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Plan finalisation report – PP-2021-6338

Sixth round of housekeeping amendments to Lismore
LEP 2012

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Lismore Local Environmental Plan 2012 (Amendment No. 52).

The proposal seeks to undertake the sixth round of housekeeping amendments to Lismore LEP 2012.

This planning proposal is a general housekeeping amendment which aims to undertake the following:

- Amend the IN1 General Industrial and IN2 Light Industrial land use tables to prohibit "School-based child care";
- Amend clause 4.2B to prevent a dwelling entitlement occurring as a result of a boundary adjustment to allow the operation of Clause 4.2D;
- Amend Schedule 5 Environmental Heritage with regard to properties in South Lismore and Tregeagle;
- Amend the Land Zoning Map with regard to various properties, to reflect changes in land ownership from both public to private and private to public; and
- Amend associated controls on Height of Building and Minimum Lot Size Maps, to reflect changes as a result of rezoning amendments.

1.1.2 Site description

Table 1 Site description

Site Description	<p>The planning proposal (Attachment A) rectifies a number of anomalies and minor issues in the Lismore LEP 2012. The proposal applies to the wider Local Government Area in respect of amendments to clause 4.2B and Land Use Tables for IN1 General Industrial and IN2 Light Industrial. In respect of the site-specific amendments, the planning proposal applies to the following sites:</p> <ul style="list-style-type: none"> • 7 Engine Street, South Lismore (Lot 1 DP 1006135); • 450 Alphadale Road, Tregeagle (Lot 1 DP 919314); • 2 Cassia Crescent, Goonellabah (Lot 1 DP 630988); • 10 Eden Street, Girards Hill (Lot 1 DP 1274234); • Part of 182A Union Street, South Lismore (Lot 3 DP 1269893); • Part of 210A Union Street, South Lismore (Lot 1 DP 1269893); • 210 Union Street, South Lismore (Lot 4 DP 1269893); • 13 Spurfield Road, McLeans Ridges (Lot 429 DP 1256075); • Part of 15 Holland Street, Goonellabah (Lot 2 DP 1184989); and • Archibald Place, South Lismore.
Type	District
Council / LGA	Lismore City Council
LGA	Lismore Local Government Area

1.1.3 Purpose of plan

The table below outlines the proposed amendments to the LEP.

Table 2 Proposed amendments

Item/Site	Proposed Amendment				
Part 2 Land Use Table					
1. Zone IN1 General Industrial and IN2 Light Industrial	<p>Land Use Table</p> <p>Zone IN1 – General Industrial</p> <p>Zone IN2 – Light Industrial</p> <p>Insert ‘School-based child care’ into Item 4 as it should be prohibited but is currently permissible.</p>				
Part 4 Principal development standards					
2. Clause 4.2B Erection of dual occupancies and dwelling houses on land in certain rural and environment protection zones	<p>Minor change to wording to Clause 4.2B by inserting additional text at 4.2B (3B)</p> <p><i>Development consent must not be granted under subclause 4.2B(3) for a lot created under subclause 4.2D(3) unless the erection of dual occupancy or a dwelling house would have been permissible on the land immediately prior to the boundary adjustment.</i></p>				
3. 7 Engine Street, South Lismore (Lot 1 DP 1006135)	<p>Schedule 5</p> <p>Part 3 Archaeological Sites</p> <p>Amend the entry for 7 Engine Street, South Lismore – Railway Shed (Item no. A11) as follows:</p> <table border="1"> <thead> <tr> <th>Address</th><th>Property Description</th></tr> </thead> <tbody> <tr> <td>7 Engine Street, South Lismore</td><td>Lot 1 DP 1006135</td></tr> </tbody> </table> <p>Delete ‘State’ and replace with ‘Local’</p>	Address	Property Description	7 Engine Street, South Lismore	Lot 1 DP 1006135
Address	Property Description				
7 Engine Street, South Lismore	Lot 1 DP 1006135				
4. 450 Alphadale Road, Tregeagle (Lot 1 DP 919314)	<p>Schedule 5</p> <p>Part 1 Environmental Heritage</p> <p>Include St Peter and St Pauls Church Tregeagle at 450 Alphadale Road, Tregeagle (Lot 1 DP 919314) as an item of Local Significance with identifier Item No. I113. This item was identified in the Lismore Heritage Study 1995 as having local significance.</p> <p>Heritage Map</p> <p>Include 450 Alphadale Road, Tregeagle (Lot 1 DP 919314) in the Heritage Map.</p>				

Item/Site	Proposed Amendment
5. 2 Cassia Crescent, Goonellabah (Lot 1 DP 630988)	<p>Land Zoning Map</p> <p>Rezone land from Zone RE1 Public Recreation to Zone RE2 Private Recreation due to change from public to private land ownership.</p>
6. 10 Eden Street, Girards Hill (Lot 1 DP 1274234)	<p>Land Zoning Map</p> <p>Rezone land from Zone RE1 Public Recreation to part Zone R1 General Residential and part E2 Environmental Conservation.</p> <p>Height of Building Map</p> <p>Introduce a maximum height of buildings of 8.5m for the part of the land proposed for Zone R1 General Residential.</p> <p>Lot Size Map</p> <p>Introduce a minimum lot size of 400m² for the part of the land proposed for Zone R1 General Residential.</p>
7. Part of 182A Union Street, South Lismore (Lot 3 DP 1269893)	<p>Land Zoning Map</p> <p>Rezone part of land from B6 Enterprise Corridor to RE1 Public Recreation.</p>
8. Part of 210A Union Street, South Lismore (Lot 1 DP 1269893)	<p>Land Zoning Map</p> <p>Rezone part of land from B6 Enterprise Corridor to RE1 Public Recreation</p>
9. Part of 210 Union Street, South Lismore (Lot 42 DP 1278476)	<p>Land Zoning Map</p> <p>Rezone part of land from Zone RE1 Public Recreation to Zone B6 Enterprise Corridor</p>
10. 13 Spurfield Road, McLeans Ridges (Lot 429 DP 1256075)	<p>Land Zoning Map</p> <p>Rezone from Zone R5 Large Lot Residential to Zone RE1 Public Recreation.</p> <p>Height of Building Map</p> <p>Remove the 8.5m maximum height of buildings from this lot so that no height of buildings standard applies.</p> <p>Lot Size Map</p> <p>Remove the minimum lot size of 3ha (Z2) from this lot so that no lot size standard applies.</p>
11. Part of 15 Holland Street, Goonellabah (Lot 2 DP 1184989)	<p>Land Zoning Map</p> <p>Rezone part IN1 General Industrial to part E2 Environmental Conservation.</p> <p>Minimum Lot Size</p> <p>Remove the minimum lot size of 1,500m² from the part of this site proposed for Zone E2.</p>

Item/Site	Proposed Amendment
12. Archibald Place, South Lismore	Land Zoning Map Rezone from RE1 Public Recreation to B6 Enterprise Corridor.

1.1.4 State electorate and local member

The site falls within the Lismore state electorate. Janelle Saffin MP is the State Member.

The site falls within the Page federal electorate. Kevin Hogan MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 15/11/2021 (**Attachment B**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

In accordance with the Gateway determination (as altered) the proposal is due to be finalised on 15/05/2022.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 24/01/2022 to 25/02/2022.

No community submissions were received.

3.1 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 4 who have provided the following feedback.

Table 3 Advice from public authorities

Agency	Advice raised	Council response
DPC – Heritage NSW	<p>Heritage NSW identified that there are no identified impacts on any items listed on the State Heritage Register.</p> <p>The amendment to the significance of the 'Railway Shed' from 'State' to 'Local' is appropriate.</p>	Noted

Agency	Advice raised	Council response
NSW Rural Fire Service	Future developments, where on mapped bush fire prone land to comply with the requirements of Planning for Bush Fire Prone Land guidelines.	Noted. This response relates to future development applications on land involved in housekeeping amendments.
Biodiversity Conservation Division	No issues to raise and we support the proposed amendments.	Noted
Ngulingah Local Aboriginal Land Council	Verbal response only – no issues raised.	Noted
DPI - Fisheries	No comment on the planning proposal.	Noted
Natural Resources Access Regulator	No comment on the planning proposal.	Noted
Lismore Regional Airport Operator	There will be minimal impact on the Lismore Airport from proposed amendments.	Noted

The Department considers Council has adequately addressed matters raised in submissions from public authorities (**Attachment C**)

3.2 Post-exhibition changes

3.2.1 Council resolved changes

At Council's Ordinary Meeting on 12/04/2022, Council resolved to proceed with the planning proposal with a minor post-exhibition change:

- Applying a 40ha minimum lot size (MLS) to land proposed to be zoned C2 Environmental Conservation (10 Eden Street, Girards Hill and part of 15 Holland Street, Goonellabah) through amendment to Lot Size Maps LSZ_005AA and LSZ_005AB.

3.2.2 Justification for post-exhibition changes

In addition to the Council post-exhibition change, the Department also determined it was necessary to prepare a new map HER_006, as this map needed to be amended to reference the new HER_006B inset.

The Department took this opportunity to correct some minor errors on the existing HER_006 map, specifically:

- the reference on the existing map to HOB_006AA and HOB_006AB instead of HER_006AA and HER_006AB, and
- to update the map key to reflect the new key adopted on other Lismore LEP 2012 heritage maps, which includes 'Item – Landscape'.

It was also necessary to amend the reference to the new heritage item for 450 Alphadale Road, Tregeagle (Lot 1 DP 919314) from I105 to I113 as there was already an existing item I105 in Lismore LEP 2012. Council advised it was appropriate to amend this number, following request for review by the Department, on 16 August 2022 (**Attachment G**).

The Department notes that these post-exhibition changes are justified and do not require re-exhibition as:

- The proposed MLS is in keeping with the lot size restrictions applied to other C2 Environmental Conservation zoned land with the LGA and affords appropriate protections in regard to subdivision opportunities land zoned for this purpose,
- The amendment to the maps reflects administrative requirements to give effect to the objectives of the proposal.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment D**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the North Coast Regional Plan 2036,
- Remains consistent with the Council's Local Strategic Planning Statement,
- Remains consistent with all relevant Section 9.1 Directions and all outstanding Directions are now considered resolved (refer to section 4.1); and
- Remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 5 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Site-specific assessment	Consistent with Gateway determination report Assessment	
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 Consistency with Section 9.1 Directions

The cover letter of the Gateway determination for the planning proposal advised that Council would need the agreement of the Secretary to justify inconsistency with section 9.1 Directions 1.3 Mining, Petroleum Production and Extractive Industries, 3.5 Development Near Regulated Airports and Defence Airfields and 4.4 Planning for Bushfire Protection (as they were numbered at the time of issuing the Gateway determination).

Direction 1.3 Mining, Petroleum Production and Extractive Industries

In order to satisfy the requirements of this Direction, the Department's Assessment Report identified that consultation was required with Department of Mining, Exploration and Geoscience (MEG). Notwithstanding, MEG were inadvertently omitted from the Gateway determination and Council did not consult with MEG during the agency consultation process.

On receipt of the finalisation package, the Department identified this issue and determined that whilst item 11 resulted in the rezoning of existing IN1 General Industrial land to C2 Environmental Conservation and would prohibit extractive industrial uses, this was of minor significance as the site is already surrounded by existing urban (including residential) uses which would make any extractive industry operation unlikely. In the interest of completeness, the Department also consulted with MEG following receipt of the finalisation package from Council.

On 1 August 2022, the Department received written advice that MEG raising no concerns with the proposal proceeding (**Attachment I**). Therefore, it is considered that the inconsistency with this direction has been resolved.

Direction 3.5 Development Near Regulated Airports and Defence Airfields

In order to satisfy the requirements of this Direction, consultation was required with the operator of the Lismore Airport (LA).

Council has consulted LA in relation to the planning proposal. This inconsistency with the Direction is justified as Council has received written advice from LA (**Attachment E**) confirming that there will be minimal impact on the LA from proposed amendments.

4.4 Planning for Bushfire Protection

In order to satisfy the requirements of this Direction consultation was required with the Commissioner of the RFS.

Council has consulted the RFS in relation to the planning proposal. The inconsistency with the Direction is justified as Council has received written advice from the RFS (**Attachment E**) outlining that future developments, where on mapped bush fire prone land, are to comply with the requirements of Planning for Bush Fire Prone Land guidelines.

Council have addressed this submission adequately (see section 3.1).

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 6 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Ten maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979 (Attachment F)</i>.</p> <p>Council confirmed on 2/08/2022 that it approved the draft and that the plan should be made (Attachment H).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 18/08/2022 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with New England North West Regional plan;
- It is consistent with the Gateway Determination; and
- No issues were raised during consultation, and there are no outstanding agency objections to the proposal.



23/8/22

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Attachments

Attachment	Document
A	Planning Proposal
B	Gateway Determination
C	Council Report
D	Gateway Determination Report
E	Agency Submissions
F	Section 3.36(1) Consultation with Council on draft LEP
G	Council approval of draft LEP
I	MEG comments
Maps	LEP Maps
MCS	Map Cover Sheet Amendment No. 52
LEP	LEP Instrument
PC	Parliamentary Counsel's Opinion
Letter	Letter to Council advising of decision