 2.2 Coastal Protection

The objective of this direction is to implement the principles in the NSW Coastal Policy.

This direction applies to the coastal zone, as defined in the *Coastal Protection Act 1979*.

This direction applies when a council prepares a draft LEP that applies to land in the coastal zone.

A draft LEP shall include provisions that give effect to and are consistent with:

- a the *NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997*, and
- b the *Coastal Design Guidelines 2003*, and
- c the manual relating to the management of the coastline for the purposes of section 733 of the *Local Government Act 1993* (the *NSW Coastline Management Manual 1990*).

The Planning proposal is consistent with this direction. It allows land to be developed in accordance with the local growth management strategies and existing land use zones.

Direction 2.3 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

This direction applies when a council prepares a draft LEP.

A draft LEP shall contain provisions that facilitate the conservation of:

- a items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,
- b Aboriginal objects or Aboriginal places that are protected under the *National Parks and Wildlife Act 1974*, and
- c Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the council, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

The Nambucca LEP 2010 contains provisions to address heritage matters. This Planning proposal does not amend these provisions.

2.4 Recreational Vehicle Areas

Not applicable to this Planning proposal.

3 Housing, Infrastructure and Urban Development

Direction 3.1 Residential Zones

The objectives of this direction are:

- a to encourage a variety and choice of housing types to provide for existing and future housing needs,
- b to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- c to minimise the impact of residential development on the environment and resource lands.

This direction applies when a council prepares a draft LEP that affects land within:

- a an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- b any other zone in which significant residential development is permitted or proposed to be permitted.

A draft LEP shall include provisions that encourage the provision of housing that will:

- a broaden the choice of building types and locations available in the housing market, and
- b make more efficient use of existing infrastructure and services, and
- c reduce the consumption of land for housing and associated urban development on the urban fringe, and
- d be of good design.

A draft LEP shall, in relation to land to which this direction applies:

- a contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- b not contain provisions which will reduce the permissible residential density of land.

The planning proposal is consistent with this direction. It allows land to be developed in accordance with the local growth management strategies and existing land use zones, particularly the R5 Large Lot Residential zone.

3.2 Caravan Parks and Manufactured Home Estates

Not applicable in to this planning proposal.

3.3 Home Occupations

Not applicable to this planning proposal.

Direction 3.4 Integrated Land Use and Transport

The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- a improving access to housing, jobs and services by walking, cycling and public transport, and
- b increasing the choice of available transport and reducing dependence on cars, and
- c reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
- d supporting the efficient and viable operation of public transport services, and
- e providing for the efficient movement of freight.

This direction applies when a council prepares a draft LEP that creates, alters or removes a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

A draft LEP shall locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:

- a *Improving Transport Choice – Guidelines for planning and development* (DUAP 2001), and
- b *The Right Place for Business and Services – Planning Policy* (DUAP 2001).

The planning proposal is consistent with this direction.

3.5 Development near licensed aerodromes

Not applicable to this planning proposal.

3.6 Shooting Ranges

Not applicable to this planning proposal.

4 Hazard and Risk

Direction 4.1 Acid Sulfate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

This direction applies when a council prepares a draft LEP that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.

Council shall consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a draft LEP that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.

When a council is preparing a draft LEP to introduce provisions to regulate works in acid sulfate soils, those provisions shall be consistent with:

- a the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Director-General, or

- b such other provisions provided by the Director-General of the Department of Planning that are consistent with the Acid Sulfate Soils Planning Guidelines.

A council shall not prepare a draft LEP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the council has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. Council shall provide a copy of any such study with its statement to the Director-General of the Department of Planning under section 64 of the EP&A Act.

Where provisions referred to under paragraph (5) of this direction have not been introduced and council is preparing a draft LEP that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the draft LEP must contain provisions consistent with paragraph (5).

The Nambucca LEP 2010 contains provisions to address acid sulfate soils. This planning proposal does not impact on these provisions.

Direction 4.2 Mine Subsidence and Unstable Land

Not applicable as the planning proposal is not located in a mine subsidence district.

Direction 4.3 Flood Prone Land

The objectives of this direction are:

- a to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*, and
- b to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

This direction applies when a council prepares a draft LEP that creates, removes or alters a zone or a provision that affects flood prone land.

A draft LEP shall include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005* (including the *Guideline on Development Controls on Low Flood Risk Areas*).

A draft LEP shall not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.

A draft LEP shall not contain provisions that apply to the flood planning areas which:

- a permit development in floodway areas,
- b permit development that will result in significant flood impacts to other properties,
- c permit a significant increase in the development of that land,
- d are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or
- e permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.

A draft LEP must not impose flood related development controls above the residential flood planning level for residential development on land, unless a council provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

For the purposes of a draft LEP, a council must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the *Guideline on Development Controls on Low Flood Risk Areas*) unless a council provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

The Local Growth Management Strategy Rural Residential Lands and Nambucca LEP 2010 were developed taking into consideration flood prone land as a hard constraint. They also contain provisions which address flood prone land. The planning proposal is consistent with this direction.

Direction 4.4 Planning for Bushfire Protection

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.

This direction applies when a council prepares a draft LEP that affects, or is in proximity to land mapped as bushfire prone land.

A draft LEP shall:

- a have regard to *Planning for Bushfire Protection 2006*,
- b introduce controls that avoid placing inappropriate developments in hazardous areas, and
- c ensure that bushfire hazard reduction is not prohibited within the APZ.

A draft LEP shall, where development is proposed, comply with the following provisions, as appropriate:

- a provide an Asset Protection Zone (APZ) incorporating at a minimum:
 - i an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
 - ii an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
- b for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the draft LEP permit Special Fire Protection Purposes (as defined under section 100B of the *Rural Fires Act 1997*), the APZ provisions must be complied with,
- c contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
- d contain provisions for adequate water supply for fire fighting purposes,
- e minimise the perimeter of the area of land interfacing the hazard which may be developed,
- f introduce controls on the placement of combustible materials in the Inner Protection Area.

It is intended to ensure the planning proposal is consistent with this direction. The Gateway panel may determine that it is necessary to consult with the NSW Rural Fire Service regarding this matter.

5 Regional Planning

Direction 5.1 Implementation of Regional Strategies

Objective

- (1) The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

Where this direction applies

- (2) This direction applies to land to which the following regional strategies apply:
- (a) Far North Coast Regional Strategy
 - (b) Lower Hunter Regional Strategy
 - (c) Illawarra Regional Strategy
 - (d) South Coast Regional Strategy
 - (e) Sydney–Canberra Corridor Regional Strategy
 - (f) Central Coast Regional Strategy, and
 - (g) Mid North Coast Regional Strategy.

When this direction applies

- (3) This direction applies when a relevant planning authority prepares a planning proposal.

What a relevant planning authority must do if this direction applies

- (4) Planning proposals must be consistent with a regional strategy released by the Minister for Planning.

Consistency

- (5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy:
- (a) is of minor significance, and
 - (b) the planning proposal achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.

The planning proposal is consistent with the Mid North Coast Regional Strategy. It is also considered to be an amendment of minor significance which achieves the overall intent of the Mid North Coast Strategy and the Local Growth Management Strategies for Nambucca Shire Council.

Direction 5.2 Sydney Drinking Water Catchment

Not applicable to the Nambucca LGA.

Direction 5.3 Farmland of State and Regional Significance on the NSW Far North Coast

Not applicable to the Nambucca LGA.

Direction 5.4 Commercial and Retail Development along the Pacific Highway North Coast

The planning proposal is not site specific. Any future development along the Pacific Highway will be assessed as part of a development application.

Direction 5.5 Development in the Vicinity of Ellalong, Paxton and Millfield (Revoked 18 June 2010)

Direction 5.6 Sydney to Canberra Corridor

(Revoked 10 July 2008. See amended Direction 5.1)

Direction 5.7 Central Coast

(Revoked 10 July 2008. See amended Direction 5.1)

Direction 5.8 Second Sydney Airport: Badgerys Creek

Not applicable to the Nambucca LGA.

6 Local Plan Making

Direction 6.1 Approval and Referral Requirements

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

A draft LEP shall:

- a minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and
- b not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the council has obtained the approval of:
 - i the appropriate Minister or public authority, and
 - ii the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General),prior to a certificate under section 65 of the Act being issued, and
- c not identify development as designated development unless the council:
 - i can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and
 - ii has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to a certificate being issued under section 65 of the Environmental Planning and Assessment Act 1979.

It is intended to ensure the planning proposal is consistent with this direction.

Direction 6.2 Reserving Land for Public Purposes

The objectives of this direction are:

- a to facilitate the provision of public services and facilities by reserving land for public purposes, and
- b to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

A draft LEP shall not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

When a Minister or public authority requests a council to reserve land for a public purpose in a draft LEP and the land would be required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*, the council shall:

- a reserve the land in accordance with the request, and
- b include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and
- c identify the relevant acquiring authority for the land.

When a Minister or public authority requests a council to include provisions in a draft LEP relating to the use of any land reserved for a public purpose before that land is acquired, the council shall:

- a include the requested provisions, or
- b take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired.

When a Minister or public authority requests a council to include provisions in a draft LEP to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the council shall rezone and/or remove the relevant reservation in accordance with the request.

A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:

- a with respect to a request referred to in paragraph (7), that further information is required before appropriate planning controls for the land can be determined, or
- b the provisions of the draft LEP that are inconsistent with the terms of this direction are of minor significance.

It is intended to ensure the planning proposal is consistent with this direction.

Direction 6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

This direction applies when a council prepares a draft LEP to allow a particular development to be carried out.

A draft LEP that amends another environmental planning instrument in order to allow a particular development proposal to be carried out shall either:

- a allow that land use to be carried out in the zone the land is situated on, or
- b rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or
- c allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

A draft LEP shall not contain or refer to drawings that show details of the development proposal. It is intended to ensure the planning proposal is consistent with this direction.

7 Metropolitan Planning

Directions that apply to metropolitan planning are relevant to this planning proposal.

