



IRF 24/2771

Gateway determination report – PP-2024-2509

To allow additional land uses in certain employment
and rural zones

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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.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Council Report 12 November 2024 – 11.5 Planning proposal to introduce certain light industries to RU1, E1 and E2 zones
Council Minutes 12 November 2024 – 11.5 Planning proposal to introduce certain light industries to RU1, E1 and E2 zones
Planning Proposal – Amendment to Lismore LEP 2012 land use tables to allow certain light industries in E1, E2 and RU1 zones prepared by Lismore City Council dated 14 November 2024

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Lismore
PPA	Lismore City Council
NAME	To allow additional land uses in certain employment and rural zones
NUMBER	PP-2024-2509
LEP TO BE AMENDED	Lismore LEP 2012
ADDRESS	Land zoned E1, E2 and RU1 under the Lismore LEP 2012
DESCRIPTION	Various allotments within the Lismore local government area
RECEIVED	Adequate 26/11/2024
FILE NO.	IRF 24/2771
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 objectives of the planning proposal are to:

- allow creative industries to be pursued in the E1 and E2 business zones;
- allow light industries (except high technology industries) to be pursued in the RU1 Primary Production zone;
- improve the functioning of Clause 6.11 Rural and nature-based tourism development; and
- remove an inaccurate E1 Local Centre zone objective.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Lismore LEP 2012 per the changes below:

1. List 'creative industry' as permissible with consent in E1 Local Centre and E2 Commercial Centre zones

'Creative industry' is defined as follows:

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.

Creative industries are a type of light industry, which is prohibited in the E1 and E2 zones. It is considered that places such as artists' studios, recording studios, and set design and production facilities are compatible with the zone objectives for local and commercial centres in the Lismore local government area.

2. List 'light industries' as permissible with consent in RU1 Primary Production zone (except 'high technology industries' which would be listed as prohibited)

The planning proposal reported to Council on 12 November 2024 originally only proposed an amendment to the LEP to list 'artisan food and drink industries' as permissible with consent in RU1 Primary Production zone. However, the elected representatives of Council resolved that the planning proposal be amended prior to sending it to the Department for a Gateway determination to list:

- light industries as permitted with consent in the RU1 zone, and
- high technology industry as prohibited in the RU1 zone.

'Light industry' is defined as follows:

a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following—

- (a) *high technology industry,*
- (b) *home industry,*
- (c) *artisan food and drink industry,*
- (d) *creative industry.*

Note—

Light industries are a type of industry—see the definition of that term in this Dictionary.

Light, home and creative industries have the opportunity to facilitate a broad range of land uses not directly connected to or compatible with the rural use of the land such as recording studios and set design and production facilities. Furthermore, the inclusion of light industries as permitted with consent has the potential to permit other light industrial land uses that are innominate, such as water bottling.

It is considered that such an amendment would require significant strategic justification through a rural lands strategy particularly noting that 'light industries' with no connection to agriculture or tourism could occur on mapped State and Regionally significant farmland in the RU1 Zone contrary to the intent of the NCRP 2041. It is considered appropriate that until this additional strategic work is undertaken and completed, in consultation with DPIRD and the local community, that only artisan food and drink industry be permitted.

'Artisan food and drink industry' is 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—

- (a) a retail area for the sale of the products,*
- (b) 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,*
- (c) facilities for holding tastings, tours or workshops.*

The planning proposal states that light industrial uses that fall under the definition of artisan food and drink industry, such as breweries, are compatible with the RU1 zone objectives and that any economic, social or environmental impacts can be effectively controlled through the development assessment process.

A condition has been included on the Gateway determination requiring that the planning proposal be amended to only list 'artisan food and drink industry' as permissible with consent in RU1 Primary Production zone as originally intended, rather than permitting 'light industry' and prohibiting 'high technology industry'.

3. Add 'artisan food and drink industries' as a use covered by Clause 6.11 Rural and nature-based tourism development

The planning proposal adds '*artisan food and drink industries*' as a tourist type use covered by Clause 6.11(6)(a) to help ensure that this type of development in rural and natural areas does not adversely impact on the agricultural production, scenic or environmental values of the land.

4. Remove the definition of 'small scale' detailed in Clause 6.11 Rural and nature-based tourism development

The planning proposal seeks to remove the definition of small scale in Clause 6.11(6) as Council considers it to be outdated and unnecessary. The existing definition states that development is considered to be small scale if it can be generally managed and operated by the principal owner living on the property.

However, Council believes that there are other provisions in Clause 6.11 which effectively manage potential impacts, including the objective to 'ensure that tourism development in rural and natural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land'.

5. Remove the following E1 Local Centre zone objective: *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 Lismore town centre is zoned E2 Commercial Centre and is considered to be the primary retail, commercial and entertainment centre of the local government area. Therefore, the E1 zone objective requiring that development does not detract from the role of the zone as the primary retail, commercial and entertainment centre of Lismore (objective number 5) is inaccurate.

Furthermore, there is conflict between this objective and objective number 7 of the E1 zone which requires that development not detract from the role of Zone E2 Commercial Centre as the primary centre of business, retail, community and cultural activity.

Overall, the planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The planning proposal applies to various allotments throughout the local government area zoned E1, E2 and RU1. Such land has the potential to be affected by a range of attributes, including but not limited to:

- acid sulfate soils;
- biodiversity values;
- bushfire hazards;
- drinking water catchment;
- flooding;
- heritage values;
- high environmental value;
- land mapped as being within the coastal zone (coastal wetlands, coastal environment area, coastal use area);
- state and regionally significant farmland.

1.5 Mapping

The planning proposal does not include any alterations to Lismore LEP 2012 maps.

2 Need for the planning proposal

The planning proposal is not a result of an LSPS, strategic study or report although it is consistent with applicable strategic documentation as detailed later within this report.

The proposal is a housekeeping amendment that is the result of landowner enquiries and staff recommendations.

The intended outcomes of the proposal are to:

- provide for the growth of cultural industries in the Lismore CBD and local centres;
- encourage the revitalisation of the Lismore urban area post-flood;
- allow rural landowners to pursue appropriate diversification of rural land;
- strengthen the visitor economy; and
- improve clarity of the LEP.

The planning proposal is considered to be 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 3 Regional Plan assessment

Regional Plan Objectives	Justification
Objective 8 Support the productivity of agricultural land	<p>The Regional Plan advocates for a mix of land uses in the rural area to contribute to the character and productivity of the region and states that diversity in the sector can contribute to sustainability and resilience. However, such uses need to be undertaken strategically to avoid significant impacts on agricultural viability.</p> <p>It is considered that the addition of 'artisan food and drink industry' to the RU1 land use table is consistent with the intent of the Regional Plan and the LEP zone objectives. The application of Clause 5.4(10) as well as its inclusion in Clause 6.11 will ensure that such development does not adversely impact on the agricultural production, scenic or environmental values of the land by prompting a merit-based assessment at the development application stage.</p>
Objective 12 Create a diverse visitor economy	<p>A key challenge for the Lismore region is being able to provide flexibility in planning controls to grow and enhance sustainable agri-tourism. It is considered that the addition of 'artisan food and drink industry' to the RU1 land use table will enable opportunities for a diverse visitor economy.</p> <p>The addition of creative industries to the E1 and E2 land use tables also has the potential to support tourism and the development of places for artistic and cultural activities, consistent with Strategy 12.1.</p>
Local government narrative	<p>This planning proposal is consistent with the following regional priorities:</p> <ul style="list-style-type: none"> to expand Lismore's arts and culture scene; and allow compatible land uses on agricultural land across the LGA.

3.2 Local

The proposal is consistent with the following local plans and endorsed strategies.

Table 4 Local strategic planning assessment

Local Strategies	Justification
Lismore Regional City Action Plan 2036	<p>The planning proposal is consistent with the following priorities of the RCAP:</p> <ul style="list-style-type: none"> Objective 9: Make the city centre the dynamic heart of the Northern Rivers. Objective 12: Strengthen and grow the cultural and arts scene. Objective 16: Enhance tourism, events and visitor experiences.
Local Strategic Planning Statement	<p>The planning proposal is consistent with the following planning priorities of the LSPS:</p> <ul style="list-style-type: none"> Planning Priority 5: Identify & support the expansion of emerging industries (opportunities for tourism are identified and promoted; promote and support the development of sustainable and creative industries in Lismore). Planning Priority 6: Expand agriculture & agribusiness while protecting productive agricultural land (amend the LEP to identify opportunities for diversification and value adding).

Community
Strategic Plan

The planning proposal is consistent with the following priorities of the CSP:

- B1: Our community has diverse business and industry, as well as opportunities for investment and growth (support and encourage a diverse and competitive mix of business and industry).
- B2: Our city, villages and riverbank precincts are vibrant and provide diverse activity that strengthens our social connections (facilitate ongoing growth opportunities and improvements within the Lismore CBD).
- B3: Our community has a diverse and thriving arts and cultural life.
- D3: Our land-use planning caters for all sectors of the community (ensure a diverse range of land use and development opportunities are available).

3.3 Section 9.1 Ministerial Directions

The planning proposal (subject to changes recommended by this report) is considered to be consistent with all relevant section 9.1 Directions except as discussed below.

Table 5 Section 9.1 Ministerial Direction assessment

Directions	Consistent / Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Justifiably inconsistent	<p>The planning proposal is inconsistent with this direction as it alters a provision that has the potential to affect flood prone land.</p> <p>The inconsistency is considered to be of minor significance. Lismore LEP 2012 contains suitable provisions (clauses 5.21 and 5.22) to ensure that this matter can be appropriately considered and addressed as part of any future site-specific development application.</p>
4.3 Planning for Bushfire Protection	Unresolved	<p>This direction applies to all local government areas when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to, land mapped as bushfire prone land.</p> <p>The direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway determination is issued and before community consultation is undertaken. Until consultation with the RFS has been undertaken regarding this planning proposal, the direction remains unresolved.</p>

4.5 Acid Sulfate Soils	Justifiably inconsistent	<p>The planning proposal is inconsistent with this direction as it has the potential to affect acid sulfate soils and the proposal is not supported by an acid sulfate soils study that considers the Acid Sulfate Soils Planning Guidelines.</p> <p>The inconsistency is considered to be of minor significance. Lismore LEP 2012 contains suitable provisions (clause 6.1) to ensure that this matter can be appropriately considered and addressed as part of any future site-specific development application.</p>
5.1 Integrating Land Use and Transport	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as it has not considered consistency of the proposal with the aims, objectives and principles of:</p> <ul style="list-style-type: none"> Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and The Right Place for Business and Services – Planning Policy (DUAP 2001). <p>The inconsistency is considered to be of minor significance. Lismore LEP 2012 contains suitable provisions (clause 6.9) to ensure that this matter can be appropriately considered and addressed as part of any future site-specific development application.</p>
8.1 Mining, Petroleum Production and Extractive Industries	Justifiably inconsistent	<p>The planning proposal is inconsistent with this direction as it has the potential to restrict the development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance through the introduction of a more sensitive land use into the rural zone and consultation with NSW Resources has not been undertaken by Council in preparing the proposal.</p> <p>Consistency with this direction is considered to be of minor significance as artisan food and drink industries are similar in nature to other tourist / agri-tourism uses that are already permissible in the rural zone.</p>
9.2 Rural Lands	Unresolved	<p>The planning proposal is considered to be generally consistent with the direction as it will support farmers diversify their activities with a land use that is likely to be compatible with other permissible agricultural supporting uses such as agritourism. It is considered appropriate however that consultation be undertaken with NSW Department of Primary Industries and Regional Development to confirm the suitability.</p> <p>Consistency with this direction will remain unresolved until this consultation is undertaken.</p>

3.4 State environmental planning policies (SEPPs)

The proposal is considered to be consistent with relevant SEPPs.

4 Site-specific assessment

The planning proposal constitutes an amendment to the E1, E2 and RU1 land use tables, amendment to Clause 6.11 of the LEP and the removal of a redundant E1 zone objective. The proposal does not apply to a specific parcel of land; rather, it will facilitate opportunities for light industries, creative industries and tourism development in certain zones.

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

Table 6 Impact assessment

Impact	Assessment
Environmental	Any potential environmental impacts resulting from specific development proposals can be appropriately assessed and addressed at the development application stage.
Social and economic	<p>The establishment of artists' studios, recording studios, and set design and production facilities are compatible with the E1 and E2 zone objectives and are expected to result in positive social and economic impacts.</p> <p>Artisan food and drink industries, such as micro-breweries, are considered compatible with other uses permitted in the RU1 zone and any potential impacts can be effectively considered and addressed through the development assessment process.</p>
Infrastructure	There is not expected to be any significant change in demand for public infrastructure as a result of this planning proposal.

5 Consultation

5.1 Community

The planning proposal is categorised as standard under the LEP Making Guidelines (August 2023). 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

The planning 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 working days to comment:

- NSW Department of Primary Industries and Regional Development- Agriculture
- NSW Rural Fire Service

6 Timeframe

Council proposes a nine month time frame to complete the LEP from the date of the report being tabled at a Council meeting.

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

The Department recommends an LEP completion date of nine months from the date of the Gateway determination in line with the benchmark timeframes and milestones detailed in the Guideline. 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 of local significance 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 the North Coast Regional Plan 2041 and will assist in creating a diverse visitor economy and arts and culture scene, as well as support the productivity of agricultural land;
- it is consistent with the Lismore Local Strategic Planning Statement and will promote and support the development of sustainable and creative industries in the Lismore local government area, while also permitting opportunities for diversification and value adding;
- it will have positive social and economic impacts through creating opportunities for additional commercial development and employment.

Based on the assessment outlined in this report the proposal must be updated before consultation to only identify 'artisan food and drink industry' as permissible with consent in RU1 Primary Production zone rather than permitting 'light industry' and prohibiting 'high technology industry'.

9 Recommendation

It is recommended the delegate of the Secretary:


- Agree that any inconsistencies with section 9.1 Directions 4.1 Flooding, 4.5 Acid Sulfate Soils, 5.1 Integrating Land Use and Transport and 8.1 Mining, Petroleum Production and Extractive Industries are minor or justified; and
- Note that the consistency with section 9.1 Directions 4.3 Planning for Bushfire Protection, and 9.2 Rural Lands is unresolved and will require justification.

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

1. Prior to community and agency consultation, the planning proposal is to be amended to remove the component seeking to permit 'light industry' and prohibit 'high technology industry' in the RU1 Primary Production zone and replace with permitting 'artisan food and drink industry' in the RU1 Primary Production zone.

2. Consultation is required with the following public authorities:
- NSW Department of Primary Industries and Regional Development – Agriculture
 - NSW Rural Fire Service
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of nine months from the date of the Gateway determination be specified on the determination document.



5 December 2024

(Signature)_____
(Date)

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10 December 2024

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