



Nambucca Shire Council

Planning Proposal Nambucca LEP Amendment No 20 Subdivision of Rural Land Severed by a Sealed Road

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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' (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 as indicated in the draft clause at Appendix 1.

1.3 Current Zoning and Use

This Planning proposal applies to all land zoned RU1 Primary Production and RU2 Rural landscape in the Nambucca LEP 2010 (NLEP2010) as prescribed in the draft clause.

1.4 Background

At present the subdivision of rural land is required to meet the minimum lot size prescribed in the NLEP2010, being either 40Ha or 100Ha. The majority of the lots that are severed by a sealed road do not provide enough land to enable subdivision of this type, although minor variations are permitted to allow lot size variations up to 10%.

Individual landholders may apply for a site specific Planning Proposal to reduce the minimum lot size on certain land subject to making application to Council at cost.

A brief investigation has been undertaken into the implications of a broader amendment to the NLEP2010 in the form of a Local Provision to allow subdivision of land severed by a public road. The investigation has examined a number of issues associated with such a proposal including the purpose and intent of the amendment, the implications and the potential controls.

Landholders have expressed concerns regarding access and management of land where it is split by a rural road. The main concerns highlighted include the following:

- Rural activities are difficult to manage in a safe manner where access is required between land on opposing sides of the road;
- The value of the severed land for rural purposes is minimal due to size, and management constraints;
- Poor management of the severed land results in environmental issues such as erosion and weeds; and
- In many areas the severed land may be a logical extension to existing nearby rural residential land.

The implications of a correctly drafted provision in the LEP that allows rural subdivision where the land is severed by public road is considered minimal if a number of guiding principles are applied. These principles are:

- The whole parcel (before the severance by road) must have an existing dwelling entitlement
- The land must adjoin part of continuous sealed road
- The land must have a suitable area of land that is not flood prone

- The land must be greater than 1Ha in size
- The land must have physical attributes to support subdivision and/or a dwelling
- The subdivision or future dwelling on the land must not result in unreasonable land use conflicts with surrounding rural activities.

An examination of the number of lots severed by a sealed public road has been undertaken and resulted in the following:

- There are approximately 103 lots severed by a sealed public road;
- No assessment has been undertaken on existing dwelling entitlements of these 103 lots;
- Approximately 14 of these are fully or substantially flood prone and unlikely to be suited to subdivision;
- 60 portions of the undersized lots were less than 1ha in size (it is noted that a multipart lot may be comprised of a number of different portions not all necessarily severed by a road). A visual estimate indicates that approximately 5-10 of these would be severed by a road and unsuitable to subdivision due to size shape and environmental constraints.

To minimize the impact of dispersed rural settlement and avoid servicing pressures in areas well outside of the town centres, further restrictions could be placed in the provisions. For instance the provision may only be applicable to areas within a certain distance of a residential or business zone in accordance with a map overlay. Outlying suburbs in shire that contribute to the 103 severed lot parcels include:

- Taylors Arm (23)
- Yarranbella/Utungun (16)
- Missabotti and surrounds (13)
- South Arm (4).

If a reasonably high take up rate for this opportunity (approximately 80%) is assumed and the analysis above is taken into consideration, it is estimated that an amendment of this nature could result in an additional 63 additional lots. For the purposes of this amendment it is proposed to exclude outlying suburbs and the potential lots could be reduced to an additional 22 lots.

A figure is presented below which illustrates the relative distribution of the severed lots. It should be noted on examination of the figure the outlying suburbs to be excluded from the provision are notably less fragmented and more rural in character than those parcels to which the provisions will apply. The provision will apply to those located nearer to services and the towns of Nambucca, Macksville, Bowraville and Scotts Head.

Allotments potential affected by the proposed LEP amendment

Part 1 Objectives or Intended outcomes

The primary objective of this LEP Amendment is to:

1. Permit subdivision of rural lots that are severed by a sealed public road.

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 subdivision to occur on undersized allotments of rural zones where the lot is severed by a sealed public road. 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 and; RU2 Rural Landscape;*
3. *Indicates that despite minimum lot size provisions contained in the plan, subdivision of undersized allotments severed by a sealed public road may occur where Council is satisfied that the subdivision is appropriate having regard to the natural and physical constraints of the land, that the subdivision will not have an adverse impact on the environmental values or agricultural viability of the land and that the potential for land use conflicts are not increased;*

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, an initial investigation has been undertaken by Council in response to concerns expressed by landowners about the difficulties in managing their land when it is severed by a public road. The amendment is considered minor a stand alone provision and Council would like it considered separately to broader rural residential release strategy.

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 provides a co-ordinated, well-considered option to all parcels of land in the situation rather than either dealing with individual parcels of land in separate planning proposals. As stated above it is considered a stand alone amendment separate to the Rural Residential release strategy.

3 Is there a net community benefit?

Yes, there is a net community benefit by enabling the better management of rural land.

Implications of not proceeding at this time

Should LEP amendment not proceed at this time it is unlikely Council would consider the amendment in the context of the rural residential release strategy and poor land management practices would continue such as erosion and poor weed management largely due to difficulties related access and fragmentation.

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?

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 will allow subdivision of rural land into smaller parcels but often these land parcels are poorly managed due access and fragmentation which contribute to issues on surrounding rural properties.

With the proposed exclusion of outlying areas identified in the body of this report, it is considered that the resulting LEP amendment will only allow for a minor addition of potential rural dwellings estimated at approximately 22 (based on an 80% take up rate). Each of these potential dwellings would be subject to merit assessment giving consideration to the physical attributes of the site as well as other issues such as flooding and land use conflicts and bushfire.

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

Yes – the planning proposal is consistent 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?

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 given.

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

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 given.

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

Yes, the proposal allows for land that is currently of minimal value to be appropriately subdivided. Other social and economic effects can be considered during assessment of any subsequent applications made.

Section D – State and Commonwealth Interests

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

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

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

Council is yet to receive a gateway determination. Preliminary feedback from the Department of Planning and Environmental in relation to this matter indicated Council should pursue this matter as part of a review of the Nambucca Local Growth Management Strategy – Rural Residential component Council has resolved to investigate the opportunity to achieve the intended outcomes through a provision that is independent of the Strategy as the resulting implications of the amendment are considered minor. No other Government agencies have been consulted in regards to this amendment at this stage, further consultation is expected should a positive gateway determination be received.

Part 4 Community Consultation

As an estimated 22 additional rural lots have the potential to be created by the proposal, it 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*'.

Appendix 1 – Proposed Amendment

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

This clause would also be drafted to exclude outlying suburbs via the provision of an overlay map prior to exhibition of the planning proposal.

- 1 The objective of this clause is to permit subdivision of rural lots that are severed by a sealed public road
- 2 This clause applies to land identified as "subject land" on the Severed Land Application Map and zoned:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape,
- 3 Despite clause 4.1 (3), development consent may be granted to the subdivision of one lot into two where:
 - (a) the existing lot is severed by an existing sealed public road; and
 - (b) the existing lot has a dwelling; and
 - (c) the resulting lot boundaries use the road as the boundary of the division;
 - (d) the resulting lots are a size greater than 1Ha; and
 - (e) the resulting lots have a suitable area available for future dwellings and access and access that are at or above the flood planning level for that land;
- 4 In deciding whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:
 - (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (d) whether or not the subdivision is likely to be incompatible with a use on land in an adjoining zone,
 - (e) any measure proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
 - (f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,
 - (g) whether or not the subdivision is likely to have an adverse impact on the environmental values or agricultural viability of the land.
- 5 This clause does not apply:
 - (a) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or
 - (b) where a resulting lot could itself be subdivided in accordance with clause 4.1.

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 for 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 proposed amendment will ensure that subdivision applications are assessed so that conflicting land use issues are minimised and the importance of rural lands is acknowledged. Potential subdivision of these lands may lead to improved management practices of land which in some cases may be neglected.

- 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 not have a negative social or economic impact as it applies only to under-utilised rural land and will effect a small proportion of lots.

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

The proposed amendment will ensure that assessment is undertaken giving due consideration to social, economic and environmental impacts of any applications.

- 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 result in some additional rural housing opportunities as previously identified. All new lots will be located on already sealed roads and will be assessed to ensure that appropriate services and infrastructure are already available.

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

Please refer to previous comments in Section B Mid North Coast Regional Strategy.

SEPP (Rural Lands) 2008 Rural Subdivision Principles

- (a) the minimisation of rural land fragmentation

As previously indicated the land that is applicable to this amended is fragmented via physical properties which results in management implications. The amendment will reduce the fragmentation of the land from a property owners point of view as the land is already severed by a sealed road. The amendment will increase the fragmentation of rural land in terms of ownership as more rural land holders are likely to reside in the area. Nevertheless as the land is already physically fragmented the results are likely to be positive in terms of ongoing 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 minimise 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 land use conflicts are minimized and will create a small number of additional lots which is anticipated to provide improved management of rural land.

- (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 result for additional dwelling entitlements but as previously stated the increase is considered minor and will give appropriate consideration the constraints of the land.

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.

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 affect 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 increase the permissible density of land within a rural zone, however as only approximately 22 additional rural lots may be created under the proposed amendment, it is considered to be of minor significance.

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. 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.

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 land applicable to this amendment is rural land unlikely to be affected by Coastal Processes. Should a development application be received in relation to this part it will be required to address the relevant provisions of council LEP, DCP and State Environmental Planning Policies.

It is considered that this amendment is not in-consistent with the provisions of this direction.

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 not applicable to residential zones.

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. The proposed provisions address flood prone land.

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 subdivision applications 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.

It is considered that the proposed amendment is of minor significance and is not inconsistent with intent of 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. The provisions of amendment have been drafted to be consistent with this provision.

7 Metropolitan Planning

Directions that apply to metropolitan planning are not relevant to this planning proposal.