Report

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| **Subject** | Planning proposal to introduce certain light industries to RU1, E1 and E2 zones |
| **TRIM Record No** | BP24/688:EF24/80 |
| **Prepared by** | Senior Strategic Planner |
| **Reason** | To initiate a Planning Proposal to amend the LEP. |
| **Strategic Theme** | Our built environment |
| **Strategy** | Our land-use planning caters for all sectors of the community. |
| **Action** | Ensure a diverse range of land use and development opportunities are available. |

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| Executive Summary Enabling greater diversification and activation of our commercial and rural areas is important to our communities, particularly as Lismore continues its social and economic recovery since the 2022 natural disaster. Council has received numerous enquiries from landholders and potential tenants regarding the use of land for various light industrial uses, including ‘creative industries’ in the E1 Local Centre and E2 Commercial Centre zones, and ‘artisan food and drink industries’ in the RU1 Primary Production zone. These land uses are currently prohibited in the respective zones; however, it is considered that the land uses are consistent with the zone objectives and are aligned with Council’s Local Strategic Planning Statement (LSPS) and the North Coast Regional Plan.  As such, Council staff have developed a planning proposal that would add ‘creative industries’ as permissible with consent in the E1 and E2 zones, and ‘artisan food and drink industries’ as permissible with consent in the RU1 zone. The planning proposal also corrects an error in the E1 zone objectives, adds ‘artisan food and drink industries’ as a use covered by the Lismore Local Environmental Plan (LEP) 2012 *Clause 6.11* *Rural and nature-based tourism development,* and removes an outdated definition of ‘small scale’ from *Clause 6.11*.  It is recommended that Council supports the planning proposal and seeks a Gateway determination from the Department of Planning, Housing and Infrastructure (DPHI) to ensure our planning framework continues to serve our communities needs and aspirations. |

Recommendation

That Council:

1. supports the planning proposal to introduce additional light industries to the Lismore Local Environmental Plan (LEP) 2012
2. forwards the planning proposal to the Department of Planning, Housing and Infrastructure (DPHI) seeking a Gateway determination and proceeds to public exhibition in accordance with any Gateway requirements
3. confirms that should any objections be made during the public exhibition stage that the General Manager will report back to Council. If no objections are made, the General Manager will proceed in making the LEP

Background

Council has received numerous enquiries relating to the use of rural lands for activities that would fall under the term ‘artisan food and drink industry’, a type of light industry defined as:

*“a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—*

1. *a retail area for the sale of the products,*
2. *the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided,*
3. *facilities for holding tastings, tours or workshops.”*

Artisan food and drink industries are currently not permissible in the RU1 zone in the Lismore LEP 2012, as ‘industries’ are a prohibited use. While the NSW State Government recently pursued agritourism reforms that allow for farm gate premises in the RU1 zone, this requires agricultural products to be predominately from the subject farm, which can make pursuing uses such as a brewery unworkable in the local area. Adding ‘artisan food and drink industries’ as permissible with consent provides additional opportunities for rural landowners to diversify income streams, particularly along the rail trail route between Bentley and Eltham.

At the same time, Council has also received enquiries relating to the establishment of uses such as artists’ studios in the CBD and other local centres (E1 Local Centre and E2 Commercial Centre zones), which is best defined as ‘creative industry’, another type of light industry.

‘Creative industry’ is a relatively recent addition to the LEP land use table, added on 26 April 2023 as part of the NSW Government’s Employment Zones reforms, which consolidated business and industrial zones into employment zones. Prior to this, the best definition for creative industry development would have been similar existing land use terms such as ‘*information and education facilities’* or ‘*community facilities’*.

The definition of creative industry is:

*a building or place the principal purpose of which is to produce or demonstrate arts, crafts, design or other creative products, and includes artists’ studios, recording studios, and set design and production facilities.*

Because ‘creative industries’ is now defined as a type of light industry in the LEP, they are currently prohibited in local and commercial centres, even though the E1 and E2 zones are considered suitable zones for such uses. While these types of development could still be approved as ‘*community facilities*’ in instances where the building or place is owned or controlled by a public authority or non-profit community organisation, in other cases ‘creative industries’ is the only applicable land use term.

It is considered that the proposed amendments will help to support growth of Lismore’s creative industries, encourage revitalisation of Lismore post-flood, allow appropriate diversification of rural lands, and support the tourist and visitor economy.

Proposed amendments to the Lismore LEP

Council has developed a planning proposal to expand the permissible uses in the E1 and E2 zones to allow for ‘*creative industries’*, and also expand the permissible uses in the RU1 zone to allow for ‘*artisan food and drink industries*’. It is considered that these particular light industrial uses are compatible with the relevant zone objectives, and that any economic, social or environmental impacts can be effectively controlled through the development assessment process.

Specifically, the planning proposal adds ‘*artisan food and drink industries*’ as ‘permitted with consent’ in the RU1 land use table. It also adds ‘*creative industries*’ as ‘permitted with consent’ to the E1 and E2 land use tables.

Additionally, the planning proposal adds ‘*artisan food and drink industries’* as a use covered by *Clause 6.11 Rural and Nature-Based Tourism*, which ensures that tourism development in rural and natural areas does not adversely impact on the agricultural production, scenic or environmental values of the land.

The planning proposal also seeks to remove the definition of small scale in *Clause 6.11 Rural and Nature-Based Tourism*, which is considered outdated and unnecessary. The definition states:

“***small scale*** *means a scale that is small enough to be generally managed and operated by the principal owner living on the property.”*

Following the State Government’s agritourism reforms, up to 100 visitors can now attend a farm gate premises (for example, a farm café) as either exempt or complying development. In many instances, this would require multiple staff and may not be at a scale that could be generally managed and operated by a principal owner living on the property. If the above definition of ‘small scale’ were to be strictly applied, there may be situations where Council could not approve a development application (DA) that could otherwise be pursued through exempt or complying pathways.

It is considered that other provisions of Clause 6.11 can allow for a merit assessment in controlling for scale, including an objective that states that the Clause’s purpose is to ensure tourism development is small scale, and a section of the Clause that indicates that development consent must not be granted unless the consent authority is satisfied that the development is small scale and low impact. Council’s Development Control Plan (DCP) for Rural and Nature-Based Tourism also provides further detail on what is considered small-scale and will be updated to reference artisan food and drink industries if and when the planning proposal gets a Gateway determination.

Finally, the planning proposal removes an objective that was incorrectly added to the E1 zone objectives as part of the NSW Government’s employment zones reform, which consolidated former B1 Neighbourhood Centre and B2 Local Centre zones into the E1 Local Centre zone.

The inaccurate E1 zone objective currently in the LEP reads:

* *To ensure that development is of an appropriate scale to service the needs of the local community and does not detract from the role of the zone as the primary retail, commercial and entertainment centre of Lismore.*

The objective is incorrect because the E2 zone (not the E1 zone) is the primary retail, commercial and entertainment centre of Lismore. Additionally, there are currently another two objectives in the E1 zone that read:

* *To provide for development that does not detract from the role of Zone E2 Commercial Centre as the primary centre of business, retail, community, and cultural activity.*
* *To ensure that development is of an appropriate scale and is compatible with the character of the surrounding neighbourhood.*

It is considered the objective proposed to be removed is phrased incorrectly and duplicates existing objectives. Council approached the Department of Planning, Housing and Infrastructure (DPHI) to correct the error, as it had been incorrectly introduced by the State through their reforms, however correspondence to Council indicated that Council would need to pursue its own planning proposal to amend the error.

Overview of the Planning Proposal

A planning proposal to facilitate to additional uses is attached to this report as **Attachment 1**. It is summarised below in **Table 1**.

**Table 1: Summary of the Planning Proposal**

| **PART** | **REQUIREMENTS** | **DESCRIPTION OF PLANNING PROPOSAL** |
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| 1 | **OBJECTIVES AND INTENDED OUTCOMES** | The objective of this Planning Proposal is to:   * amend the Lismore LEP 2012 to allow creative industries to be pursued in the E1 and E2 business zones, * amend the Lismore LEP 2012 to allow artisan food and drink industries to be pursued in the RU1 Primary Production zone, * rectify an error in the E1 Local Centre zone resulting from the State Government’s employment zones reform. |
| 2 | **EXPLANATION OF PROVISIONS** | The objectives of this LEP amendment will be achieved through:   * Removing an inaccurate E1 zone objective * Amending land use tables for the RU1, E1 and E2 zones * Adding ‘*artisan food and drink industries’* as a defined use of Clause 6.11 ‘Rural and nature-based tourism development’ * Removing the definition of ‘small scale’ from Clause 6.11 |
| 3 | **JUSTIFICATION**  **Section A – Need for the Planning Proposal**  ***Is the planning proposal a result of an endorsed LSPS, strategic study or report?***  ***Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*** | The planning proposal is not a result of an endorsed LSPS, strategic study or report. It has been made due to landowner enquiries and internal staff recommendations.  The Planning Proposal is considered the best means of achieving the objectives. |
|  | **JUSTIFICATION**  ***Section B* – *Relationship to Strategic Planning Framework***  ***Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?***  ***Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?***  ***Is the planning proposal consistent with any other applicable State and regional studies or strategies?***  ***Is the planning proposal consistent with applicable SEPPs?***  ***Is the Planning Proposal consistent with applicable s9.1 Ministerial Directions?*** | The Planning Proposal is consistent with applicable directions in the North Coast Regional Plan (2041).  The Planning Proposal is consistent with Lismore’s Local Strategic Planning Statement.  The Planning Proposal is consistent with applicable State and regional studies or strategies.  The Planning Proposal is consistent with applicable SEPPs.  The Planning Proposal is consistent with applicable Section 9.1 Directions. |
|  | **JUSTIFICATION**  ***Section C* – *Environment, Social and Economic Impact***  ***Is there any likelihood that critical habitat of threatened species, populations or ecological communities or their habitats, will be adversely affected because of the proposal?***  ***Are there any other likely environmental effects of the Planning Proposal and how are they proposed to be managed?***  ***Has the Planning Proposal adequately addressed any social and economic effects?*** | The planning proposal does not apply to any specific parcel of land. There is the potential that some artisan food and drink industries could potentially impact upon biodiversity on rural land, as some rural land includes biodiversity value, however it is considered that other provisions of the LEP, DCP and SEPPs would appropriately manage any impacts as part of any development application assessment. Any potential impacts would also need to satisfactorily address any relevant sections of the Biodiversity Conservation Act 2016 at the DA stage.  There are no other likely environmental or social effects that cannot be managed appropriately through existing provisions of the LEP, DCP and relevant SEPPs as part of any development application assessment. |
|  | **JUSTIFICATION**  ***Section D* – *Infrastructure (Local, State and Commonwealth)***  ***Is there adequate public infrastructure for the Planning Proposal?***  ***What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?*** | The planning proposal will not increase demand for local, State or Commonwealth infrastructure for creative industries. Artisan food and drink industries in RU1 areas may, depending on estimated traffic volumes, require upgrade of public roads, however this would be conditioned in line with Council’s Rural and Nature-based Tourism DCP during the DA process, and development would also be subject to s7.11 local contributions. Artisan food and drink industries would also, where connection to reticulated water supply is not available, need to satisfy Council regarding provision of water.  No consultation has been conducted pre-Gateway given the minor nature of the planning proposal. State and federal public authorities and government agencies will be consulted in line with any Gateway condition. |
| 4 | **MAPPING** | The planning proposal does not involve any amendments to the Lismore LEP 2012 maps. |
| 5 | **COMMUNITY CONSULTATION** | Council will conduct community consultation in accordance with any Gateway determination. Public exhibition will be undertaken in accordance with the DPE *Local Environmental Plan Making Guideline* – August 2023 and Council’s Community Participation Plan. |
| 6 | **PROJECT TIMELINE** | It is estimated that it will take approximately nine months to gazette the LEP amendment following Council endorsement. |

Comments

Finance

Not required.

Other officer comments

Manager Destination and Economy

Over the past 18 months Lismore City Council has received an increase in the number of enquiries relating to the establishment of creative industries within Lismore’s commercial centres. The recommendation for inclusion of these activities into our commercial centres is strongly supported and will ensure the growth, diversification, and activation of our commercial centres now and into the future.

Public consultation

Consultation will be undertaken in line with any Gateway determination and Council’s Community Participation Plan.

Conclusion

The attached planning proposal seeks to amend the Lismore LEP 2012 to provide additional appropriate light industrial uses in the RU1, E1 and E2 zones. These uses will help to support growth of Lismore’s cultural industries, encourage revitalisation of Lismore post-flood, allow appropriate diversification of rural lands, and support the tourist and visitor economy.

The Planning Proposal is consistent with the North Coast Regional Plan, Lismore’s Local Strategic Planning Statement, the relevant State Environmental Planning Policies and s9.1 Ministerial Directions.

It is recommended that Council supports the planning proposal and seeks a Gateway determination from DPHI.

## Attachment/s

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| 1. | Planning proposal - additional light industrial uses | (Over 7 pages) |