

Matters Arising

Subject	Deferred Matter rezoning planning proposal - Stage 1 non-urban
TRIM Record No	BP18/943:EF17/65
Prepared by	Senior Strategic Planner
Reason	To obtain a resolution of Council to forward the Deferred Matter rezoning planning proposal (stage 1 non-urban) to the Minister for Planning for a Gateway determination.
Strategic Theme	Our built environment
Strategy	Our land-use planning caters for all sectors of the community.
Action	Ensure a diverse range of land use and development opportunities are available

Executive Summary

The Lismore Local Environmental Plan (LEP) 2012 was made on 22 February 2013 with lands adopted by Council as environmental protection zones shown on the LEP maps as 'Deferred Matter'. Such lands are currently zoned in accordance with the LEP 2000. Council has since been operating under two LEPs and two Development Control Plans (DCPs), which is an overly complex system of land use planning.

This planning proposal seeks to rezone non-urban Deferred Matter (DM) land under LEP 2012 and is the first stage of Lismore City Council's proposed DM rezoning. Stage 2 will seek to rezone urban DM land and will form the subject of a separate planning proposal. The proposed rezoning of DM land also involves the consequential amendment of numerous other LEP maps.

The rezoning of non-urban DM will assist in the simplification of the current complex circumstances using two LEPs and two DCPs. The use of Zone RU1 Primary Production for rural land, based on the "primary use" (the main use of the land over the last two years) will remove landholder concern and uncertainty associated with the previous use of environmental protection zones (E Zones). The opportunity is also provided for DM landholders to apply for an environmental protection zone.

Council staff wrote to all privately owned non-urban DM landholders requesting:

- 1) The "primary use" of the DM land (the main use for which the land has been used for the last two years);
- 2) The preference for either Zone RU1 Primary Production or one of the environmental protection zones (E2 Environmental Conservation or E3 Environmental Management).

E Zones are only proposed if requested by the landholder. Privately owned land proposed for an E zone has been subjected to a biodiversity field inspection by a suitably qualified Council officer unless the land is mapped as Coastal Wetland (SEPP Coastal Management) or a recent flora and fauna assessment (under 5 years old) was supplied by the landholder. The proposed zone for public land is determined on the basis of the "primary use". Biodiversity assessment for public land was limited to a desk top analysis.

Executive Summary

This proposal requires the amendment of 26 LEP 2012 map sheets and involves the following maps: Acid Sulfate Soils; Drinking Water Catchment; Flood Planning; Heritage; Land Application; Lot Size; Land Zoning; and Potential Rural Landsharing Community Development.

The planning proposal has been prepared in accordance with Council's resolution 9/17 made at the 14 February 2017 Ordinary meeting and is consistent with the North Coast Regional Plan 2036; the relevant State Environmental Planning Policies; and the relevant *Environmental Planning and Assessment Act 1979* (EP&A Act) Section 9.1 Directions by the Minister.

This planning proposal has been prepared in accordance with the Department of Planning & Environment's guide to preparing planning proposals. A Gateway Determination under Section 3.33 of the EP&A Act is sought.

It is recommended that Council support the DM rezoning planning proposal (stage 1 non-urban) and request a Gateway determination from the Minister for Planning.

Recommendation

That:

1. Council support the Deferred Matter rezoning planning proposal (stage 1 non-urban) as detailed in Attachment 1 and summarised in this report.
2. The planning proposal as detailed in Attachment 1 is forwarded to the Minister for Planning for a Gateway determination.
3. Council confirms that staff are to proceed to public exhibition of the planning proposal based on the Gateway determination, and report back to Council with any issues as part of post-exhibition reporting of submissions.

Background

History of environmental protection zoning in the Draft Lismore LEP 2012 process

The preparation of a new Lismore Local Environmental Plan (LEP) to replace LEP 2000 commenced in October 2006, when Council resolved to prepare a new comprehensive LEP consistent with the standard instrument prescribed by the State Government.

Council resolved to forward its Draft LEP (DLEP) and Local Environmental Study to the (then) Department of Planning and Infrastructure (DPI) in August 2008 seeking authorisation for public exhibition. The DPI issued authority to exhibit the DLEP and Council subsequently endorsed the public exhibition for DLEP 2010 at its April 2010 meeting. The DLEP 2010 was on public exhibition for 4 months from 29 April 2010 to 30 August 2010. 1417 submissions to the DLEP 2010 were received.

The issues raised by the submissions to the DLEP 2010 and the analysis of these issues, including additional studies, were reported to an Extraordinary meeting of Council on 10 November 2011. At that meeting Council resolved to adopt a number of changes and to publicly exhibit the revised DLEP, which occurred from 17 November 2011 to 30 January 2012. 595 submissions were received.

Following an analysis of submissions to the second DLEP, at its Extraordinary meeting of 31 May 2012 Council adopted the Lismore LEP 2012 to forward to the (then) Minister of Planning and Infrastructure with a request that the Minister make the Draft Lismore LEP 2012 in accordance with the *Environmental Planning and Assessment Act 1979* and associated Regulation. The Draft Lismore LEP 2012 included the E2 Environmental Conservation and E3 Environmental Management Zones (E Zones), along with a '*riparian land and waterways clause*'.

In September 2012, prior to making the Lismore LEP 2012, the Minister announced a review into the way environmental zones and overlays are applied to land on the Far North Coast (Lismore, Ballina, Byron, Kyogle and Tweed LGAs) and in December 2012 the Department engaged consultants Parson Brinckerhoff to undertake the review.

The Lismore LEP was made on 22 February 2013 with the Council adopted E zoned lands shown on the LEP maps as 'Deferred Matter'. Such lands are currently zoned in accordance with the LEP 2000. The Department advised that the *riparian land and waterways clause* had the effect of an environmental overlay and was also removed. Council has been operating under two LEPs and two Development Control Plans since 22 February 2013 which is an overly complex system of land use planning.

In May 2014 the Department of Planning & Environment (DP&E) released the consultants' Interim Report and in October 2015 the review was finalised with the release of the *Northern Councils E Zone Review Final Recommendation Report*. A Ministerial Planning Direction for the '*Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs*' was issued by the DP&E on 1 March 2016. The direction stipulates how E zones and environmental overlays are to be applied.

In September 2016 the DP&E advised that up to \$40,000 would be available to each Far North Coast Council to complete the review subject to completion of the necessary background work and lodgement of a planning proposal for a Gateway determination to rezone the Deferred Matter areas by no later 30 June 2017. Funding extensions were not available, and payment was dependent on the successful completion of the project within the specified timeframe.

The proposed LEP 2012 Deferred Matter review process was reported to Council at the Ordinary meeting of 14 February 2017. Council resolved as follows:

Resolution 9/17

1. Council does not support the application of E Zones on agricultural land;
2. Environmental Protection zones are only used in the Lismore Local Environmental Plan 2012 where requested by the property owner or as part of a negotiated development outcome;

3. *A draft Planning Proposal is prepared to rezone all agricultural land mapped as Deferred Matter in Lismore Local Environmental Plan 2012 to the RU1 Primary Production zone;*
4. *On those lands where property owners have requested the application of an E zone, Council adopt the Stage 1: Pre-Gateway Consultation and Preparation of Planning Proposal process for the review of Deferred Matters (E Zones and Overlays) in the Lismore Local Environmental Plan 2012 as outlined in option 3 of this report;*
5. *On the basis of resolving (4) above, Council accept the funding offer from the Department of Planning and Environment of up to \$40,000 for the review of the Deferred Matters;*
6. *In the review of deferred E zone matters, staff investigate and report back via a Council briefing on how land that has been included in an E zone at the request of a landowner can be reviewed at a change of ownership of the land.*

A motion was moved at the Ordinary Council Meeting of 14 March that Council rescind its decision on the review process for E zones of the 14 February 2017 Ordinary Council Meeting. On submission to the meeting the motion was defeated.

The DM rezoning planning proposal has been divided into two stages in order to manage the large number of allotments and the volume of mapping amendments. Non-urban DM forms the subject of this Stage 1 DM rezoning. Stage 2 involves urban DM land and will form the subject of a separate planning proposal to be reported to Council in the coming months.

Actions 5 and 6 of the above Resolution 9/17 above are addressed in a later section of this report following the Planning Proposal overview.

Non-urban DM landholder consultation overview

Council staff wrote to private landholders with DM on their land in November 2017 in accordance with parts 1 - 4 of the resolution. The consultation letter provided information on DM areas; included a copy of the Council resolution; and sought to determine the primary use of the DM land. Landholders were also requested to advise Council if they sought to have an E zone on their DM land.

The results of this consultation and preliminary staff recommendations were discussed with Councillors at a workshop on 20 March 2018. At that time there had only been a 49% response rate. At the suggestion of a Councillor staff sent out a further letter to those who had not responded to the first letter. This occurred in April 2018. The response rate following the second letter was 75.5%.

Non-urban DM landholders are predominantly private individuals/organisations. Other landholders include Rous County Council (Rocky Creek Dam), Lismore City Council (two unused quarry sites), the Crown (Wyrallah & Broadwater stock flood refuges, recreation & nature reserves and others) and two Local Aboriginal Land Councils. The consultation letters were sent to all non-urban DM private landholders. Public landholders will be consulted during the exhibition period.

Council received one hundred and eleven (111) responses out of the one hundred and forty seven (147) landholders that were contacted, a 75.5% response rate. Eleven (11) landholders have requested an E zone. Table 1 below provides an overview of the non-urban DM areas and landholder responses.

Table 1 – Non-urban Deferred Matter Area overview

Ownership	Primary use	No. lots	No. owners	No. responses	DM area (ha)	E zone request	Proposed zone	Proposed lot size
Private	Agriculture, rural res, or other	172	136	100	1273	No	RU1	40ha
	Environmental protection	11	11	11	67.6	Yes	E2/E3	40ha
Lismore City Council	Environmental management (unused quarry sites)	2	1	N/A	4.6	N/A	E3	40ha
Crown	Wyrallah and Broadwater Stock flood refuges	4	1	N/A	88	N/A	RU1	40ha
	Tuckurimba Nature Reserve	1	1	N/A	0.75	N/A	E3	40ha
	Travelling stock camp – Agriculture	2	1	N/A	8	N/A	RU1	40ha
	Ruthven Recreation Reserve	3	1	N/A	3.6	N/A	RU1 & E3	40ha
	Road reserve	2	1	N/A	0.45	N/A	RU1	40ha
Crown / LCC	3 areas of undescribed riparian land	N/A	2	N/A	67	N/A	E2	40ha
Rous County Council	Rocky Creek Dam catchment	5	1	N/A	84	N/A	E3	40ha
	Dam infrastructure	See above			12		SP2	N/A
Jali LALC	Cultural heritage preservation	1	1	1	7.7	Not stated	E2	40ha
	3 lots Agriculture	3			84		RU1	40ha
Ngulingah LALC	Vacant bushland	2	1	0	0.42	No	RU1	40ha
Bunjun Aboriginal Co-Op Ltd	Agriculture	1	1	0	0.3	No	RU1	40ha
		Total 209	Total 157	Total 75.5%	Total 1702			

The ecological attributes of privately owned non-urban DM land proposed for an E zone was verified with a biodiversity field inspection and ground survey conducted by an appropriately qualified person (Refer to Attachment 3 for biodiversity field inspection reports). In most instances this was Council's Environmental Strategies Coordinator or Council's Ecologist acting in the coordinator's role.

Explanation of the planning proposal

This planning proposal is Stage 1 of Lismore City Council's DM LEP 2012 amendment and involves non-urban DM land. The full planning proposal report for Stage 1, prepared in accordance with the DP&E guidelines, is provided at Attachment 1.

The deferral of DM land from LEP 2012 resulted in the omission of this land from all LEP maps, not just the land zoning map. Consequently this planning proposal involves the amendment of various LEP development standard maps, hazard maps and other mapped attributes. In total, the Stage 1 DM planning

proposal involves the amendment of a total of 26 LEP 2012 map sheets and a minor amendment to Schedule 1 – Heritage. A summary of the amendments is provided in Table 2.

Table 2 – Proposed amendments to LEP maps and schedules involving Non-Urban DM

LEP 2012 Map	Summary of proposed amendments
Acid Sulfate Soils	Insert appropriate acid sulfate soils classification for relevant DM land.
Drinking Water Catchment	Insert drinking water catchment mapping for relevant DM land.
Flood Planning	Insert flood mapping for relevant DM land.
Heritage	Minor amendment to heritage mapping and cadastre for consistency with boundary adjusted, heritage listed DM lot. Also involves amendment to Schedule 1 – omit superseded lot/DP and insert new lot/DP
Land Application	Omit DM land.
Lot Size	Insert minimum lot size for DM land – 40ha to apply to Zones E2 and E3; 40ha to apply to Zone RU1 except if DM is within Zone 1(b) under LEP 2000 in which case 20ha is to apply; No minimum lot size applies to Zone SP2.
Land Zoning	Apply Zone RU1, E2, E3 or SP2. Zone SP2 to apply to some DM land owned by Rous County Council within which is located dam infrastructure or water filtration plant.
Potential Rural Landsharing Community Development	Omit one DM affected lot that is proposed for E2 and E3 at the request of the landholder.

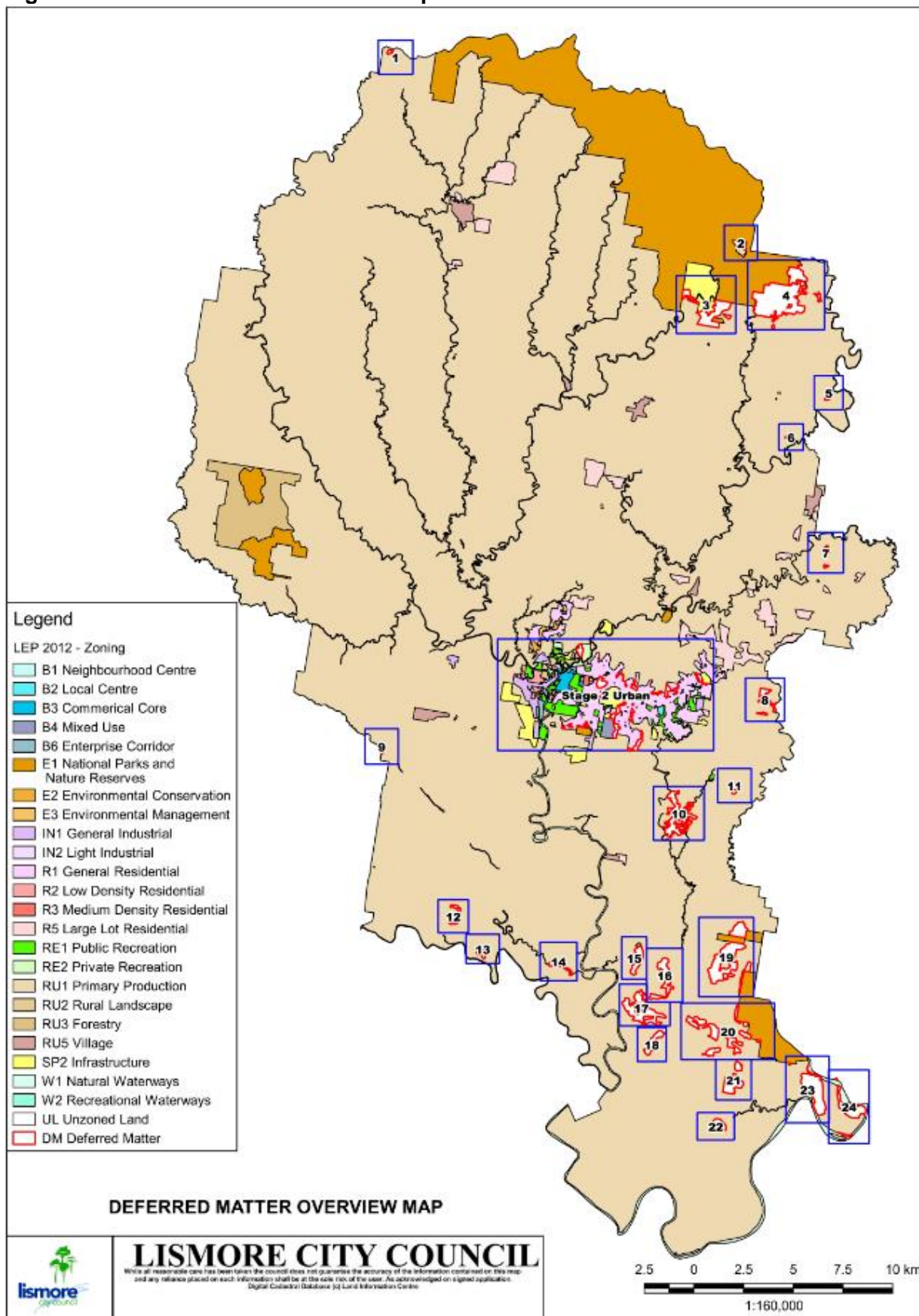
The proposed minor modification to the Heritage Map is due to a boundary adjustment involving two DM affected lots, one of which is listed in Schedule 5 as an Environmental Heritage Item. It is proposed to amend Schedule 5 by changing the property description of the aforementioned heritage item. Details are listed in Table 3.

Table 3 – Proposed amendment to Part 1, Schedule 5 – Environmental Heritage

Suburb	Item Name	Address	Property Description	Significance	Item no
Existing heritage listing					
Dunoon	“Wendella”	143 Rocky Creek Dam Road	Lot 1, DP 538691	Local	I17
Proposed amended heritage listing					
Dunoon	“Wendella”	143 Rocky Creek Dam Road	Lot 12, DP 1147676	Local	I17

The Lismore LGA non-urban DM areas have been divided into 24 sites for the purposes of this planning proposal. This has enabled the production of maps at an appropriate scale that clearly indicate the site and the proposed zone change. Figure 1 illustrates the location of each of the DM sites. Individual DM Site maps are located at Attachment 2.

Figure 1 – Deferred Matter Overview Map



Details of non-urban DM land including property address, lot and deposited plan, primary use, existing zone and proposed zone are provided for each of the 24 sites in Attachment 4 of this report. Proposed zones for non-urban DM are RU1 Primary Production, E3 Environmental Management, E2 Environmental Conservation and SP2 Infrastructure (Water Storage Facility). Refer to Attachment 2 for individual site maps.

The proposed DM zone changes presented in Attachment 4 have been summarised below. Zones have been categorised in this summary as either rural, environmental protection or infrastructure.

- 136 lots with DM (65%) are currently zoned rural under LEP 2000 and are proposed for rural zoning under LEP 2012;
- 52 lots with DM (25%) are currently zoned environmental protection or a combination of rural and environmental protection under LEP 2000 and are proposed for rural zoning under LEP 2012;
- 15 lots with DM (7%) are currently zoned rural under LEP 2000 and are proposed for environmental protection or a combination of rural and environmental protection zoning under LEP 2012;
- 2 lots with DM (1%) and three large areas of undescribed riparian land at Broadwater, are currently zoned environmental protection under LEP 2000 and are proposed for environmental protection zoning under LEP 2012.
- 4 lots with DM (2%), all owned by Rous County Council, are currently zoned rural under LEP 2000 and are proposed for infrastructure or a combination of infrastructure and environmental protection zoning under LEP 2012.

An overview of all non-urban land that is proposed for environmental protection zoning is provided in Table 4 below. All of the private landholders have agreed to the proposed use of an environmental protection zone on their DM areas. All of the private DM land has been verified as consistent with E2 or E3 criteria in accordance with the *Northern Councils E Zone Review Final Recommendations Report*. Field assessments were not required if the land was under a conservation agreement (*National Parks and Wildlife Act 1974*) or the land was mapped as Coastal Wetland under SEPP (Coastal Management) 2018.

Table 4 – Deferred Matter land proposed for E zones

Address	Owner	Primary use	DM existing zone	DM proposed zone	Area (ha) approx.		Verified
					DM	E zone	
Site 1							
1035 Blue Knob Road, Blue Knob 4/258958	Private	Environmental conservation & management	1(a)	E2 and E3	4.2	6.2	Yes
Site 3							
186 Rocky Creek Dam Road, Dunoon 1/1112836	Rous County Council	Infrastructure & environmental management	1(a)	SP2 and E3	35	28	No
229 Rocky Creek Dam Road, Dunoon 111/1234813	Rous County Council	Infrastructure & environmental management	1(b) & 5	SP2 and E3. Also small area of RU1 to E3	5	3	No
229A Rocky Creek Dam Road, Dunoon 1/118970	Rous County Council	Infrastructure & environmental management	1(b)	SP2 and E3	16	13	No
131 Nightcap Range Road, Dorroughby 1/121383	Rous County Council	Environmental management	1(a)	E3	38	38	No
108 Nightcap Range Road, Dorroughby 40/608509	Private	Environmental management	1(a)	E3	4.7	4.7	Yes
Site 4							
165 Fox Road, Rosebank 3/618351	Private	Environmental management & rural residential	1(a)	RU1 and E3	4.8	2.6	Yes

Address	Owner	Primary use	DM existing zone	DM proposed zone	Area (ha) approx.		Verified
					DM	E zone	
76 Maso Road, Repentance Creek 2/251294	Private	Environmental management & rural residential	1(a)	RU1 and E3	4.5	3.5	Yes
93 Maso Road, Repentance Creek 5/615305	Private	Environmental management & rural residential	1(a)	RU1 and E3	5	2	Yes
151 Maso Road, Repentance Creek 6/615305	Private	Environmental management & rural residential	1(a)	RU1 and E3	26	21	Yes
234 Fox Road, Rosebank 1/604515	Lismore City Council	Environmental management	1(a)	E3	3.7	3.7	No
Site 5							
387 Ridgewood Road, Rosebank 13/847265	Private	Environmental conservation & management	1(a)	E2 also RU1 to E3	5	6.8	Yes
Site 7							
67 Gray Road Eltham 2/619965	Private	Environmental conservation	7(a)	E2	2.4	2.4	Yes
Site 14							
941 Coraki Road, Ruthven 242/755728	Crown	Recreational reserve	1(r)	E3 & RU1	3.4	3.4	No
Site 17							
6 Baxter Lane, Tuckurimba 124/755746	Crown	Nature reserve	1(a)	E3	0.75	0.75	No
1709 Wyrallah Road, Tuckurimba 11/136070	Private	Environmental management	1(a)	E3	1	1	OEH conservation agreement
Site 23							
650 Broadwater Road, Broadwater 1/171730	Lismore City Council	Environmental management	1(a)	E3	1	1	No
708 Broadwater Road, Broadwater 31/627286	Private	Environmental management	1(a) & 1(r)	E3	6	6	Yes
84A Bagotville Road, Broadwater 2/717103	Private	Environmental management & rural residential	1(a) & 1(r)	E3 & RU1	4	2.4	Yes
Part Bagotville Road reserve and adjacent undescribed land	Lismore City Council	Environmental conservation	7(a)	E2	4	4	Coastal Wetland (CM SEPP)
Site 24							
114 Plenkovich Road, Broadwater 253/755691	Jali LALC	Aboriginal cultural heritage	7(a)	E2	7.6	7.6	Coastal Wetland (CM SEPP)
Part Plenkovich Road reserve and adjacent undescribed land	Crown	Environmental conservation	1(r) & 7(a)	E2	58	58	Coastal Wetland (CM SEPP)
Part Broadwater Road reserve and adjacent undescribed land	Part Lismore City Council, part Crown	Environmental conservation	7(a)	E2	5	5	Coastal Wetland (CM SEPP)
						Total: 224 ha	

Details and justification for proposed zones

The planning proposal will:

- Address Council resolution 9/17.
- Simplify land use planning requirements for all non-urban land in the Lismore Local Government Area with the provision a single Local Environmental Plan.
- Provide appropriate land use zones for non-urban DM land in accordance with the *Environmental Planning and Assessment Act 1979* Section 9.1 Directions by the Minister.
- Remove landholder concern and uncertainty associated with the application of E zones in non-urban areas.
- Provide an opportunity for non-urban DM landholders to request an E zone where the “primary use” of the DM area is environmental conservation or environmental management.

The selection of the suite of zones proposed for non-urban DM areas is based on the “primary use” test in accordance with the Northern Councils E Zone Review – Final Recommendations. Table 5 below provides justification and explanation for the use of proposed zones RU1 Primary Production, E3 Environmental Management, E2 Environmental Conservation and SP2 Infrastructure.

Table 5 – Details and justification for proposed zones

Proposed zones	Site (refer to figure 1)	Description	Justification
SP2	3	4 Rous County Council lots including 186, 228, 229 & 229A Rocky Creek Dam Road, Dunoon (1/1112836; 2/117544; 111/1234813 & 1/118970)	<p><u>Rocky Creek Dam</u></p> <p>These four allotments form part of the land owned by Rous County Council used for Rocky Creek Dam, associated infrastructure and bushland catchment area. The majority of the Rous land in this location is within Zone SP2 Infrastructure and the remaining land is DM. This DM rezoning presents the opportunity to make some minor adjustments to the boundary of the SP2 so that it includes all of the dam and associated infrastructure. Some of the infrastructure on DM land includes part of the dam wall, part of the spillway, the entire water treatment facility and some of the road network. The remaining DM land in 186, 229 & 229A Rocky Creek Dam Road is bushland catchment and is proposed for Zone E3.</p> <p>SP2 is a prescribed zone under SEPP (Infrastructure) 2007 and E zones are not. The use of SP2 will enable development and ongoing maintenance of the dam and associated infrastructure as intended under the SEPP.</p>
E2 and E3	1, 3, 4, 5, 7, 14, 17, 23 & 24	11 private lots, 2 LCC lots, 2 Crown lots, 4 Rous lots, 1 Jali LALC lot and 3 areas of undescribed riparian land at Broadwater. Refer to Attachment 4 and Table 6 for detail.	<p><u>E Zone Review Final Recommendations</u></p> <p>Consistent with E Zone Review Final Recommendations including:</p> <ul style="list-style-type: none"> • Proposed Zone E2 or E3 ‘primary use’ – environmental protection; • Private DM land consistent with one or more E zone criteria; • Private DM land E zone criteria ‘verified’; • Public DM land not ‘verified’, however primary use is environmental protection; • Private land may be consistent with E2 criteria but in some cases proposed E3; or consistent with E3 but in some cases proposed E2 – negotiated development outcome with landowner. <p><u>Council resolution 9/17</u></p> <p>Consistent with Lismore City Council resolution 9/17.</p>
RU1	All sites except 1 and 5	184 private lots, 10 Crown lots, 6 lots owned by various Aboriginal groups. Refer to Attachment 4 for detail.	<p><u>Primary use - E Zone Review Final Recommendations</u></p> <p>Council is not compelled to apply an E zone where the land is consistent with the E zone criteria in accordance with the Northern Councils E Zone Review.</p> <p>Numerous areas of DM contain high conservation value vegetation, however, the ‘primary use’ test has been satisfied with community consultation and/or desk top assessment and Zone RU1 Primary Production is proposed for ‘primary uses’ such as agriculture (commercial grazing, bee keeping, cropping or horticulture), hobby farms, rural residential, multiple occupancy and rural tourism.</p> <p>Council consulted with all private DM landholders via mail to determine the primary use of their land. A second letter was sent to those landholders that did not respond to the first letter. A 75.5% response rate was achieved. The nominated land use was further subject to a desk top assessment. Private DM</p>

Proposed zones	Site (refer to figure 1)	Description	Justification
			<p>land without a landholder response (24.5%) was subject to a desk top assessment only.</p> <p>This approach is consistent with the E Zone Review Final Recommendations.</p> <p><u>Council resolution 9/17</u> Consistent with Council resolution 9/17.</p> <p><u>Ancillary use</u> Native vegetation, including woody vegetation is often ancillary to the primary use of the land, whether that is commercial agriculture, a hobby farm, rural residential, multiple occupancy or tourism. The following extracts are taken from the Department of Planning and Environment - Planning Circular PS 13-001. <i>An ancillary use is a use that is subordinate or subservient to the dominant purpose. The concept is important when a development involves multiple components on the same land.</i> <i>To put it simply:</i></p> <ul style="list-style-type: none"> • If a component serves the dominant purpose, it is ancillary to that dominant purpose. • If a component serves its own purpose, it is not a component of the dominant purpose but an independent use of the same land. It is a dominant use in its own right. <p><u>Native vegetation ancillary to agriculture/hobby farms</u> The ancillary use of native vegetation for the dominant purpose (primary use) of agriculture and hobby farms includes:</p> <ul style="list-style-type: none"> • Shelter for stock; • Provision of windbreak for stock or crops/horticulture; • Soil stability and erosion mitigation; • Reduction of water table levels in low lying areas; • Dust mitigation for crops; • Cyclic salt mitigation in areas close to the coast or tidal waterways such as Broadwater; • Integrated pest management with the provision of habitat to maintain biodiversity. Higher order predators can assist with controlling pest insects and rodents. • Maintaining native vascular plants and associated mycorrhizal fungi assist in the maintenance of soil health. Mycorrhizae play an important role in soil biology and soil chemistry which has the potential to enhance agricultural productivity. • Erosion mitigation on the floodplain with the maintenance of some woody vegetation can potentially assist with the management of acid sulfate soils. Acid sulfate soils are formed under waterlogged conditions, high in iron sulfide or their oxidation products. When acid sulfate soils are left in an undisturbed state without exposure to oxygen potential negative impacts are minimised. When acid sulfate soils are exposed to oxygen, the iron sulfide oxidises to form sulfuric acid. This can have a negative environmental impact and may potentially reduce crop or pasture productivity. • The provision of construction timber and/or firewood in accordance with 'Allowable activities clearing of native vegetation' Part 2, Schedule 5A of the <i>Local Land Services Act 2013</i>. <p><u>Native vegetation ancillary to rural residential, multiple occupancy and rural tourism</u> The ancillary use of native vegetation for the dominant purpose rural residential, multiple occupancy and tourism includes:</p> <ul style="list-style-type: none"> • Provision of amenity for residents / tourists • A bush land retreat can enhance the wellbeing of residents / tourists • Recreational use for residents / tourists • Enhanced ecological knowledge and awareness of the natural environment for residents / tourists

Proposed zones	Site (refer to figure 1)	Description	Justification
			<ul style="list-style-type: none"> • Soil stability and erosion mitigation • Dust mitigation • Sound mitigation • Other ancillary uses listed for agriculture and hobby farms <p><u>Conservation and management definitions</u> In assigning a primary use the dictionary definition for 'conservation' and 'management' (used in E2 Environmental Conservation and E3 Environmental Management) were considered. The relevant Collins definition follows:</p> <ul style="list-style-type: none"> • 'Management' – handling, controlling, directing; and • 'Conservation' – protection, preservation and careful management. <p>Both of these definitions imply that human intervention is required in order to satisfy a primary use of either environmental conservation or environmental management. Moreover, it is logical to argue that bushland that is not actively managed for environmental protection is likely to have a land use that is subordinate or ancillary to the dominant use of agriculture, hobby farm, rural residential, multiple occupancy or rural tourism.</p>

Mapping

The mapping is located at Attachment 2. An overview map is provided which divides the Lismore LGA non-urban DM areas into 24 sites (also refer to Figure 1 in this report). A "Locality map" and a "Proposed zone map" is provided for each site.

Environmental, social and economic impact

Ecological impacts

A land use permissibility comparison for the proposed LEP 2012 zones is provided in Table 6 below. The proposed non-urban zones will only permit limited low scale development. The widest range of permissible land uses can occur in Zone RU1 and the most restrictive zone is E2. It is worth noting that the majority of the non-urban lots with DM areas also have cleared areas more potentially suited to some of the land uses listed in Table 6, thus limiting potential development pressure on DM areas. Notwithstanding land use permissibility, numerous local, state and federal requirements apply to development that requires consent including; LEP and DCP provisions; Council policies and strategies; *Biodiversity Conservation Act 2016*, *Local Land Services Act 2013*, *SEPP 44 – Koala Habitat Protection*, *SEPP Coastal Management 2018*, and the Federal *Environment Protection and Biodiversity Conservation Act 1999*. Permissibility alone does not determine the potential for development.

Note 1. The comparison is limited to dwellings, dual occupancies, rural tourist accommodation, rural industries and agriculture.

Note 2. O – permissible without consent; C – permissible with consent; X – prohibited.

Table 6 – Land use permissibility comparison

Zone	Land use				
	Dwelling	Dual occupancy	Rural accommodation	Tourist	Agriculture
RU1	C	C	C B&B, farm stay, camping grounds, caravan parks, eco-tourist facility.	C	O grazing, bee keeping, dairy (pasture), horticulture, viticulture. C aquaculture, intensive livestock ag, turf farming.
E3	C	X	C B&B, farm stay, camping grounds, caravan parks, eco-tourist facility.	X	O grazing, bee keeping. C dairy (pasture). X aquaculture, intensive livestock ag, turf farming, horticulture, viticulture.
E2	X	X	X	X	C

Zone	Land use					
	Dwelling	Dual occupancy	Rural accommodation	Tourist	Rural industry	Agriculture
						grazing, bee keeping, dairy (pasture) X aquaculture, intensive livestock ag, turf farming, horticulture. viticulture.

The majority of the DM areas are just not suitable for further intensive development. Many of the sites are forested and located on infertile rhyolitic (Site 2 and 4) or sandstone soils (Site 23). Sites 12, 13, 14, 16, 17 (part) 18, 19, 20, 21, 22 and 24 are located on a flood plain. At best, some of the sites may be suitable for a dwelling or low scale rural tourism operation, while others will not be developed due to physical constraints or ecological attributes.

The planning proposal is not likely to adversely impact threatened species, populations or ecological communities or their habitats. Table 7 below provides a summary of potential ecological impacts for various zone change categories. There is no critical habitat in the Lismore LGA.

Table 7 - Assessment of ecological impacts

General DM zone change category	Likelihood of negative ecological impacts
LEP 2000 rural zone to RU1	65% of all non-urban lots with DM are proposed to change from a rural zone under LEP 2000 to the equivalent Zone RU1 under LEP 2012. There are no likely negative ecological impacts associated with a proposed "like for like" change. Moreover, some of the land uses that are permissible in rural zones under LEP 2000 are no longer permissible under LEP 2012 including industries and motels. Biodiversity values are protected under LEP 2012, Lismore DCP, Council's policies /strategies and state and federal legislation.
LEP 2000 environmental zone to RU1; or a combination of LEP 2000 environmental zone and rural zone to RU1	25% of all non-urban lots with DM are proposed to change from an environmental zone or part environmental zone under LEP 2000 to Zone RU1 under LEP 2012. All non-urban DM in LEP 2000 environmental zones have limited development potential. Sites 7, 8 and 11 DM areas are all heavily forested; Site 13 is a billabong used for watering stock; Sites 10, 12 and 15 are slightly more open koala habitat forest; and Sites 19, 20, 23 and 24 includes Coastal Wetland or are in the 100m proximity area for Coastal Wetlands under SEPP (Coastal Management) 2018. The biodiversity values of the land are significant. The development potential is low due to physical constraints and ecological attributes. Biodiversity values are protected under LEP 2012, Lismore DCP, Council's policies /strategies and state and federal legislation.
LEP 2000 rural zone to E2 or E3; or LEP 2000 rural zone to a combination of E2/E3 and RU1	7% of all non-urban lots with DM are proposed to change from a rural zone under LEP 2000 to Zone E2 or E3 under LEP 2012. E2/E3 criteria for privately owned lots has been verified in accordance with the Northern Councils E Zone Review Final Recommendations. Biodiversity values are protected under LEP 2012, Lismore DCP, Council's policies /strategies and state and federal legislation.
LEP 2000 environmental zone to E2/E3	1% of all non-urban lots with DM are proposed to change from an environmental zone under LEP 2000 to E2 under LEP 2012 (Sites 7 & 24). Additionally, 3 large undescribed riparian areas in Sites 23 & 24 totalling 67ha are proposed for Zone E2. The DM in Site 7 is subtropical rainforest and those in Sites 23 & 24 are Coastal Wetlands under SEPP Coastal Management 2018. The biodiversity values of these areas are protected under local, state and federal legislation.
LEP 2000 rural zone to SP2; or LEP 2000 rural zone to E3 and SP2	2% of all non-urban lots with DM, all located within Site 3, are proposed to change from a rural zone under LEP 2000 to E3 and SP2 under LEP 2012. All of this land is owned by Rous County Council and is used for Rocky Creek Dam and the associated bushland catchment. The provision of some Zone SP2 enables the maintenance and provision of dam infrastructure as intended pursuant to SEPP (Infrastructure) 2007. The biodiversity values of this area are protected under local, state and federal legislation.

Natural hazards

An overview of the natural hazards that apply to land proposed for rezoning is provided below in Table 8. There are no likely negative environmental effects associated with the planning proposal with regards to natural hazards.

Table 8 Natural hazards

Natural hazard	Assessment comments
Flood	The following sites include flood prone land: 12, 13, 14, 16, 17 (part), 18, 19, 20, 21, 22, 23 (small part only) and 24. The zones that form the subject of this planning proposal do not enable subdivision beyond the minimum lot size of 40ha. There is no potential for more intensive development. There is no additional risk to life or property as a result of the planning proposal.
Landslip	No sites, except Site 10, include DM land mapped as mass movement. Two lots in Site 10 have some DM land that is constrained by landslip. The land in this location is proposed to change from Zones 1(a) and 7(b) to Zone RU1. The minimum lot size remains at 40ha and there is no additional potential for more intensive development in this location. No negative effects as a result of this constraint.
Bushfire	All sites except Site 13, which is a billabong, contain bushfire prone land. The planning proposal will be referred to the NSW Rural Fire Service in accordance with Ministerial Direction 4.4.
Contaminated land	In accordance with clause 6, SEPP 55 a planning authority does not need to consider whether the land is contaminated for this planning proposal. The land is not specified in subclause 6(4) of the SEPP. The proposed zone changes do not permit more intensive development for residential, educational, recreational or child care purposes or for the purposes of a hospital. No additional negative effects in relation to potential contaminated land.
Acid sulfate soils	Sites 12 to 24 inclusive are included in Lismore LEP 2012 Acid Sulfate Soils Map. The proposed zone changes do not permit more intensive development. No additional negative effects as a result of this constraint.

Aboriginal and European cultural heritage

The DM areas of the 209 lots were assessed to determine Aboriginal and European cultural heritage values using the: Aboriginal Heritage Management Information System (AHIMS); and an unpublished report entitled "Wiy-abal Aboriginal Clan (Bundjalung Nation) Cultural Heritage & Values Relating to the Lismore City Council Local Government Area" prepared by Collins M and Heron R dated June 2000; and the Lismore LEP 2012 Heritage Map. Site 3 includes one allotment mapped as a heritage item. Sites 14 and 15 each include an AHIMS site (search completed 18/6/2018) within DM areas. An assessment of any potential effects on cultural heritage values is provided in Table 9.

Table 9 Aboriginal and European cultural heritage

Site	Address	Assessment comments
Aboriginal cultural heritage		
14	940 Coraki Road, Ruthven (Lot 1 DP 125530)	The existing zone on the DM area within this lot is 1(r) Riverlands and the proposed zone is RU1 Primary Production. There is very little change in development potential for this flood prone grazing land. No known negative effects as a result of the planning proposal. The planning proposal will be referred to the Ngulingah LALC for comment.
15	1511 Wyrallah Road, Tucki Tucki (Lot 131 DP 728195)	The existing zone on the DM area within this lot is 7(b) Environment Protection - Habitat and the proposed zone is RU1 Primary Production. This Crown lot is part of the Wyrallah stock flood refuge and is used by surrounding graziers in times of flood. There is a grazing lease/license over the land for grazing in non-flood periods. There is very little change in development potential for the land. No known negative effects as a result of the planning proposal. The planning proposal will be referred to the Ngulingah LALC for comment.
European cultural heritage		
3	143 Rocky Creek Dam Road, Dunoon (Lot 12 DP 1147676)	143 Rocky Creek Dam Road, Dunoon is listed as a heritage item in LEP 2012 (I17 – "Wendella"). A boundary adjustment between this lot and adjoining Rous County Council land necessitates a minor realignment of zone boundaries. The small area of DM now within the lot was previously within the adjoining Rous land. The DM land is currently within Zone 1(a) General Rural and it is proposed for Zone RU1 Primary Production. No known negative effects as a result of the planning proposal.

State and regionally significant farmland

In accordance with the Northern Councils E Zone Review Final Recommendations Report, State and regionally significant farmland (Northern Rivers Farmland Protection Project 2005) is to be considered along with primary use of the land before applying an E zone or a rural zone. The “Introduction” section of the Northern Rivers Farmland Protection Project Final Recommendations February 2005 highlights the importance of agriculture on the North Coast. The Introduction is provided below:

Agriculture is an important industry on the North Coast. It is the region’s third largest employer and exporter and fourth highest contributor to gross regional production.

Agricultural land is a finite resource and is under increasing development pressure. A great deal of agricultural land has been lost to production already. Population pressures have resulted in urban and rural residential encroachment onto farmland. This is having a significant impact on the economic and social value of agriculture in our region. In particular, the loss of critical mass of farms can make it difficult to maintain support services and infrastructure. Land use conflicts between farming and non-farming neighbours have increased, at times leading to farmers having to alter or even close their farming operations. Increasing land prices due to development pressures make it difficult for farmers to purchase additional land to ensure the ongoing viability of their business.

The planning proposal, based on the “primary use” of the land ensures that farms can continue to be operated as farms without having to rely on the uncertainties of the existing use provisions of the *Environmental Planning and Assessment Act 1979* if the land were to be zoned for environmental protection. Moreover, this planning proposal enables the continuation of the positive social and economic benefits provided by the agricultural sector. All State significant farmland is proposed for Zone RU1 Primary Production, consistent with the “primary use” test. Regionally significant farmland is mainly proposed for Zone RU1, with smaller areas proposed for Zone E2 and E3, consistent with the “primary use” test. Refer to Attachment 1 for a more detailed analysis of State and regionally significant farmland.

Other social and economic effects

Notwithstanding the significant economic and social benefits of the agricultural sector, the proposed zone changes will generally provide a status quo with regards to development potential. The planning proposal will provide for the continuation of low scale development opportunities compatible with the agricultural and ecological values of the rural area.

The vast majority of the non-urban DM areas are too constrained to be suited to development other than the current “primary use”. The biodiversity values of these DM areas, protected by policy and legislative requirements at all levels of government, will further restrict the development potential for these locations.

The planning proposal does not involve any negative social or economic impacts. The positive impacts of the proposal include: the simplification of land use planning requirements for all non-urban land in the Lismore Local Government Area with the provision a single LEP; the removal of any landholder concern and uncertainty associated with the application of E zones in non-urban areas; and the provision of an opportunity for non-urban landholders to request an E zone where the primary use of the DM area is environmental conservation or environmental management.

Summary of the planning proposal

Table 10 below provides an overview of the planning proposal report structured in accordance with the DP&E guidelines for planning proposals. Refer to Attachment 1 for the full Stage 1 Non-Urban DM rezoning planning proposal report for submission to the DP&E.

Table 10 Overview of planning proposal

Part	Requirements	Description of planning proposal
1	OBJECTIVES OR INTENDED OUTCOMES	<p>The outcomes of this proposal follow:</p> <ul style="list-style-type: none"> Simplify land use planning requirements for all non-urban land in the Lismore Local Government Area with the provision of a single LEP. Provide appropriate land use zones for non-urban DM land in accordance with the <i>Environmental Planning and Assessment Act 1979</i> Section 9.1 Directions by the Minister. The removal of any landholder concern and uncertainty associated with the application of E zones in non-urban areas. Provide an opportunity for non-urban DM landholders to request an E zone where the “primary use” of the DM area is environmental conservation or environmental management.
2	EXPLANATION OF PROVISIONS	Refer to Tables 2 – 4 and Attachment 4 of this report.
3	JUSTIFICATION Section A – Need for the Planning Proposal <i>1. Is the Planning Proposal a result of any strategic study or report?</i> <i>2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?</i>	<ul style="list-style-type: none"> Refer to Table 5 in this report; This DM rezoning planning proposal is consistent with the Delivery Program Strategy D3.2 and the Operational Plan Action D3.2.1; The planning proposal is the only means of achieving the intended outcomes.
3	JUSTIFICATION Section B – Relationship to Strategic Planning Framework <i>3. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?</i> <i>4. Is the Planning Proposal consistent with the Council's local strategy or other local strategic plan?</i> <i>5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?</i> <i>6. Is the Planning Proposal consistent with applicable s117 Ministerial Directions?</i>	<ul style="list-style-type: none"> The planning proposal is consistent with the North Coast Regional Plan 2036 (refer to Attachment 1 for detail); Consistent with relevant LEP 2012 zone objectives; Consistent with Imagine Lismore 4 Year Delivery Program; Consistent with SEPPs (refer to Attachment 1 for detail); Consistent with s9.1 Ministerial Directions (refer to Attachment 1 for detail).
3	JUSTIFICATION Section C – Environment, Social and Economic Impact <i>7. 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?</i> <i>8. Are there any likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?</i> <i>9. How has the Planning Proposal adequately addressed any social and economic effects?</i>	<ul style="list-style-type: none"> Refer to the section of this report entitled “Environmental, Social & Economic Impact” for details No further reporting recommended.

Part	Requirements	Description of planning proposal
3	JUSTIFICATION Section D – State and Commonwealth Interests 10. Is there adequate public infrastructure for the Planning Proposal? 11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?	<ul style="list-style-type: none"> The DM rezoning planning proposal does not present any additional demands on public infrastructure; No further reporting recommended. Consultation is recommended with the following public authorities/organisations: RFS, OEH & Ngulingah LALC.
4	MAPPING	<ul style="list-style-type: none"> Refer to Maps in Attachment 2 to this report.
5	COMMUNITY CONSULTATION	<ul style="list-style-type: none"> Recommended 28 day exhibition period.
6	PROJECT TIMELINE	<ul style="list-style-type: none"> Recommendation of 12 months for completion (refer to Attachment 1 for detail).
7	DELEGATIONS	<ul style="list-style-type: none"> Council does not have delegation for the final plan making stage of the DM rezoning planning proposal.

Council Resolution 9/17 Actions 5 and 6

Part 5 of the Council resolution 9/17 was addressed with the lodgement of a funding application to the DP&E for the review of Deferred Matter areas. The DP&E wrote to Council on two occasions confirming that funding up to \$40,000 would not be available for Council. An extract from the DP&E's letter dated 16 May 2017, stating the reason for the negative response to the funding request, is provided below:

As stated in my letter of 13 March 2017, Council's resolution to make the application of E Zones voluntary does not address the question of the 'primary use of the land', and is not consistent with the Final Recommendations and the process required by the Ministerial planning direction 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs.

The 'primary use' of DM land has subsequently been identified by a variety of methodologies including: consultation letters to all private DM landholders, up to date aerial photography, site visits and discussion with landowners.

Part 6 of the resolution required staff to, 'investigate and report back via a Council briefing on how land that has been included in an E zone at the request of a landowner can be reviewed at a change of ownership of the land'. This was discussed at the Council briefing of 20 March 2018. The only way to achieve a change in the zoning of land is via a planning proposal to change an E zone to another zone with costs to be borne by the landholder. There is no guarantee that such a proposal would satisfy the relevant legislative requirements or be supported at Gateway stage.

Comments

Finance

Not required.

Other staff comments

Privately owned DM land proposed for an E zone was verified with a biodiversity field inspection and ground survey conducted by an appropriately qualified person. In most instances this was Council's Environmental Strategies Coordinator or Council's Ecologist acting in this role. Field inspection reports have been prepared and these are located at Attachment 3 to this report.

Two Council owned lots including 243 Fox Road, Rosebank (Site 4); and 650 Broadwater Road, Broadwater (Site 23) are entirely DM and are proposed to change from Zone 1(a) General Rural under LEP 2000 to Zone E3 Environmental Management under LEP 2012. Council's Property Services Manager

has confirmed that the two lots were old quarry sites and the resource has been depleted. The proposed Zone E3 is consistent with the primary use for these sites.

LEP delegations

The delegations do not extend to Council in this instance and consequently, Council does not seek to exercise delegations for plan making.

Public consultation

Council staff have already undertaken pre-Gateway consultation with private DM landholders in accordance with Council's 'Deferred Matter Review Process' resolution of 14 February 2017. Refer to the Background section of this report for details.

Council will commence further community consultation post Gateway determination. It is anticipated that the DP&E will require a twenty eight (28) day public exhibition period.

Notification of the exhibited planning proposal will include:

- A newspaper advertisement (Local Matters) that circulates in the area affected by the planning proposal.
- The website of Lismore City Council and the Department of Planning and Environment.
- Letter to affected landholders.

The written notice:

- Provide a brief description of the objectives or intended outcomes of the planning proposal.
- Indicate the land that is the subject of the planning proposal.
- State where and when the planning proposal can be inspected.
- Provide detail that will enable members of the community to make a submission.

Exhibition material:

- The planning proposal, in the form approved for community consultation by the Director General of the Department of Planning and Environment.
- The Gateway determination.

Conclusion

This report details the Deferred Matter rezoning planning proposal – Stage 1 non-urban and the associated pre-Gateway public consultation. An assessment of the planning proposal indicates that it is consistent with:

- Council's Deferred Matter rezoning resolution of its ordinary meeting of 14 February 2017 (resolution 9/17);
- The relevant State Environmental Planning Policies;
- The relevant Section 9.1 Ministerial Directions;
- The North Coast Regional Plan 2036.

There is sufficient information to enable Council to support the planning proposal and forward it to the Department of Planning and Environment seeking a Gateway determination.

Attachment/s

1. Planning Proposal report for the Department of Planning and Environment (Over 7 pages)
2. Planning Proposal Mapping (Over 7 pages)
3. Biodiversity Field Assessment Reports (Over 7 pages)

4. Deferred Matter (Stage 1 Non-Urban) Site Details