



IRF21/3468

## Gateway determination report – PP-2021-5175

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To rezone part of 389 Keen Street, East Lismore (Lot 3 DP 805680) to R1 General Residential and amend associated minimum lot size and height of building controls

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Attachment 1 & 4 for Gateway request
Contaminated land preliminary assessment
Council resolution
Gateway request letter
Planning Proposal Application Form
Planning proposal report – 389 Keen Street, East Lismore – August 2021
Planning Proposal Submission Form

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Lismore City Local Government Area</b>
<b>PPA</b>	<b>Lismore City Council</b>
<b>NAME</b>	<b>Part 389 Keen Street (30 Lots)</b>
<b>NUMBER</b>	<b>PP-2021-5175</b>
<b>LEP TO BE AMENDED</b>	<b>Lismore Local Environmental Plan 2012</b>
<b>ADDRESS</b>	<b>389 Keen Street, East Lismore</b>
<b>DESCRIPTION</b>	<b>Lot 3 DP 805680</b>
<b>RECEIVED</b>	<b>25/08/2021</b>
<b>FILE NO.</b>	<b>IRF21/3468</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

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

The objective of the planning proposal is to allow for the future residential subdivision of part of 389 Keen Street, East Lismore.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Lismore LEP 2012 to apply the changes below to part of 389 Keen Street, East Lismore (Figure 1):

**Table 3 Current and proposed controls**

<b>Control</b>	<b>Current</b>	<b>Proposed</b>
Land zoning	RU1 Primary Production	R1 General Residential
Height of buildings	0m	8.5m
Minimum lot size	40ha	400m <sup>2</sup>

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

## 1.4 Site description and surrounding area

The site is located south of East Lismore, approximately 3km south of the Lismore central business district in the Lismore Local Government Area. The site is a rural parcel comprising approximately 61ha and has a history of horticultural use (Figure 1).

The surrounding area is characterised by a mixture of zones including:

- R1 General Residential;
- RU1 Primary Production;
- E3 Environmental Management;
- IN2 Light Industrial;
- E1 National Parks and Nature Reserves;
- SP2 Infrastructure;
- W1 Natural Waterways.

The site itself is zoned RU1 Primary Production and is located on the urban fringe of the East Lismore area. The Lismore sewage treatment plant is located approximately 1km east and the Wyrallah Road waste or resource management facility is located approximately 700m south east.

Additionally, the eastern boundary of the site has frontage to the Wilson River and the western boundary adjoins the Wilsons Nature Reserve (Figure 2).

The subject site is partially bushfire prone (Figure 3) and is identified on the Lismore LEP 2012 flood planning area maps (Figure 4).

The subject site has been identified to contain primary koala habitat (approximately 1ha) and >50% Camphor Laurel (approximately 1ha) which has been determined by a supporting Biodiversity Assessment report to be consistent with lowland rainforest Endangered Ecological Community (EEC) (Figure 5).

Additionally, the wider allotment contains areas of potential High Environmental Value (HEV) (Figure 6) and includes a small area of Biophysical Strategic Agricultural Land (BSAL) adjoining the Wilson River. Existing powerlines traverse the site (Figure 7).

The planning proposal relates specifically to a 5ha portion of the subject site that adjoins the urban area of East Lismore (Figure 8). The planning area relevant to this planning proposal was occupied by a macadamia farm, which was cleared in 2014 (Figure 9). The land is now under pasture.

The planning area is not identified as flood planning area on the Lismore LEP 2012 flood planning map (Figure 4), however is part bushfire prone (Figure 3).

The planning area does not contain BSAL, and according to the planning proposal does not impact the areas identified as primary koala habitat or lowland rainforest.

The planning area is gently undulating (slope 2%-5%) with a future 30 lots proposed on the planning area to be serviced by an extension of Felicity Drive.





Figure 1 Subject site (source: SixMaps)

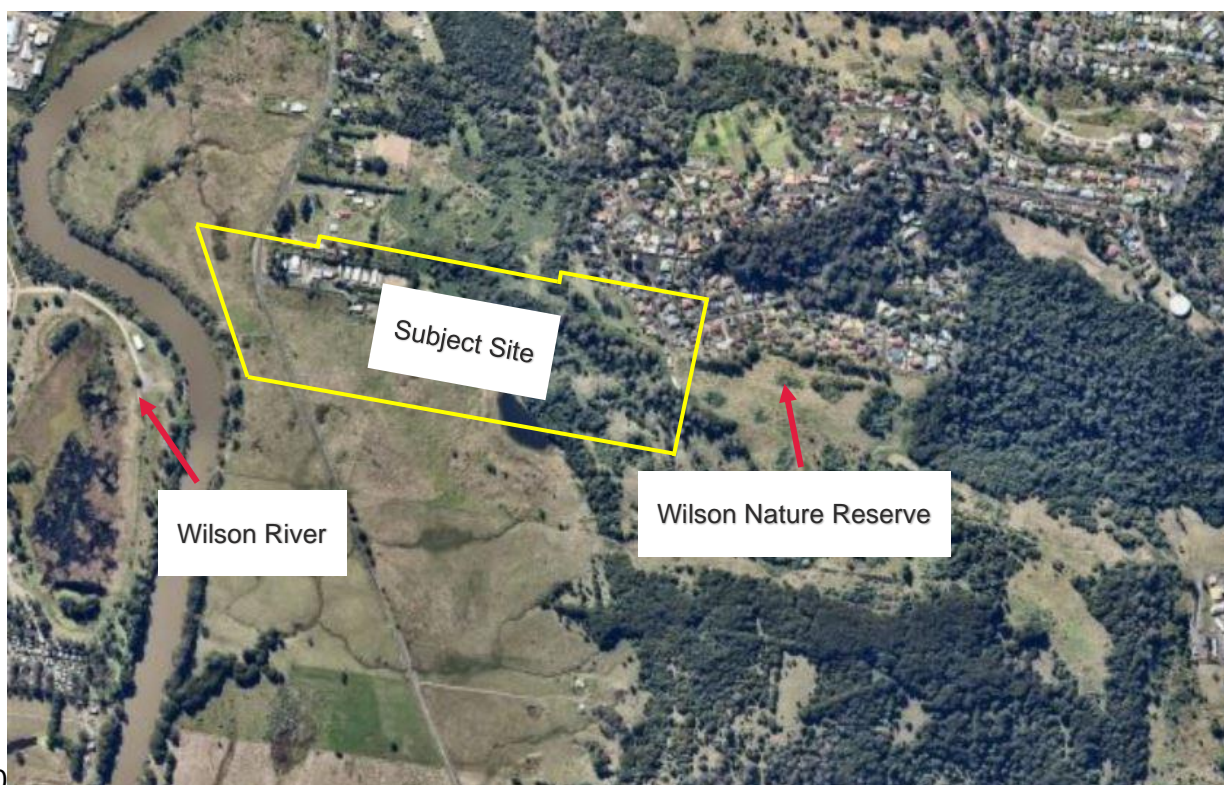
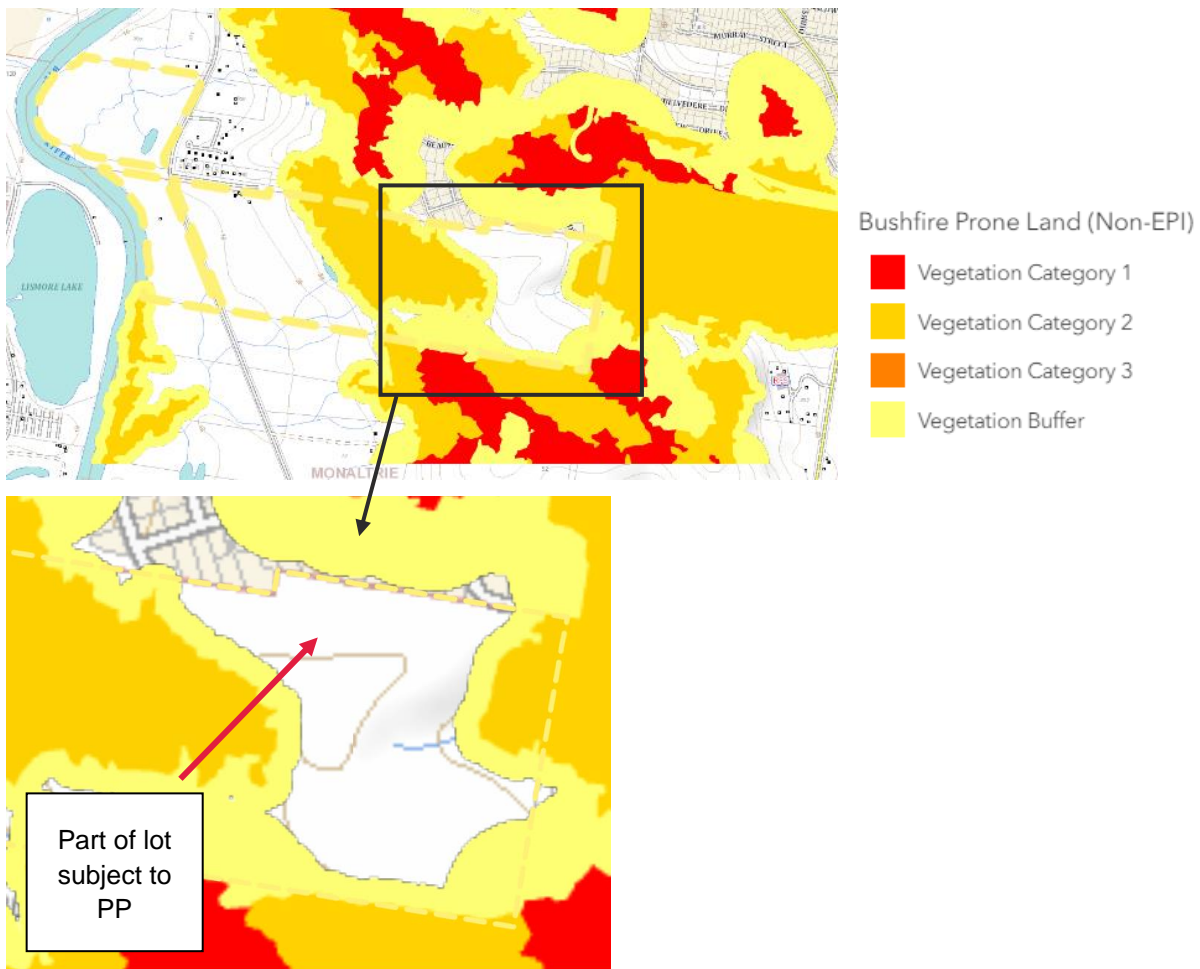
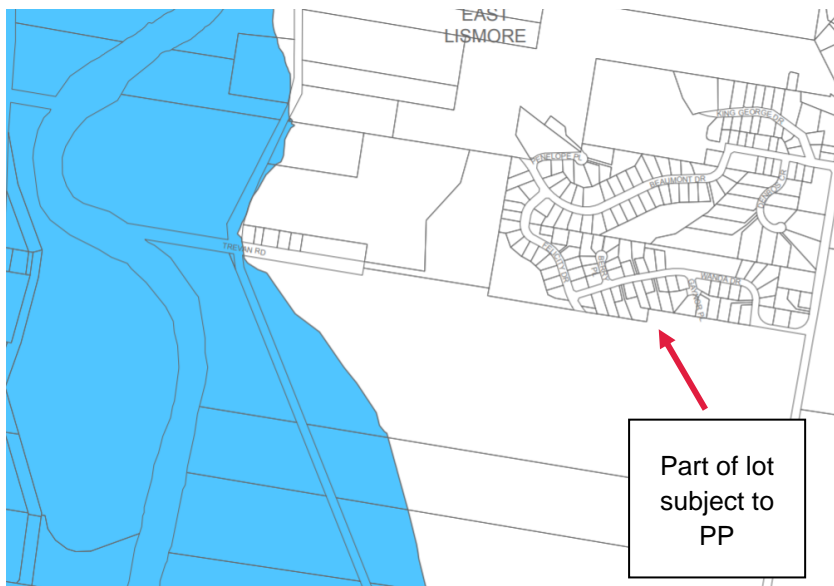


Figure 2 Site context (source: NearMap)

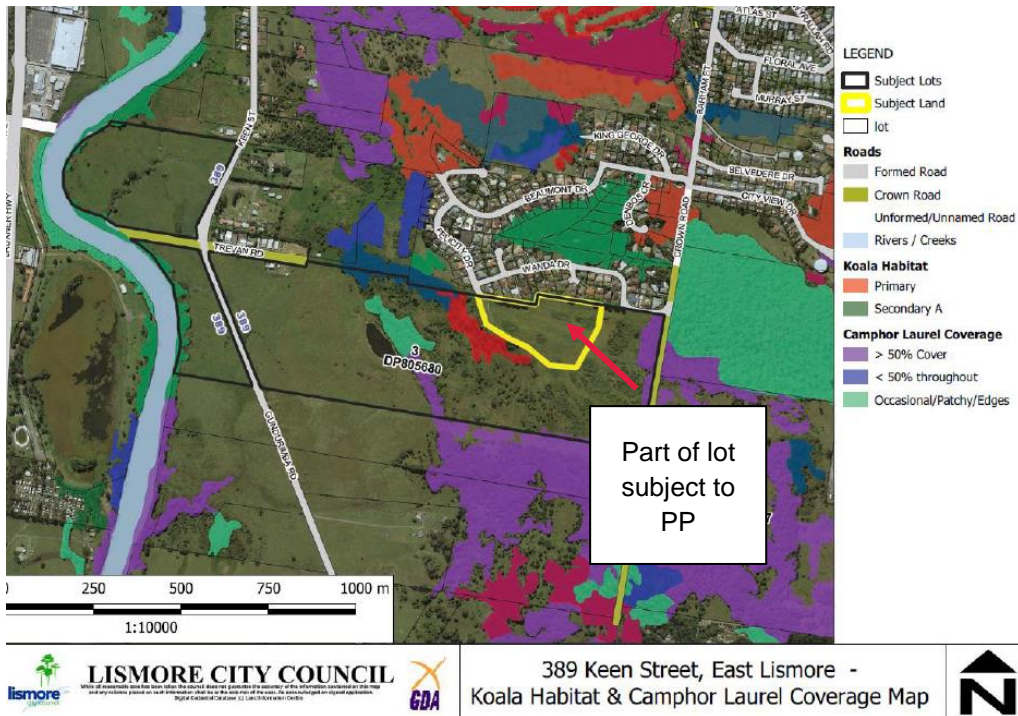


**Figure 3 Bushfire Prone Land (source: Spatial Viewer)**

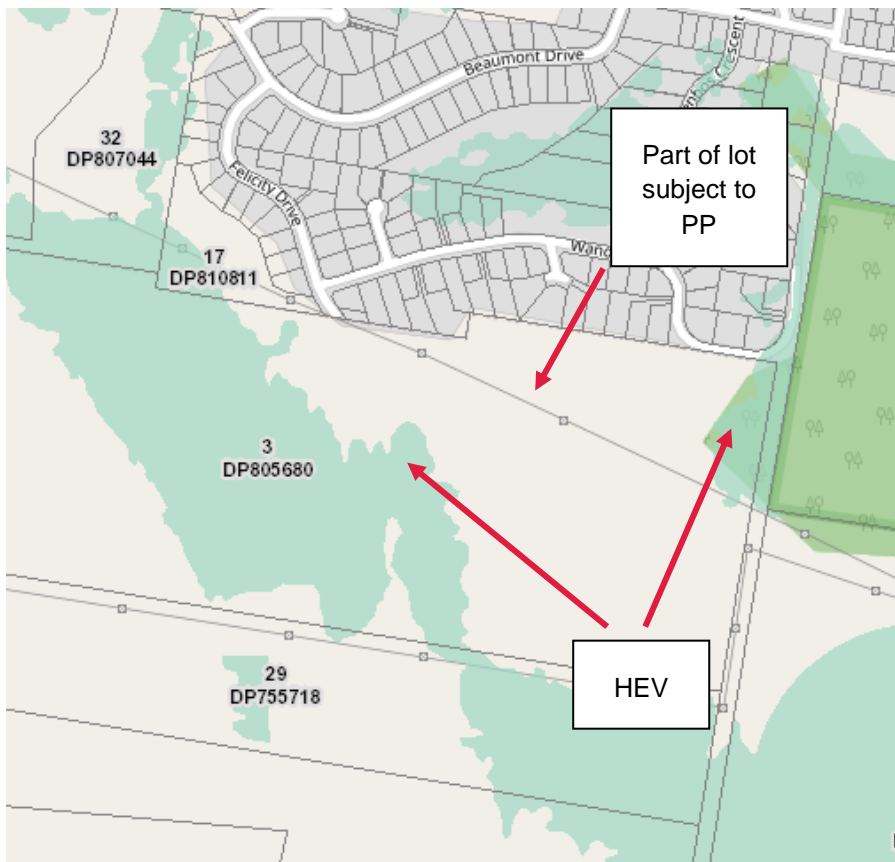


**Figure 4 Flood planning area (source: Lismore LEP 2012)**





**Figure 5 Koala Habitat and Camphor Laurel Coverage Map (source: Planning proposal report – 389 Keen Street, East Lismore)**



**Figure 6 High Environmental Value**



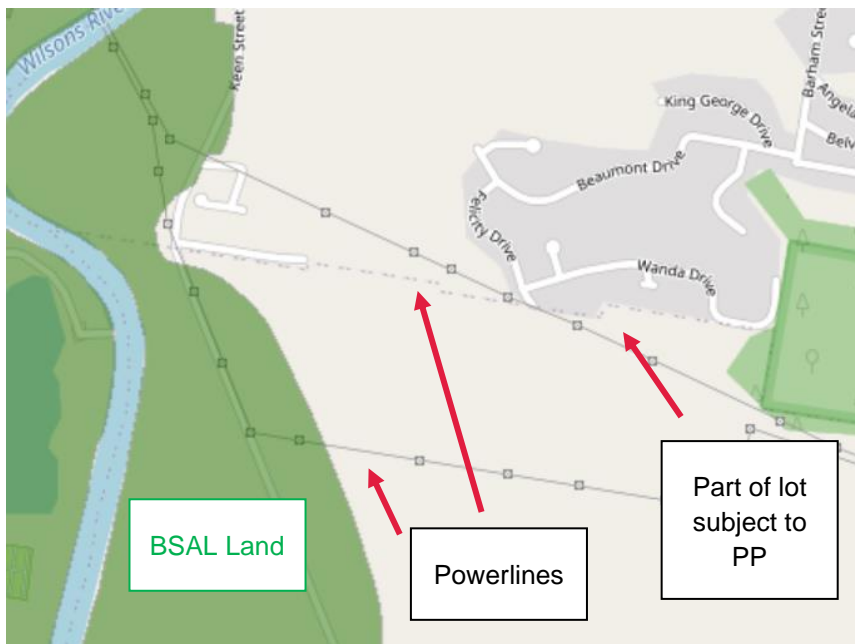


Figure 7 Biophysical Strategic Agricultural Land

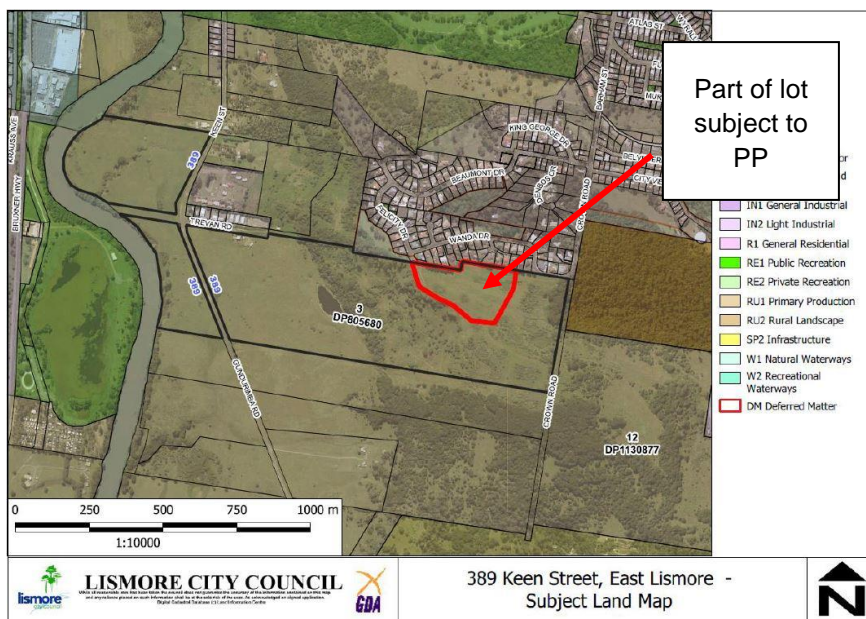
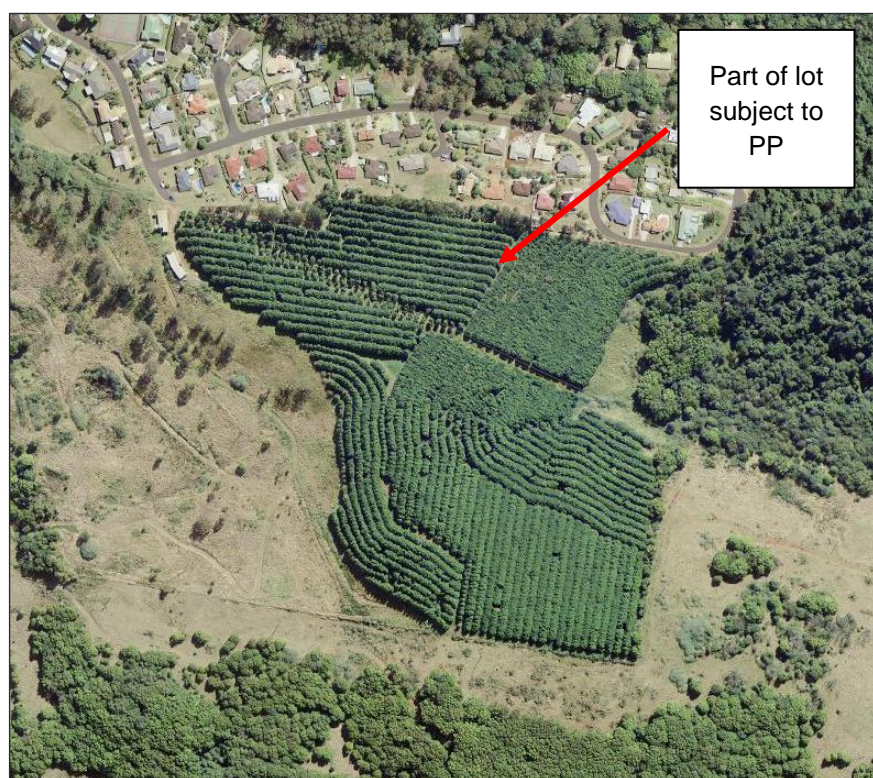


Figure 8 Planning area (source: Planning proposal report – 389 Keen Street, East Lismore)



**Figure 9 Extent of former macadamia plantation (source: SixMaps)**



**Figure 10 Powerlines traversing planning area (Source: Six Maps)**

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the land zoning, minimum lot size and height of building maps. It should be noted that the proposed height of building map indicates that an adjoining lot is part of the subject lot. Additionally, the Lot and DP for this adjoining lot is shown on all of the maps provided. This is because the proposal initially covered a larger area which extended over the subject lot and adjoining Lot 12 DP 1130877. This is discussed in further detail under section 1.6 of this report.



For clarity, it is recommended that the maps be amended to remove the reference to Lot 12 DP 1130877 and remove the black line identifying Lot 12 DP 1130877 as the subject lot on the proposed height of building map.

Following these minor amendments, these maps will be suitable for community consultation.

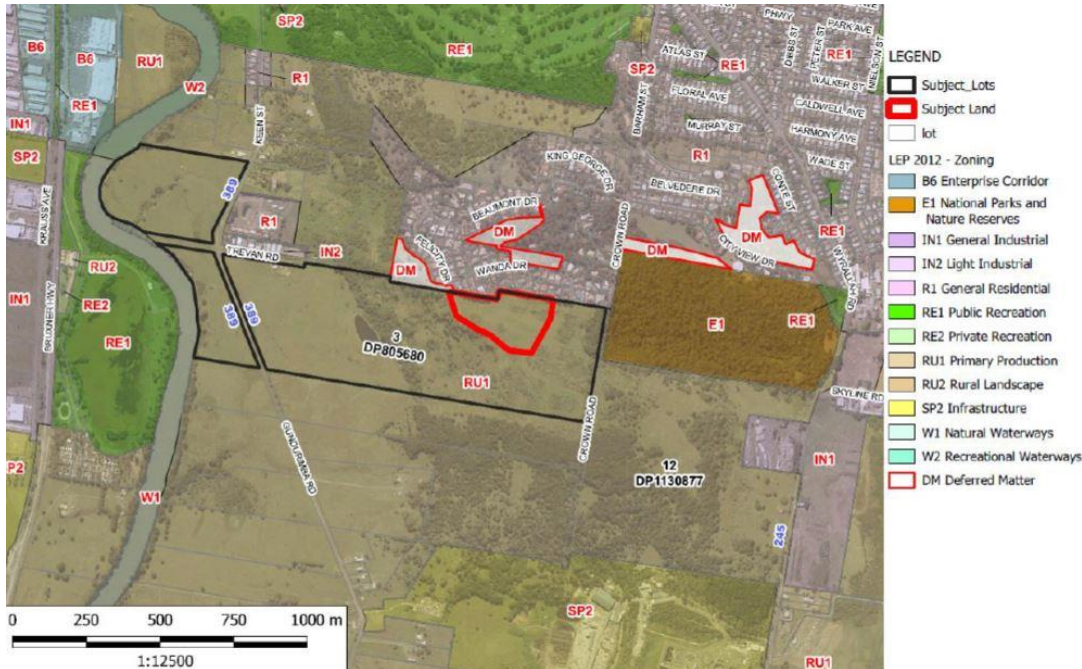


Figure 11 Current zoning map

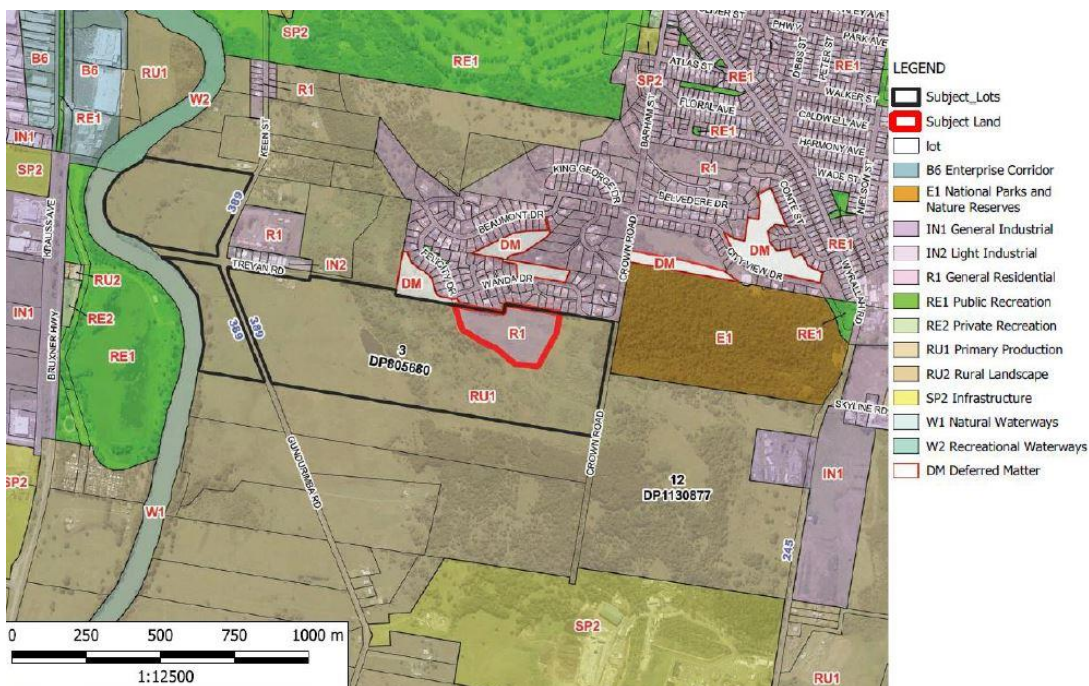


Figure 12 Proposed zoning map



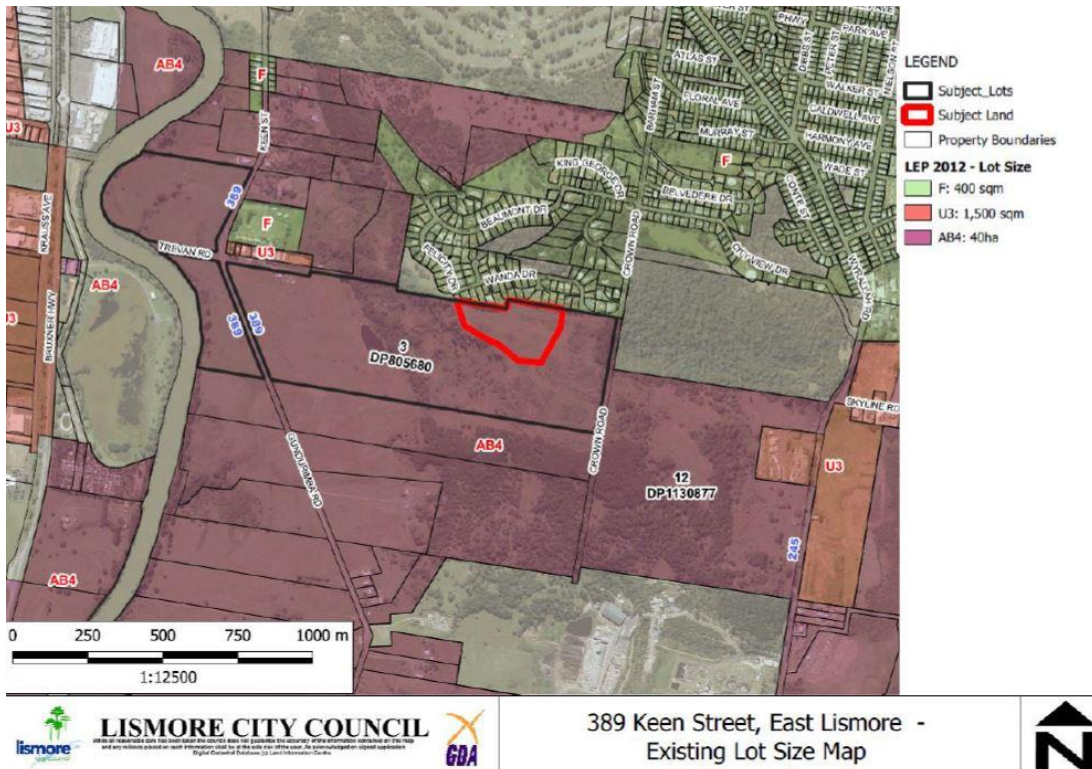


Figure 13 Current lot size map

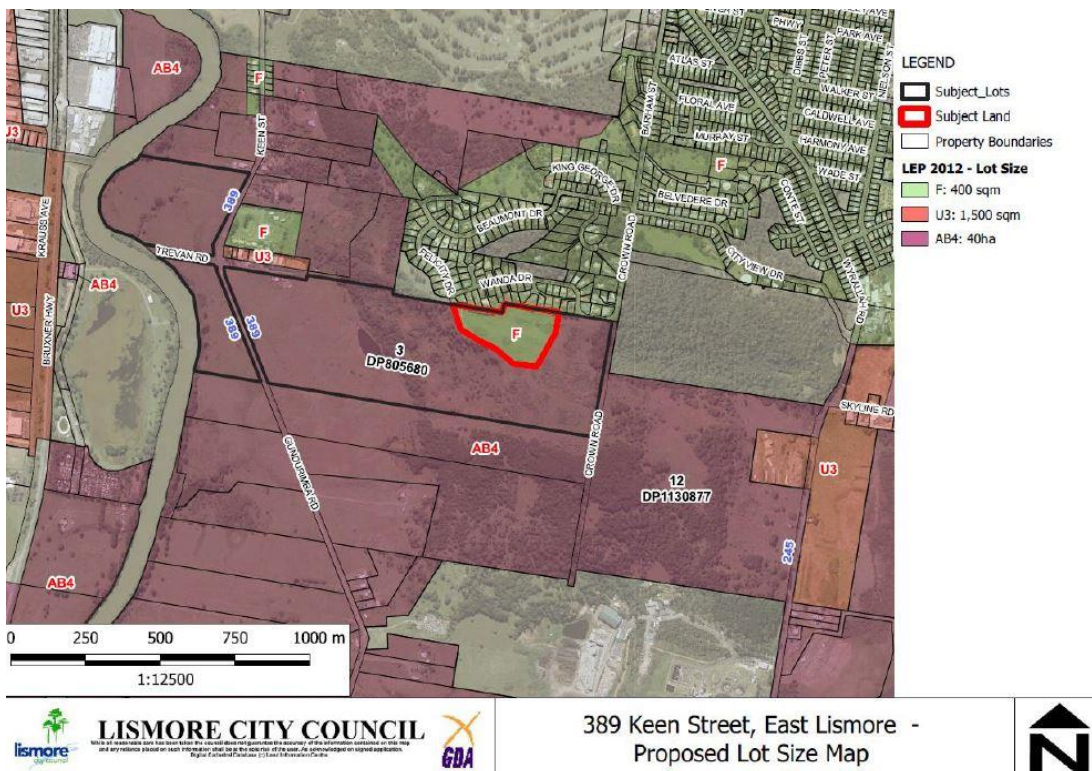


Figure 14 Proposed lot size map



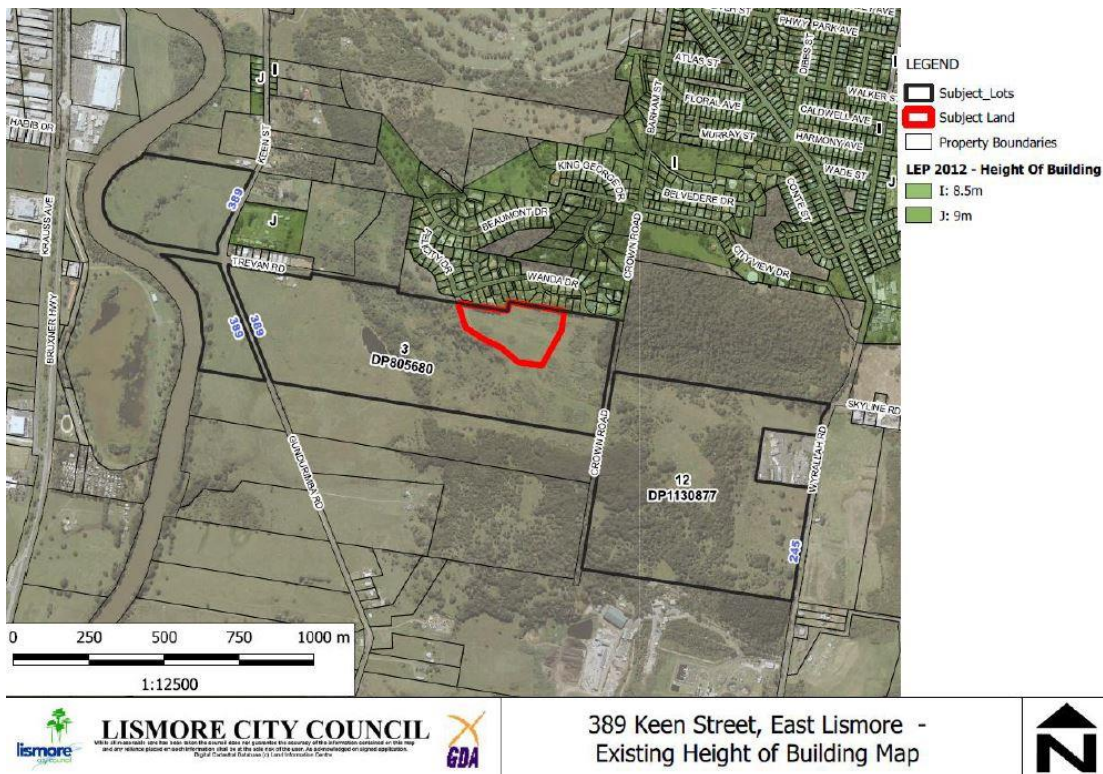


Figure 15 Proposed height of building map

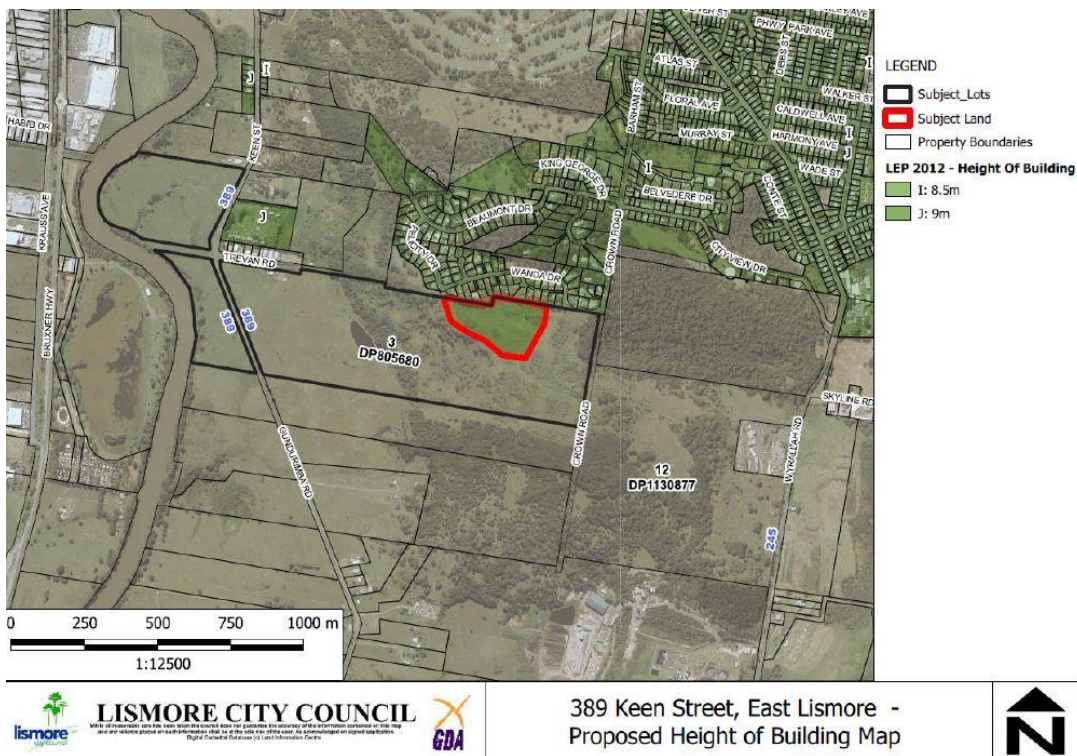


Figure 16 Current height of building map

## 1.6 Background

Council consulted with the former Office of Environment and Heritage (OEH) in relation to the proposed planning proposal for a larger area which extended over Lot 3 DP 805680 and adjoining Lot 12 DP 1130877 (Figure 17).

This proposal comprised a planning area of approximately 15ha, to be rezoned from RU1 Primary Production to R1 General Residential. The proposed planning proposal was supported by a Biodiversity Assessment Report (dated 23 August 2016) which considered “Site Vegetation” and “Threatened Flora and Communities” (Figure 18).

The former OEH identified the biodiversity values present on the wider site, requesting that an E2 zone be applied to the balance of both lots in order to contribute to achieving actions of the North Coast Regional Plan 2036 (Regional Plan). This was to be achieved by rezoning the residual lot parcel from RU1 Primary Production to E2 Environmental Conservation. Additionally, it was requested a 50m buffer be provided to Wilson Nature Reserve, given its proximity to the rezoning and threats posed to the reserve by increasing urbanisation on the periphery of the reserve.

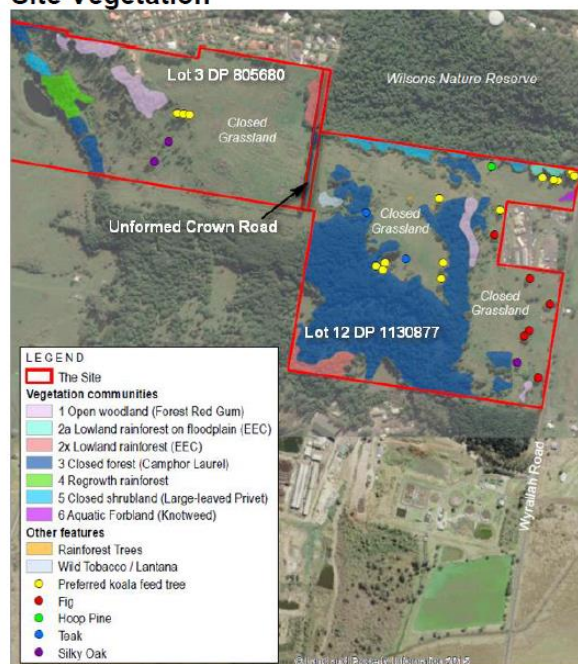
In response to the advice of the former OEH, the planning area was reduced to 5ha (yield of approximately 30 lots). Council have indicated the planning area has been chosen as it is identified as the least constrained area of the original 15ha and does not contain woody vegetation.



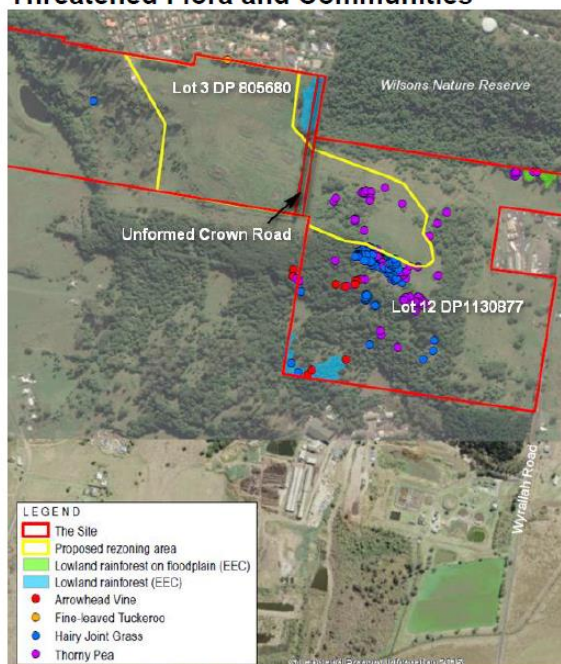
**Figure 17 Subject site in context to Lot 12 DP 1130877**



### Site Vegetation



### Threatened Flora and Communities



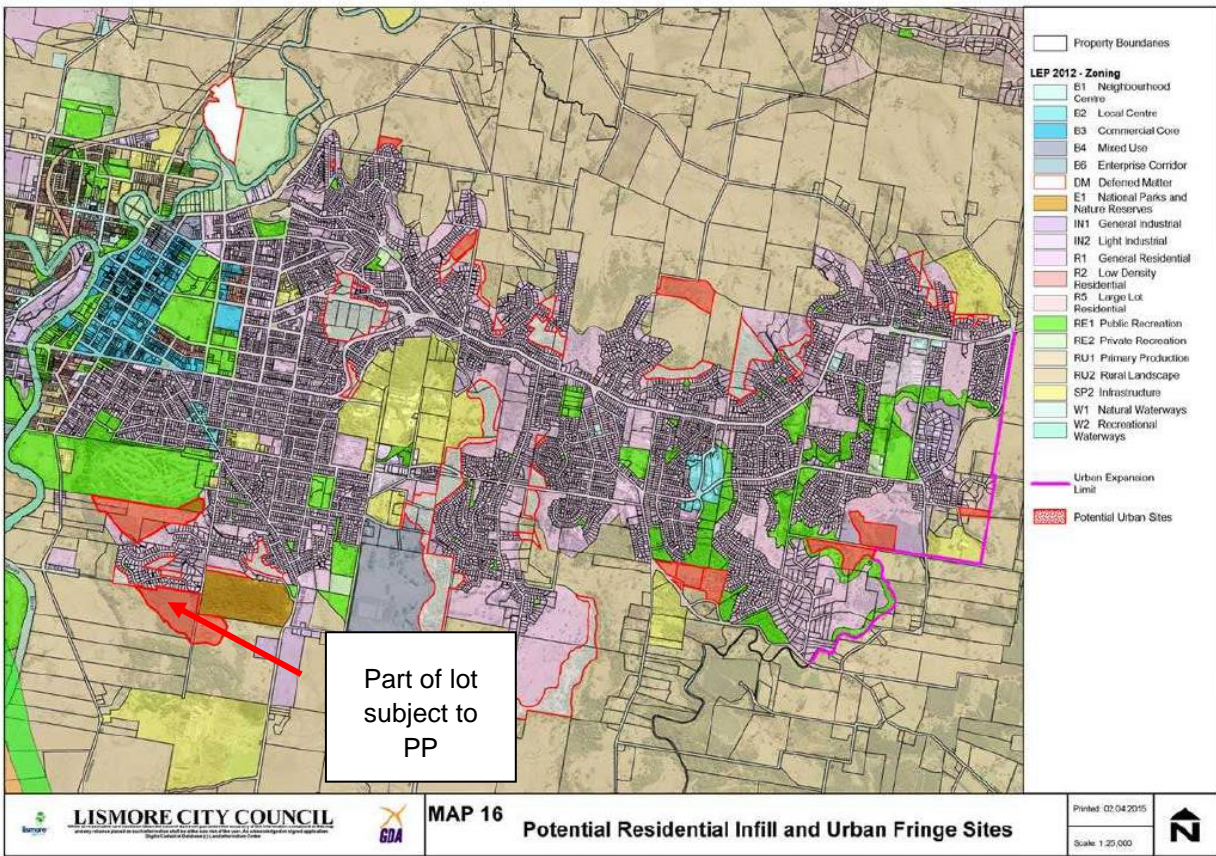
**Figure 18 Biodiversity Assessment Report “Site Vegetation” and “Threatened Flora and Communities” Map**

## 2 Need for the planning proposal

The land is identified in the Lismore Growth Management Strategy 2015 – 2035 (GMS) as potential residential, pursuant to Map 16 – Potential Residential Infill and Urban Fringe Sites (Figure 19). The GMS states in relation to the subject lot, “*Lot 3 DP 805680 is located at the southern end of the East Lismore ridgeline and its development would represent a logical progression in development along the top of the ridge line*”. The Lismore GMS was endorsed by the Department on 11 August 2015.

It should be noted that the Urban Growth Area boundary largely follows the footprint of the original rezoning proposal that spanned Lot 3 DP 805680 and Lot 12 DP 1130877. This footprint has been reduced following investigations which concluded that only 5 ha was suitable for residential development due to constraints such as servicing, traffic, geotechnical and ecology.

The planning proposal is the only mechanism to amend Lismore LEP 2012 to facilitate the proposed planning provisions within the planning area.



**Figure 19 Lismore Growth Management Strategy 2015 -2035 – Map 16**

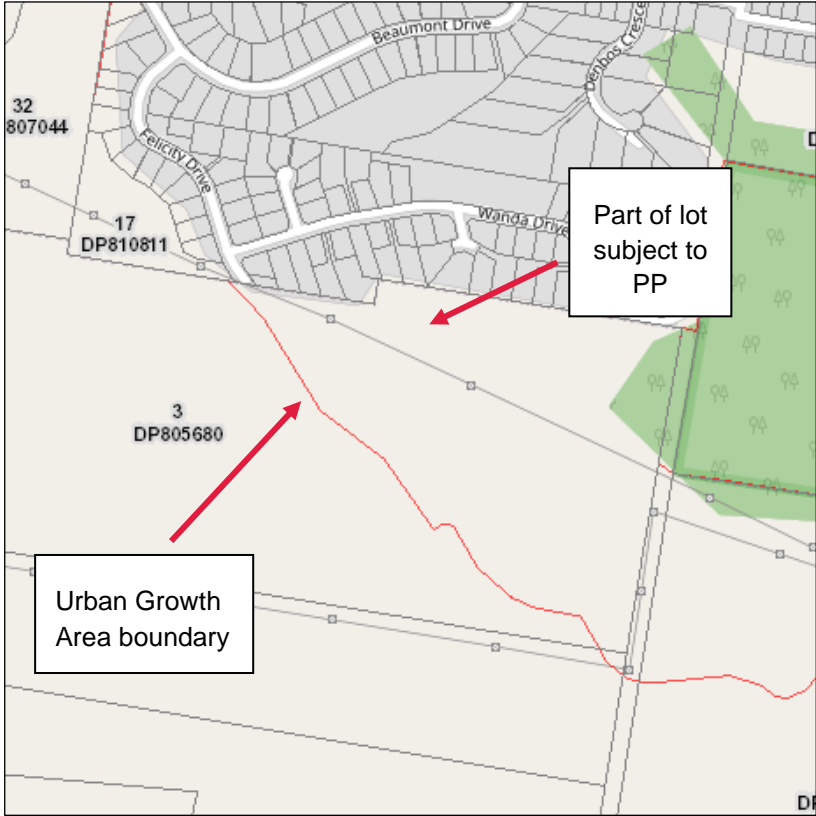
### 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan 2036.



**Table 4 Regional Plan assessment**

Regional Plan Objectives	Justification
<p>Direction 1 Deliver environmentally sustainable growth</p>	<p>This Direction aims to manage growth and protect the rural and coastal landscapes of the North Coast. The planning proposal is consistent with this Direction and aligns with Action 1.1 which seeks to focus urban development to urban growth areas. The part of the land to which the planning proposal relates is within the mapped as Urban Growth Area (Figure 20).</p>  <p><b>Figure 20 Urban Growth Area Boundary</b></p>
<p>Direction 2 Enhance biodiversity, coastal and aquatic habitats, and water catchments</p>	<p>This Direction nominates that new development should be appropriately located to limit any adverse impacts on the region's biodiversity, coastal and aquatic habitats, and water catchments.</p> <p>The planning proposal is consistent with Action 2.1 which aims to focus development to areas of least environmental sensitivity. There are areas of mapped potential HEV on the land, but these areas do not comprise part of the planning proposal area (Figure 5, 6 and 18). The planning proposal identifies and recognises the sensitive ecosystems within the allotment and implements the 'avoid, minimise, offset' hierarchy to biodiversity by avoiding the areas of high biodiversity.</p> <p>Never the less, given the period that has passed since the preparation of the supporting Biodiversity Assessment and the reconfiguration of the planning area, it is considered that Council should prepare an Ecological Report, to focus specifically on the planning area, being the 5ha site subject of this proposal and consult with the Division of Biodiversity and Conservation (BCD) to confirm the suitability of the proposal.</p>

Direction 11 Protect and enhance productive agricultural lands	<p>This Direction identifies that the North Coast's most important farmland has been mapped to support long term agricultural production. The planning proposal aligns with Action 11.1 which aims to enable the growth of the agricultural sector by directing urban and residential development away from important farmland. The planning area is not identified as important farmland.</p> <p>Additionally, the maintenance of the existing RU1 Primary Production zone for the residue parcel is in accordance with the wider actions of the regional plan, to protect productive agricultural lands.</p> <p>In recognition that the area is surrounded by land within zone RU1 Primary Production and there is a small section of the site mapped as BSAL adjoining the Wilson River, it is recommended that as a condition of the Gateway determination that a Land Use Conflict Assessment, including a strategy to mitigate any potential impacts resulting from the proximity of the future dwellings is undertaken. Consultation should also be undertaken with the Department of Primary Industries – Agriculture (DPI- Agriculture) to confirm the suitability of the proposal.</p>
Direction 22 Deliver greater housing supply	<p>This Direction identifies that there should be a ready supply of well-located land for residential development to create a downward pressure on housing prices, maximise the use of existing infrastructure and ensure that environmentally sensitive areas are avoided. The planning proposal is consistent with Action 22.1 which aims to deliver an appropriate supply of residential land within local growth management strategies and local plans to meet the region's projected housing needs.</p> <p>The presence of additional dwellings within close proximity to agricultural land uses and the East Lismore sewage treatment plant and the Wyrallah Road waste or resource management facility has the potential to create land use conflict.</p> <p>Therefore, it is recommended that as a condition of the Gateway determination that a Land Use Conflict Assessment, including a strategy to mitigate any potential impacts resulting from the proximity of the future dwellings to these land uses should be undertaken to ensure there are no negative impacts. It is also recommended that consultation is undertaken with the Environment Protection Authority (EPA) to confirm the suitability of the proposal.</p>
Direction 23 Increase housing diversity and choice	<p>This Direction identifies that providing housing diversity and choice will improve affordability, help meet the needs of an ageing population and support the reduction of household size. The planning proposal is consistent with Action 23.1 as the part of the land is identified in Council's GMS as a potential residential infill and urban fringe site and the proposed controls will enable housing diversity.</p>
Local Government Narratives - Lismore	<p>The land is located within the mapped Urban Growth Area and is nominated as Investigation Area – Urban Land on the Urban Growth Map for Lismore Local Government Area. The planning proposal is consistent with the housing narratives for Lismore, specifically that the proposed controls will not prevent housing diversity.</p>

## 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
Lismore Growth Management Strategy 2015-2035	<p>The GMS is an endorsed strategy that was approved by the Department of Planning, Industry and Environment on 11 August 2015. GMS' are prepared by Councils to guide the orderly development and expansion of urban land, and manage environmental impacts, such as biodiversity constraints.</p> <p>The planning proposal is consistent with the GMS which identifies the planning area as being located upon land identified as a potential urban site on Map 16 – Potential Residential Infill and Urban Fringe Sites (Figure 19).</p> <p>The area of land identified by Map 16 is significantly larger than the area subject to the planning proposal because investigations concluded that only 5 hectares was suitable for residential development due to constraints such as servicing, traffic, geotechnical and ecology.</p> <p>In determining the land as a potential urban site, the GMS has taken into account a number of constraints that can be present that could restrict or limit urban expansion. One such consideration is identified areas of high conservation value, which is demonstrated on Map 13.</p> <p>As can be seen in Figure 21, it appears that the wider subject lot is identified as having some areas of high conservation value, which extends from the north into the site and follows the ridgeline. However, the classification of the potential urban site appears to correspond with this biodiversity layer, in that the urban footprint layer is contained within the ridgeline on the site. Therefore, the high conservation value layer does not appear to fall within the planning area. This would accord with the findings of the Biodiversity Assessment, prepared to support the wider rezoning proposal for Lot 3 and Lot 12 (140 lots), which identifies that the planning area is the least constrained area of the allotment and avoids threatened flora, EECs and areas of potential HEV.</p>
Lismore City Regional Action Plan	<p>The Lismore Regional City Action Plan (RCAP) was prepared in collaboration with Lismore City Council to provide a framework to manage and shape growth.</p> <p>The plan is based around five goals: Live, Work &amp; Learn, Meet, Play &amp; Protect and Move and includes 18 objectives to achieve these goals via a coordinated approach to land-use planning and infrastructure delivery.</p> <p>The plan also identifies priorities for additional investment opportunities such as infrastructure and public spaces to help manage changes while protecting the city's unique character and lifestyle.</p> <p>The proposal is consistent with the RCAP and responds to the following relevant objectives and goals, including:</p> <p><i>Objective 1: Support community aspirations for greater housing diversity and choice</i></p> <p>Action 1.1 Encourage housing options that support social inclusion, including crisis accommodation, housing for seniors and persons with a disability, lone-person households and affordable living.</p> <p>Action 1.3 Promote a sustainable growth footprint and enhance place-specific character and design outcomes.</p> <p><i>Objective 3 Strengthen resilience to natural hazards and climate change</i></p>

	<p>Action 3.1 Apply risk-responsive land use controls in local plans to avoid new development in high risk areas.</p> <p><i>Objective 14: Protect and value Lismore’s biodiversity, waterways and green landscapes</i></p> <p>Action 14.1 Protect the city’s scenic corridors and iconic natural landscape settings.</p> <p>Action 14.2 Manage urban development and urban bushland to support biodiversity conservation and the restoration of bushland and riparian corridors.</p>
<p>Lismore Biodiversity Management Strategy 2015-2035: Revised 2<sup>nd</sup> Edition</p>	<p>The Lismore Biodiversity Management Strategy 2015-2035 (LBMS) is relevant to the proposal as the wider site contains areas of biodiversity value and the LBMS sets a framework for the ongoing protection of this biodiversity.</p> <p>Of specific note is:</p> <p>Strategy 1. <i>Incorporating landscape-scale biodiversity management in strategic planning projects</i></p> <p>Objective 1.1 <i>Review and update of Council policies, strategies and plans to incorporate biodiversity values.</i></p> <p>Action 1.1.1 <i>Staff from Environmental Strategies are part of internal engagement in the early planning stages of projects, including:</i></p> <ul style="list-style-type: none"> <li>• <i>Plans of Management</i></li> <li>• <i>Asset Management Plans</i></li> <li>• <i>Street Tree Master Plan</i></li> <li>• <i>LEP and DCP Reviews</i></li> <li>• <i>Growth Management Strategy</i></li> <li>• <i>Local Strategic Planning Statement</i></li> </ul> <p>The proposal is informed by a Biodiversity Assessment, prepared to support the wider rezoning proposal to facilitate 140 lots. This Biodiversity Assessment has been reviewed by Council’s ecologist, in accordance with Action 1.1.1.</p> <p>Council’s ecologist noted that zone E2 may be appropriate in some parts of Lot 12 and to a lesser extent Lot 3, at the time the wider rezoning proposal was being considered. Notwithstanding, the reconfiguration of the proposal has reduced the planning area in response to the avoid, minimise, offset hierarchy.</p> <p>Lot 12 is not included in this proposal, nor is the residue comprising 56ha of Lot 3 (not including the 5ha of the planning area) as it is not proposed to amend the land zoning at this time.</p> <p>The proposal is considered to be consistent with this action of the LBMS as internal engagement has occurred in the early planning stages of this project and the feedback from this engagement has informed the proposal as currently requested.</p>
<p>Lismore Local Government Area Key Habitats and Corridors System – Vegetation Mapping for Lismore LGA</p>	<p>The Lismore Local Government Area Key Habitats and Corridors System (LGAKHCS) is relevant to the proposal as the site is identified in the report as a “grey zone”. This report is identified to apply to the “grey and blue zones” within the Lismore LGA.</p> <p>The corridor sectors are prioritised for regeneration action into six categories, initially on the basis of significance, and then in terms of tenure, in linking</p>



(Grey and Blue Zones) April 2012

significant areas and connecting to important areas of habitat in adjoining LGAs, and as providing optimum habitat for the highest priority assemblages.

The report identifies the importance of key habitats and the corridors that link them on a regional, sub-regional and local scale. The corridors have been ranked in value for conservation-priority vertebrates and prioritised to inform planning decisions and to direct vegetation rehabilitation and restoration.

The highest priority sectors comprise those in the regional network, not protected in the National Park estate (very high significance).

The second highest priority sectors consist of those in the regional network already protected in the National Park estate (very high significance).

The third highest sectors comprise sub-regional network, providing main linkages between regional sectors or linking to important areas of habitat in adjoining LGAs (high significance).

The fourth highest priority sectors represent sub-regional links of less significance providing smaller areas of habitat for the highest priority assemblages (high significance).

The fifth and sixth highest priority sectors constitute the local network (high-moderate significance), providing linkages of lower significance and catering for mostly lower priority assemblages. The fifth highest priority provides linkages of higher significance than the sixth highest priority.

The site is identified as supporting the start of the Gundurimba-Tucki Tucki Creek Connector, a high-moderate ranked corridor. The corridor on the site is identified in the plan as travelling south, away from the existing urban footprint, connecting to the Wyrallah Connector and the Lower Tucki Tucki Creek Connector. The corridor is considered to have a local status and the priority for rehabilitation/restoration is ranked 3 – 1. This corridor is a fifth priority sector.

Appendix 8 of the Report outlines that the corridor retains moderate significance as a local link connecting to Wilson Nature Reserve and Rotary Park and connecting Tuncester-Parrots Nest, Lower Tucki Tucki Creek and Wyrallah Connectors. The condition of the corridor is identified as fragmented and degraded and the key action is to rehabilitate and restore.

The recommendations of this report specify that rehabilitation and restoration of corridors should be guided by the prioritisation hierarchy (as outlined above) with gaps and degraded areas in the highest priority sectors receiving primary attention, followed by lower sectors down the order.

The report further clarifies that landholders within the identified corridor sectors should be encouraged to undertake vegetation rehabilitation, with the report suggesting that Lismore City Council assist relevant landholders to apply for vegetation restoration funding.

Due to the scale of the maps contained in the report, it cannot be confirmed if the planning area is located within the Gundurimba-Tucki Tucki Creek Connector. It should also be noted that the corridor appears to extend to the south of the lot, however the high conservation value vegetation and habitats layer contained in the GMS is identified traversing the site from the north, along the ridgeline adjoining the planning area. Given the site has, until recently, been used for the purposes of macadamia plantation, it can be assumed that the corridor is unlikely to comprise vegetation that would contribute to this corridor within the planning area. The wider site may however comprise vegetation of significance to this corridor.

	<p>Never the less, it is recommended that Council prepare an Ecological study, to focus specifically on the planning area, taking into consideration any vegetation that would contribute to maintaining the high-moderate significance of the Gundurimba-Tucki Tucki Creek Connector. The planning proposal shall be amended, based on any updated findings contained within the study.</p> <p>Given the planning proposal does not include the 56ha of the residual parcel, it is suggested that in terms of the wider environmental values on the site and the potential contribution that these values may make to the corridor, that Council continue to work with the landowner in regard to the rehabilitation of the corridor on the wider site, in accordance with the recommendations of the report.</p>
Inspire Lismore 2040 Local Strategic Planning Statement	<p><i>Planning Priority 1 Growth is consolidated around Lismore city, its CBD and villages</i></p> <p>The rationale associated with this priority nominates that the GMS identifies the land needed to accommodate future population growth. As noted above, the land is identified by the GMS as a potential residential infill site.</p> <p>The relevant strategic outcomes for the priority aim to consolidate new development to ensure that services are available, protect significant farmland, identify and protect the natural environment, facilitate housing diversity and ensure infill urban residential development is accessible by walking and cycling connections and public transport. It is considered that the planning proposal generally aligns with these outcomes as the land is identified by the GMS as a potential residential infill site and the parts of the land containing significant environmental attributes have been identified and protected by limiting the proposed extent of the R1 General Residential zone.</p> <p><i>Planning Priority 4 Recognise, embrace and protect our cultural heritage</i></p> <p>The rationale associated with this priority nominates that planning controls will be adopted in consultation with the local Aboriginal community that will best protect areas of identified important Aboriginal cultural heritage value while enabling desired uses consistent with those values. Additionally, the priority also nominates that engagement with Council's Aboriginal Advisory Group, Ngulingah LALC and local Aboriginal community members on development applications, LEP amendments and preparation of land use strategies will be undertaken as an ongoing priority.</p> <p>The original 15ha proposal submitted for Lots 3 and 12 was informed by an Aboriginal Cultural Heritage Assessment, prepared by Everick Heritage Consultants in March 2017. The report, prepared in consultation with two cultural heritage staff from the Ngulingah LALC and a representative from the Widjabul Wyabul native title claimant group, concluded that:</p> <ul style="list-style-type: none"> <li>• No indigenous cultural heritage sites or relics were identified within the project area,</li> <li>• No areas have been identified that are considered to contain potential archaeological deposits of significant Aboriginal heritage; and</li> <li>• All the project area has been disturbed in a manner which constitutes 'disturbance' within the meaning of the Due Diligence Code and is consistent with the Due Diligence Code.</li> </ul> <p>The planning proposal report indicates Lismore City Council's Environmental and Cultural Heritage Contractor has reviewed the ACHA Report and concurs with the findings.</p>

Council have recommended that consultation be undertaken with Ngulingah Local Aboriginal Land Council and Office of Environment and Heritage. Consultation with the LALC is considered appropriate in this instance and the Gateway recommends consultation with Heritage NSW to reflect new arrangements in regard to Aboriginal Cultural Heritage within the State government.

*Planning Priority 10: Areas of high biodiversity value and connectivity are protected and enhanced*

The rationale associated with this priority nominates that Lismore's natural systems support significant biodiversity with large numbers of native species and a diverse range of ecosystems and habitats, including subtropical, warm temperate and dry rainforests, wet sclerophyll forests, swamp forests and wetlands. Some of these species and ecological communities are listed as threatened or endangered under state or federal legislation.

The rationale also identifies that zoning of rural land for environmental management or conservation purposes has been highly controversial in Lismore, and in the short to medium term, Council will consider a range of land use planning responses to ensure high biodiversity areas and their connectivity are protected from potential adverse impacts of land uses and development.

The strategic outcomes for this priority state that areas of high conservation value, including corridors are to be maintained and improved to retain biodiversity and enhance connectivity for wildlife. The planning proposal aligns with this priority as it implements the 'avoid, minimise, offset' hierarchy to biodiversity by excluding the areas of potential HEV located within the allotment from the planning proposal area.

The planning proposal area has been reduced in size from the 15ha previously sought, applying only to the former macadamia plantation, which is the least constrained section of the site in regard to biodiversity value. The reduction in the size of the planning area has located the rezoning away from areas of high biodiversity value, in particular, vegetation located along the eastern boundary of the lot and within the road reserve corridor, adjoining Wilson Nature Reserve. The planning area does not comprise any identified EECs, nor does it contain koala habitat. The land is covered by the Comprehensive Koala Plan of Management for south-east Lismore, which will be relevant to future development stages on the site.

Notwithstanding, it is recommended that as a condition of the Gateway determination that consultation is undertaken with the BCD to confirm the suitability of the proposal.

Additionally, given the period that has passed since the preparation of the supporting Biodiversity Assessment and the reconfiguration of the planning area, it is considered that Council should prepare an Ecological Report, to focus specifically on the planning area, being the 5ha site subject of this proposal.

*Planning Priority 12: Protect and improve productive agricultural land and other natural resources*

The rationale associated with this priority nominates that the protection of productive agricultural land and other natural resources such as quarries is a land use planning priority for Council and the community.

The strategic outcomes aim to ensure that the availability and viability of rural land for ongoing agricultural use is not compromised by inappropriate or incompatible development. The proposal does not compromise the objectives of

this outcome as the land is not identified as important farmland and has been identified in the GMS as a potential residential infill site. However as noted previously in the report, it is recommended that as a condition of the Gateway determination that a Land Use Conflict Assessment, including a strategy to mitigate any potential impacts resulting from the proximity of the future dwellings to agricultural land uses should be undertaken to ensure there are no negative impacts. It is also recommended that consultation is undertaken with DPI – Agriculture.

Imagine Lismore  
Revised Delivery  
Program 2017-  
2021 and  
Operational Plan  
2021-2022

*D3 Our land use planning caters for all sectors of the community.*

*D3.1 Ensure land is available and serviced to meet population growth in locations that are accessible close to services and employment, and suitable for development.*

*D3.1.1 Process planning proposals to amend the LEP. Milestones for 2021-2022 include:*

- *Finalise Council initiated general amendments*
- *Finalise two (2) landowner-initiated amendments commenced in 2019-20 and 2020-21*

The planning proposal identifies that the proposal is consistent with the above actions of the Delivery Program 2017-2021 and Operational Plan 2019-2020.

It is noted that the title of the plan has been updated since original lodgement. The most recent version found on Council's website is titled, 'Revised Delivery Program 2017-2021 and Operational Plan 2021-2022'. The key actions outlined above remain the same. Despite this, it is considered appropriate that the planning proposal should be updated to reference the updated plan, for consistency with the current plan.

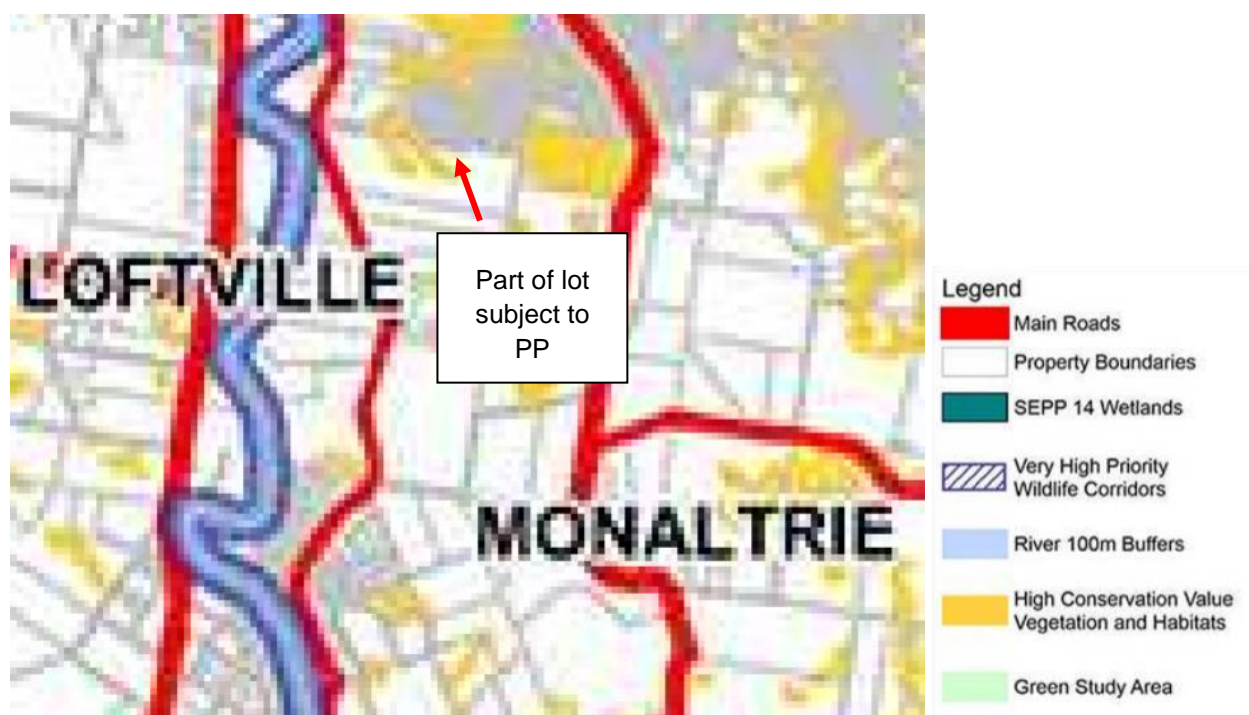


Figure 21 Lismore Growth Management Strategy 2015 -2035 – Map 13



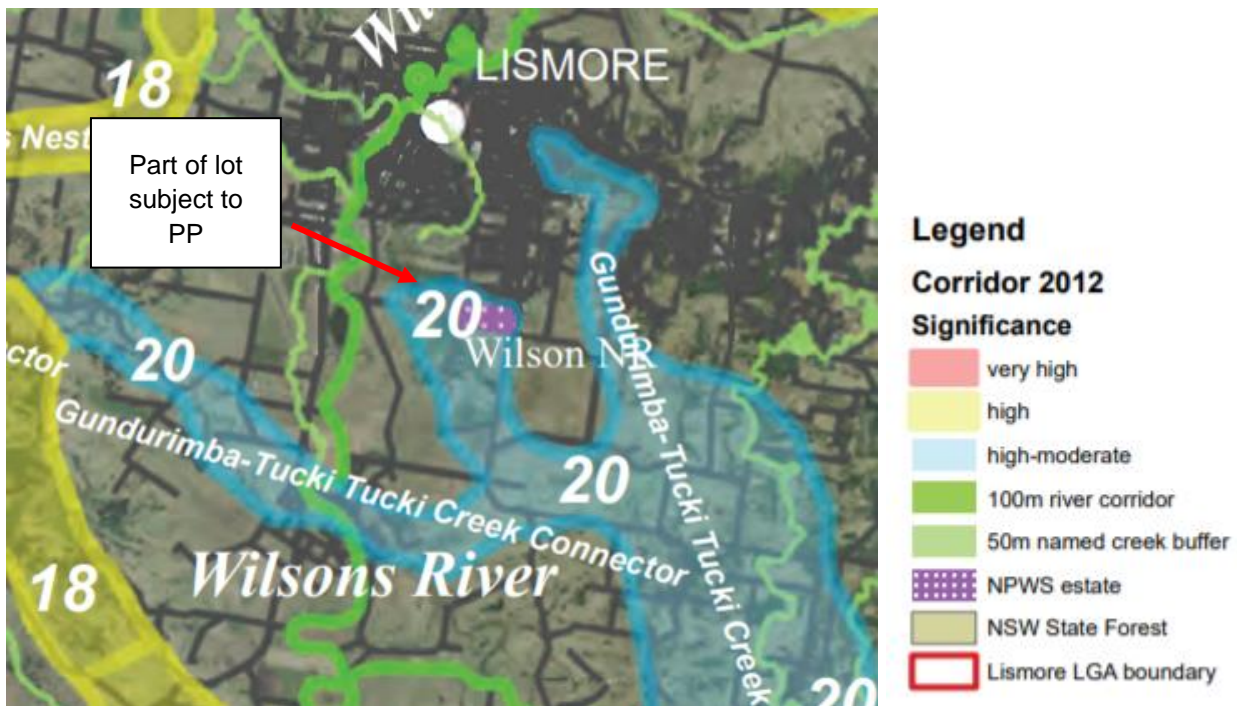


Figure 22 Ranked corridor significance for vertebrate assemblages in the Lismore LGA (Source: Lismore Local Government Area Lismore Key Habitats and Corridors System – April 2012)



Figure 23 Key habitats and corridors system prioritised for regeneration action in the Lismore LGA (Source: Lismore Local Government Area Lismore Key Habitats and Corridors System – April 2012)

### 3.3 Section 9.1 Ministerial Directions

The planning proposal is consistent with the relevant Ministerial Directions, except for those discussed below:

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 1.2 Rural Zones	No, justifiably inconsistent	The proposal is inconsistent with this Direction as it seeks to rezone land from a rural zone to a residential zone and contains provisions that will increase the permissible density of the land. The inconsistency with the Direction is justified by the GMS which is a Department endorsed strategy.
Direction 1.3 Mining, Petroleum Production and Extractive Industries	No, justifiability inconsistent	The proposal is inconsistent with this Direction as extractive industries will be prohibited on land currently zoned RU1 Primary Production when it is rezoned to R1 General Residential. The inconsistency is considered to be of minor significance as the land is highly unlikely to be suitable for extractive industries given it is in close proximity to the existing urban area and EECs. It is however recommended that Council consult with NSW Mining, Exploration and Geoscience to confirm the suitability of the proposal.
Direction 1.5 Rural Lands	No	The proposal is inconsistent with this Direction as it will affect land within an existing rural zone and does not support all of the Direction's requirements such as supporting farmers in exercising their right to farm. The inconsistency is justified by the GMS which is a Department endorsed strategy in force. However, to ensure that the proposal does not contribute to rural land use conflict, it is recommended that as a condition of the Gateway determination that a Land Use Conflict Assessment, including a strategy to mitigate any potential impacts resulting from the proximity of the future dwellings is undertaken. Consultation should also be undertaken with the Department of Primary Industries – Agriculture (DPI- Agriculture) to confirm the suitability of the proposal. Until the report has been prepared and consultation has been undertaken, the Direction remains unresolved.
Direction 4.4 Planning for Bushfire Protection	No	The planning proposal is potentially inconsistent with this Direction as it applies to land that is bush fire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway Determination is issued and before community consultation is undertaken. Until consultation has been undertaken the Direction remains unresolved.

### 3.4 State environmental planning policies (SEPPs)

The planning proposal is considered to be consistent with all relevant SEPPs. It should be noted that clause 17 of the State Environmental Planning Policy (Koala Habitat Protection) 2020 (Koala SEPP) applies to this proposal as the site is RU1 Primary Production and the Koala SEPP 2020 applies to RU1, RU2 and RU3 zoned land. Notwithstanding, whilst the wider allotment is identified as comprising primary koala habitat, the planning area is not considered to comprise potential koala habitat or core koala habitat and has been sited to occupy the former macadamia plantation, which is understood to contain no koala habitat trees.

It is understood that the site is located within the planning area for the Comprehensive Koala Plan of Management for south-east Lismore, which will be relevant in the consideration of future development applications on the site.

## 4 Site-specific assessment

### 4.1 Environmental

The wider allotment is constrained by a number of environmental factors that require consideration. The lot contains potential HEV, primary koala habitat and a number of EECs. As such, consideration has been given to the proposal in regard to the impact of the proposal on these items.

It is considered that the planning proposal identifies and recognises the sensitive ecosystems within the allotment and implements the 'avoid, minimise, offset' hierarchy to biodiversity by avoiding the areas of high biodiversity. The planning proposal area has been significantly reduced from the previously requested 15ha (140 lot) rezoning proposal, to locate the proposed residential zone away from the environmental values of the allotment.

The proposal adjoins urban land to the north and occupies a section of the site that has previously been used for horticulture purposes. The planning proposal recognises these sensitive ecosystems and the area of land to be rezoned does not contain any EECs, threatened flora species or areas mapped as having potential HEV. As such, the planning proposal is unlikely to result in any negative impacts to the environment.

A key Regional Plan Action about biodiversity, outlines that development should be focused to areas of least biodiversity sensitivity in the region and implement the 'avoid, minimise, offset' hierarchy to biodiversity, including areas of high environmental value (Action 2.1). Additionally, the Regional Plan also outlines that future urban development is to be focused to mapped urban growth areas (Action 1.1).

The planning proposal is considered to meet these requirements of the Regional Plan as the planning area has been reduced to a 5ha, relatively unconstrained parcel of land, that avoids the environmental values of the wider site. The planning area has been considerably reduced to mitigate the impact of the proposal and has been setback 200m from the boundary adjoining the road reserve and wider Wilson Nature Reserve and 120m from Lowland Rainforest EEC on the eastern boundary of the site. This exceeds the 50m buffer requested by BCD in correspondence dated 30 June 2017. Additionally, the proposal is considered to have a minor environmental impact, as the planning area avoids any environmentally significant or potential HEV land and aligns with the key actions of the Regional Plan in terms of protection of biodiversity and environmental values.

The proposal is also consistent with section 9.1 Direction 2.1 Environmental Protection Zones. The planning proposal is consistent with this Direction as the proposal includes provisions that facilitate the protection and conservation of environmentally sensitive areas by implementing the 'avoid, minimise, offset' hierarchy to biodiversity by avoiding the areas biodiversity value. In addition, it does not reduce the environmental protection standards that apply to the land. As the planning

area has been sited having regard to environmentally sensitive areas, it is considered there is no impact on the environmental values of the wider allotment.

Notwithstanding, it is noted that the planning area may be within or in close proximity to the Gundurimba-Tucki Tucki Creek Connector. It is therefore recommended as a condition of the Gateway determination that consultation is undertaken with BCD. Additionally, it is recommended that given the period that has lapsed since the preparation of the supporting Biodiversity Assessment, and the wider planning area which is now out of scope, a new study should be prepared to focus specifically on the reduced planning area, the 5ha site subject of this proposal.

Further, the Ecological Study should take into consideration the presence of native grassland, sedgeland and possibly threatened hairy joint grass within the planning area and any vegetation that would contribute to maintaining the high-moderate significance of the Gundurimba-Tucki Tucki Creek Connector. The report should take into consideration the findings of supporting Council strategies and identify any ecological values within the planning area. The planning proposal should be amended to take into consideration the outcomes of the findings, prior to community consultation.

## 4.2 Social and economic

The land adjoins an existing urban area to the north and is located in close proximity to existing shopping, community and health services. Further, the proposed planning controls will enable a diversity of housing options. It is considered that the planning proposal will have positive social impacts for the community as it will contribute to the variety of housing types and densities available in Lismore to meet the region's projected housing needs.

However, the potential for conflict due to the proximity agricultural land uses, the East Lismore sewage treatment plant and the Wyrallah Road waste or resource management facility is a consideration.

The presence of additional dwellings within close proximity to these land uses has the potential to create land use conflict. As discussed earlier in the report, it is recommended that as a condition of the Gateway determination that a Land Use Conflict Assessment, including a strategy to mitigate any potential impacts resulting from the proximity of the future dwellings to these land uses should be undertaken to ensure there are no negative social impacts. It is also recommended that consultation is undertaken with the EPA.

The proposal will enable the expansion of an existing urban area which will create jobs during the subdivision construction and building work phases. It also has the potential to attract a small additional population to Lismore which will have positive ongoing economic benefits for the community. As such, the proposal is not expected to have any adverse economic impacts.

## 4.3 Infrastructure

There will be no impact on State or regional infrastructure or the requirement for additional funding. With respect to local infrastructure, sufficient investigation has been undertaken to satisfy Council that future residential lots can be serviced and the specific servicing requirements for the subdivision will be addressed at the development application stage.

In regard to water, the proposal can be serviced via an expansion of the existing Tanelawn pressure zone, which is located in the adjacent residential area. The expansion can be achieved through an extension of existing reticulation network, and is unlikely to require additional infrastructure, such as reservoirs. Notwithstanding, Council have indicated that the existing reservoir is maintaining a high load in comparison to its storage capacity. Therefore, Council have indicated that detailed modelling is required at subdivision stage to assess the ability of the system in regard to maintaining firefighting flows.



Further, it is recommended that as a condition of the Gateway determination that consultation is undertaken with Rous County Council as the regional water supply authority providing potable water in bulk to Lismore.

The existing sewerage system in the Tanelawn catchment is determined by Council to have sufficient reserve capacity to service the proposed rezoning. Council note that the additional 30 lots would have a relatively minor impact on the capacity of the East Lismore sewerage system, with future development directed to the Tanelawn sewerage system, located to the north of the planning area. Some sections of the development may require servicing via a pressure sewer, due to the topography.

With regard to the road network, Council has identified that vehicle access will be from Beaumont Drive which has the capacity to accommodate the estimated 30 future residential lots.

Council indicated in its planning proposal report that, ordinarily a second access road would be required for larger scale development of the site, such as the 15ha rezoning first proposed. The steep topography and presence of potential HEV along an adjacent unformed Crown road reserve limits the potential for a second access road. Additionally, the upgrade of Beaumont Drive to support the 140 lots would double vehicle movements, diminishing residential amenity. Therefore, the inability to provide a second access road was an impediment to delivery of the 140 lots initially sought and is a key reason for the reduction in the scale of the planning proposal to 30 lots. Notwithstanding, it is recommended that as a condition of the Gateway determination that consultation is undertaken with Transport for NSW (Roads and Maritime Services) to confirm the suitability of the proposal.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate, and forms to the conditions of the Gateway determination.

### 5.2 Agencies

Council has nominated the following public agencies to be consulted about the planning proposal:

- NSW Rural Fire Service;
- Ngilingah Local Aboriginal Land Council; and
- Biodiversity Conservation Division.

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- NSW Rural Fire Service
- Biodiversity Conservation Division
- Department of Primary Industries - Agriculture
- Environment Protection Authority
- Ngilingah Local Aboriginal Land Council
- Heritage NSW
- Rous County Council
- Transport for NSW
- NSW Mining, Exploration and Geoscience



## 6 Timeframe

Council proposes a 10 month time frame to complete the LEP.

The Department recommends a time frame of 12 months to ensure it is completed in line with its commitment to reduce processing times.

It is noted that the Project Timeline includes a history of the proposal to date. It is recommended that the report is updated to reflect only the plan making steps specific to PP-2021-5175.

Conditions to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

The planning proposal is consistent or justifiably inconsistent with the State, regional and local planning framework and deals only with matters of local significance. Council has requested to be the plan making authority and it is considered appropriate that Council be provided with this authorisation.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The planning proposal is supported by the Lismore Growth Management Strategy 2015-2035;
- The planning proposal is consistent with the North Coast Regional Plan 2036;
- The planning proposal identifies and recognises the sensitive ecosystems within the allotment and implements the 'avoid, minimise, offset' hierarchy to biodiversity by avoiding the areas of high biodiversity;
- The planning proposal aligns with relevant Planning Priorities contained in the Inspire Lismore 2040 Local Strategic Planning Statement;
- The planning proposal aligns with Imagine Lismore Revised Delivery Program 2017-2021 and Operational Plan 2021-2022; and
- The planning proposal will facilitate the supply of urban land in an appropriate location to meet the region's projected housing needs.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- amend land zoning, minimum lot size and height of building maps, contained in Part 4 of the planning proposal, to remove the reference to Lot 12 DP 1130877;
- amend the proposed height of building map to remove the black line around Lot 12 DP 1130877;
- update Part 3 (4) of the planning proposal report to reference Council's 'Revised Delivery Program 2017-2021 and Operational Plan 2021-2022';
- update Part 3 (4) of the planning proposal to include reference and commentary on the Lismore Regional City Action Plan;
- update Part 6 of the planning proposal to refer only to the plan making steps specific to this application;
- prepare an Ecological Study to address the planning area and consider the presence of native grassland, sedgeland, hairy joint grass and any vegetation that would contribute to maintaining the high-moderate significance of the Gundurimba-Tucki Tucki Creek

Connector. The report should take into consideration the findings of supporting Council strategies and identify any ecological values within the planning area; and

- prepare a Land Use Conflict Assessment, including a strategy to mitigate any potential impacts resulting from the proximity of the future dwellings to surrounding agricultural land uses, the East Lismore sewage treatment plant and the Wyrallah Road waste or resource management facility.

The amended planning proposal shall be submitted to the Planning Secretary for review and approval, prior to public exhibition.

## 9 Recommendation

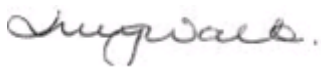
It is recommended the delegate of the Secretary:

1. **agree** that any inconsistencies with section 9.1 Directions 1.2 Rural Zones and 1.3 Mining, Petroleum Production and Extractive Industries are minor and justified in accordance with the terms of the Direction; and
2. **note** that the consistency with Directions 1.5 Rural Lands and 4.4 Planning for Bushfire Protection are unresolved and will require justification

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

1. Prior to agency and community consultation, Council is to:
  - (a) update the planning proposal as follows:
    - amend land zoning, minimum lot size and height of building maps, contained in Part 4 of the planning proposal, to remove the reference to Lot 12 DP 1130877;
    - amend the proposed height of building map to remove the black line around Lot 12 DP 1130877;
    - update Part 3 (4) of the planning proposal report to reference Council's 'Revised Delivery Program 2017-2021 and Operational Plan 2021-2022';
    - update Part 3 (4) of the planning proposal to include reference and commentary on the Lismore Regional City Action Plan;
    - update Part 6 of the planning proposal to refer only to the plan making steps specific to this application;
  - (b) prepare:
    - an Ecological Study to address the planning area and consider the presence of native grassland, sedgeland, hairy joint grass and any vegetation that would contribute to maintaining the high-moderate significance of the Gundurimba -Tucki Tucki Creek Connector. The report should take into consideration the findings of supporting Council strategies and identify any ecological values within the planning area; and
    - a Land Use Conflict Assessment, including a strategy to mitigate any potential impacts resulting from the proximity of the future dwellings to surrounding agricultural land uses, the East Lismore sewage treatment plant and the Wyrallah Road waste or resource management facility.
2. The amended planning proposal is to be updated to address any recommendations of the studies outlined in condition 1 and submitted to the Planning Secretary for review and approval, prior to public exhibition.
3. Consultation is required with the following public authorities:
  - NSW Rural Fire Service
  - Biodiversity Conservation Division
  - Department of Primary Industries - Agriculture

- Environment Protection Authority
  - Ngulingah Local Aboriginal Land Council
  - Heritage NSW
  - Rous County Council
  - Transport for NSW
  - NSW Mining, Exploration and Geoscience
4. The planning proposal should be made available for community consultation for a minimum of 28 days.
  5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



14/09/2021

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Lucy Walker

Specialist Planning Officer, Local and Regional Planning, Northern Region



(Signature)

16/9/2021

(Date)

Jeremy Gray

Director, Northern Region

Assessment officer

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