



Nambucca Shire Council

Planning Proposal Nambucca LEP Amendment no. 12 Exceptions to minimum lot sizes for certain Rural Subdivisions

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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 by reference in the draft clause.

1.4 Background

On 16 September 2010 Council reviewed the recently gazetted Nambucca LEP 2010 and identified a number of anomalies and other future amendments to pursue in the LEP. One of these amendments was to incorporate a clause that would allow special purpose subdivision in Rural Areas. Essentially the clause would allow rural land to be subdivided below the minimum lot size where Council is satisfied the use of the land after the subdivision will be for an established use other than residential accommodation.

Such clauses were common in NSW LEP's and an equivalent clause was present in the Nambucca LEP 1995. The reason such clauses were common is that there are a plethora of permissible uses in rural zones which don't require and/or cannot afford a large holding. For this reason it was considered reasonable to provide such a clause in the LEP 2010 and the matter was forwarded to the Department of Planning (DoP) for consideration through the Gateway Process.

The gateway determination (PP_2010_nambu_003_00) determined the matter could not proceed. Later discussions indicated the amendment was not to proceed because the proposed clause was not part of the standard instrument template.

No further action has been taken to pursue this amendment and to date any enquiries regarding this type of subdivision have been advised that they would require an LEP amendment to change the minimum lot size.

More recently the Armidale-Dumaresq Shire has placed their draft LEP 2012 on exhibition and it includes a local clause to permit subdivision of the type proposed in this report. As an LEP requires approval from the DoP for exhibition it appears the DoP may have reconsidered their position on these types of subdivisions or a local model provision to allow this type of subdivision has been developed.

Part 1 Objectives or Intended outcomes

The primary objective of this LEP Amendment is to:

1. Amend Clause 4.2 Rural Subdivision or create a new local provision to ensure that a subdivision resulting in a lot less than the minimum lot size may occur on rural land where it is related to a permissible land use and does not result in an additional dwelling entitlement.

Part 2 Explanation of Provisions

The objectives of the LEP amendment will be achieved by inserting the following local provision into the Nambucca LEP 2010.

Exceptions to minimum lot sizes for certain rural subdivisions

- 1 The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of permissible uses other than for the purpose of dwelling houses or dual occupancies.
- 2 Land in a zone to which Clause 4.2 applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land, where the consent authority is satisfied that the use of the land after the subdivision will be the same use permitted under the existing development consent for the land (other than for the purpose of a dwelling house or a dual occupancy).
- 3 Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:
 - a the subdivision will not adversely affect the use of the surrounding land for agriculture, and
 - b the subdivision is necessary for the ongoing operation of the permissible use, and
 - c the subdivision will not increase rural land use conflict in the locality, and
 - d the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

Part 3 Justification

Section A – Need for the Planning Proposal

1 *Is the Planning Proposal the Result of any Strategic study or Report*

The planning proposal is not the result of any strategic study or report.

This type of subdivision was permissible under the Nambucca LEP 1995, the provisions of the Standard Instrument LEP have not provided for this within the standard clauses.

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

There may be other provisions or clauses that may be able to achieve the intent of this amendment. However the clause provided 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 a manner that allows a permissible use to proceed without requiring unnecessary and resource ineffective land management responsibilities. The proposed clause includes provisions to ensure that any subdivision of this nature gives adequate consideration to potential impacts.

Implications of not proceeding at this time

Should council not proceed with an LEP amendment that meets the intent of this Planning Proposal, a future permissible use not requiring an entire rural allotment to operate will be required to prepare an LEP amendment to reduce the minimum lot size. This would be a costly exercise for an applicant and inefficient use of Council resources to implement site specific changes of this type. A general clause to capture this type of the development is the most efficient method.

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.*

There is no direct reference to this type of provision within the Mid North Coast Regional Strategy, however the proposed clause is not inconsistent with content of the Strategy.

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

The planning proposal is consistent with the 2022 Community Strategic Plan which states the following in relation to having 'well planned communities'.

Objective: A well planned community which minimises its environmental footprint and social costs whilst maximising the economic and social wellbeing of its residents.

The LEP amendment provides a practical solution for a business or activity that is appropriately located in a rural environment but does not require a full rural parcel to operate. This subdivision provision will allow a permissible activity to establish on rural land and the land to be subdivided. In this manner the residue portion of land is likely to be managed/used more efficiently under separate ownership.

6 *Is the Planning Proposal consistent with applicable state environmental planning policies (SEPP's)?*

Yes – see Appendix 1

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

Yes – see Appendix 2

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 LEP amendment will not directly result in an adverse impact to critical habitat or threatened species, populations or their habitats. During preparation of any development application made under this amended clause consideration will need to be given 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, and the proposed clause includes provisions to ensure adequate consideration is given to any potential environmental impacts.

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

Yes, there is unlikely to be any adverse social or economic impacts associated with the amendment proposed in this planning proposal. A similar clause was available in the Nambucca LEP 1995 and over the effective life of this plan no issues were encountered with its implementation.

It is expected any issues that arise could be managed through the development application process.

Section D – State and Commonwealth Interests

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

The proposal will allow the subdivision of land only where a use or activity is established. It is assumed that in most instances the established use will have already have adequate infrastructure and services in place for its operation. In the event services or infrastructure do require upgrading this could managed through the development application process for subdivision. This would also be the case for any contributions required to be paid.

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

A gateway determination is yet to be received. Any consultation that occurs as a result of the Gateway determination will be given consideration in this part. This section will be amended as required.

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 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'.

Appendix 1 - State Environmental Planning Policies

All State Environmental Planning Policies (SEPP)s have been considered during the preparation of this Planning proposal. However the only Planning Proposal of specific relevance is SEPP (Rural Lands).

- **State Environmental Planning Policy (Rural Lands)**

The aim of this policy is to facilitate the orderly and economic use and development of rural lands for rural and related purposes.

This SEPP does not directly relate to LEP amendments or planning proposals, however it does provide a number of Rural Planning principles to be given consideration when assessing development applications.

It is noted that 117 Directions relate specifically to LEP amendments on Rural Land and it may be repetitious to give consideration to these principles in this part as well as in the 117 directions (appendix 2).

Further additional comments on this SEPP will be made under the relevant 117 directions.

Appendix 2 - 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 has no effect on existing employment lands.

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 does not intend on rezoning any rural land. Although the planning proposal does not directly propose any increases to density in rural zoned land, it will provide an opportunity for a permissible use to be separated from the rural portion of a property by allowing subdivision below the minimum lot size. It is considered that this reduction of lot size is of minor significance and is only likely to occur on occasions where a suitable permissible use is already established.

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:

- 3a 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
- 3b 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

- 4a 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*.
- 4b 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*.

Consistency

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 provisions of the planning proposal 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 planning proposal (if the planning proposal relates to a particular site or sites, and
 - iii is approved by the Director-General of the Department of Planning and is in force, or
- b is of minor significance.

This Planning Proposal affects land in the rural zones and the minimum lot size provisions within the rural zones. For this reason the planning proposal must be consistent with the Planning Principles and the Rural Subdivision principles identified in SEPP (Rural Lands) 2008.

SEPP (Rural Lands) 2008 Rural Planning Principles

- a the promotion and protection of opportunities for current and potential productive and sustainable activities in rural areas.

There are a number of mechanisms available to protect agriculture resources from land use conflicts including Council's DCP 2010 and the living and working in rural areas handbook (DPI, 2008) which provides buffer/ setback requirements to certain activities. These will be applied as necessary through DA process, in addition to the following LEP provisions which are proposed through this amendment.

Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:

- a the subdivision will not adversely affect the use of the surrounding land for agriculture, and
- b the subdivision is necessary for the ongoing operation of the permissible use, and
- c the subdivision will not increase rural land use conflict in the locality, and
- d the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

- b recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or state.

In the Nambucca LGA the gross regional product delivered by the agricultural sector was the only economic sector to decrease during the 2004-2008 period. It declined by approximately 6.9% per annum over this period and this trend is reflected with employment in the agriculture sectors decreasing over the last 20 years (LGMS Employment Lands, NSC 2010).

The decrease in employment may be partially representative of higher individual productivity per employee and technical advancement of agricultural industries and machinery. However the negative trend in gross regional product within the agricultural sector demonstrates a downsizing of the industry in the LGA.

Factors which may have contributed to this include:

- large scale local productivity being less competitive with overseas markets; and
- other sectors being more attractive and profitable – for the example the growth in Nambucca LGA's manufacturing sectors; and
- Attractive rural development opportunities and property market for 'sea' and tree' changers.

Despite the decline in the gross regional product from within the agricultural sector, the importance of the rural industry in the Nambucca Region is recognised in the Nambucca LEP 2010 with over 50% of land

within the shire being zoned rural. Further to this, the proposed amendment will provide a number of opportunities for rural land holders including the following:

- This amendment may provide rural landowners with an opportunity to supplement income by disposing of an agreed portion of their land without having adverse impacts on their rural production.
 - It may also improve feasibility or certainty for development or land uses suited to a rural locality, knowing that upon establishment subdivision is a viable option.
 - This Planning Proposal may provide an opportunity for improved management regimes of residue portions of rural land that may result from a permissible use being approved on the land. This amendment will assist in preventing potentially productive rural land from being mismanaged or neglected as unused land.
- c recognition of the significance of rural land uses to the state and rural communities, including the social and economic benefits or rural land use development;

This planning proposal gives recognition to the importance of rural landscapes and associated productivity through provisions that will require Council to be satisfied a proposed development under this clause will not have adverse effects on:

- the surrounding land for agriculture, and
 - rural land use conflict in a locality, and
 - the natural and physical constraints affecting the land.
- d in planning for rural lands to balance the social economic and environmental interests of the community

The proposal will provide opportunities for established rural located businesses, community orientated activities to dispose of unused land where natural and physical constraints of the land are not impacted.

- e the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land;

The proposed clause contains provisions to ensure that natural and physical issues are taken into consideration during the assessment of a proposed subdivision. These matters are also reiterated through other legislative requirements such as Section 79C of the EP&A Act, relevant SEPP's and other clauses of the Nambucca LEP 2012.

- f the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities;

The proposed amendment to the LEP will not have an impact on housing in rural areas.

- g the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing;

The proposed amendment to the LEP will not have an impact on housing in rural areas. As the proposed subdivision will only be available to established uses it is intended that adequate services and infrastructure will already be in place for the established use.

- h ensuring consistency with any applicable regional strategy of the department of planning or any applicable local strategy endorsed by the director general.

SEPP (Rural Lands) 2008 Rural Subdivision Principles

(a) the minimisation of rural land fragmentation

This proposed amendment will allow for the subdivision of an established use in a rural area. Although the planning proposal will contribute to the fragmentation of rural land, the resulting fragmentation is expected to be of minimal significance. Further to this, as the use shall be established on a property prior to allowing the subdivision of the land, it is expected that any adverse fragmentation issues will be identified during the assessment of the use rather than the subsequent subdivision.

(b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses

There are a number of mechanisms available to protect agriculture resources from land use conflicts including Council's DCP 2010 and the living and working in rural areas handbook (DPI, 2008) which provides buffer/ setback requirements to certain activities. These will be applied as necessary through DA process, in addition to the following LEP provisions which are proposed through this amendment.

Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:

- a the subdivision will not adversely affect the use of the surrounding land for agriculture, and*
- b the subdivision is necessary for the ongoing operation of the permissible use, and*
- c the subdivision will not increase rural land use conflict in the locality, and*
- d the subdivision is appropriate having regard to the natural and physical constraints affecting the land.*

(c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands

In this instance the proposed clause will allow a reduction in minimum lots sizes of rural land but only for non-residential purposes. Council and the Director General (DoP) recently approved Councils Local Growth Management Strategy – Rural Residential Land. This strategy identified the land to be used for Rural Residential purposes which was subsequently zoned for that purpose under the Nambucca LEP 2010. This proposal does not intend on amending the Local Growth Management Strategy or Rural Residential zones (R5 Large Lot Residential) contained in the LEP 2010.

(d) the consideration of the natural and physical constraints and opportunities of land

The proposed new clause specifically highlights the need to give consideration to the natural and physical constraints and opportunities of the land in question.

(e) ensuring that planning for dwelling opportunities takes account of those constraints

By giving consideration to the natural and physical constraints it is given that any planning for dwellings or other permissible uses would also be subject to those same considerations.

It is considered that the planning proposal is generally consistent with the principles contained with the SEPP (Rural Lands) 2008 and any inconsistency is only considered to be of minor significance.

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 provides additional provisions to give consideration to natural and physical constraints of a parcel subject to a proposal development under the amending clause.

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 provides additional provisions to give consideration to natural and physical constraints of a parcel subject to a proposal development under the proposed clause.

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.

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 Nambucca LEP 2010 contains provisions which address flood prone land. The planning proposal does not propose to amend these provisions and considered to be 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.

The Gateway panel may determine that it is necessary to consult with the NSW Rural Fire Service regarding this matter. All subdivisions on Bushfire Prone Land are required to be forwarded to the NSW Rural Fire Service as integrated development. Under Section 100B of the *Rural Fires Act* NSW Rural Fire Service must issue a Bushfire Safety Authority for any subdivision that can create land which could lawfully be used residential purposes.

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.

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.