



Nambucca Shire Council

Planning proposal Nambucca LEP Amendment No 16 Boundary Adjustments for certain Rural and Environmental Land

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Table of Contents

1.0	PRELIMINARY	1
1.1	CONTEXT	1
1.2	SUBJECT LAND.....	1
1.3	CURRENT ZONING AND USE.....	1
1.4	BACKGROUND.....	1
PART 1	OBJECTIVES OR INTENDED OUTCOMES	2
PART 2	EXPLANATION OF PROVISIONS	2
PART 3	JUSTIFICATION.....	3
	SECTION A – NEED FOR THE PLANNING PROPOSAL	3
	SECTION B –RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK.....	3
	SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT.....	5
	SECTION D – STATE AND COMMONWEALTH INTERESTS.....	5
PART 4	COMMUNITY CONSULTATION	6
	APPENDIX 1 – PROPOSED AMENDMENT.....	7
	APPENDIX 2 - STATE ENVIRONMENTAL PLANNING POLICIES.....	7
	APPENDIX 3 - SECTION 117 DIRECTIONS.....	10

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' (DoPi, 2012). A gateway determination under Section 56 of the Act is requested.

1.2 Subject Land

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

1.3 Current Zoning and Use

This Planning proposal applies to all land zoned RU1 Primary Production, RU2 Rural landscape, Zone R5 Large Lot Residential; and E3 Environmental Management in the Nambucca LEP 2010 as prescribed in the draft clause.

1.4 Background

As local Councils produced their Local Environmental Plans (LEP's) in accordance with the state governments standard instrument requirements, the adopted LEP's repealed the State Environmental Planning Policy no. 1 Variations to Development Standards for that area.

Clause 4.6 of standard Instrument LEP replaced the functions of this repealed SEPP and this clause allows for variations to development standards such as lot size, height and floor space ratio. To be considered, a variation must satisfy the provisions of this clause.

A feature lacking from clause 4.6 which was previously available to Council through Department of Planning issued assumed concurrences under the SEPP is the ability to undertake boundary adjustments associated with lots that are already under the minimum lot size.

Discussions with the Department of Planning previously indicated that the issue was being examined and it appears that an agreement has now been made on the wording of provisions to address the issue. Coffs Harbour, Upper Hunter and Ballina LEP's have drafted or contain provisions which allow boundary adjustments between existing undersized allotments.

The following is adapted from the draft Coffs Harbour LEP 2012 presently on exhibition:

4.1B Boundary adjustments of land in certain rural and environmental protection zones [local]

- (1) The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size and the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in the following zones:

Zone RU1 Primary Production
Zone RU2 Rural landscape

Zone R5 Large Lot Residential; and
Zone E3 Environmental Management.

- (3) Despite Clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining allotments where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that:
 - (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (b) the number of dwellings or opportunities for dwellings on each lot after subdivision must be the same as before the subdivision, and
 - (c) the potential for land use conflict will not be increased as a result of the subdivision, and
- (4) Before granting consent to development to which this clause applies the consent authority must be satisfied that the subdivision will result in the continued protection and long term maintenance of any land zoned E3 Environmental Management or E2 Environmental Protection.

These provisions allow a landowner/s to adjust boundaries on undersized allotments where no adverse effects will be encountered. In many cases these types of boundary adjustments allow for logical and practical rural land management practices. On the 30 May 2012 Council resolved the following:

- 1 Pursuant to the Clause 55 of the Environmental Planning and Assessment Act 1979, Council prepare a Planning Proposal to support an amendment to allow for the Boundary adjustments of land in certain rural and environmental protection zones.**
- 2 The Planning Proposal and associated material be submitted to the Minister for Planning for consideration under Clause 56 of the Act.**

Part 1 Objectives or Intended outcomes

The primary objective of this LEP Amendment is to:

1. Facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size and the objectives of the relevant zone can be achieved. The resulting boundary adjustment should not result in additional dwelling entitlements or additional land use conflicts in rural areas.

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 to enable boundary adjustments to occur on undersized allotments of rural and environmental zones. An explanation of the provisions is provided below:

1. *Explains the objectives of the provisions;*
2. *Defines which zones the provisions apply to being RU1 Primary Production; RU2 Rural Landscape; R5 Large Lot Residential; E3 Environmental Management;*
3. *Indicates that despite minimum lot size provisions contained in the plan, subdivision of undersized allotments may occur where Council is satisfied that no additional dwelling entitlement would be create and the potential for land use conflicts are not increased;*

4. Council must also be satisfied that E3 and E2 zoned land will not be detrimentally impacted by the adjustment.

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*

No, the provisions were applicable in the Nambucca LEP 1995 and SEPP 1. They were removed with the implementation of the Standard Instrument LEP. Council's intention in preparing the LEP 2010 was to complete a best fit transfer of the old LEP into the new format. This new provision complies with Councils intent.

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 logical boundary adjustments are permissible within Councils development controls.

Implications of not proceeding at this time

Should LEP amendment not proceed at this time, Council may not be able to undertake logical subdivisions.

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 recommends subdivision in rural areas be in accordance with the SEPP Rural Lands and the potential for new dwelling entitlements be limited. This proposal is considered consistent with this SEPP.

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

Yes – the planning proposal is not inconsistent with Council's Community Strategic Plan.

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 a logical manner. It is unlikely that the planning proposal will result in any adverse impacts to threatened species their habitats or endangered ecological communities. However, should development applications be received under the new provisions, appropriate consideration to environmental impacts including threatened species will be provided.

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

The proposal is allowing development to occur in a logical manner. It is unlikely that the planning proposal will result in any adverse environmental impacts. However, should development applications be received under the provisions this new provision, appropriate consideration to environmental impacts including threatened species will be provided.

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

Yes, the proposal allows for logical subdivisions to occur, social and economic effects can be considered to during assessment of any subsequent applications made under the SEPP.

Section D – State and Commonwealth Interests

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

Yes, the provisions will not increase densities in rural areas.

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

N/A Council is yet to undertake consultation with other government agencies.

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 boundary adjustments are available on undersized rural allotments as long as they do not result in additional dwelling entitlements or land use conflicts.

Appendix 1 – Proposed Amendment

The following is the draft clause prepared for insertion into the Nambucca LEP 2010.

1B Boundary adjustments of land in certain rural and environmental protection zones [local]

(1) The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size and the objectives of the relevant zone can be achieved.

(2) This clause applies to land in the following zones:

Zone RU1 Primary Production
Zone RU2 Rural landscape
Zone R5 Large Lot Residential; and
Zone E3 Environmental Management.

(3) Despite Clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining allotments where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that:

(a) the subdivision will not create additional lots or the opportunity for additional dwellings, and

(b) the number of dwellings or opportunities for dwellings on each lot after subdivision must be the same as before the subdivision, and

(c) the potential for land use conflict will not be increased as a result of the subdivision, and

(4) Before granting consent to development to which this clause applies the consent authority must be satisfied that the subdivision will result in the continued protection and long term maintenance of any land zoned E3 Environmental Management or E2 Environmental Protection.

Appendix 2 - State Environmental Planning Policies

All State Environmental Planning Policies (SEPP)s have been considered during the preparation of this Planning proposal. The following were required to be specifically addressed.

SEPP (Rural Lands) 2008 Rural Planning

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.

The rural planning principles are listed and given consideration below:

- 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 provide buffer/ setback requirements to certain activities. Further the proposed provisions of the LEP specify that Council must be satisfied an application under this part will not result in land use conflicts.

- 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.

The amendment will assist rural land holders to implement logical land management practices that will not result in additional dwelling densities or land use conflicts.

- 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;

The proposed amendment will implement provisions that worked effectively since they were first introduced in 1989.

- d in planning for rural lands to balance the social economic and environmental interests of the community

This amendment will rectify an anomaly with the Standard Instrument LEP, replacing effective provisions that were available to Councils prior to the introduction of the Standard Instrument.

- 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;

Council is required to give consideration to a number of statutory instruments which relate to the natural environment and constrained land. The proposed amendment will not affect the applicability of any such legislation.

- 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 will allow for improved land management opportunities for rural land holders.

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

This planning proposal will not result in any additional rural housing opportunities.

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

As already stated this proposal is considered consistent with the Mid North Coast Regional Strategy.

SEPP (Rural Lands) 2008 Rural Subdivision Principles

- (a) the minimisation of rural land fragmentation

The proposed amendment will not effect the planned release of rural land, rather it will provide the provisions required to enable land to be subdivided in a manner that supports logical rural land management practices.

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

As stated previously the amendment includes provisions to minimize potential land use conflicts.

- (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

The planning proposal will allow for subdivision of the rural land only where it will not result in additional dwelling entitlements or land use conflicts. These proposed changes reflect provisions which were available under SEPP 1, which in most cases provided for well planned and logical rural boundary adjustments and management practices.

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

The amendment includes provisions to ensure that the subdivision occurs in a manner that promotes suitable land use and development. A number of legislative requirements address natural and physical constraints.

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

The planning proposal will not result in any greater opportunities for dwelling entitlements.

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

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 does not effect the business or other employment land.

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. The provisions do not require the rezoning of land and will not result in an increase in density.

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 where requested by staff.

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. The principles identified in the SEPP (Rural Lands) 2008 have been given consideration in Appendix 1 and are not duplicated in this section.

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. It contains specific provisions to ensure the environmentally zoned land will not be detrimentally impact by the proposed development.

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 and Council's Coastal Zone Management Plan.

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. The R5 Large Lot Residential zone is included in the provisions of this SEPP.

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 provisions of this amendment will not impact on the requirements to give consideration to development applications through the DA process.

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. However, individual boundary adjustments lodged under these provisions will require the NSW Rural Fire Service to issue a bushfire safety authority should the proposed adjustments be located on Bushfire Prone Land.

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.

