



IRF24/2908

Gateway determination report – PP-2024-2297

To facilitate a two-lot subdivision as an additional permitted use on Lot 11 DP 1096690, 92 Dunoon Road, North Lismore

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Acknowledgment of Country

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

Contents

1	Planning proposal.....	1
1.1	Overview	1
1.2	Objectives of planning proposal.....	1
1.3	Explanation of provisions.....	1
1.4	Site description and surrounding area	2
1.5	Mapping	3
2	Need for the planning proposal	4
3	Strategic assessment	4
3.1	Regional Plan	4
3.2	Local.....	7
3.3	Section 9.1 Ministerial Directions.....	8
3.4	State environmental planning policies (SEPPs)	9
3.4.1	SEPP (Primary Production) 2021.....	Error! Bookmark not defined.
3.4.2	SEPP (Resilience and Hazards) 2021	Error! Bookmark not defined.
4	Site-specific assessment	9
4.1	Environmental	9
4.2	Social and economic	13
4.3	Infrastructure	13
5	Consultation.....	14
5.1	Community	14
5.2	Agencies	14
6	Timeframe	14
7	Local plan-making authority	14
8	Assessment summary	14
9	Recommendation.....	15

Table 1 Reports and plans supporting the proposal

Relevant reports and plans

Planning Proposal – To facilitate a two-lot subdivision as an additional permitted use on Lot 11 DP 1096690, 92 Dunoon Road, North Lismore – 26 November 2024

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Lismore
PPA	Lismore City Council
NAME	To facilitate a two-lot subdivision as an additional permitted use on Lot 11 DP 1096690, 92 Dunoon Road, North Lismore
NUMBER	PP-2024-2297
LEP TO BE AMENDED	Lismore Local Environmental Plan 2012
ADDRESS	92 Dunoon Road, North Lismore
DESCRIPTION	Lot 11 DP 1096690
RECEIVED	11/12/2024
FILE NO.	IRF24/2908
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 planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to enable the subdivision of Lot 11 DP 1096690, 92 Dunoon Road, North Lismore into two lots so that the existing approved goods transport terminal and associated manager's residence may be excised from the balance of the farm.

1.3 Explanation of provisions

It is proposed to amend Schedule 1 Additional permitted uses of the Lismore LEP 2012 to permit subdivision of Lot 11 DP 1096690, 92 Dunoon Road, North Lismore into two lots.

The planning proposal contains the proposed wording for Schedule 1 which has been prepared by Council. The draft clause provides that the land may be subdivided to create two lots less than the minimum lot size where the consent authority is satisfied that the subdivision will not increase rural land use conflict and is appropriate having regard to the natural and physical constraints affecting the land.

The objectives and intended outcomes when read together with the explanation of provisions are used for drafting of an LEP by the Parliamentary Counsel Office. As such, it is recommended the draft clause is removed from the planning proposal.

However, once the draft clause is omitted from the planning proposal, it will not be clear that it is intended to require the consent authority to consider and be satisfied in relation to certain matters before the granting development consent for subdivision of the land. The planning proposal must, therefore, be updated to include this detail.

A condition has been included on the Gateway determination requiring the planning proposal to be updated prior to public exhibition.

1.4 Site description and surrounding area

The site is known as Lot 11 DP 1096690, 92 Dunoon Road, North Lismore (Figure 1) and is located approximately 2.7km by road from the Lismore CBD (Figure 2). The site has an area of 36.31ha and is zoned RU1 – Primary Production with an applicable minimum lot size of 40 hectares.

The western side of the property contains a goods transport terminal and associated manager's residence that was approved by Council in 2000 (DA2000/176). A separate dwelling house and associated sheds have vehicle access from Cusack Road and the land is predominantly utilised for cattle grazing. The topography of the land is such that the farm and the transport business operate independently as they are located on either side of a ridgeline.

Surrounding land uses are predominantly cattle grazing with some rural dwellings. The Lismore Go Kart Track and Showgrounds are located to the south. Future residential development in the North Lismore Plateau precinct is to be located to the east and north-east.

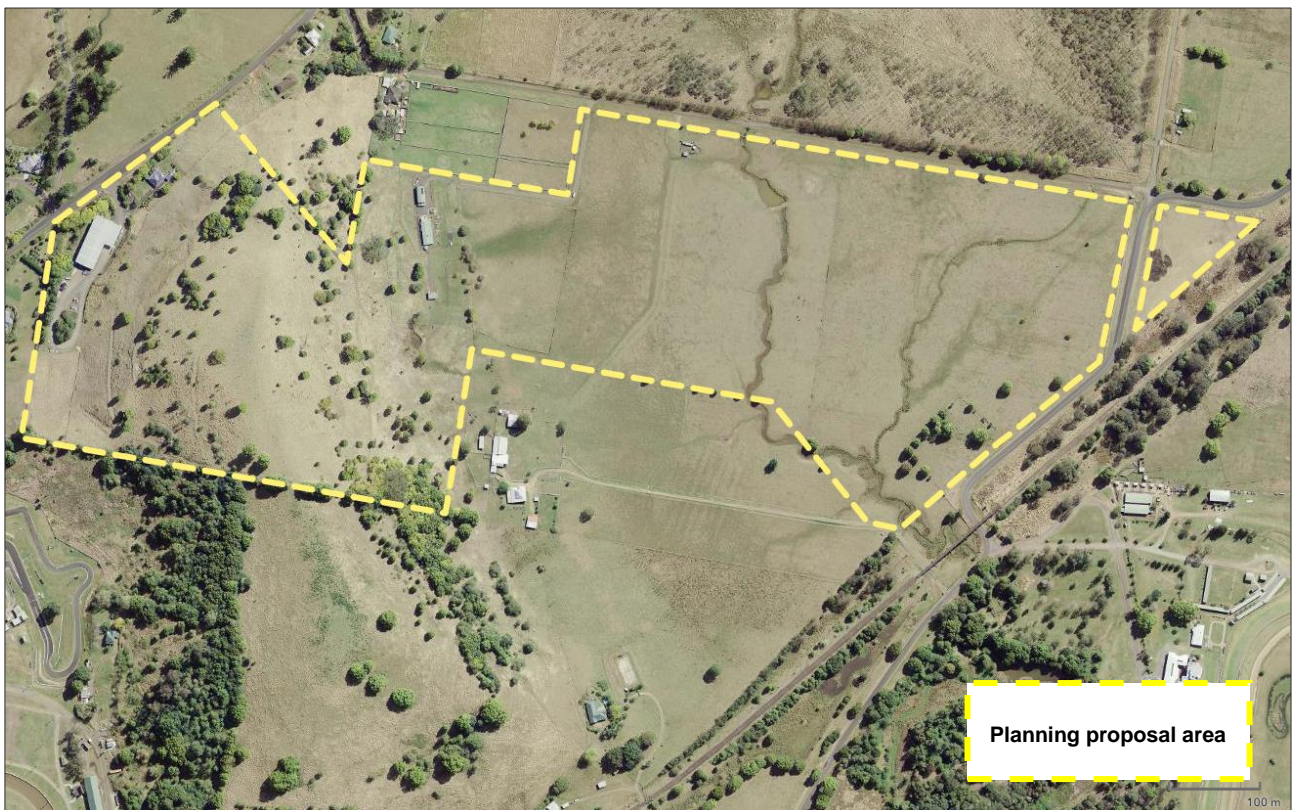


Figure 1 Subject site (source: NSW Spatial Viewer)

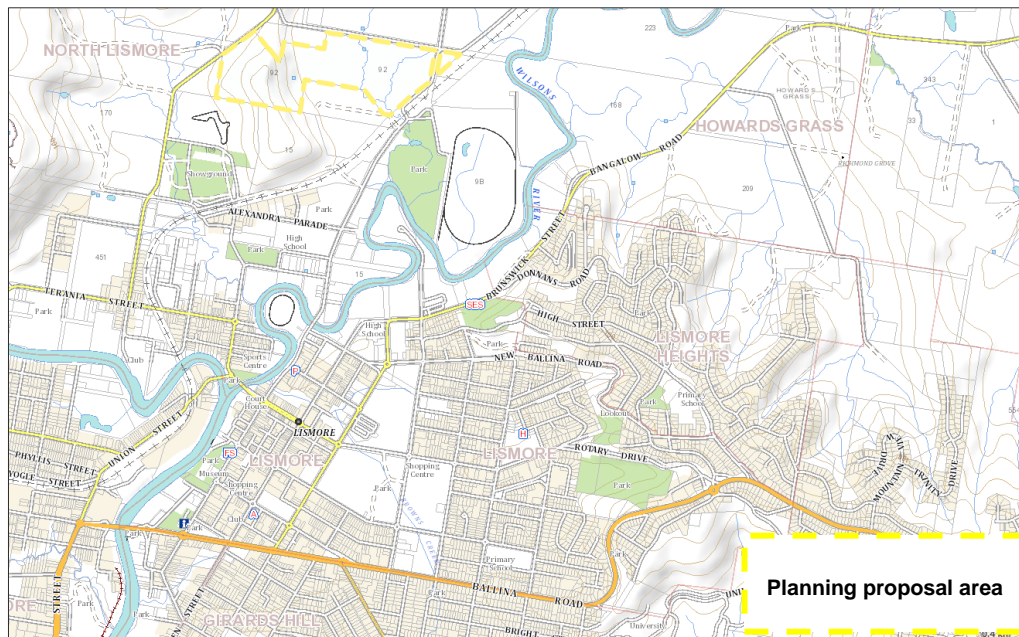


Figure 2 Site context (source: NSW Spatial Viewer)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the relevant Lismore LEP 2012 Additional Permitted Uses map (Figure 3), which is considered suitable for community consultation.

Maps consistent with the Department of Planning and Environment's Standard Technical Requirements for Spatial Datasets and Maps will be required to be prepared prior to the plan being made.



Figure 3 Proposed additional permitted uses map

2 Need for the planning proposal

The planning proposal is not the result of a local strategic planning statement or Department approved local strategy or report.

The planning proposal is proponent initialled and seeks to facilitate the subdivision of the land into two lots that are less than the minimum lot size to enable the existing approved goods transport terminal and associated manager's residence to be excised from the balance of the farm.

Clause 4.6 of the Lismore LEP 2012 precludes the subdivision of land below the minimum lot size for certain zones, including RU1 Primary Production.

The proponent has considered other options for achieving the aims of the proposal. However, the proposal to amend Schedule 1 of the Lismore LEP 2012 is considered to be the best approach on the basis that:

- introducing a 'special purpose' rural subdivision clause could lead to unintended consequences for rural land in the Lismore LGA and is not supported by Council at this time; and
- reducing the minimum lot size could set a precedent for other land zoned RU1 Primary Production and contribute to rural land fragmentation.

Therefore, the planning proposal is considered the best means of achieving the objectives and intended outcomes.

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 2041.

Table 4 Regional Plan assessment


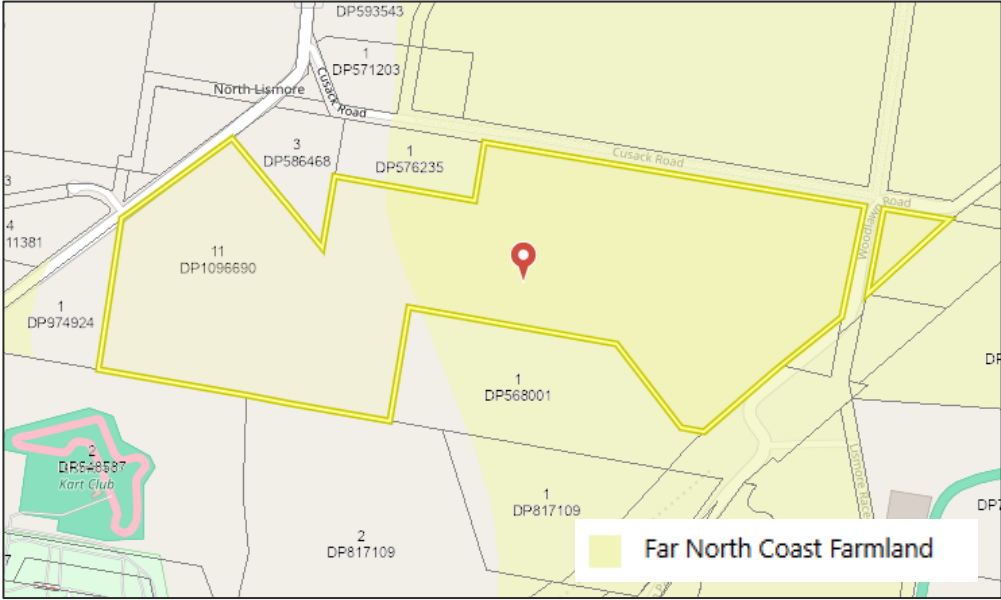
Regional Plan Objectives	Justification
Goal 1: Liveable, sustainable and resilient	<p><i>Objective 1: Provide well located homes to meet demand</i></p> <p>The subject land contains two existing dwellings that will be located separately on the two proposed lots.</p> <p><i>Objective 3: Protect regional biodiversity and areas of high environmental value</i></p> <p>No areas of mapped high biodiversity or potential high environmental value (Figure 4) will be impacted as a result of the proposal. The Biodiversity Assessment Report submitted with the proposal concludes that the planning proposal is unlikely to significantly affect threatened species or ecological communities or their habitats.</p>  <p><i>Objective 4: Understand, celebrate and integrate Aboriginal culture</i></p> <p>The planning proposal confirms that an AHIMS database search identified no record of an Aboriginal site or places within a 50-metre radius of the subject site. However, it is recommended consultation occurs with the Ngulingah Local Aboriginal Land Council (LALC) to confirm the suitability of the proposal.</p> <p><i>Objective 5: Manage and improve resilience to shocks and stresses, natural hazards and climate change</i></p> <p>The subject site is mapped as bushfire prone land. A bushfire hazard assessment has been undertaken confirming that the proposal is satisfactory and consultation will be required with the NSW Rural Fire Service (RFS) following the Gateway determination.</p> <p>The lower lying parts of the property are within Council's flood planning area (Figure 7) and identified as high flood risk (Figure 8) and extreme risk (Figure 9). The two existing dwellings are located above the flood planning level.</p>

Figure 4 Potential high environmental value land (source: Spatial Viewer)

Regional Plan Objectives	Justification
	<p><i>Objective 8: Support the productivity of agricultural land</i></p> <p>The eastern portion of the site is mapped as important farmland (Figure 5).</p>  <p>Figure 5 Far North Coast Farmland map (source: Northern Region Viewer)</p> <p>The planning proposal seeks to enable the subdivision of an approved commercial activity (goods transport terminal) from farming operations (cattle grazing). The integrity of the farming operation will however be retained with all mapped farmland to be located in the single larger lot that will also include higher flood refuge land.</p>

3.2 Local

The proposal confirms that it is consistent with the following local plans and approved 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
Inspire Lismore 2040 – Local Strategic Planning Statement (LSPS)	<p>The planning proposal is not inconsistent with the LSPS. The following Planning Priorities of the LSPS are relevant to the proposal.</p> <p><i>1 Growth is consolidated around Lismore city, CBD and villages</i></p> <p>The proposal will allow for the creation of one additional rural lot within proximity to the Lismore CBD (2.7km).</p> <p><i>3 Rural and natural landscapes will be identified & protected</i></p> <p>The planning proposal is unlikely to in result in any adverse impact upon the existing rural landscape.</p> <p><i>4 Recognise, embrace and protect our cultural heritage</i></p> <p>There is no record of an Aboriginal site or places within a 50-metre radius of the subject site. It is, however, recommended that consultation occurs with the Ngulingah Local Aboriginal Land Council (LALC) to confirm the suitability of the proposal.</p> <p><i>6 Expand agriculture & agribusiness while protecting productive agricultural land</i></p> <p><i>12 Protect and improve productive agricultural land and other natural resources</i></p> <p>The planning proposal seeks to enable the subdivision of an approved commercial activity (goods transport terminal) from farming operations (cattle grazing). The planning proposal aims to support these land uses to continue to occur.</p> <p><i>8 Consolidate existing industries & support their continued growth</i></p> <p><i>9 Transport & communications keep our communities connected and facilitate the expansion of industries</i></p> <p>The planning proposal is expected to support the ongoing use of the site as a goods transport terminal, which supports agribusinesses in the region.</p> <p><i>10 Areas of high biodiversity value and connectivity are protected and enhanced</i></p> <p>The Biodiversity Assessment Report submitted with the proposal concludes that the planning proposal is unlikely to significantly affect threatened species or ecological communities or their habitats.</p> <p><i>13 Identify, manage and adapt to risks from natural hazards</i></p> <p>A bushfire hazard assessment has been undertaken and consultation will be required with the NSW Rural Fire Service following the Gateway determination. The lower lying parts of the property are within Council's flood planning area, which has been identified as an extreme flood risk precinct.</p>

3.3 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all relevant section 9.1 Directions except the following:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Inconsistent – Unresolved	<p>This Direction aims to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and that potential flood impacts are considered.</p> <p>The planning proposal is inconsistent with this Direction as it applies to flood prone land and does not include provisions that give effect to and are consistent with the policies identified within the Direction.</p> <p>Flooding is discussed in detail in section 4.1 of this report. Conditions have been imposed on the Gateway determination to require that Council include additional detail in the planning proposal in relation to flooding.</p> <p>Until the planning proposal is updated with the required additional detail in relation to flooding consistency with this Direction will remain unresolved.</p>
4.2 Coastal Management	Inconsistent - Justified	<p>This Direction applies to the proposal as the site includes land within the coastal zone. The far eastern boundary of the property is fringed by the Coastal Environment map due to the site being within 500 metres of the Wilson River.</p> <p>The planning proposal is inconsistent with this Direction as it does not address the requirements of the Direction.</p> <p>The assessment checklist for planning proposals in Appendix 1 of the NSW Coastal Design Guidelines 2023 has been prepared in accordance with the Direction.</p> <p>The inconsistency with this Direction is considered to be of minor significance as any potential development generated as a result of the proposal will be subject to a merit assessment at the development application stage.</p>

4.3 Planning for Bushfire Protection	Inconsistent – Unresolved	The planning proposal is potentially inconsistent with this Direction as the subject site is mapped as bushfire prone land. The Direction provides that Council must consult with the Commissioner of the RFS after a Gateway determination is issued and before community consultation is undertaken. Until consultation has been undertaken, the Direction remains unresolved.
9.2 Rural Lands	Inconsistent – Justified	<p>This Direction applies as the planning proposal seeks to allow for the future subdivision of RU1 zoned land below the minimum lot size so that an existing approved goods transport terminal can be subdivided from the balance of the farm.</p> <p>The inconsistency is considered to be of minor significance as the integrity of the farming operation will be retained with all mapped farmland to be located in the single larger eastern lot that will also include flood refuge land for farm animals and machinery.</p>

3.4 State environmental planning policies (SEPPs)

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

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Flora and fauna	<p>A Biodiversity Assessment Report prepared by GeoLINK dated 27 September 2024 has been prepared to support the planning proposal.</p> <p>No areas of mapped high biodiversity or environmental value will be impacted as a result of the proposal.</p> <p>The report states that the site comprises cleared pastureland with scattered woody regrowth in the western section, on the midslopes of the small knoll. The site provides potential foraging resources for locally occurring avifauna, mammals, reptile and amphibian species, however no threatened flora or fauna species were recorded during the site assessment.</p> <p>The report concludes that the planning proposal is unlikely to significantly affect threatened species or ecological communities or their habitats, within the meaning of the Biodiversity Conservation Act 2016 and an Environmental Impact Statement, Species Impact Statement or Biodiversity Development Assessment Report is not required.</p>

Bushfire

The subject land is identified as bushfire prone (Figure 6):

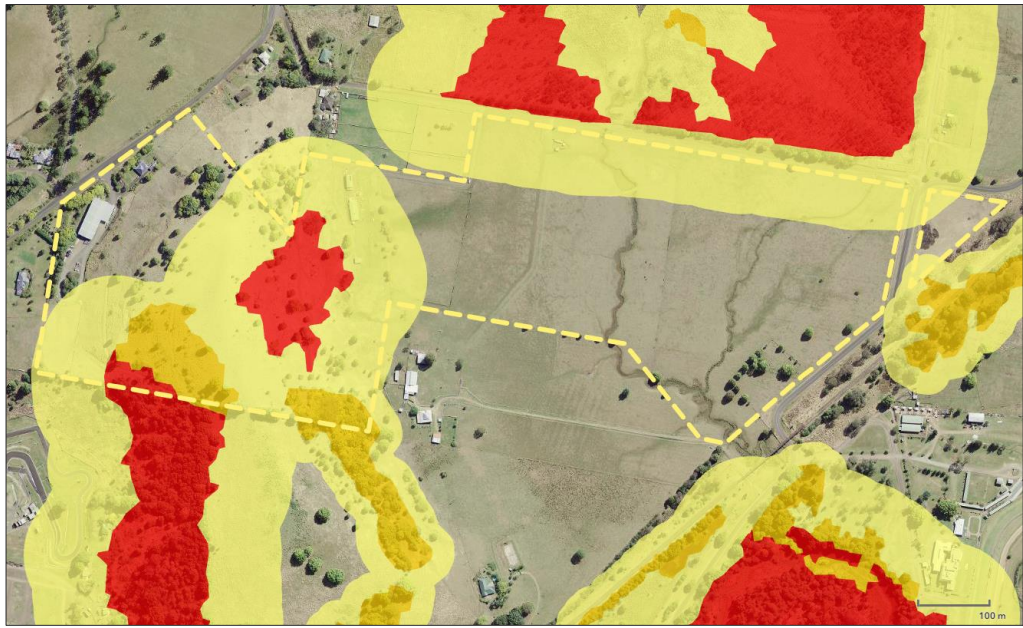


Figure 6 Bushfire prone land map (source: NSW Spatial Viewer)

As discussed above, consultation is required to occur with the RFS to resolve the inconsistency with the section 9.1 Directions and forms part of the Gateway conditions.

Fragmentation of rural land

The proposal will allow for the subdivision of rural land below the current 40ha minimum lot size to allow for the creation of an additional allotment to contain an existing approved goods transport terminal.

As discussed above, the topography and existing approved uses on the site have resulted in the agricultural land use being confined primarily to the land east of the ridgeline on the site. This eastern land is being retained in a single large lot and no significant adverse impact to agriculture is anticipated.

Flooding

The lower lying parts of the property are within Council's flood planning area (Figure 7) and identified as high flood risk (Figure 8).

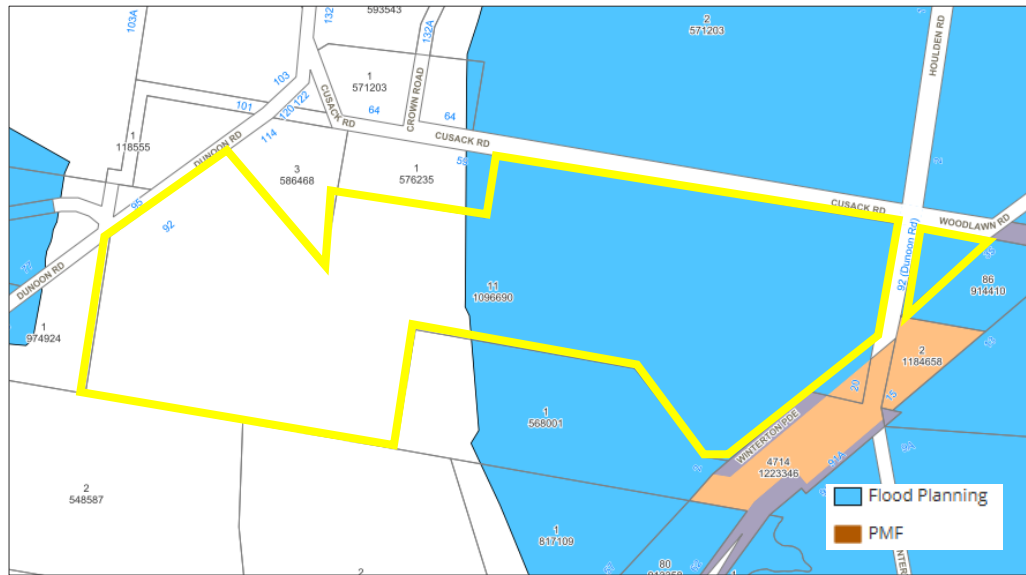


Figure 7 Flood planning area (source: Lismore City Council IntraMaps)

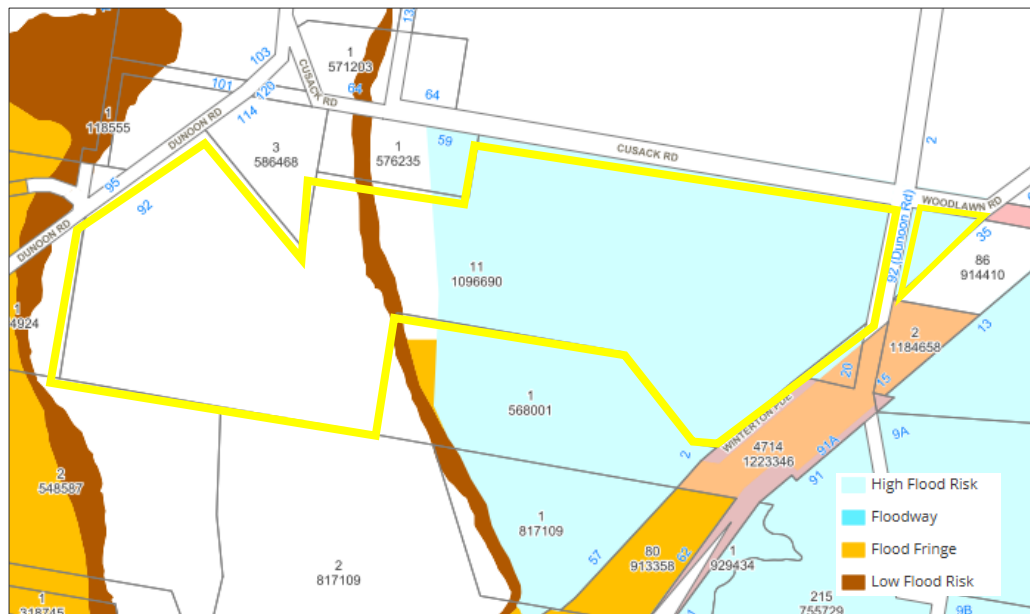


Figure 8 Current flood management (source: Lismore City Council IntraMaps)

Council's draft development control plan (DCP) identifies the flood prone portion of the land as being in an extreme flood risk precinct (Figure 9).

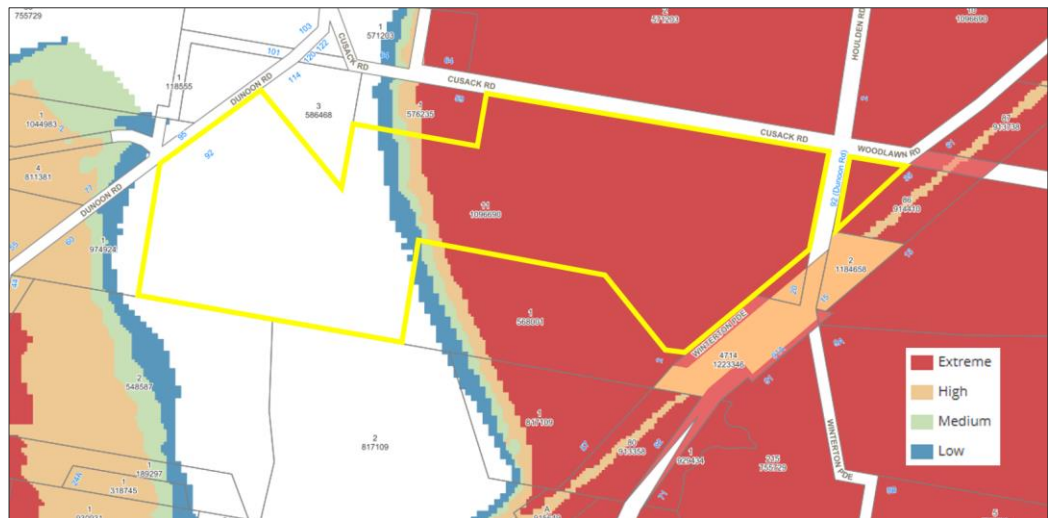


Figure 9 Flood risk precinct map (source: Lismore City Council IntraMaps)

The extent of the Probable Maximum Flood event is shown in Figure 10.



Figure 10 Probable Maximum Flood map (source: Lismore City Council IntraMaps)

The planning proposal states that the existing dwellings and infrastructure associated with the goods transport terminal are outside the flood planning area. While future landowners may seek to undertake other land uses that are permitted with consent in the RU1 zone, it is considered that this can be appropriately managed through Council's existing flood planning controls and the development application process.

It is noted however that low-lying sections of Cusack Road are subject to extreme flood risk which may impact evacuation from the proposed eastern lot. Although it is acknowledged the current vehicular access point for the farmhouse on Cusack Road (mapped as extreme flood risk) is an existing situation, the current ability to evacuate if required to flood free Dunoon Rd may not be available in the future and will need to be considered.

Any future Development Application will be required to satisfy the provisions of Clause 5.21 Flood planning and 5.22 Special flood considerations of the Lismore LEP 2012. The *Shelter-in-place guideline for flash flooding* was released by the Department in

January 2025 and includes design criteria for future development relying on shelter-in-place as part of their emergency management response.

Prior to exhibition and agency consultation, Council is to include additional detail in the planning proposal in relation to flooding, including a map that shows the inundation of the site and further details regarding access to the existing farmhouse from Cusack Road (including the type of event that will affect the access as well as the duration that the road is inaccessible and potential alternate arrangements if needed). A condition is recommended on the Gateway determination in this regard.

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Subdivision of existing goods transport terminal	The planning proposal will allow for the creation of an additional allotment to contain an existing approved goods transport terminal, which would allow for the sale of the business independent from the existing farm operations. No adverse social or economic impacts have been identified.
Land use conflict	<p>The planning proposal will allow for the subdivision of rural land below the current 40ha minimum lot size to allow for the creation of an additional allotment to contain an existing approved goods transport terminal. The remainder of the subject land will continue to be used for cattle grazing purposes.</p> <p>The planning proposal states that no change in land use or land use conflict is anticipated as a result of the proposal. Council has indicated the proposed Schedule 1 clause is to be worded such that the consent authority would need to be satisfied that the subdivision would not increase rural land use conflict. Potential impacts will be further considered as part of any future development application lodged.</p>
Aboriginal cultural heritage	<p>An AHIMS database search identifies no record of an Aboriginal site or places within a 50-metre radius of the subject site. It is recommended consultation occurs with the Ngulingah Local Aboriginal Land Council (LALC) to confirm the suitability of the proposal.</p> <p>The planning proposal states that Aboriginal cultural heritage has been addressed in Section C 8(d) of this Planning Proposal. This should be updated to correctly refer to 9(d). A condition is included on the Gateway determination in this regard.</p>

4.3 Infrastructure

The subject land is serviced by Council's reticulated water system and on-site wastewater systems service the existing developments on the land.

The site is connected to an existing power supply and telecommunications services are available to the site.

The planning proposal states there will be no change to existing public infrastructure is required as a result of the planning proposal.

5 Consultation

5.1 Community

The planning proposal is categorised as standard under the LEP Making Guidelines (September 2022). Accordingly, a community consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination.

5.2 Agencies

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

- NSW Rural Fire Service
- Ngulingah Local Aboriginal Land Council

6 Timeframe

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as standard.

A timeframe of nine months in line with the Department's commitment to reducing processing times and with regard to the benchmark timeframes. A condition 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.

As the planning proposal is low impact and a local matter it is recommended that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

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

- it is not inconsistent with local and regional strategic planning policies; and
- site specific issues can be adequately considered and managed at the development application stage.

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

- remove the draft wording for Schedule 1 Additional permitted uses;
- identify that it is intended to require the consent authority to consider and be satisfied in relation to certain matters before the granting of development consent for a two-lot subdivision;
- include additional detail in relation to flooding, including a map that demonstrates the inundation of the site and further details regarding access to the existing farmhouse via Cusack Road (including the type of event that will affect the access as well as the duration that the road is inaccessible and potential alternate arrangements if needed);

- update the reference to Aboriginal Cultural Heritage to refer to Section C 9(d); and
- reference the current *Local Environmental Plan Making Guideline* (August 2023).

9 Recommendation

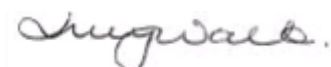
It is recommended the delegate of the Secretary:

- **agree** that any inconsistencies with section 9.1 Direction 4.2 Coastal Management and 9.2 Rural Lands is minor or justified; and
- **note** that the consistency with section 9.1 Directions 4.1 Flooding and 4.3 Planning for Bushfire Protection is unresolved and will require further justification.

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

The following conditions are recommended to be included on the Gateway determination:

1. Prior to community and agency consultation, the planning proposal is to be updated to:
 - (a) remove the draft wording for Schedule 1 Additional permitted uses;
 - (b) identify that it is intended to require the consent authority to consider and be satisfied in relation to certain matters before the granting of development consent for a two-lot subdivision;
 - (c) include additional detail in relation to flooding, including a map that demonstrates the inundation of the site and further details regarding access to the existing farmhouse via Cusack Road (including the type of event that will affect the access as well as the duration that the road is inaccessible and potential alternate arrangements if needed);
 - (d) update the reference to Aboriginal Cultural Heritage to refer to Section C 9(d); and
 - (e) reference the current *Local Environmental Plan Making Guideline* (August 2023).
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - Ngulingah Local Aboriginal Land Council
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority.
5. The timeframe for the LEP to be completed is to be 9 months from the date of the Gateway determination.



16-01-2025

(Signature)

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