

Planning Services

IRF18/7096

Gateway determination report

LGA	Lismore
PPA	Lismore City Council
NAME	Rural and Nature Based Tourism
NUMBER	PP_2018_LISMO_007_00
LEP TO BE AMENDED	Lismore Local Environmental Plan 2012
ADDRESS	All land in the RU1 Primary Production zone in Lismore LEP 2012
DESCRIPTION	Various properties
RECEIVED	23/01/2018
FILE NO.	EF18/48695
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The planning proposal applies to the RU1 zone and seeks to broaden the range of permissible tourism and visitor accommodation types, while ensuring tourism development is of a small scale and does not adversely impact agricultural production, scenic or environmental values of land.

The proposed amendments to Lismore LEP 2012 include:

- Amendments to the RU1 Land Use Table (LUT) being; insert Tourist and Visitor Accommodation as permissible with consent; remove the child definitions from permissible with consent being bed and breakfast accommodation and farm stay accommodation; and prohibiting backpackers' accommodation, hotel or motel accommodation and serviced apartments; and
- insert a local provision, clause 6.11 Rural and nature-based tourism development, to restrict tourist-orientated development to a small-scale compatible with the rural, environmental or scenic nature of the land. This clause introduces definitions of 'small scale' (meaning a scale that is small enough to be generally managed and operated by the principal owner living on the property) and 'tourism development'. Importantly 'tourism development' applies to various forms of tourist and visitor accommodation and other miscellaneous tourism uses such as caravan parks, eco-tourist facilities, camping grounds, home industries, kiosks and restaurants or cafes.

Site description

The proposal will apply to all land in the Lismore Local Government Area (LGA) which is zoned RU1 Primary Production.

Existing planning controls

Lismore LEP 2012 currently lists several tourism related land uses as permitted with consent under the RU1 Primary Production zone including bed and breakfast accommodation, camping grounds, caravan parks, cellar door premises, eco-tourist facilities, farm stay accommodation, home industries, information and education facilities, kiosks, and restaurants or cafes.

Clause 5.4 of the Lismore LEP 2012 includes numerical standards for bed and breakfast accommodation, home industries, farm stay accommodation and kiosks.

Clause 5.13 of the Lismore LEP 2012 relates to ecotourist facilities. This is a compulsory clause under the standard template that requires Council to be satisfied that the eco-tourist facility is sympathetic to and maintains the environmental and cultural values of the land and is designed and managed to have minimum impact on the environment.

Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions for the following reasons:

- The proposal will enhance tourism opportunities in rural locations with the benefit to the local economy;
- Aligns with Lismore's strategic planning framework that promotes tourism in its local area; and
- The proposal has no impact on State policy relating to tourism and is appropriate to proceed.

PROPOSAL

Objectives or intended outcomes

The statement of objectives adequately describes the intent of the planning proposal. The intended outcome of the planning proposal is to permit with consent certain tourism development in the RU1 Primary Production zone subject to a local clause to limit tourist-orientated development to a small-scale that is compatible with the rural nature of the land.

Explanation of provisions

The explanation of provisions addresses the intended changes to Lismore LEP 2012. The planning proposal seeks to:

- amend the land use table of RU1 Primary Production by:
 - (a) omitting Bed and Breakfast Accommodation and Farm Stay Accommodation from Item 3 Permitted with consent;
 - (b) inserting Tourist and Visitor Accommodation into Item 3 Permitted with consent;
 - (c) inserting Backpackers Accommodation, Hotel and Motel Accommodation and Services Apartments into Item 4 Prohibited; and

- introduce an additional local provision to Part 6 Additional Local Provisions to Lismore LEP 2012 that limits tourism development and manages its impacts, in the RU1 Primary Production zone.

The planning proposal states the amendments to the LEP will be accompanied with a Development Control Plan Chapter 4 Rural Tourism. The Development Control Plan (DCP) will include specific provision to determine likely impacts including the provision of an ecological assessment.

Proposed clause 6.11 replicates similar clauses in Byron and Ballina. Despite this subclause (5) is difficult to understand, and could be clearer for exhibition purposes. It is recommended a condition be included that provides a plain English explanation of what this subclause purports to do. A condition has been included in this regard.

It should also be made clear in the planning proposal that clause 6.11 applies to other developments than tourism and visitor accommodation. A requirement for this has also been included.

Mapping

The planning proposal will not amend any LEP maps. The amendment involves changes to the written instrument only.

NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of any strategic study or report. The proposal is the result of a review of the provisions of the Lismore LEP 2012 and enquires regarding tourism uses in the RU1 Primary Production zone.

Council identified that the current provisions in the RU1 Primary Production zone limit tourism development. Demand has grown for small scale tourism uses within rural locations and the existing 'closed' zone requires proposed development to fit the definition of either bed and breakfast, eco-tourist facility or farm stay accommodation. However, these land uses are restricted in where they can be undertaken ie they must either be in an existing residence, on a working farm or in a location with special ecological values.

Council has identified principles and standards which will be necessary to provide small scale tourism uses in the RU1 Primary Production zone. The standards will minimise any adverse environmental and social impacts.

Opening the RU1 land use table for tourist and visitor accommodation types will have the following benefits:

1. it will facilitate a means for providing small scale tourism uses given the high demand in Lismore; and
2. it will support rural tourism in the region with benefits to the local economy.

The amendment to the instrument is the most appropriate mechanism to achieve the objectives and intent of the proposal.

STRATEGIC ASSESSMENT

State

The proposal is not inconsistent with the NSW State Plan.

Regional

North Coast Regional Plan 2036

The planning proposal is consistent with goals, directions and actions in the North Coast Regional Plan 2036 (NCRP). The proposal is consistent with Direction 8: Promote the growth of tourism which advocates the opportunity to expand tourism on the North Coast. The proposal enables Action 8.2 to facilitate tourism and visitor accommodation in rural hinterland locations through local environmental plans.

The proposal is also consistent with the Local Government Narratives for the Lismore LGA. The proposal provides opportunities to expand nature-based tourism, which is a regional priority for Lismore.

Local

The planning proposal is consistent with Imagine Lismore (Community Strategic Plan) 2017- 2027. The planning proposal is consistent with objectives in the delivery program including the following.

- D2 - Our built environment is managed and enhanced to meet the needs of our growing community; and
- D3 - Our land use planning caters for all sections of the community.

A specific DCP for Rural Tourist Accommodation is being developed in conjunction with this proposal which aims to protect the environment and limit impacts to agricultural production.

Section 9.1 Ministerial Directions

The following section 9.1 Directions are applicable to the proposal: 1.2 Rural Zones; 1.5 Rural Lands; 2.3 Heritage Conservation; 3.2 Caravan Parks and Manufactured Home Estates; 3.3 Home Occupations; 3.4 Integrating Land Use and Transport; 4.1 Acid Sulfate Soils; 4.3 Flood Prone Land; 4.4 Planning for Bushfire Protection; 5.3 Farmland of State and Regional Significance on the NSW Far North Coast; 5.10 Implementation of Regional Plans; 6.1 Approval and Referral Requirements; and 6.3 Site Specific Provisions.

Of the above Directions, the proposal is considered to be inconsistent with Directions 1.2, 1.5, 4.1, 4.3 and 4.4.

1.2 Rural Zones

Direction 1.2 Rural Zones is relevant to the planning proposal. The direction provides that a planning proposal must not increase the permissible density of development within a rural zone.

The planning proposal seeks to enable different forms of tourism development in the RU1 Primary Production zone thereby increasing the permissible density in a rural zone. While the proposal is inconsistent with the Direction, it is limited to small scale and low impact tourist development under the proposed Clause 6.11.

The development of the DCP Rural Tourist Accommodation will also manage the impact of tourism development including issues such as traffic and ecological assessment.

Any proposal would also need to consider the provision in Clause 5.4 Controls relating to miscellaneous permissible uses in the Lismore LEP 2012 for bed and breakfast accommodation, home industries, farm stay accommodation and kiosks.

Considering the scale controls and heads of consideration this inconsistency is of minor significance and justified in accordance with the terms of the direction.

1.5 Rural Lands

This direction's objective is to protect the agricultural production value of rural land. The proposal makes additional tourist and visitor accommodation land uses permissible in the RU1 Primary Production zone. The additional tourism uses may prejudice some rural operations – however any impact will be limited by the introduction of clause 6.11, which also limits the scale of existing permissible uses in the RU1 zone.

In addition, the proposal is consistent with the Rural Planning Principles of SEPP (Rural Lands) by providing sustainable economic activities i.e. rural tourism, restricted to small scale development. The proposal does not reduce productive agricultural land and provides alternative economic opportunities for rural communities. The inconsistency of the proposal with the Direction is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

4.1 Acid Sulfate Soils

The direction states that a planning proposal shall not propose intensification of land uses on land identified as containing acid sulfate soils unless a study assessing the appropriateness of the land has been complete. The direction is relevant as tourism uses may be permissible on land affected by this constraint. However, there are Acid Sulfate land management provisions in the Lismore LEP 2012 which require that such issues be considered at the development application stage. The inconsistencies are justified as of minor significance.

4.3 Flood Prone Land

This direction provides that a planning proposal shall not permit a significant increase in the development potential of flood-prone land.

The planning proposal seeks to permit with consent additional tourism development in RU1 Primary Production zone. The RU1 Primary Production zone includes flood prone land where the proposed tourist may be permitted on land affected by this constraint.

However, the Lismore LEP 2012 contains provisions to address development on flood-prone land at the development assessment stage. The inconsistency is considered to be of minor significance and justified in accordance with the terms of the Direction.

4.4 Planning for Bushfire Protection

This direction is applicable to the proposal as tourist development may be permitted on land with bushfire prone land. The Direction requires the PPA to consult with the Commissioner of the NSW Rural Fire Service after a Gateway determination has been

issued and prior to public exhibition. Until this consultation has occurred, the inconsistency of the proposal with this Direction remains unresolved.

State environmental planning policies (SEPPs)

SEPP (Rural Lands) 2008 is relevant to the planning proposal as it contains provisions that affect rural zoned land.

The proposal is not inconsistent with the Rural Planning Principles or the Rural Subdivision Principles of the SEPP as the provisions recognise the importance of sustained economic activities in rural areas. This may be achieved through increased patronage via tourism opportunities. The proposed Clause 6.11 ensures any proposal will consider any impacts on agricultural production.

SITE-SPECIFIC ASSESSMENT

Environmental

The proposal is not expected to have any significant environmental impacts. Constraints such as impacts on threatened species would be addressed through the development application stage and controlled through the existing and proposed clause 6.11 LEP provisions.

Economic

The proposal will have a positive economic impact from increased tourism development including with increased patronage and the multiplier effect associated within increase tourism in the Lismore LGA.

Social

Opportunities for tourism development in rural areas can result in negative impacts on small rural communities such as increased traffic or noise impacts. The provisions in Clause 6.11 limit development to a small scale and potentially minimise impacts. The proposed development is not expected to have significant adverse social impacts.

The planning proposal does not discuss impacts on existing operators in the RU1 zone, such as caravan parks who may already breach the 'small scale' threshold. It is recommended Council identify operators of tourism development in the RU1 zone who breach this threshold and consult with them directly. A condition has been included in this regard.

Infrastructure

Increased accommodation opportunities have the potential to put more stress on infrastructure and services in rural areas. However, these opportunities will be restricted to small scale development. The proposed DCP will include development controls to assess the additional infrastructure requirement for any proposed development.

CONSULTATION

Community

The planning proposal has indicated a 28-day public exhibition period. This proposal is not classified as low impact as described in *A guide to preparing local*

environmental plans (Department of Planning and Environment 2016). This exhibition period is therefore considered to be appropriate.

Agencies

The proposal notes that Council intends to consult with the following agencies:

- Rural Fire Service,
- Department of Primary Industries,
- Office of Environment and Heritage, and
- Ngulingah LALC.

Consultation with these agencies are considered appropriate.

TIME FRAME

The planning proposal includes a project timeline, which suggests a completion time of six months. This is considered to be appropriate.

LOCAL PLAN-MAKING AUTHORITY

Lismore City Council has requested to be the local plan-making authority for this plan. As the proposal deals with matters of local significance, it is recommended that Council be authorised to the local plan-making authority in this instance.

CONCLUSION

It is recommended that the planning proposal proceed subject to conditions for the following reasons:

- The planning proposal will enable certain tourist and visitor accommodation be permissible with consent in rural locations of Lismore LGA;
- The planning proposal will enhance tourism opportunities particularly in rural zones with benefit to the local economy;
- The possible impacts of increased tourism development in the rural locations will be considered at the development application stage which can mitigate any adverse impacts; and
- The planning proposal aligns with Council's commitment to its strategic planning framework that promotes tourism in its local area.

RECOMMENDATION

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, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are minor and justified in accordance with the terms of the Direction; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved until consultation with the NSW Rural Fire Service has been undertaken.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. A plain English explanation of proposed clause 6.11 is included, particularly providing explanation that the new term 'tourism development' encapsulates uses other than tourist and visitor accommodation, and explaining how subclause (4) and (5) interact.
2. The planning proposal should be made available for community consultation for a minimum of 28 days. Operators of 'tourism development' in the RU1 zone, who breach the 'small scale' test should also be individually contacted.
3. Consultation is required with the following public authorities:
 - Department of Primary Industries;
 - NSW Rural Fire Service;
 - Office of Environment and Heritage; and
 - Ngulingah LALC.
4. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



14/2/19

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