



IRF23/465

Gateway determination report – PP-2023-340

Changes to Lismore LEP 2012 to facilitate agritourism reforms

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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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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Lismore City Council Planning Proposal, 19 January 2023
Lismore City Council Report to Ordinary Council Meeting and Resolution, 14 February 2023
Planning Proposal Application Form PP-2023-340
Planning Proposal Submission Form PP-2023-340

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Lismore
PPA	Lismore City Council
NAME	Changes to Lismore LEP 2012 to facilitate agritourism reforms
NUMBER	PP-2023-340
LEP TO BE AMENDED	Lismore LEP 2012
ADDRESS	Applies to all land within the LGA where ‘agritourism’ and rural and nature-based tourism land uses are permitted with consent
DESCRIPTION	As above
RECEIVED	17/02/2023
FILE NO.	IRF23/465
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

1.2 Objectives of planning proposal

The objective of the planning proposal is to ensure Council’s Local Environmental Plan (LEP) aligns with the State government’s agritourism reforms by enabling suitable flexibility for agritourism, while protecting amenity and existing agricultural uses. The intended outcomes are to:

- increase the maximum number of bedrooms permitted for ‘farm stay accommodation’
- allow development consent to be granted where rural and nature-based tourism development is accessed from a classified road
- ensure amenity concerns related to rural and nature-based tourism development are adequately addressed and considered
- ensure ‘farm experience premises’ are of a suitable scale and do not adversely impact on agricultural production, scenic or environmental values; and
- ensure alignment between the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and Council’s LEP.

The intended outcomes of the planning proposal are adequately described. The objective, however, is not clear and should be amended to also reference rural and nature-based tourism development, consistent with the stated intended outcomes. It is recommended that a condition of

the Gateway determination require that the planning proposal be amended prior to agency and community consultation to include this component.

1.3 Explanation of provisions

The following amendments are proposed to the Lismore Local Environmental Plan (LEP) 2012 to achieve the intended outcomes:

Table 3 Proposed LEP amendments

LEP provision	Proposed amendment
Part 5 Miscellaneous provisions	
clause 5.4(5)	<p>Increase the number of bedrooms permitted with consent for 'farm stay accommodation' from 5 to 12.</p> <p>The intent is to better reflect the Code SEPP's allowance already for 6 buildings as complying development. This number is also more consistent with that permitted for 'farm stay accommodation' in surrounding LGAs.</p>
Part 6 Additional local provisions	
clause 6.11(3)(a)	Delete the words ' <i>other than a classified road</i> ' to enable merit-based assessment of vehicular access for rural and nature-based tourism developments that require access from a classified road.
clause 6.11(3)(d)	<p>Delete the word '<i>amenity</i>' and add the following new subclauses to clarify amenity considerations, and ensure adequate consideration to surrounding agricultural uses and on-site sewage management:</p> <p><i>(e) the development will not generate noise, traffic, parking or light spill that will significantly impact upon surrounding residents, and</i></p> <p><i>(f) the development will not significantly impair the use of the surrounding land for agriculture or rural industries, and</i></p> <p><i>(g) the land is capable of accommodating the on-site disposal and management of sewage for the development</i></p> <p>Note, the final wording of these subclauses will be subject to legal drafting by Parliamentary Counsel.</p>
clause 6.11(6)	<p>Relocate the definition of '<i>small scale</i>' to the end of clause 6.11(3) for improved clarity.</p> <p>Note, the appropriateness of relocating this definition will be subject to the legal drafting and decision of Parliamentary Counsel.</p>
clause 6.11(6)(f)	<p>Delete '<i>farm stay accommodation</i>' as controls for this land use are now covered under Standard Instrument LEP clause 5.24 Farm stay accommodation.</p> <p>Add '<i>farm experience premises</i>' to ensure development is of a small scale and amenity and agricultural impacts are suitably managed.</p>

LEP provision	Proposed amendment
Schedule 2 Exempt Development	
Roadside stalls	Delete ' <i>Roadside stalls</i> ' as this use is now listed as exempt development in the Codes SEPP.

The planning proposal notes that amendments to the LEP are accompanied by amendments to Council's Development Control Plan which include updated controls for proposed rural and nature-based tourism developments.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved, apart from the interaction with agritourism implementation changes proposed to be made Department in an amending SEPP. Until these changes are made by the Department, clause 5.24 Farm stay accommodation is not yet adopted and 'farm experience premises' is a prohibited land use in the RU1 and RU2 zones under Lismore LEP 2012.

The Department's policy team have confirmed that work is underway to prepare the amending SEPP that will insert 'agritourism' (which includes 'farm gate premises' and 'farm experience premises') as permitted with consent in all RU1, RU2 and RU4 zones, and in other zones as nominated by councils. The SEPP will also insert optional clauses 5.24 Farm stay accommodation and 5.25 Farm gate premises in LEPs where councils have nominated to adopt these clauses.

For the Lismore LEP 2012, the policy team also advised that 'agritourism' will be inserted in the RU1 and RU2 zones and both optional clauses will be inserted. It was also confirmed that due to the State election caretaker period, there will be a short delay in finalising the amendments to LEPs to implement the agritourism reforms, however, these are expected to be made in the coming months, subject to the Minister's approval.

To assist in the community's understanding of the proposal in the interim should Council exhibit the proposal prior the amending SEPP, it is recommended that a condition of the Gateway determination require that the planning proposal be amended, prior to public exhibition, to clearly outline the interaction between the planning proposal and the proposed changes to Lismore LEP 2012 as a result of the agritourism reforms.

1.4 Site description and surrounding area

The planning proposal applies to all land within the Lismore LGA where 'agritourism' and rural and nature-based tourism land uses will and are permitted with consent.

1.5 Mapping

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

1.6 Background

On 9 March 2021, Council resolved to prepare a planning proposal to amend Lismore LEP 2012 to allow an approval pathway for additional small-scale tourism uses on RU1 zoned land that are compatible with the rural, environmental or scenic nature of the land. The proposal involved an amendment to clause 6.11 (Rural and nature-based tourism development) of LEP 2012 to:

- (a) include additional considerations relating to amenity, agricultural land use and on-site sewage management
- (b) remove the exclusion for all forms of tourism development located on a classified road
- (c) include ‘artisan food and drink industry’, ‘recreation facility (indoor)’ limited to a ‘health studio’ or similar facility, or ‘function centre’ excluding a convention centre or exhibition centres and not for the purposes of music festivals; and
- (d) include additional provisions to regulate the size and scale of rural function centres.

The planning proposal did not progress however due to the imminent roll out of the State-wide agritourism reforms.

2 Need for the planning proposal

This planning proposal is not a result of a strategic study or report. Council notes that it has been prepared in response to the State government’s agritourism reforms.

In discussions with Council staff on 28 February 2023, Council clarified that the planning proposal is the same as the 2021 proposal with respect to (a) and (b) in 1.6 above (which resulted from enquiries regarding tourism uses in the RU1 zone), together with amendments to reflect the agritourism reforms.

Council’s approach in amending the LEP is considered to be the best means of achieving the intended outcomes.

3 Strategic assessment

3.1 Regional Plan

The planning proposal is considered to be generally consistent with the overall intent of the North Coast Regional Plan (NCRP) 2041.

In particular the proposal is consistent with *Objective 8 Support the productivity of agricultural land* by making it easier for rural landowners to use their land for ‘agritourism’ and compatible rural and nature-based tourism activities to complement existing farm businesses without compromising agricultural productive capacity.

The proposal is also consistent with *Objective 12 Create a diverse visitor economy* by facilitating greater tourism and visitor opportunities in rural locations across the LGA.

The planning proposal aligns with the *Local Government Narrative for Lismore LGA* by supporting tourism.

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 4 Local strategic planning assessment

Local Strategies	Justification
Inspire Lismore 2040 Local Strategic Planning Statement	The proposal is consistent with the themes and planning priorities of the LSPS and in particular ‘Priority 5 – Identify and support the expansion of emerging industries’.

Imagine Lismore Community Strategic Plan 2022-2032	<p>The proposal is consistent with objectives in the delivery program including:</p> <ul style="list-style-type: none"> • B1 – Our community has diverse business and industry, as well as opportunities for investment and growth; • D3 – Our land use planning caters for all sectors of the community; and • E5 – We continue to grow our reputation and capacity as a regional city.
Innovate Lismore 2024: Economic Development Strategy 2019-2024	The proposal aligns with the goals in the tourism, culture and sport sectors to 'identify the tourism product range and develop our tourism endowments'.

3.3 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all relevant section 9.1 Directions except as discussed below:

Table 5 s9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.1 Conservation Zones	Justifiably inconsistent	<p>The proposal is inconsistent with the Direction as it allows an intensification of 'farm stay accommodation' in the C3 Environmental Management zone (by increasing the number of possible bedrooms) but does not include provisions that facilitate the protection and conservation of environmentally sensitive areas associated with this intensification.</p> <p>The inconsistency is considered to be of minor significance as the proposal does not reduce the current environmental standards that apply to the land and proposed clause 5.24 requires consideration of any adverse impact to native or significant flora or fauna for 'farm stay accommodation' at DA stage.</p>
3.2 Heritage Conservation	Justifiably inconsistent	<p>The proposal is inconsistent with the Direction as it does not contain provisions that facilitate the conservation of heritage and Aboriginal cultural significance.</p> <p>The inconsistency of the proposal with this direction is considered to be of minor significance as the planning proposal does not alter the existing conservation measures of heritage and Aboriginal cultural significance that can be considered and addressed at the DA stage.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Justifiably inconsistent	<p>The proposal is inconsistent with the Direction as it allows an intensification of 'farm stay accommodation' on some lands that will be subject to flooding (by increasing the number of possible bedrooms) and does not include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy, the principles of the Floodplain Development Manual 2005, the Considering Flooding in Land Use Planning Guidelines 2021, or any adopted flood study and or floodplain risk management plan.</p> <p>The inconsistency of the proposal is considered to be of minor significance as the LEP already contains provisions that will ensure appropriate consideration of flood planning at the DA stage.</p>
4.3 Planning for Bushfire Protection	Unresolved	<p>This Direction requires the planning authority to consult with the NSW Rural Fire Services (RFS) following the issue of a Gateway determination where a planning proposal will affect or is in proximity to land mapped as bushfire prone land.</p> <p>As the planning proposal applies to all land where 'agritourism' and rural and nature-based tourism land uses are permitted, it is likely some land will fall within this category. Therefore, the proposal is potentially inconsistent with this direction.</p> <p>Until consultation has occurred with the NSW RFS, this direction remains unresolved.</p>
4.5 Acid Sulfate Soils	Justifiably inconsistent	<p>The proposal is inconsistent with the Direction as it allows an intensification of 'farm stay accommodation' on some lands that will be subject to acid sulfate soils (by increasing the number of possible bedrooms) and is not supported by an acid sulfate soils study.</p> <p>The inconsistency of the proposal is considered to be of minor significance as the LEP already contains provisions that will ensure appropriate consideration of acid sulfate soils at the DA stage.</p>
5.3 Development Near Regulated Airports and Defence Airfields	Unresolved	<p>This Direction applies as the proposal seeks to create and alter provisions relating to land near a regulated airport. The direction requires that consultation must be undertaken with the lessee/operator of the airport.</p> <p>Until consultation has been undertaken with the lessee/operator of the Lismore Regional Airport, this Direction remains unresolved.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
5.4 Shooting Ranges	Justifiably inconsistent	<p>The planning proposal is inconsistent with this Direction as it affects, creates and alters provisions for land adjacent to/adjoining an existing shooting range and will permit an intensification of land use.</p> <p>This inconsistency is considered to be of minor significance as the proposal includes provisions to ensure the compatibility of 'farm stay accommodation' and 'farm gate premises' with nearby land uses, also noting rural and nature-based tourism development is already permitted on RU1 land under clause 6.11.</p>
9.2 Rural Lands	Justifiably inconsistent	<p>The planning proposal is inconsistent with this Direction as it affects land in a rural zone and it does not address and satisfy all of the requirements listed in the direction.</p> <p>This inconsistency is considered to be of minor significance as the proposal broadly aligns with the agritourism reforms and strategic approaches to prioritising rural investment opportunities to support farmers. Further, the proposal includes provisions to minimise potential for rural land use conflict and is generally consistent with the regional and local planning framework.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal is considered to be consistent with all relevant SEPPs.

4 Site-specific assessment

4.1 Environmental

The proposal is not expected to have any significant environmental impacts. Any constraints to future development, such as high environmental values, acid sulfate soils, flooding, bushfire, land contamination, and the like, would be addressed at the development application stage and controlled through existing provisions of LEP 2012, along with proposed clauses 5.24, 5.25 and amended clause 6.11.

4.2 Social and economic

The proposal is expected to result in a positive economic impact with more opportunities for rural and nature-based tourism development, and new opportunities for 'agritourism', including greater investment and the multiplier effect associated with increased tourism in the Lismore LGA.

The proposal is not expected to generate significant adverse social impacts. Proposed clauses 5.24, 5.25 and amended clause 6.11 require, amongst other matters, consideration to amenity and land use conflict, to minimise the likelihood of potential for adverse impacts to surrounding residents and land uses.

4.3 Infrastructure

No new or additional local or State infrastructure has been identified as being needed as a result of the proposal. Any future development application would need to consider infrastructure servicing requirements relative to the proposed land use.

It is recommended that consultation occur with Transport for NSW regarding the proposed amendment to clause 6.11 which would enable consideration of rural nature-based tourism developments that require vehicular access via a classified road. A condition to this effect is included in the Gateway determination.

5 Consultation

5.1 Community

Council does not specify a community consultation period.

A period of 10 working days is considered appropriate consistent with the Department's LEP Making Guideline for a basic LEP, and forms part of the conditions of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- NSW Rural Fire Service
- Transport for NSW
- Lismore Regional Airport lessee/operator
- NSW Department of Primary Industries - Agriculture

6 Timeframe

Council proposes a 6 month timeframe to complete the LEP.

This aligns with the LEP Making Guideline benchmark timeframe for a basic planning proposal and advice to this 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.

As the planning proposal is generally consistent, or justifiably inconsistent with the State, regional and local planning framework, it is recommended that Council be authorised to be the local plan-making authority for the proposal.

8 Assessment summary

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

- the proposal is consistent with the State government's agritourism reforms;
- the proposal will enable additional opportunities for rural nature-based tourism development and new opportunities for 'agritourism' with benefits to the local economy;

- the proposal is generally consistent, or justifiably inconsistent with the State, regional and local planning framework; and
- the proposal principally comprises housekeeping amendments.

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

- clarify the objective of the proposal with respect to rural and nature-based tourism development consistent with the intended outcomes, and
- revise the planning proposal to clearly outline the interaction between the planning proposal and the proposed changes to Lismore LEP 2012 as a result of the agritourism reforms.

9 Recommendation

It is recommended the delegate of the Secretary:

- agree that any inconsistency with section 9.1 Directions 3.1 Conservation Zones, 3.2 Heritage Conservation, 4.1 Flooding, 4.5 Acid Sulfate Soils, 5.4 Shooting Ranges and 9.2 Rural Lands is minor or justified; and
- note that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection and 5.3 Development Near Regulated Airports and Defence Airfields is 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, the planning proposal is to be amended to:
 - clarify the objective of the proposal with respect to rural and nature-based tourism development, consistent with the intended outcomes, and
 - revise the planning proposal to clearly outline the interaction between the planning proposal and the proposed changes to Lismore LEP 2012 as a result of the agritourism reforms.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - Transport for NSW
 - Lismore Regional Airport lessee/operator
 - NSW Department of Primary Industries - Agriculture
3. The planning proposal should be made available for community consultation for a minimum of 10 working days.
4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



13/3/23

(Signature)

(Date)

Craig Diss

Manager, Local & Regional Planning

Northern Region



17 March 2023

(Signature)

(Date)

Jeremy Gray

Director, Northern Region

Assessment officer

Sandra Bush

Senior Planning Officer, Northern Region

6588 5535