

## Planning and Assessment

IRF19/4449

### Gateway determination report

<b>LGA</b>	Lismore
<b>PPA</b>	Lismore City Council
<b>NAME</b>	Rezoning Deferred Matter Lands – Stage 2 Urban (0 houses and 0 jobs)
<b>NUMBER</b>	PP_2019_LISMO_001_00
<b>LEP TO BE AMENDED</b>	Lismore Local Environmental Plan 2012
<b>ADDRESS</b>	This proposal applies to various lots in the Lismore local government area
<b>DESCRIPTION</b>	Various
<b>RECEIVED</b>	24 June 2019
<b>FILE NO.</b>	IRF19/4449
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to amend the Lismore Local Environmental Plan (LEP) 2012 to apply Standard Instrument zones to 138ha of deferred land in urban areas. The land was deferred following the then Minister for Planning's announcement in September 2012 of a review of the application of E zones and environmental overlays on the Far North Coast.

Lismore City Council is undertaking a two-stage implementation program for deferred lands. Stage one (non-urban areas) received a Gateway determination to proceed on 10 May 2019. The current proposal (urban areas) is stage two and seeks to:

- apply E zones to public land owned by Council or the Crown or to private land in accordance with a negotiated development outcome;
- apply rural, residential and special use zones to other deferred land;
- amend the following LEP maps for the subject land: land application; minimum lot size; drinking water catchment; flood planning; height of buildings; and potential rural land sharing community development; and
- include an additional objective in the RU2 Rural Landscape zone land use table.

Nine private landowners and Southern Cross University were consulted about the proposal and asked if they wanted an environmental zone and to confirm the primary use of the land (**Attachment F**). Council received responses from all but one private landowner.

Tables 1–20 in part 1 of the planning proposal (**Attachment A**) list the subject land, current and proposed zones, required map amendments, the identified primary use of the land and whether the sites meet the E zone criteria.

The proposal seeks to rezone:

- 109.3ha to E2 Environmental Conservation/E3 Environmental Management;
- 23.4ha to SP2 Infrastructure (educational establishment);
- 4.3ha to RU2 Rural Landscape; and
- 1ha to R1 General Residential.

## 1.2 Land to which the planning proposal applies

The planning proposal applies to 70 urban lots comprising 138ha of land within the Lismore local government area (LGA). The affected lots have been grouped into 15 geographical locations, as shown at Figure 1 (below). A list of the subject properties is included in pages 8-13 of the planning proposal (**Attachment A**).

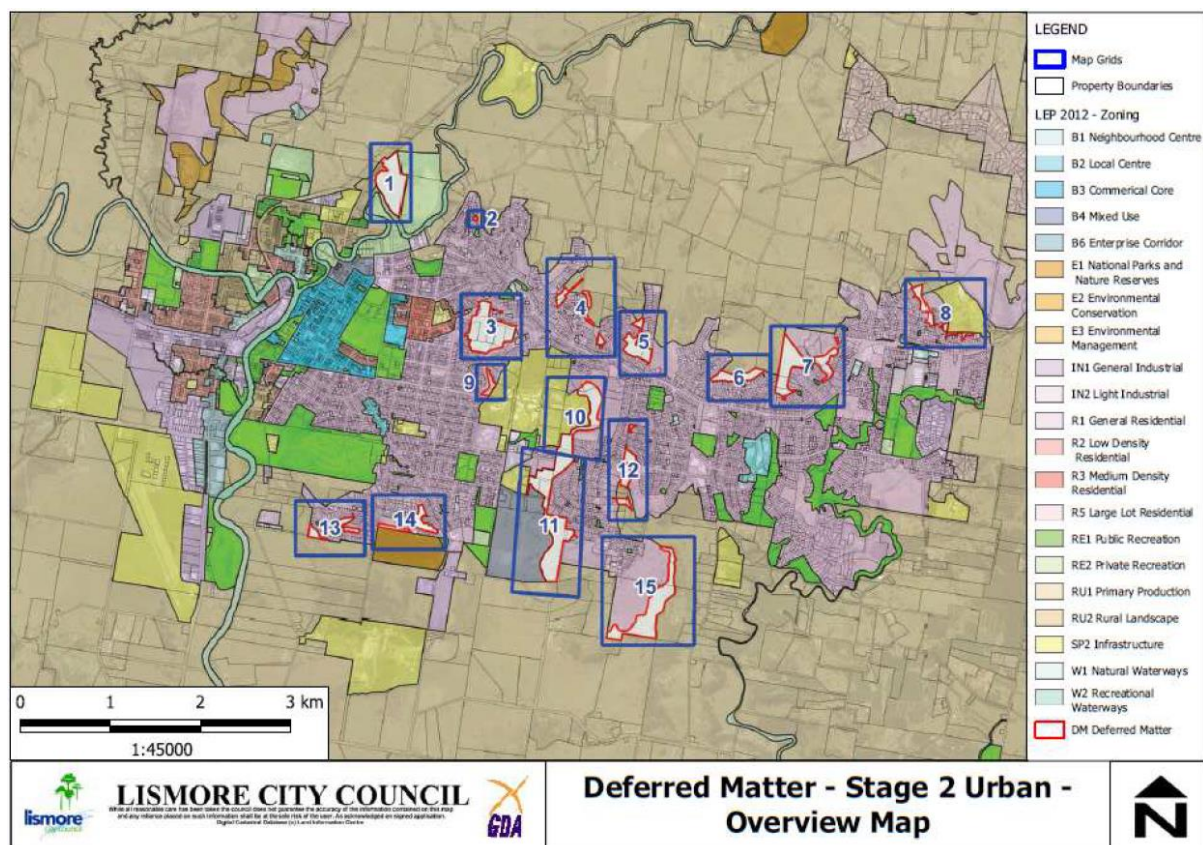


Figure 1: Overview of lands affected by the planning proposal (source: Lismore City Council).

A total of 54 lots comprising 91ha of land are owned by either Council or the Crown. Seven lots with a total area of 23.5ha are owned by Southern Cross University. The remaining nine lots totalling 24ha are privately owned.

## 1.3 Existing planning controls

The following Lismore LEP 2000 zones apply to the deferred land:

- 1(a) General Rural;
- 1(d) Investigation;

- 2(a) Residential;
- 6(a) Recreation;
- 5(b) Special Uses (Technology Park);
- 7(a) Environmental Protection (Natural Vegetation and Wetlands); and
- 7(b) Environmental Protection (Habitat).

#### **1.4 Summary of recommendation**

The planning proposal seeks to amend the Lismore LEP 2012 to apply Standard Instrument zones to the urban deferred land.

The proposal primarily seeks to transition most of the subject land in a 'like-for-like' zone.

It is recommended that the planning proposal proceed subject to conditions as it:

- is consistent with the Northern Councils E Zone Review Final Recommendations and implements the government's policy for the zoning of environmental land on the Far North Coast of NSW; and
- continues to integrate the land use planning requirements for deferred matter lands for the Lismore LGA into a single consolidated LEP.

## **2. PROPOSAL**

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

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The primary objective of the proposal is to incorporate urban deferred land into the Lismore LEP 2012 while undertaking minor associated housekeeping amendments in relation to a building encroachment and the introduction of a new objective into the RU2 Rural Landscape land use table.

### **2.2 Explanation of provisions**

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved. The proposal will be implemented by:

- applying E zones to public land owned by Council or the Crown or to private land in accordance with a negotiated development outcome;
- applying rural, residential and special use zones to other deferred land;
- amending the land application, minimum lot size, drinking water catchment, flood planning, height of buildings and potential rural land sharing community development LEP maps for the subject land; and
- including an additional objective in the RU2 Rural Landscape zone land use table.

An additional RU2 zone objective is also proposed to provide extra protection for lots that may contain attributes that meet the E zone criteria and are proposed to be zoned RU2 due to their primary use. The additional objective proposed for the RU2 zone is:

*To provide for a limited range of development that does not have an adverse effect on areas with ecological values.*

## 2.3 Mapping

The planning proposal includes maps that show all the properties in the LGA that are subject to the planning proposal and the proposed zones.

The planning proposal does not contain maps showing the consequential changes to other LEP maps resulting from the inclusion of the subject land into the LEP. The proposed changes affect the following maps:

- minimum lot size (MLS);
- height of building (HOB);
- drinking water catchment (DWC);
- flood planning (FLD);
- potential rural land sharing community development (RCD); and
- land application (LAP).

It is recommended that the Gateway determination include a condition that these proposed maps be prepared and included in the planning proposal prior to consultation.

Amendments to all map series will need to be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps prior to finalisation of the LEP.

## 3. NEED FOR THE PLANNING PROPOSAL

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The planning proposal has arisen due to Council's need to integrate deferred lands into the Lismore LEP 2012 in accordance with the Northern Councils E Zone Review Final Recommendations Report. In September 2012, the then Minister for Planning announced a review of the application of E zones and environmental overlays on the Far North Coast. Until the review was completed, land that had been proposed for an E2 or E3 zone was deferred from the Lismore LEP 2012. The final recommendations report was released in October 2015.

A planning proposal is the only way to incorporate the deferred land into the Lismore LEP 2012 and apply appropriate zones, development standards and other planning controls.

## 4. STRATEGIC ASSESSMENT

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### 4.1 State

#### Northern Councils E Zone Review Final Recommendations Report

The final recommendations report sets out clear criteria and methodologies for Far North Coast councils to follow when seeking to apply E zones. This was further supported by a section 9.1 Direction requiring councils to be consistent with the adopted recommendations and directive from the Department's Secretary (1 March 2016) providing further guidance on how to apply the final recommendations. The final E zone recommendations also clarify that the application of E zones under the criteria is not mandatory and only applies to land proposed for an E zone.

The proposal is considered to be consistent with the Northern Councils E Zone Review Final Recommendations Report criteria and methodology (**Attachment G**). Council has applied E zones in the proposal only to public land that it believes has a primary use of environmental conservation or management or private land consistent with a negotiated development outcome that reflects the final recommendations.



Council has determined that some land in the proposal does not warrant an E zone even though it may contain environmental attributes. This is discussed in sections 4.2 and 4.4 below.

The proposal seeks to amend the drinking water catchment map in the Lismore LEP 2012 to include some of the subject land. This is consistent with the final recommendations, which permit the application of a mapped planning control for matters of public health and safety such as drinking water catchments. Consultation regarding this matter is recommended with Rous County Council as the relevant water supply authority.

#### **4.2 Regional**

The planning proposal is generally consistent with the *North Coast Regional Plan 2036* except in relation to the rezoning of approximately 16.6ha of land zoned 7(b) Environment Protection Zone at Southern Cross University (SCU) to SP2 Infrastructure (educational establishment). This rezoning will increase the theoretical development potential of the land and would not direct potential development away from biodiversity-sensitive areas. This inconsistency is considered to be of minor significance as:

- the proposed SP2 zone is consistent with most of the adjoining land within the university campus (which also includes areas containing similar environmental attributes) and will assist in providing a more consistent and coordinated planning framework for the entire campus;
- the land is quite steep and the likelihood of any significant development that would have an adverse environmental impact is extremely unlikely; and
- the land is regulated under the *Biodiversity Conservation Act 2016*, which provides an appropriate legislative regime for the management of vegetation on the site.

#### **4.3 Local**

The planning proposal is consistent with *Imagine Lismore Community Strategic Plan 2017-2027*. One of the actions of the strategic plan is to monitor the LEP and amend it as required. The proposal simplifies the land use planning requirements for these deferred lands by enabling controls under a single LEP.

The proposal is also consistent with Council's *Lismore Growth Management Strategy 2015-2035* approved by the Department in August 2015.

#### **4.4 Section 9.1 Ministerial Directions**

The proposal is considered to be consistent with all relevant section 9.1 Directions except the following:

##### Direction 1.1 Business and Industrial Zones

The planning proposal is inconsistent with this Direction as it does not retain areas zoned business and industrial as it rezones land (Site 11) from 5(b) Special Uses (Technology Park) under the Lismore LEP 2000 to SP2 Infrastructure (educational establishment) or E3 Environmental Management (**Attachment Maps**). This inconsistency is considered to be of minor significance as:

- most of the land is owned by SCU and will be zoned SP2 Infrastructure (educational establishment), which is considered appropriate for university-owned land;

- the land to be zoned E3 is a Crown road reserve and will be zoned consistent with other Crown land; and
- the proposed zones better reflect the ownership, attributes and likely future use of the land.

### Direction 1.2 Rural Zones

The planning proposal is inconsistent with this Direction as it rezones land at part of 224 and 226 Invercauld Road (Site 15) from 1(a) General Rural under the Lismore LEP 2000 to R1 General Residential (**Attachment Maps**). This inconsistency is considered to be of minor significance as it reflects a negotiated development outcome associated with an adjoining rezoning and approved residential subdivision.

### Direction 1.5 Rural Lands

The planning proposal is inconsistent with this Direction as it rezones land at part 224 Invercauld Road from 1(a) General Rural under the Lismore LEP 2000 to R1 General Residential and does not implement provisions such as supporting farmers in exercising their right to farms. This inconsistency is considered to be of minor significance due to the small quantity of land involved (2000m<sup>2</sup>) and because the rezoning reflects a negotiated development outcome associated with an adjoining rezoning and approved residential subdivision.

### Direction 2.1 Environment Protection Zones

The planning proposal is inconsistent with this Direction as it reduces the environmental protection standards for land (Site 11) by rezoning the land from 7(b) Environment Protection under the Lismore LEP 2000 to SP2 Infrastructure (educational establishment). This inconsistency is considered to be of minor significance for the reasons discussed above in relation to the *North Coast Regional Plan 2036*.

### Direction 2.3 Heritage Conservation

The planning proposal is inconsistent with this Direction as it does not contain provisions that facilitate the conservation of matters of environmental and Aboriginal cultural heritage significance. The planning proposal contains two sites listed within the Aboriginal Heritage Information Management System (AHIMS). This inconsistency is considered to be of minor significance as the Lismore LEP 2012 contains appropriate conservation provisions and Council proposes to undertake consultation with the Ngulingah Local Aboriginal Land Council to confirm the cultural significance of the land.

### Direction 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs

This Direction provides that where a planning proposal proposes an E2 or E3 zone or an overlay and associated clause, the proposal must be consistent with the E zones final recommendations report.

As compliance with the final recommendations report requires formal consultation with the landowners, consistency with this Direction remains unresolved.

### Direction 3.1 Residential Zones

The proposal is inconsistent with this Direction as it seeks to rezone various lands from 2(a) Residential to rural or environment. The main sites affected (**Attachment Maps**) include:

- Site 13 – part 27 Felicity Drive, East Lismore – being rezoned from 2(a) to E3;
- Site 14 – part 37 City View Drive, East Lismore – being rezoned from 2(a) to RU2; and
- Sites 10 and 11 – various part parcels at the SCU campus – being rezoned to SP2.

The inconsistency is considered to be of minor significance due to the small quantity of land involved and the low development potential of the land for any residential use due to its physical attributes.

#### Direction 3.5 Development Near Regulated Airports and Defence Airfields

The proposal applies to land near Lismore Airport. This Direction provides that consultation with the lessee/operator of the airport is to be undertaken in preparing the planning proposal. Until this consultation has occurred, the consistency of the proposal with this Direction remains unresolved.

#### Direction 4.4 Planning for Bushfire Protection

The proposal applies to bushfire-prone land. This Direction provides that consultation with the NSW Rural Fire Service is to be undertaken in preparing the planning proposal. Until this consultation has occurred, the consistency of the proposal with this Direction remains unresolved.

#### Direction 5.10 Implementation of Regional Plans

The planning proposal is inconsistent with this Direction in relation to the rezoning of approximately 16.6ha of 7(b) Environment Protection zone land at SCU to SP2 Infrastructure (educational establishment). As discussed above in relation to the *North Coast Regional Plan 2036*, the inconsistency is considered to be of minor significance.

#### Direction 6.2 Reserving Land for Public Purposes

The planning proposal is inconsistent with this Direction as it rezones land from 6(a) Recreation to E3 Environmental Management or R1 General Residential without the Secretary's approval. This inconsistency is considered to be of minor significance as:

- the land is being rezoned consistent with the physical attributes and likely future use of the land; and
- no loss of public open space will occur (other than 100m<sup>2</sup> at 23 Trinity Drive, which is to be zoned R1 to help Council rectify a building encroachment).

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

The proposal is considered to be consistent with all applicable SEPPs.

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

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#### **5.1 Social**

No adverse social impacts associated with the proposal are considered likely. The integration of the subject land into the Lismore LEP 2012 will provide landowners with certainty of the land uses that are permitted on their land and will simplify the planning controls for the land.

#### **5.2 Environmental**

No significant adverse environmental impacts associated with the proposal have been identified as most of the land identified as containing environmental attributes is being zoned E2 or E3 (109.3ha).

Several sites that are likely to contain endangered ecological communities, primary koala habitat or other high-value vegetation have not been allocated an E zone. As discussed above, Council has determined this land does not warrant an E zone in accordance with the E Zone final recommendations. This is considered appropriate for the reasons discussed previously in this report.

Council staff have advised that a preliminary contaminated land assessment is to be undertaken for the rezoning of the land at Site 11 (SCU) to SP2. This assessment should be considered prior to consultation.

Site 1 (Currie Park) is identified as flood prone and regionally significant farmland (**Attachment Maps**). No adverse impact has been identified as the land is being zoned E3 Environmental Management consistent with its primary use of environmental management and the fact it will have no increase in development potential.

### **5.3 Economic**

No significant adverse economic impacts associated with the proposal have been identified. The proposed changes are generally 'like-for-like' zonings that do not result in any significant decrease in the development potential of the land.

## **6. CONSULTATION**

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### **6.1 Community**

The planning proposal has indicated a 28-day community consultation period. In accordance with *A guide to preparing local environmental plans*, it is considered that the planning proposal is not low impact as it applies to several land parcels that have been deferred from the Lismore LEP for some time. A 28-day exhibition period is considered appropriate.

The Secretary's directive of 1 March 2016 recommends that all landowners whose land is proposed to have an E zone applied be notified in writing of the proposal and the public exhibition arrangements. Landowners are also to be notified in writing when Council has considered any submissions to the proposal and has resolved to send the proposal to the Minister's delegate for finalisation. It is recommended that the Gateway determination include these requirements.

### **6.2 Agencies**

Council has identified that it should consult with:

- NSW Rural Fire Service;
- Ngulingah Local Aboriginal Land Council;
- Department of Planning, Industry and Environment (Crown Lands); and
- the Lismore Airport operator/lessee.

This consultation is considered appropriate. It is also considered that Council should consult with:

- Department of Planning, Industry and Environment (Environment, Energy and Science);
- Rous County Council (Drinking Water Catchment);
- Jali Local Aboriginal Land Council; and
- Bunjum Aboriginal Co-Operative Ltd.



## **7. TIME FRAME**

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The planning proposal includes a project timeline that estimates the completion of the planning proposal in 12 months. To ensure the planning proposal authority has adequate time to complete the process, a time frame of 18 months is recommended.

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

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Council has not requested to be authorised as the local plan-making authority. Consistent with the Secretary's directive of 1 March 2016, an authorisation to act as the local plan-making authority is not to be issued to Northern councils where a planning proposal seeks to apply an E zone to land. This is to ensure a consistent approach to the finalisation of zoning decisions consistent with the E zone review final recommendations report. It is recommended that Council not be authorised to act as the local plan-making authority.

## **9. CONCLUSION**

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The planning proposal seeks to amend the Lismore LEP 2012 to apply Standard Instrument zones to the urban deferred land.

The proposal primarily seeks to transition most of the subject land in a 'like-for-like' zone.

It is recommended that the planning proposal proceed subject to conditions as it:

- is consistent with the Northern Councils E Zone Review Final Recommendations and implements the government's policy for the zoning of environmental land on the Far North Coast of NSW; and
- continues to integrate the land use planning requirements for deferred matter lands for Lismore LGA into a single consolidated LEP.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 3.1 Residential Zones and 5.10 Implementation of Regional Plans are minor or justified in accordance with the terms of the Directions; and
2. note that the consistency with section 9.1 Directions 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs, 3.5 Development Near Regulated Airports and Defence Airfields and 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning and Public Spaces determine that the planning proposal should proceed subject to the following conditions:

1. Prior to agency and community consultation, the planning proposal is to be amended to:
  - a) include minimum lot size, drinking water catchment, flood planning, height of building, potential rural land sharing community development and land application maps for the subject lands; and

- b) include a preliminary contaminated land assessment for Site 11 (Southern Cross University).
2. The planning proposal should be made available for community consultation for a minimum of 28 days. Council is to write to each landowner subject to the planning proposal to advise of the proposed community consultation arrangements.
  3. Consultation is required with the following public authorities:
    - NSW Rural Fire Service;
    - Department of Planning, Industry and Environment (Environment, Energy and Science);
    - Department of Planning, Industry and Environment (Crown Lands);
    - Rous County Council;
    - Lismore Airport lessee/operator;
    - Ngulingah Local Aboriginal Land Council;
    - Jali Local Aboriginal Land Council; and
    - Bunjum Aboriginal Co-Operative Ltd.
  4. When Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, landowners whose land will be subject to an E zone are to be notified in writing of Council's decision and advised that they have 28 days to notify the Department if they would like the Chief Planner to review the proposed zoning of their property.
  5. The time frame for completing the LEP is to be 18 months from the date of the Gateway determination.
  6. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.



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