

# Report

<b>Subject</b>	<b>Seventh round of general amendments to the LEP</b>
<b>TRIM Record No</b>	BP23/20:EF22/54
<b>Prepared by</b>	Strategic Planner
<b>Reason</b>	To make general amendments to the LEP 2012.
<b>Strategic Theme</b>	Our built environment
<b>Strategy</b>	Our land-use planning caters for all sectors of the community.
<b>Action</b>	Ensure a diverse range of land use and development opportunities are available.

## Executive Summary

Lismore City Council periodically reviews the Local Environmental Plan 2012 (LEP 2012) with amendments involving zone changes; adjustment of the land use table; addition of non-mandatory provisions; and changes to schedules as required.

The intended outcomes of this proposal include:

- Enable dual occupancies (detached) in Zone RU1 Primary Production to be located beyond the current 100m development standard separation distance and be accessed via their own driveway where necessary.
- Enable the subdivision of split zone allotments that incorporate Zone RU2 Rural Landscape
- Enable dual occupancies (detached) in Zone R5 Large Lot Residential to be located beyond the current 80m development standard separation distance and be accessed via their own driveway where necessary.
- Update the Heritage Map and associated Schedule 5 in response to a recent boundary adjustment.
- Update the Land Zoning Map (including some consequential amendments to the Lot Size Map and the Height of Buildings Map) to rectify minor anomalies.
- Remove unnecessary clauses.

This planning proposal has been prepared in accordance with the Department of Planning & Environment's guide to preparing planning proposals. A Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979* is sought.

It is recommended that Council support the general amendments planning proposal and request a Gateway determination from the Department.

## Recommendation

That:

1. Council supports the Planning Proposal for general amendments to the Lismore Local Environmental Plan 2012 as summarised in Table 1 and described in Attachment 1.
2. The Planning Proposal at Attachment 1 is forwarded to the Department of Planning and Environment for a Gateway Determination.
3. Council confirms that staff are to proceed to public exhibition of the planning proposal and government agency consultation based on the Gateway Determination. Should any objections be received, staff are to report back to Council. If no objections are made, staff are to proceed in making the LEP.

## Background

Regular review and amendment of the Lismore LEP 2012, Council's principal statutory land use planning document, is an ongoing process. General amendments or "housekeeping amendments" are generally minor in nature and can involve mapping updates, small scale single lot/part lot rezonings, updates to the land use table and other minor changes to the written instrument. This planning proposal is the seventh round of general amendments to LEP 2012.

A briefing was held with Councillors on this matter on 1 March 2023.

During the development of the Planning Proposal the Lismore Local Planning Panel was constituted,

As this Planning Proposal relates to general "housekeeping" amendments considered to be minor in nature the General Manager has determined the amendments are:

- a) correcting obvious errors in the Lismore LEP;
- b) minor in nature; and
- c) will not have significant adverse impact on the environment or adjoining land,

Further justification is provided with this report.

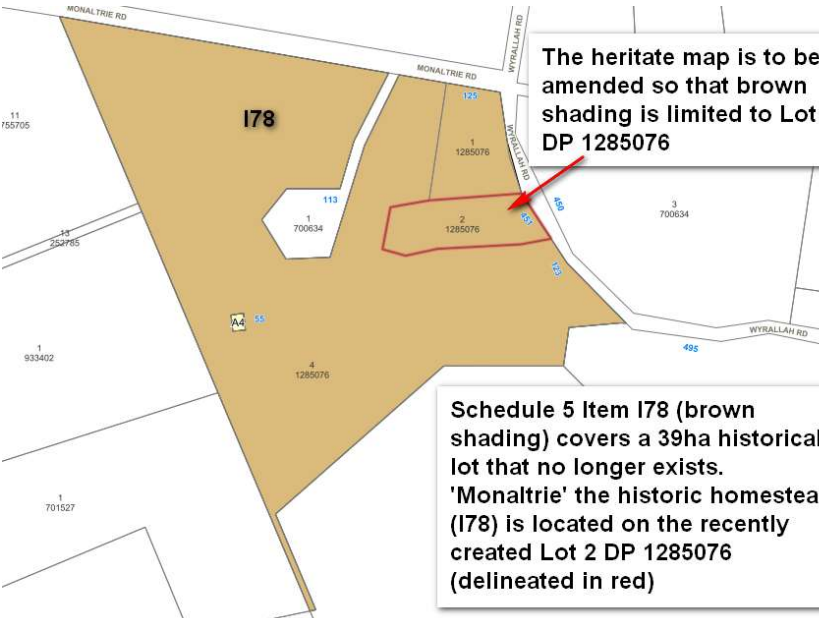
## Overview of the planning proposal


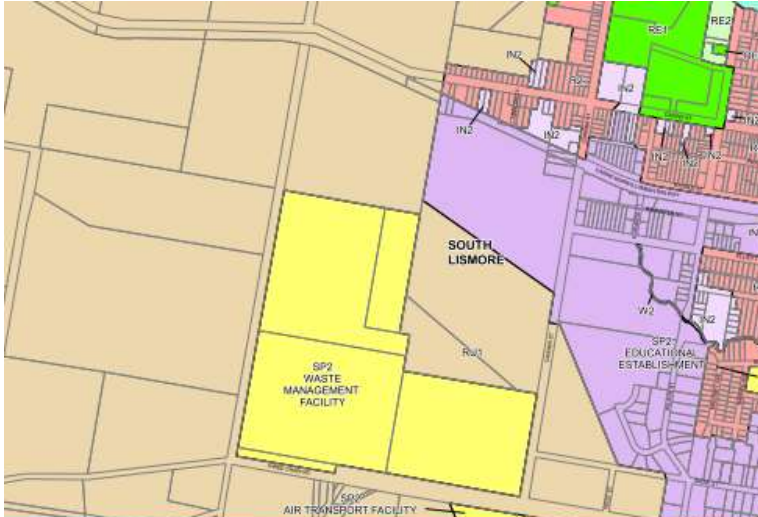
The planning proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* and the relevant Department of Planning and Environment (DPE) guidelines and is attached to this report (Attachment 1). A description of each of the items and the justification for the proposed changes is provided below.



**Table 1 – Overview of the Planning Proposal**

Item Clause/Map	Proposed Amendment	Justification
<b>Part 4 Principal development standards</b>		
<b>Item A</b> 4.2C Erection of dual occupancies (detached) in Zone RU1	Removal of <ul style="list-style-type: none"> <li>• 100m separation control and</li> <li>• requirement for a single driveway</li> </ul>	<p>By way of a Notice of Motion (12.3), Council resolved at the meeting of 8 November 2022 That Council</p> <ol style="list-style-type: none"> <li>1. <i>remove the 100 metre separation requirement for additional dwellings to be constructed in the RU1 zone where suitable, in circumstances where a 100 metre separation is not achievable OR that a better dwelling site can be located greater than 100 metres and the objectives of the clause can be better achieved.</i></li> <li>2. <i>provide a briefing to councillors regarding progressing the option to include up to three dwellings on RU1 zoned land.</i></li> </ol> <p>The Councillors report stated "The 100-metre rule absolutely does not automatically result in favourable planning outcomes, considering that a</p>

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		<p><i>dwelling footprint is going to be comparably the same, the actual land utilised for a dwelling whether &lt; or &gt; 100 metres is not going to physically impact the size and scale of development on a rural property.</i></p> <p><i>There are other planning provisions and controls that can be utilised to support suitable locations &gt;100 metres separation for dual occupancies, such as land use conflict risk and boundary setbacks...This proposal could allow for additional housing in the LGA:</i></p> <ol style="list-style-type: none"> <li><i>1. for those proponents who don't have a suitable dwelling site within 100 metres: or</i></li> <li><i>2. for those proponents who have a preferred, better site greater than 100 metres and have not proceeded on this basis."</i></li> </ol> <p>It is also proposed that the requirement for a single driveway be removed from the LEP and placed into the DCP instead with guidance around what is expected and when Council would accept variations.</p> <p>The requirements to have a 100m separation and a single driveway are often varied, and this results in DAs going to Council (or now the LPP) for determination. Since 2016, 7 (5%) rural detached dual occupancies applications have had a variation due to having a second driveway and 10 (7%) have had a variation due to being more than 100m. Of those, only two applications were refused (one seeking a variation to the distance and one seeking a variation to the distance and single driveway). All other applications were considered suitable.</p> <p>Other controls will remain in clause 4.2C to ensure that the objectives of the clause are maintained. Applications will still need to demonstrate that:</p> <ul style="list-style-type: none"> <li>• The development does not impair the agricultural use of the land.</li> <li>• The land is physically suitable.</li> <li>• The land is capable of accommodating on-site disposal and management of sewage; and</li> <li>• The development will not have an adverse impact on the scenic amenity or character.</li> </ul> <p><b>Note 1.</b> Lismore DCP Chapter 1 Residential Development, including Section 10 Rural Dual Occupancy (Detached), will be amended in a future DCP amendment to reflect any changes to LEP 2012 clause 4.2C.</p> <p><b>Note 2.</b> Point 2 of the council resolution does not form part of this LEP general amendment planning proposal.</p>
<b>Item B</b> 4.2E Exceptions to minimum subdivision lot sizes for certain split zones	Insertion of the RU2 zone into the clause	<p>Clause 4.2E in its original form was gazetted on 25 October 2013 (LEP Amendment 4). Without this clause subdivision under the then new Lismore Standard Instrument LEP was not possible for certain split zoned lots. Clause 4.2E was further refined as part of the second round of general LEP amendments (LEP Amendment 10), gazetted on 19 December 2014.</p> <p>In its current form the clause applies to an allotment that contains:</p> <ol style="list-style-type: none"> <li>(a) Land in a residential, business, industrial or recreation zone, or Zone RU5 Village or Zone SP2 Infrastructure, and</li> <li>(b) Land in Zone RU1 Primary Production, Zone C2 Environmental Conservation or Zone C3 Environmental Management.</li> </ol> <p>Zone RU2 has recently been applied at three urban bushland locations as part of the urban Deferred Matter rezoning planning proposal. The Urban DM rezoning was gazetted on 9/7/2021. Prior to this Zone RU2 was only applied to a small area of the LGA limited to the urban area. The original Zone RU2 area had no potential for subdivision and the split zone clause had no utility in this zone.</p> <p>Now that Zone RU2 has been included in three flood free urban sites, all of which have areas of Zone R1 with subdivision potential, it is time to consider the merits of including Zone RU2 in the split zone clause.</p> <p>Zone RU2 was selected for these urban bushland sites in order to navigate the DM Council resolution that did not enable the use of E zones (now C</p>

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		zones) unless requested by the landholder.
<b>Part 6 Additional local provisions</b>		
<b>Item C</b> 6.7 Dual occupancies (detached) in Zone R5	Removal of the 80m separation requirement	<p>Clause 6.7 provides criteria for dual occupancies (detached) in Zone R5 Large Lot Residential, including “each dwelling will be situated wholly within a radius of 80 metres from each other”.</p> <p>Allotment areas within Zone R5 Large Lot Residential range from 2,500m<sup>2</sup> to several hectares, with the likely median area estimated to be 5,000m<sup>2</sup>. The dimensions of the majority of the R5 lots are such that each dwelling will be located within the required radius of 80m, without the application of clause 6.7 development standard. Larger R5 lots are often constrained with slope, vegetation etc and there are often valid arguments to locate dwellings outside of the required radius of 80m. It is proposed to omit the 80m development standard and enable a merit based assessment for the location of dual occupancies (detached).</p>
<b>Schedule 5 &amp; Associated Heritage Map</b>		
<b>Item D</b> Schedule 5 Part 1 Environmental Heritage and <ul style="list-style-type: none"> <li>Heritage Maps HER_006AA &amp; HER_006AB</li> </ul>	<ul style="list-style-type: none"> <li>For item I78, omit the property description ‘Lot 2, DP 700634’ and insert in its place ‘Lot 2 DP 1285076’</li> <li>Amend The Heritage Map Sheets so that Item I78 is only located on Lot 2 DP 1285076</li> </ul>	<p>LEP Schedule 5 includes I78, 451 Wyrallah Road, with the now superseded property description ‘Lot 2 DP 700634’. This historical 39ha allotment was one of three lots involved in a boundary adjustment approved under DA20/140. Lot 2 DP 700634 incorporated ‘Monaltrie’, an historical homestead, which is now situated on the recently created allotment Lot 2 DP 1285076. The change is necessary to correctly identify the Lot and DP numbers and to locate the historical item I78.</p>  <p>The heritate map is to be amended so that brown shading is limited to Lot DP 1285076</p> <p>Schedule 5 Item I78 (brown shading) covers a 39ha historical lot that no longer exists. ‘Monaltrie’ the historic homestead (I78) is located on the recently created Lot 2 DP 1285076 (delineated in red)</p>
<b>Mapping</b>		
<b>Item E</b> <ul style="list-style-type: none"> <li>Land Zoning Map Sheet LZN_005</li> <li>Lot Size Map Sheet LSZ_005</li> <li>Height of Buildings Map Sheet HOB_005</li> </ul> <p>Address: part 12, 14, 16, 18, 20, 22, 24, 26, 28 &amp; 30 Spurfield Road, McLeans Ridges (part Lots 406 – 415 inclusive all in DP 1256075)</p>	Correct zoning anomaly to remove split zones for residential blocks at Spurfield Road	<p>The eastern side of Spurfield Road McLeans Ridges incorporates 10 lots with split zones. The land in this area is within Zone R5 Large Lot Residential and these 10 allotments erroneously include an area of Zone RU1 Primary Production. These 10 allotments range in area from approximately 6,000m<sup>2</sup> to 10,000m<sup>2</sup>. The Zone RU1 component of the lots ranges from approximately 3% to 18% of the area of the lots. The anomaly has existed since the allotments were subdivided over 10 years ago. The origin of the issue is likely to be a difference between the approved DA plans and the final subdivision certification plans.</p>

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<b>Item F</b> <ul style="list-style-type: none"> <li>Land Zoning Map Sheet LZN_005AA</li> <li>Land Zoning Map Sheets LZN_006AA and LZN_006AB</li> </ul>	Correct land use definitions on mapping	<p>Council's sewage treatment plant at South Lismore (135, 135A, 135B &amp; 147 Three Chain Road and 171 Caniaba Road) is within Zone SP2 Infrastructure in Map Sheet LZN_005AA where it is incorrectly described as a "Waste Management Facility". The correct Standard Instrument (SI) LEP land use definition that should apply is "Sewage treatment plant".</p> <p>Council's waste or resource management facility and sewage treatment plant at Monaltrie (313 Wyrallah Road Monaltrie) is within Zone SP2 Infrastructure in Map Sheets LZN_006AA &amp; LZN_006AB where it is incorrectly described as a "Waste management facility". The correct SI LEP land use definitions that should apply are "Waste or resource management facility" and "Sewage treatment plant".</p> 

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<p><b>Item G</b></p> <ul style="list-style-type: none"> <li>Land Zoning Map Sheet LZN_005AB</li> <li>Lot Size Map Sheet LSZ_005AB</li> <li>Height of Buildings Map Sheet HOB_005AB</li> </ul> <p>Address: 731 (Lot 3 DP 720443) and 733 (Lot 2 DP 720443) Ballina Road Goonellabah</p>	<p>Correct zone anomaly to remove school property from public recreation zone</p>	<p>731 (Lot 3 DP 720443) and 733 (Lot 2 DP 720443) Ballina Road Goonellabah are currently within Zone RE1 Public Recreation and yet the land is owned by the NSW Department of Education. The land should be within Zone R1 General Residential which is the zone that has been applied for schools in the urban area. It is noted that some of the land is outside of the fenced area of the school and includes part of the road and footpath. Zone R1 is also applicable in this instance in accordance with LEP practice note PN 10-001.</p> 
<p><b>Item H</b></p> <ul style="list-style-type: none"> <li>Land Zoning Map Sheet LZN_006AB</li> <li>Lot Size Map Sheet LSZ_006AB</li> <li>Height of Buildings Map Sheet HOB_006AB</li> </ul> <p>Address: part 5 Reserve Street Goonellabah (part Lot 2 DP 814012)</p>	<p>Amend zoning boundary to accommodate public drain in the RE1 zoned land rather than in the R1 zoned land.</p>	<p>A land area of approximately 700m<sup>2</sup>, in the southeastern portion of Weston Park (5 Reserve Street Goonellabah), was rezoned from RE1 Public Recreation to R1 General Residential as part of LEP 2012 Amendment No. 7. Refer to the figure below.</p> <p>LEP Amendment 7, gazetted on 5 December 2014, involved the reclassification and or rezoning of 12 Council owned sites in order to facilitate the sale of the land in accordance with the Council resolution of 10 December 2013.</p> <p>Council's property staff lodged a DA for the subdivision of this land in 2022. A drain has subsequently been identified within the proposed R1 allotment adjacent to the western boundary. The DA has now been withdrawn and it is now proposed to realign the zone boundary so that the drainage infrastructure will be retained in Zone RE1 Public Recreation. This will have the effect of reducing the area of Zone R1 General Residential by approximately 50m<sup>2</sup>. Council's property staff intend to lodge a new subdivision DA when the zone boundary realignment is finalised.</p>



Item Clause/Map	Proposed Amendment	Justification

## Planning proposal maps

The planning proposal involves mapping changes. The maps show the existing and proposed changes and are included within the Planning Proposal, attachment 1 to this report.

## Summary of the planning proposal

Table 2 below provides an overview of the planning proposal structured in accordance with the DPE guidelines for planning proposals. The detailed planning proposal report is located at Attachment 1 to this report.

**Table 2 - Summary of planning proposal**

Part	Requirements	Description of planning proposal
1	<b>OBJECTIVES OR INTENDED OUTCOMES</b>	The objective of this proposal is to correct anomalies and errors within the Lismore LEP 2012 and make minor amendments that improve Lismore's planning framework.

2	<b>EXPLANATION OF PROVISIONS</b>	Refer to Table 1 of this report.
3	<b>JUSTIFICATION</b> <b>Section A – Need for the Planning Proposal</b>	Refer to Table 1 of this report.
	<b>Section B – Relationship to Strategic Planning Framework</b>	<ul style="list-style-type: none"> <li>The planning proposal is consistent with the North Coast Regional Plan actions (refer to Attachment 1 for detail)</li> <li>The planning proposal will not preclude the implementation of Lismore's LSPS, Growth and Realignment Strategy or Community Strategic Plan</li> <li>The planning proposal is consistent with SEPPs</li> <li>Consistent or justifiably inconsistent with s9.1 Ministerial Directions</li> </ul>
	<b>JUSTIFICATION</b> <b>Section C – Environment, Social and Economic Impact</b>	<ul style="list-style-type: none"> <li>The planning proposal is limited to general housekeeping amendments only.</li> <li>There is no critical habitat in the LGA.</li> <li>There will be no adverse impacts on threatened species, populations or ecological communities or their habitats.</li> <li>Each of the sites proposed for rezoning has been reviewed for environmental constraints. The planning proposal will not result in any negative environmental effects.</li> <li>Due to the minor nature of the proposed amendments, there are no additional technical reports recommended.</li> <li>No anticipated negative impacts on Aboriginal and European cultural heritage. Refer to Attachment 1 for detail. The planning proposal will be referred to the LALC for comment.</li> <li>No further reporting recommended.</li> </ul>
	<b>Section D – State and Commonwealth Interests</b>	<ul style="list-style-type: none"> <li>The general amendments do not present any additional demands on public infrastructure.</li> <li>No further reporting recommended.</li> <li>Consultation with public authorities will be confirmed at Gateway determination.</li> </ul>
4	<b>MAPPING</b>	<ul style="list-style-type: none"> <li>Refer to LEP Maps in the Planning Proposal.</li> </ul>
5	<b>COMMUNITY CONSULTATION</b>	<ul style="list-style-type: none"> <li>Recommended 28-day exhibition period.</li> </ul>
6	<b>PROJECT TIMELINE</b>	<ul style="list-style-type: none"> <li>Recommendation of 6 - 12 months for completion (Refer to Attachment 1 for detail).</li> </ul>

## Comments

### Finance

Not required.

## Other staff comments

The Development and Compliance and Property sections of Council have provided input into the preparation of this Planning Proposal.



## Process and Public consultation

This Planning Proposal will not be referred to the Lismore Local Planning Panel for advice. A ministerial direction, 'Local Planning Panels Direction - Planning Proposals' sets out the Planning Proposals that are exempt from referral to the LPP (see excerpt below).

1. *A council to whom this direction applies is required to refer all planning proposals prepared after 1 June 2018 to the local planning panel for advice, unless the council's general manager determines that the planning proposal relates to:*
  - (a) the correction of an obvious error in a local environmental plan,*
  - (b) matters that are of a consequential, transitional, machinery or other minor nature, or*
  - (c) matters that council's general manager considers will not have any significant adverse impact on the environment or adjoining land.*

Items D – H of this Planning Proposal are corrections of obvious errors and therefore accord with exemption 1(a).

Items A – C are minor in nature and are considered to not have significant adverse impact on the environment or adjoining land, therefore exemptions 1(b) and 1(c) are applicable. The removal of the separation and single driveway requirements included in items A and C will change the assessment of development applications to which these clauses apply to be merit-based rather than relying upon a numerical standard. Full consideration of environment and amenity issues will still be given and other controls in the LEP and DCP will remain. Item B enables the subdivision of land in split zones that includes a portion of RU2 zoned land. The clause applies only to three lots that are predominantly zoned for residential use. Again, full consideration of environment and amenity issues will still be required at the development application stage.

Once endorsed by a resolution of Council, the Planning Proposal will then proceed to the DPE for Gateway Determination and following that Council will commence community consultation and referrals to State Government agencies in accordance with the conditions of the Gateway.

## Conclusion

This report has outlined a planning proposal to undertake Council's seventh round of general amendments to the Lismore LEP 2012. An assessment of the planning proposal indicates that it complies with the relevant SEPPs and is consistent with the section 9.1 Ministerial Directions. The proposal is also consistent with the actions of the North Coast Regional Plan.

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

## Attachment/s

1. Planning proposal report (Over 7 pages)