

DELEGATED DETERMINATION REPORT**REPORT TO THE GENERAL MANAGER**

ADDRESS/LOCALITY: LOT: 2 DP: 1214953, DP 808657 lot 3, DP 367581 lot 1, LOT: 12 DP: 844585, LOT: 1 DP: 772627, 8 Sexton Road NORTH LISMORE, 55 Dunoon Road NORTH LISMORE, 3 Old Quarry Road NORTH LISMORE, 30 Old Quarry Road NORTH LISMORE, 48 Old Quarry Road NORTH LISMORE

APPLICATION No: 5.2017.270.1

PROPOSAL: Subdivision of land to create a total of 433 residential allotments, a commercial allotment, open space and areas for environmental management. The proposed development will be undertaken as follows:

Precinct 1 - Total of 95 residential allotments, local centre allotment, open space and provision for environmental management;

Precinct 2 - Total of 295 residential allotments, open space and areas for environmental management;

Precinct 3 - Staged development consent sought in accordance with Section 83B of the EP&A Act for the creation of 43 residential allotments. Concept approval is sought for Precinct 3 and this area will be the subject of a further development application.

The proposed application also seeks approval for associated tree removal, earthworks and infrastructure. The proposal constitutes integrated development in accordance with s.91 of the *Environmental Planning and Assessment Act 1979*. Approval from NSW Department of Primary Industries (Water) is required in accordance with the *Water Management Act 2000*, approval from NSW Roads and Maritime Services in accordance with the *Roads Act 1993*, and approval from NSW Rural Fire Service in accordance with the *Rural Fires Act 1997*.

PLANS REF:

Plans numbered	Title	Drawn by	Issue	Date
117312-30B	Ultimate Overall Proposal Plan	RPS	-	14 February 2018
117312-30D	Plan of Subdivision Precinct One Allotment Layout	RPS	C	31 May 2018
117312-30D	Plan of Subdivision Precinct Two Allotment Layout	RPS	C	31 May 2018
117312-30D	Plan of Subdivision <i>Concept</i> Precinct Three Allotment Layout	RPS	C	31 May 2018
117312-30B	Ultimate Overall Proposal Plan (Heritage Overlay)	RPS	-	14 February 2018
12188-01	North Lismore Plateau Concept Fire Access Track	TGM	00	22/11/2013

OWNER: Mr W A Sexton
APPLICANT: Planners North
AUTHOR: Mrs S J Thatcher
DATE OF REPORT: 27/09/2018
DATE LODGED: 24/08/2017

SUMMARY

ISSUES/VARIATIONS: Aboriginal cultural heritage, ecology, Voluntary Planning Agreements for water and wastewater infrastructure provision and biodiversity certification for stage 3, bushfire, storm water, minor variations of road width requirements as required by Lismore Development Control Plan (LDCP)

MANDATORY PRECONDITIONS: Mandatory Preconditions including SEPP 55 have all been satisfied

SUBMISSIONS: Submissions received are addressed within the report

RECOMMENDATION: Approval

1 Executive summary

- 1.1 Lismore City Council received a Development Application (DA) from Planners North for proposed subdivision of land at North Lismore Plateau, which is located to the west of Dunoon road, North Lismore. The proposal involves the creation of a total of 433 residential allotments, a local centre allotment and a number of recreation and environmental management areas. Precinct 1 creates a total of 95 lots, Precinct 2 has 295 lots and Precinct 3 with approximately 43 lots is concept only for the purposes of this application. The application also seeks approval for associated tree removal, earthworks and infrastructure.
- 1.2 The proposed development constitutes 'regional development' requiring referral to the Joint Regional Planning Panel (JRPP) for determination as it has a Capital Investment Value of over \$30 million. While Council officers are responsible for the assessment of the DA, the Northern Joint Regional Planning Panel is the consent authority.
- 1.3 The proposal is consistent with the 20 year vision set out in the 2036 North Coast Regional Plan and is considered to be a positive contribution to the region's primary growth anchors and provides opportunities for more diverse housing within the region.
- 1.4 The subject site is zoned R1 General Residential; E2 Environmental Conservation; E3 Environmental Management; B1 Neighbourhood Centre; and RU1 Primary Production and the proposed subdivision is permissible in the zones with development consent.
- 1.5 A detailed assessment has been undertaken against the provisions of *Lismore Local Environmental Plan 2012* (LLEP 2012) and Lismore Development Control Plan (LDCP).
- 1.6 The development complies with the numerical requirements of LLEP 2012 and is consistent with its relevant objectives. It complies with LDCP with the exception of minor variation to the proposed road reserve from 24.5metres (as required by LDCP Table 1) to a 22m wide road reserve incorporating 2 x 6m wide lanes, a footpath either side and appropriate verge for street tree planting and provision of services. However, on merit the proposed variation is considered satisfactory.
- 1.7 The DA was referred to the Department of Primary Industries – Water and Rural Fire Service as Integrated Development, both of which raised no objection to the proposal subject to conditions of consent.
- 1.8 The DA was also referred to Office of Environment and Heritage, Ngulingah Local Aboriginal Land Council, the Roads and Maritime Services, Essential Energy, NSW Police, Department of Industry – Crown Lands & Water and Civil Aviation Safety Authority, all of which raised no objection to the proposal subject to conditions of consent (where required).
- 1.9 The initial request for additional information was forwarded by e-mail on 7 September 2017, followed by a formal letter that was sent on 21 September 2017.
- 1.10 For the first public exhibition the DA was advertised in Lismore City Council's *Local Matters* publication between 13 September 2017 and 13 October 2017. The DA was notified to the North Lismore Plateau Registered Aboriginal Parties (NLP RAP), adjoining and nearby property owners and occupants between 7 September 2017 and 13 October 2017. In accordance with the provisions of cl.89 (3)(a) of the *Environmental Planning & Assessment Regulation 2000* the notification period was for twenty eight (28) days as "nominated integrated development". Nineteen (19) submissions were received and the issues raised in submissions are included within the body of this report. 28 days commences on the day after the notice is published in the newspaper.
- 1.11 Further information was provided by the applicant along with a request that the application be amended to include a full set of plans providing detail in relation to the proposed fire trail, in accordance with the provisions of cl.55 of the *Environmental Planning and Assessment Regulation 2000*.
- 1.12 For the second public exhibition the DA was advertised in Lismore City Council's *Local Matters* publication between 14 March 2018 and 14 April 2018. The DA was notified to NLP

RAP, submitters from the first public exhibition, adjoining and nearby property owners and occupants between 8 March 2018 and 14 April 2018. The purpose of the notification was to advise that additional information relating to the proposed subdivision development had been received and was available for perusal. Eight (8) submissions were received at that time, and a further three (3) submissions received shortly after the close of the exhibition period, and the issues raised in submissions are included within the body of this report.

- 1.13 Voluntary Planning Agreement (VPA) negotiations were held with Council and following agreement on the terms of the VPAs the matter was reported to Council's Ordinary Meeting of 13 February 2018. Council resolved at that meeting to place the VPAs on public exhibition.
- 1.14 In conjunction with the development application for subdivision Council also advertised the receipt of two Draft Voluntary Planning Agreements relating to this application, between 28 February 2018 and 28 March 2018.
- 1.15 During public exhibition of the Draft VPAs two (2) submissions were received. The issues raised in submissions are included within the report to Council at its Ordinary meeting of 8 May 2018. At the meeting Council resolved to accept the draft VPA for Biodiversity Certification and draft VPA for Provision of Water and Wastewater Infrastructure and authorised the General Manager to execute the Agreements.
- 1.16 Further requests for additional information were made to the applicant seeking further details with regard to flora and fauna assessment, cultural heritage matters and contaminated land assessment.
- 1.17 For the third public exhibition the DA was advertised in Lismore City Council's *Local Matters* publication between 29 August 2018 and 29 September 2018. The DA was notified to NLP RAP, submitters, adjoining and nearby property owners and occupants between 21 August 2018 and 28 September 2018. The purpose of the notification was to advise that additional information relating to the proposed subdivision development had been received and was available for perusal. Seven (7) submissions were received and the issues raised in submissions are included within the body of this report.
- 1.18 The proposal has been assessed against relevant clauses within the applicable environmental planning instruments. The development is considered to satisfy all relevant clauses. A detailed assessment is at Section 11.1 of this report.
- 1.19 Overall, the development is considered satisfactory with regard to key issues, including Aboriginal cultural heritage, ecology, social and economic impacts, and minor variation to LDCP requirements subject to the imposition of suitable conditions of consent to satisfactorily address these issues and enhance the development. The proposed development has been assessed against the relevant matters for consideration pursuant to s.415C of the *Environmental Planning and Assessment Act 1979*, including the suitability of the site and the public interest, and is considered satisfactory.
- 1.20 It is recommended that the proposed development be approved subject to the conditions documented at **Attachment 1** to this report.

2 Background

The site known as North Lismore Plateau (NLP) comprises an elevated plateau west of Dunoon Road in North Lismore and approximately 1.5 kilometres north-west of the Lismore CBD. The land is generally located above the 70 metre contour and is approximately 79.95 ha in area. Vegetation is mainly cleared pasture with pockets of rainforest regrowth and Camphor Laurel. Much of the area enjoys views over the Lismore CBD and surrounding area. A disused Council-owned hard rock quarry is located at the southern end of the plateau. The locality is well placed in relation to employment, schools, active open space, services and facilities in North Lismore and the Lismore CBD. It is an area that can provide a balance to the pressure for residential development east of Lismore.

The site has been identified as a potential location for urban development for more than 20 years through LEP Investigation zones, Lismore City wide strategic plans and local growth management strategies, and since 2006, the Far North Coast Regional Strategy.

NLP's location means it is of strategic importance to the rejuvenation of the Lismore CBD, the expansion of North and South Lismore industrial and commercial areas and the growing health and allied services sector, which is underpinned by the State government's significant investment in the upgrade of the Base Hospital. NLP will balance Lismore's growth, which has spread consistently east towards Ballina and the coast, and make better use of infrastructure such as schools and open space that exist to the north and west of the CBD.

As part of its comprehensive planning for the NLP, in consultation with TPG (now known as PNPG) and Winten, Council has prepared and adopted an Infrastructure Delivery Plan, a Section 7.11 Contributions Plan, a Section 64 Development Servicing Plan and a Development Control Plan (DCP) to ensure that major infrastructure upgrades to water, sewer and roads will occur in a timely manner and can be paid for as development proceeds in accordance with an agreed structure plan, which is part of the DCP.

The rezoning of the land from RU1 Primary Production to include E2 Environmental Conservation, E3 Environmental Management, B1 Neighbourhood Centre, R1 General Residential came into effect on 15 April 2016.

The applicant attended two formal Pre-lodgement meetings with Council on 6 February 2013 and on 15 October 2015. Formal minutes of the meetings were provided to the applicant that gave an outline of technical reports required and issues to be addressed in any future development application to be lodged with Council.

The development application, the subject of this report, was lodged with Council on 24 August, 2017. There have been delays in processing due to further requests for technical reports / plans to be updated throughout the assessment of this application.

3 Description of Proposal

Proposed is the Subdivision of land to create a total of 433 residential allotments, a commercial allotment, open space and areas for environmental management. The proposed development will be undertaken, as shown on the Proposed Concept Plan at Figure 1, as follows:

Precinct 1 - Total of 95 residential allotments, local centre allotment, open space and provision for environmental management;

Precinct 2 - Total of 295 residential allotments, open space and areas for environmental management;

Precinct 3 - Staged development consent sought in accordance with Section 83B of the EP&A Act for the creation of 43 residential allotments. Concept approval is sought for Precinct 3 and this area will be subject of a further development application.

The proposed application also seeks approval for associated tree removal, earthworks and infrastructure. The proposal constitutes integrated development in accordance with s.91 of the *Environmental Planning and Assessment Act 1979*. Approval from NSW Department of Primary Industries (Water) is required in accordance with *Water Management Act 2000*, approval from NSW Roads and Maritime is required in accordance with *Roads Act 1993*, and approval from NSW Rural Fire Service is required in accordance with *Rural Fires Act 1997*.

The application also includes the works required to provide infrastructure to the proposed subdivision development including (but not limited to):

- Site preparation involving clearing and grubbing, stripping and stockpiling of topsoil and the provisions of construction access;
- Civil construction works on the site, including earthworks, construction of roads, installation of water, sewer and drainage underground reticulation, laying of conduits for electricity and NBN, and pavement construction and landscaping.
- Finishing works including removal of temporary works, topsoil rehabilitation and general site clean-up.



Figure 1: Extract from RPS Design Series Plans showing overall concept plan

A full copy of the plans showing the lot layout for each Precinct are attached to this report as **Attachment 2**.

4 Description of Locality

The subject site as shown in Figure 1 and Figure 2 and described in Real Property terms as Lot 2 DP 1214953 and Lot 3 DP 808657. Lot 2 DP 1214953 has a total area of 79.95ha excluding roads and Lot 3 DP 808657 has an area of 8.091ha. The site also contains a number of road reserves that have been transferred to Lismore City Council.

The proposed development provides for the use and the upgrade of the existing fire trail located on Council land immediately to the south of the site, which is located on Lot 1 DP 772627, Lot 12 DP 844585 and Lot 1 DP 367581.

The subject site ranges in elevation from 130m AHD in the west to 10m AHD in the east adjoining Dunoon Road. The upper and lower precincts are separated by a substantial corridor of vegetation running generally north to south throughout the site. The upper plateau affords panoramic views towards Lismore City. Constraints mapping also identifies areas within the site having a slope in excess of 18 degrees.

The northern edge of the development site adjoins land known as the Plateau North Property Group land (PNPG) which is also identified for future residential development in accordance with the Structure Plan adopted in Lismore Development Control Plan Part B Chapter 10 – North Lismore Plateau Urban Release Area.

Development to the south comprises existing rural land holdings and Council owned land including the quarry site containing significant vegetation. The western edge of the development site includes existing vegetation with rural land holdings. The Lismore Showground is located to the south-east of the development site with residential land holdings immediately to the south of the Showground site.

5 Locality Map

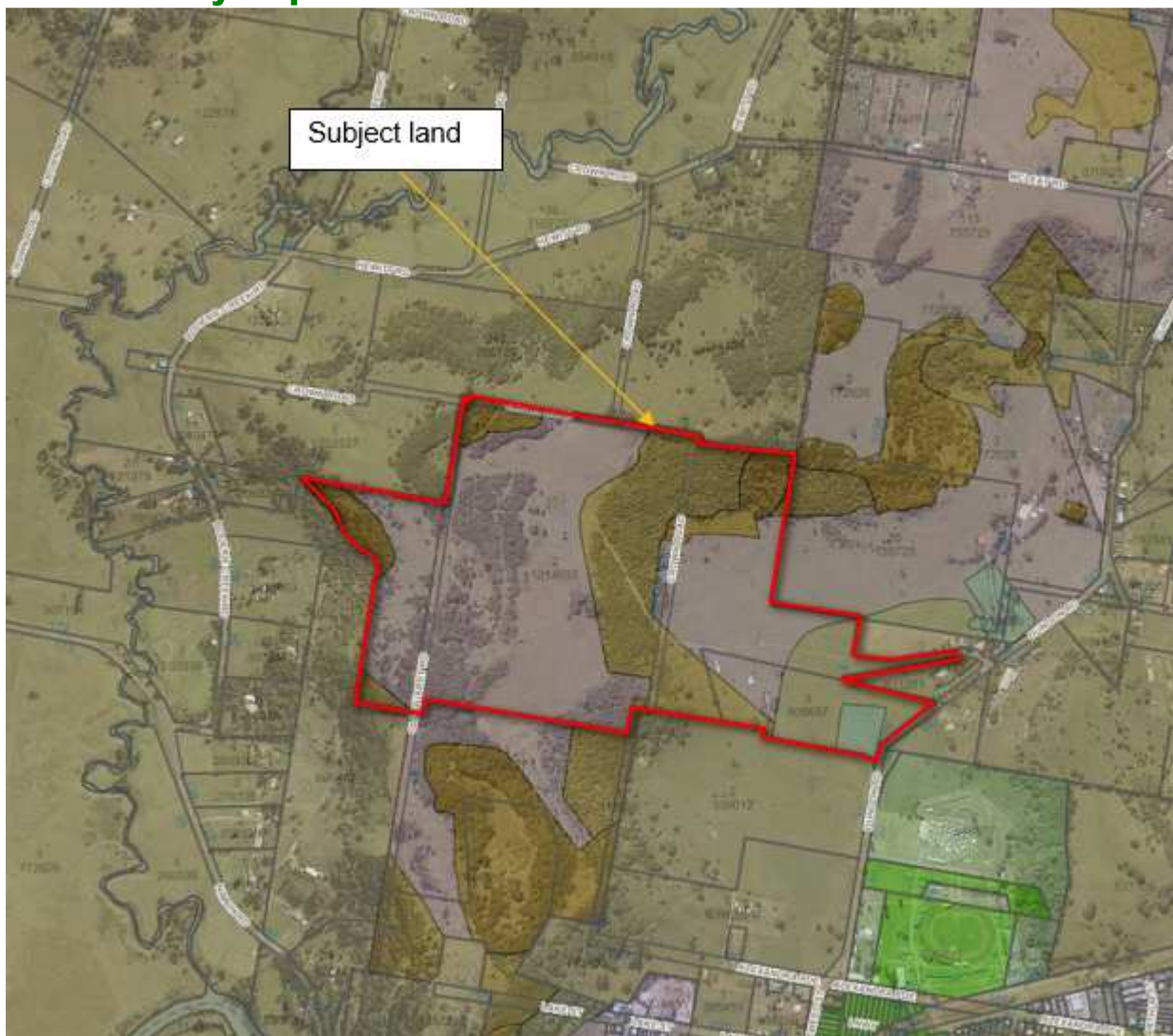


Figure 2: Locality plan

6 Statutory Controls

Lismore LEP 2012

- Zoning – RU1 Primary Production, E2 Environmental Conservation, E3 Environmental Management, B1 Neighbourhood Centre, R1 General Residential
- Item of Heritage – No
- In vicinity of Heritage Item – No
- Conservation Area – No

S7.11 Contributions Plan

Environmental Planning & Assessment Act 1979

SEPP No. 44 – Koala Habitat Protection

SEPP No. 55 – Remediation of Land
SEPP No. 64 - Advertising and Signage
SEPP (BASIX) 2004
SEPP (Infrastructure) 2007
SEPP (Rural Lands) 2008
SEPP (State and Regional Development) 2011
Advertised Development
Nominated Integrated Development

7 Policy Controls

Lismore Development Control Plan
1.8.22 Urban kerbside numbering system policy
1.8.4 Undergrounding of Electricity Mains & Provision of Street Lighting
1.8.6 Undergrounding of Telephone Plant in Subdivisions
Community Sun Protection Strategy
Guidelines & Practices for Mediation of DAs
5.2.10 Equity in Access and Provision of Facilities to Public Spaces
5.2.29 Development Application Determination
5.2.30 Social Impact Assessment
5.3.2 Planning Agreements Policy
5.17.8 Sustainability, Viability & Amenity of Rural & Urban Land
8.2.1 Public Art Policy

8 Internal Referrals

Set out below is a summary of each of the relevant referral officer's comments. A full copy of each of the referral comment reports (where relevant) is included with this report as **Attachment 3**.

8.1 Building

The application has been reviewed and comments provided, with no objections raised subject to the imposition of appropriate conditions that are included in the draft conditions attached to this report.

8.2 Environmental Health

The application has been reviewed and comments provided, with no objections raised subject to the imposition of appropriate conditions that are included in the draft conditions attached to this report.

The issues addressed within the referral comments from this officer includes potential noise impacts and land contamination, as well as addressing stormwater treatment and buffers from neighbouring land. It is noted that the officer recommends the inclusion of a condition of development consent relating to potential noise from the Lismore Showground speedway events. After consideration of this issue, the inclusion of such a condition is not supported by the assessing officer (the author of this Report) and such a condition has not been included within the draft conditions of consent attached to this Report.

As an alternative to a condition, it is proposed that council will include the mapping from the Noise report on the GIS system. This will allow Council to include advice to prospective purchasers that may be impacted by future noise from the speedway with a notation to this effect on s.10.7 Planning certificates.

8.3 Water and Sewer

The application has been reviewed and comments provided, with no objections raised subject to the imposition of appropriate conditions that are included in the draft conditions attached to this report.

The provision of water and wastewater infrastructure is discussed within the comments provided from the Water and Sewer Development Engineer. The referral also provides comments with regard

to some of the challenges for the provision of water supply and sewerage services. The infrastructure provision is also linked with Council's Delivery Service Plan.

8.4 Engineering/Traffic/Stormwater Drainage

The application has been reviewed and comments provided, with no objections raised subject to the imposition of appropriate conditions that are included in the draft conditions attached to this report.

The comments provided by Council's Development Engineer include the proposed variation in road reserve width for the modified form of Boulevard Collector (Minor) within Precinct 2 from 24.5m to 22m, traffic impact, external and internal road network, pedestrian facilities and public transport, earthwork, stormwater quantity, and flooding. The report concludes that all of these issues have been satisfactorily addressed within the application documents and supporting technical reports.

8.5 Landscaping Design / Council assets

The application has been reviewed and comments provided, with no objections raised subject to the imposition of appropriate conditions that are included in the draft conditions attached to this report.

The concept designs for landscaping as proposed by the "Updated Landscape Package" documents are supported with the following recommendations made:

- 1 Remove *Agathis robusta* from the tree species list as this species does not adapt well to this area.
- 2 Remove the following from Boulevard list due to root system issues being too large on shallow soils: *Araucaria cunninghamii*; *Elaeocarpus* sp.; *Ficus* sp.; and *Flindersia schottiana*.
- 3 Add the following to Boulevard list: *Brachychyton acerifolius*; *Waterhousia floribunda* 'sweeper';
- 4 The Large fig tree within Local Park 2 must be significantly mulched and protected before site works begin.
- 5 The large *Corymbia* tree at the base of Park 2 must also be significantly mulched and protected before works commence. This tree has a heavy lean, and therefore, landscaping features attracting users of the park should be focused away from the lean.

These recommendations have been included within the appropriate condition of development consent.

8.6 Ecology

Multiple flora and fauna surveys were undertaken from 2011-2017 by James Warren and Associates Pty Ltd, Greenloaning Biostudies Pty Ltd and most recently Peter Parker Environmental Consultants Pty Ltd (final report dated 24 July 2018). These studies identified that native vegetation on the subject site is in general highly degraded, reflecting a history of large scale vegetation clearing for agricultural purposes.

Most of the habitat on the site is low quality vegetation dominated by weedy stands of camphor laurel, broad leaved privet, small leaved privet and lantana with a minor component of native rainforest pioneer species such as blackwood, red kamala, foam bark and muttonwood.

Although several large paddock trees including figs and a few large eucalypts were recorded on the subject site, there are few fauna habitat features such as hollow-bearing trees and fallen logs. A patch of 126 forest red gums (0.87 ha) located in Precinct 2 is classified as preferred koala habitat.

The initial flora and fauna surveys recorded a number of threatened fauna species on the site including koala, rose-crowned fruit dove and a species of microbat. Several threatened plant species were also recorded including rough-shelled bush nut, sweet myrtle, arrowhead vine, three patches of hairy-joint grass and a large population of thorny pea. Several targeted threatened species surveys were conducted from 2012 to 2016 to quantify and map the extent of thorny pea, map the

extent of hairy-joint grass determine whether there was a resident koala population on the subject site. The targeted threatened species surveys found:

- The bulk of the thorny pea population is in the west of Precinct 3, although a few individuals of thorny pea were recorded in Precincts 1 and 2
- Two substantial patches of hairy-joint grass were recorded in Precinct 1 (1.72 ha) and Precinct 3 (1.28 ha) with a small, seasonally variable patch recorded in the north of Precinct 3.
- Koala scat surveys undertaken in March 2014, March 2015 and November 2016 recorded two old scats, three old scats, 30 scats and a koala skeleton respectively.
 - The flora and fauna assessment supporting the development application asserts that low koala activity in March 2014 and March 2015 is consistent with the general observations of scats under forest red gum trees each time that the site was visited.
 - The flora and fauna assessment also asserts that the scats recorded in 2016 were those of the deceased koala which remained on site for an extended period and browsed on multiple trees.

In conclusion the documentation provided has satisfactorily addressed all ecological issues.

The application has been reviewed and comments provided, with no objections raised subject to the imposition of appropriate conditions that are included in the draft conditions attached to this report. In particular the requirement for an Environmental Management Plan must be provided by the proponent and approved by Council before most direct ecological impacts (generally within Precinct 2) can take place.

8.7 Aboriginal Cultural Heritage

To ensure an appropriate and open process was followed in the assessment of Aboriginal Cultural Heritage, Council engaged the services of an independent consultant with suitable qualifications and experience in this work.

Council is particularly mindful of the interest expressed by Mr Mickey Ryan (and others) in the rezoning and proposed development of the land. Mr Ryan is opposed to the rezoning and development having regard to claims made by him (and others) about the heritage significance of the area (the plateau). Mr Ryan's claims include: that certain rock or stone formations on the plateau are not European (or postcolonial) construction and may be evidence of indigenous settlement; and that a burial site on the plateau may be an indigenous burial site rather than a settler burial site (from the late 19th Century).

In addition to the matters noted immediately above, Council has consulted extensively with respect to Indigenous Cultural Heritage and has noted the concerns raised by a number of indigenous people and groups. This consultation has occurred particularly through the North Lismore Plateau Registered Aboriginal Parties (NLP RAP).

In response to the matters raised Council retained an independent consultant to assist it to consider these issues in the development assessment process.

Mr Neville Baker of Baker Archaeology was engaged to undertake the peer review and provides the following summary of the work undertaken.

"I find that the archaeological investigations have been thorough and am of the opinion that, apart from the surface sites of contemporary Aboriginal cultural significance recorded by Converge, that Aboriginal stone artefact sites are rare, widely scattered and likely do not reflect a broad low-density distribution across the land. Matter of archaeological uncertainty identified early in the assessment process have been adequately resolved through test excavations across the NLP as well as a focussed exploratory excavation of a suspected grave site on Council land in the southern area. No grave was found to exist.

Aboriginal consultation has been thorough and consistent with best practice principles. I understand that there is firm opposition to the development by Mickey Ryan, but that other RAPs reluctantly agree and are actively involved in master-planning to have their views on planning integrated into the development layout.

On review of the submissions I see no new issues arising that have not been identified or addressed in the Aboriginal heritage assessment. A consistent theme in submissions was that Mickey Ryan had not been properly consulted, which appear at odds with the records of his involvement in RAP meetings and fieldwork from the outset of the project.

In my opinion the Everick reports could be improved in their structure and level of detail to meet OEH guidelines if they are to be used to support any AHIP application. However, given that the DA will not impact Aboriginal sites, the Everick reports provide sufficient documentation for an approval body."

The application has been reviewed and comments provided, with no objections raised subject to the imposition of appropriate conditions that are included in the draft conditions attached to this report.

8.8 Property Services

Council as owner of the land proposed to be traversed for the purposes of a fire trail for Precinct 2 of the proposed development has granted consent for this purpose, subject to the applicant entering into a Licence Agreement.

The Licence Agreement will include (but not be limited to) the following conditions:

- Maintenance of the track to keep it clear and road accessible
- Restricting access to the track for NSW Rural Fire Service purposes only
- Consultation with the North Lismore Plateau Registered Aboriginal Parties and Native Title holders to determine the level of cultural heritage assessment and provide input into the trail design (along with ecological assessment)
- Indemnity
- Environmental Protections
- The licence will automatically terminate once the alternative fire access is constructed, or the development consent lapses, whichever occurs first.

The application has been reviewed and comments provided, with no objections raised subject to the imposition of an appropriate condition regarding the Licence Agreement, which has been included in the draft conditions attached to this report.

9 External Referrals

A copy of all Government department responses are attached to this report as **Attachment 4**.

9.1 Ngulingah Local Aboriginal Land Council

The application was referred to the Ngulingah Local Aboriginal Land Council (Ngulingah LALC) on 4 September 2017. No response has been received to date.

9.2 Roads and Maritime NSW

The application was referred to the RMS and comments were received on 20 September 2018, raising no objection and recommending conditions to be placed on the Development Consent, that are included within the draft conditions of consent.

9.3 Office of Environment & Heritage (Threatened Species)

The application was referred to the Office of Environment and Heritage and comments were received on 12 July 2018, raising no objection and recommending Council satisfy itself that the biodiversity impacts have been adequately assessed and offset.

9.4 NSW Heritage Office (Cultural Heritage)

The application was referred to the Office of Environment and Heritage and comments were received on 3 October 2018, raising no objection and advising that the further information supplied addresses all previous concerns and no further action is required.

9.5 Essential Energy

The application was referred to Essential Energy and comments were received on 6 October 2017, raising no objection and recommending conditions to be placed on the Development Consent, that are included within the draft conditions of consent.

9.6 Civil Aviation Safety Authority (CASA)

The application was referred to CASA and comments were received on 22 September 2017, raising no objection and recommending conditions to be placed on the Development Consent, that are included within the draft conditions of consent.

9.7 NSW Police

The application was referred to NSW Police on 4 September 2017 and no response has been received to date.

10 Integrated Referrals

10.1 Department of Primary Industries (Water)

The application was referred as nominated integrated development and comments were received on 26 September 2018, raising no objection and recommending conditions to be placed on the Development Consent, that are included within the draft conditions of consent.

10.2 NSW Rural Fire Service

The application was referred and comments were received on 26 September 2018, raising no objection and recommending conditions to be placed on the Development Consent.

Following discussion with Council's Property Services section it was requested that the RFS amend Condition 13 to exclude the requirements for an s88B instrument over Council's land for the purpose of the temporary fire trail to service Precinct 2 of the proposed development. This matter is discussed in detail above at Section 8.8 of this report.

An amended Bushfire Safety Authority was issued by RFS and submitted to Council on 4 October 2018. The conditions recommended in that document have been included within the draft conditions of consent.

11 Matters for Consideration

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

11.1 Provisions of environmental planning instruments

Lismore LEP 2012

Zone, Definition and Permissibility

The proposed development is permissible as “subdivision” within the R1 General Residential, RU1 Primary Production, E2 Environmental Conservation and E3 Environmental Management zones under the provisions of the *Lismore LEP 2012*.

Zone objectives and Zoning Control Tables

Having regard to the provisions of *Lismore LEP 2012*, it is considered that:

- (a) The development is in accordance with clause 2.3 and promotes the specific aims of this plan, the objectives of the zone and the objectives of the controls, and
- (b) The development, in particular, is in accordance with and promotes the character of the neighbourhood within which the development is carried out.

As such, consent to the development may be granted.

Part 2 - Permitted or Prohibited Development

1. Subdivision – consent requirements (cl 2.6)

Consent is being sought by way of this application.

Part 4 – Principal Development Standards

2. Minimum subdivision lot size (cl 4.1)

The minimum subdivision lot size in the R1 General Residential zone is 300m² and each of the proposed allotments exceed this minimum lot size.

The remainder of the land is zoned either RU1 Primary Production, E2 Environmental Conservation or E3 Environmental Management, all with a minimum lot size of 40ha.

The lots created in these zones do not exceed the minimum lot size requirement of 40ha. As the lots proposed are in split zones it is proposed to create them in accordance with the provisions of cl4.2E.

3. Exceptions to minimum subdivision lot sizes for certain split zones (cl 4.2E)

The remainder of the land is zoned either RU1 Primary Production, E2 Environmental Conservation or E3 Environmental Management and proposed lots 7001, 7002 and 7003 do not meet the minimum 40ha lot size.

The applicant provides the following comments in this regard:

The provisions of Part (3) of Clause 4.2E enable Development Consent to be granted to subdivide an original lot to create lots if one of the resulting lots will leave only the land in zone RU2 Primary Production, zone E2 Environmental Conservation or zone E3 Environmental Management that was in the original lot. The residual land is identified on the proposed plans as Lots 7001, 7002 & 7003.

The intent is that the proposed plans of the development identify the residual RU1, E2 & E3 land associated with each stage of the subdivision. The residual allotments proposed contain only the land zoned RU1, E2 or E3 in the original lot.

In the event that the identification of the residual land into effectively 3 residual lots is considered to be inconsistent with the provisions of clause 4.2E in Council's view, it is submitted that the residual land within each precinct can be consolidated into one residual parcel as the staging of the subdivision progresses. For example, Lot 7001 in Precinct 1 could be consolidated with the Precinct 2 & 3 land pending the creation of the ultimate residual single land parcel.

Council supports the creation of Lots 7001, 7002 and 7003 in accordance with the provisions of this clause in line with the comments provided by the applicant. It is contended that the creation of the lots meets the provisions and intent of this clause.

Part 5 – Miscellaneous Provisions

4. Preservation of trees or vegetation (cl 5.9)

Council is satisfied that the vegetation that is to be removed pursuant to the DA is an acceptable impact and other environmental benefits will accrue as a result of the grant of consent.

5. Heritage Conservation (cl5.10)

Council has considered the effect of the proposed development on the heritage significance of the items and the area and has been assisted by the reports and the peer review undertaken by Mr Neville Baker of Baker Archaeology. Council is satisfied that the impacts on the heritage significance of the area are acceptable.

Part 6 – Additional Local Provisions

6. Earthworks (cl 6.2)

Consent is sought by way of this development application. Council is satisfied that the earthworks are acceptable.

7. Flood planning (cl 6.3)

This issue has been addressed comprehensively in the Flood Planning Assessment provided with the application documents. The proposed development is consistent with the objectives of the clause. Council is satisfied that the development meets the requirements of sub clause 6.3(3) of this clause.

8. Drinking water catchments (cl 6.4)

The land is within the Wilson River drinking water catchment. Council is satisfied that the development is not likely to have any adverse impact on the quality and quantity of water entering the drinking water storage. The proposed development has been designed, sited and managed to avoid any significant adverse impact on water quality and flows.

9. Airspace operations (cl 6.5)

Council has consulted with the Civil Aviation Safety Authority (CASA) as the development is approximately 2.5 NM north of the runway at Lismore Aerodrome. The land has a natural land elevation of 130m AHD at its closest point to the aerodrome, and this could infringe on the inner horizontal surface for the Lismore Aerodrome Obstacle Limitation Surfaces.

CASA advises that should the development result in construction sites and cranes the applicant should be referred to the procedure design organisation/s responsible for the maintenance of instrument flights procedures at Lismore Aerodrome.

As part of the application process consultation should also be undertaken with the Lismore Aerodrome operational management (OMT) to ensure that aviation issues have been considered. A condition of consent to this effect has been included within the Draft Conditions of Development Consent attached to this report.

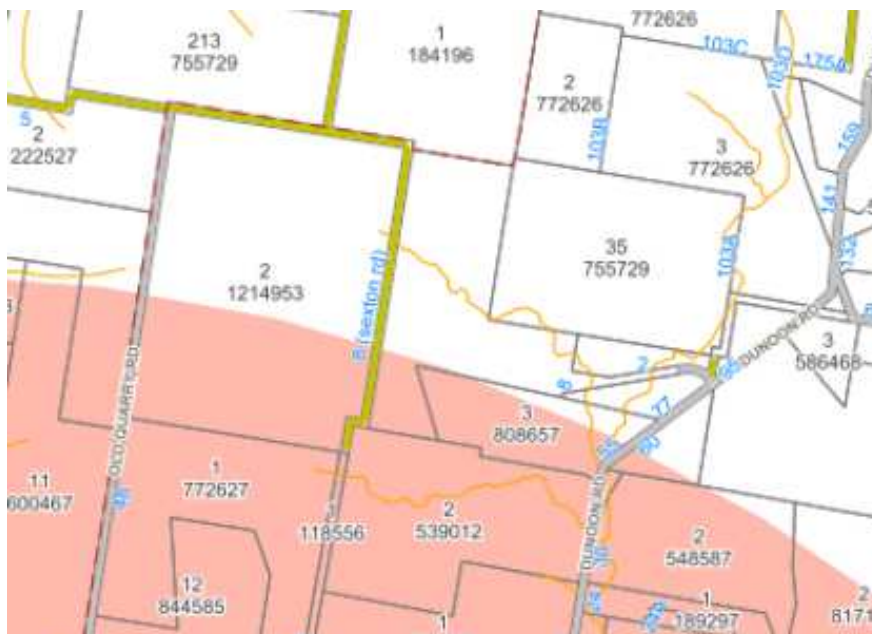


Figure 3: Extract from Council's GIS showing the 4 km Obstacle aircraft buffer 4km

10. Essential services (cl 6.9)

All essential services are available to the development

Compliance Table

STATUTORY CONTROL –Lismore Local Environmental Plan 2012				
Site Area – #m ²	Existing	Proposed	Control	Complies
Residential				
Minimum Lot Size (Cl. 4.1)	300m ²	>300m ²	300m ²	YES

SEPP 44 – Koala Habitat Protection

The site is over 1ha in area, and contains core koala habitat on the site.

An assessment in accordance with the provisions of SEPP 44 is contained within the revised *Flora and Fauna Assessment* prepared by Parker Environmental consultants Pty Ltd in July 2018. Further discussion on this matter is contained in the “Ecology” comments provided by Council technical staff.

SEPP 55 & Contaminated Land Management Issues

Following a review of available information, Council is unaware of any contamination affecting the site. The subject site has been considered in the context of Clause 7 of *State Environmental Planning Policy 55* and the *Contaminated Lands Management Act 1997* and is unlikely to present contamination issues that require remediation before the development proceeds.

SEPP 64 – Advertising and Signage

There is no advertising and signage proposed as part of this development application.

SEPP (Infrastructure) 2007

Dunoon Road is a Classified Road. The subdivision of 50 or more allotments with access to a Classified Road is identified in Schedule 3 of SEPP (Infrastructure) 2007. The proposed development therefore comprises traffic generating development in accordance with the provisions of the SEPP and was duly referred to the Roads and Maritime Services. A response was received on 20 September 2018.

SEPP (Rural Lands) 2008

The proposed subdivision is considered to be consistent with the provisions of this SEPP.

SEPP (State and Regional Development) 2011

In accordance with Part 4 Regionally significant development the development has a capital investment value of more than \$30 million and is declared to be regionally significant development for the purposes of the Act.

Additionally the development has a capital investment value of more than \$5 million and the council is the owner of the land proposed as a fire trail and is a party to a planning agreement relating to the development.

It is noted that at the time of lodgment of the development application that the legislative requirements stated "\$20 million" rather than \$30 million, which has no effect on this application as the capital investment value of the development is over \$30 million.

Lismore Development Control Plan

The application has been assessed against the relevant controls in the Lismore DCP as indicated in the following compliance table, and comments are provided where the proposal does not strictly comply with the applicable provisions or conditions are required to address certain matters. Additional more detailed comments with regard to the major issues are provided after the table.

1. Development Control Plan Compliance Table

LISMORE DEVELOPMENT CONTROL PLAN		
	Complies Yes/No	Relevant Comments
North Lismore Plateau		
<i>Development Principles</i>		
Principle 1	Yes	The proposed development meets the development principles as assessed by the applicant within Appendix D3 of the Statement of Environmental Effects
Principle 2		
Principle 3		
Principle 4		
Principle 5		
Principle 6		
Principle 7		
Principle 8		
Principle 9		
Principle 10		
Principle 11		
Principle 12		
<i>Aboriginal Cultural Heritage</i>		
4.1 Identification, Assessment & Management	Yes	The application is accompanied by an Aboriginal cultural heritage assessment report detailing the outcomes of field survey and archaeological investigations on the subject land. The report also provides details of consultation with Registered Aboriginal Parties in this regard. An Aboriginal cultural Heritage Management Plan has also been prepared and provided with the application documentation
<i>Cultural Heritage</i>		
5.1 Identification, Assessment & Management	Yes	Further field investigations were undertaken to ensure potential items of cultural heritage were identified and mapped prior to the submission

LISMORE DEVELOPMENT CONTROL PLAN		
	Complies Yes/No	Relevant Comments
North Lismore Plateau		
		of the Development Application. The reports submitted with the application include a Cultural Heritage Assessment and Cultural Heritage Management Plan
Urban Subdivision		
6.1 Stormwater Management	Yes	The proposed development will protect receiving waters from high flows, erosion and pollution and management stormwater discharge from the development
6.2 Flora and Fauna Conservation	Yes	The application was accompanied by a Flora and Fauna Assessment that demonstrates that the application meets all the requirements of this element subject to the imposition of appropriate conditions of development consent.
6.3 Landscape Planning & Environmental Management	Yes	The application was accompanied by draft landscape and environmental management plans that demonstrates that the application meets all the requirements of this element subject to the imposition of appropriate conditions of development consent.
6.4 Public Open Space	Yes	The supporting documentation provided with the application demonstrates that the proposed development meets the requirements of this element subject to the imposition of appropriate conditions of development consent
6.5 Pedestrian and cycle path network	Yes	The supporting documentation provided with the application demonstrates that the proposed development meets the requirements of this element subject to the imposition of appropriate conditions of development consent
6.6 Staging of infrastructure delivery	Yes	The supporting documentation provided with the application demonstrates that the proposed development meets the requirements of this element subject to the imposition of appropriate conditions of development consent
6.7 External road works	Yes	The supporting documentation provided with the application demonstrates that the proposed development meets the requirements of this element subject to the imposition of appropriate conditions of development consent
6.8 Internal street design	Yes	The supporting documentation provided with the application demonstrates that the proposed development meets the requirements of this element subject to the imposition of appropriate conditions of development consent
Table 1 – NLP Street Network Characteristics	No	The plans submitted provide for a modified form of Boulevard Collector (Minor) within Precinct 2 of the development. This modified design provides for a 22m wide road reserve

LISMORE DEVELOPMENT CONTROL PLAN		
	Complies Yes/No	Relevant Comments
North Lismore Plateau		
		incorporating 2 x 6m wide lanes, a footpath either side and appropriate verge for street tree planting and provision of services. The variation sought for the Boulevard Collector (Minor) is to vary the reserve width from 24.5m as identified in Table 1 to 22m. In this regard the application has submitted that this variation is minor and that the proposal provides an adequate design for the traffic serviced by this road. Additionally, that the road network design is appropriate and performs satisfactorily both from an engineering and urban design perspective. The proposed road network is adequate to service the proposed development and is considered to be consistent with the performance criteria provisions specified at P1 Section 6.8 of the DCP Chapter. It is also submitted that the objectives of the internal street design provisions have been met with the proposal providing for safety and security, improved development efficiency and the provision of valuable community space. Council's Development Engineer provides the following comments: <i>"The applicant has requested a variation from the DCP for the major and minor boulevards, to have a modified layout that has removed the on street cycleways and increased the footpath widths so as to be classified as a shared pathways. This variation is supported by the development engineer for the following reasons;</i> ○ <i>Traffic capacity of the road will not be affected with the modification to the bike lanes</i> ○ <i>Reduced overall carriageway width will in turn reduce whole of life maintenance costs (bike lanes and painted buffers would have been sealed)</i> ○ <i>Removal of painted buffer will also reduce whole of life maintenance costs (renewal painting)</i> ○ <i>Road profile will be a more recognisable design for motorists and cyclists</i> ○ <i>Modification will not alter the aesthetic appeal being developed</i>

LISMORE DEVELOPMENT CONTROL PLAN		
	Complies Yes/No	Relevant Comments
North Lismore Plateau		
		<i>The layout plan provided by the proponent has relied heavily on Local Streets and Access Places to maintain a low speed environment and provide direct access to residential allotments."</i> On this basis Council assessment staff support the proposed variation of the road width for the Boulevard Collector (Minor) from 24.5m to 22 metres, as requested by the applicant.
6.9 Lot sizing for housing diversity	Yes	The supporting documentation provided with the application demonstrates that the proposed development meets the requirements of this element subject to the imposition of appropriate conditions of development consent
6.10 Lot orientation and configuration for solar access	Yes	The supporting documentation provided with the application demonstrates that the proposed development meets the requirements of this element subject to the imposition of appropriate conditions of development consent
Appendix A – Urban Release Area Structure Plan	Yes	The subdivision design is in accordance with the proposed structure plan
Appendix B – Indicative Lot and Dwelling Typologies	Yes	The supporting documentation provided with the application demonstrates that the proposed development meets the requirements of this element subject to the imposition of appropriate conditions of development consent
Appendix C – Indicative Street Specifications	Yes	The supporting documentation provided with the application demonstrates that the proposed development meets the requirements of this element apart from the requested variation to the width of the Boulevard Collector (Minor) to 22 metres as discussed above at <i>Table 1 – NLP Street Network Characteristics</i>
Appendix D – Indicative List of Park Embellishments	Yes	Details to be provided prior to issue of the Civil Works Construction Certificate
Appendix E – Noise map	Yes	Comments noted
Appendix F – areas requiring further Aboriginal cultural heritage investigations at development application stage	Yes	Further investigations were undertaken
Flood Prone Lands		
Development Controls (Floodway, High Flood Risk, Flood Fringe and Low Flood Risk, CBD)	Yes	This Chapter was not addressed in the Development Application but has been considered in the assessment process. It is considered that the development can generally comply with the requirements. Appropriate conditions of development consent have been drafted and imposed.
Residential		
Commercial		
Rural Areas		
Buffers		

LISMORE DEVELOPMENT CONTROL PLAN		
	Complies Yes/No	Relevant Comments
North Lismore Plateau		
Conflicts in Land Uses	Yes	This Chapter was not addressed in the Development Application but has been considered in the assessment process. It is considered that the development can generally comply with the requirements. Appropriate conditions of development consent have been drafted and imposed.
Recommended Buffers		
Crime Prevention Through Environmental Design		
Rationale	Yes	The proposed development complies with the provisions of DCP Chapter 13 through the design of the subdivision layout to provide opportunities for natural surveillance for future residents.
Guidelines for Development Assessment	Yes	
Surveillance (i.e. sit and design of buildings, subdivision design, landscaping and lighting)	Yes	
Access Control and Target Hardening	Yes	
Territorial Reinforcement	Yes	
Defensive Space	Yes	
Waste Minimisation		
Relationship with Legislation	Yes	This Chapter was not addressed in the Development Application but has been considered in the assessment process. It is considered that the development can generally comply with the requirements. Appropriate conditions of development consent have been drafted and imposed.
Handling Waste	Yes	
Development and Construction Certificate Application	Yes	

Relevant Council Policies

1.8.22 Urban kerbside numbering system policy

The draft conditions of consent will require that the street numbering system is to be of the type that is engraved into or painted onto the kerb and covered with reflective paint.

1.8.4 Undergrounding of Electricity Mains & Provision of Street Lighting

The proposed subdivision is considered to be consistent with the provisions of this policy.

1.8.6 Undergrounding of Telephone Plant in Subdivisions

The proposed subdivision is considered to be consistent with the provisions of this policy.

Community Sun Protection Strategy

The draft conditions of consent will include a condition of consent that reflects the requirements of this Policy

5.2.10 Equity in Access and Provision of Facilities to Public Spaces

The draft conditions of consent will include a condition of consent that reflects the requirements of this Policy

5.2.29 Development Application Determination

This Policy is not relevant to the current application as it is being determined by the JRPP.

5.2.30 Social Impact Assessment

The proposed subdivision is considered to be consistent with the provisions of this policy. Social impact as a result of the development is discussed further in Section 11.5 of this report.

5.3.2 Planning Agreements Policy

The proposed subdivision is considered to be consistent with the provisions of this policy.

5.17.8 Sustainability, Viability & Amenity of Rural & Urban Land

The proposed subdivision is considered to be consistent with the provisions of this policy.

8.2.1 Public Art Policy

This Policy is not relevant to the current application as the proposed subdivision is not commercial development over \$2M

11.2 Draft instruments

As at the date of this report there are no draft EPIs on exhibition or recently made that are relevant to the proposed development.

11.3 Voluntary Planning Agreements

The applicant lodged Voluntary Planning Agreements (VPAs) with Council to be considered in conjunction with the development application as follows:

11.3.1 Voluntary Planning Agreement for Biodiversity Certification of the land within proposed Precinct 3 (Concept Plan) – Winten land

Biodiversity certification offers planning authorities a streamlined biodiversity assessment process for areas marked for development at the strategic planning stage. The process identifies areas of high conservation value at a landscape scale. These areas can be avoided and protected while identifying areas suitable for development. Biodiversity certification offers a range of secure options for offsetting impacts on biodiversity.

After biodiversity certification is conferred on an area of land, development may proceed without the usual requirement under the *Environmental Planning and Assessment Act 1979* (EP & A Act 1979) for site-by-site threatened species assessment.

Legislation for biodiversity certification can be found in Part 7AA of the *Threatened Species Conservation Act 1995* (TSC Act).

The flora and fauna assessment submitted with DA17/270 identified areas of hairy joint grass within the proposed development footprint that is proposed for biodiversity certification with the provision of a Hairy joint grass BioBank area. These areas are mapped and shown in the *Flora and Fauna Assessment* dated 18 January 2018 as prepared by Peter Parker Environmental Consultants Pty Ltd and designated as “Fig. 6” within that report.

The proposed VPA to ensure that Biodiversity Certification is undertaken is an approach that is also supported by the NSW Office of Environment and Heritage. This is to ensure that the appropriate process is undertaken for Biodiversity Certification of the land contained within Precinct 3 (Concept Plan only) prior to the assessment of any Development Application for subdivision of the land within this precinct as referred to in clause 4 of the VPA.

11.3.2 Voluntary Planning Agreement for Provision of Water and Wastewater Infrastructure – Winten land

Lismore City Council is the local government authority responsible for the provision of water and wastewater services in the Lismore Local Government Area. At its Ordinary Council meeting of 11 August 2015 Council resolved to “commence negotiations with the developers of the North Lismore Plateau to prepare a draft agreement, outlining the roles and

responsibilities of both the Council and the developers with respect to the delivery of trunk infrastructure internal to the North Lismore Plateau development”.

It was confirmed at that Council Meeting that Council would not be responsible for the provision of trunk water or sewer mains that were within the boundaries of the land being developed. On 24 August 2017 a development application was lodged by Planners North on behalf of the Winten Group for the subdivision of their land at North Lismore Plateau, which is to be determined by the Northern Joint Regional Planning Panel.

The Draft Voluntary Planning Agreement (Draft VPA) seeks to give effect to the Council resolution of 11 August 2015 relating to the provision of the offsite reticulated water trunk main to the northern property boundary of lot 20 in Deposited Plan 1148069 (the TPNG land). The developers (Winten and TPG) will be required to connect to this trunk main.

The Draft VPA also gives effect to the Council resolution relating to the provision of the offsite gravity sewage trunk main to the southern property boundary of Lot 3 in Deposited Plan 808677 (the Winten land). The developers (Winten and TPG) will be required to connect to this trunk main.

11.3.3 Council resolution

Council considered a report at its Ordinary Meeting of 13 February 2018 regarding the Draft Voluntary Planning Agreements (Draft VPAs) for the Winten development on North Lismore Plateau (**Attachment 5**). It was resolved at that meeting that the Draft VPAs be placed on public exhibition.

The public exhibition period was from 28 February 2018 to 28 March 2018 and two (2) submissions were received.

Council considered a further report at its Ordinary meeting of 8 May 2018 (**Attachment 6**). The issues raised in submissions were addressed in the report to Council as follows:

“Lismore City Council borrowing of \$24 Million / Council expenditure to date on infrastructure

Council’s undertakings with regard to the provision of infrastructure at North Lismore Plateau is quite similar to that which happens with any development that occurs throughout Lismore (and elsewhere in NSW). That is, Council pays the cost of constructing infrastructure to service the development and recovers the cost through section 94 and section 64 charges as the development occurs.

In effect, when land is zoned for residential purposes, Council needs to make decisions around the timing of infrastructure. Previous resolutions of Council resulted in works commencing to provide the necessary trunk mains to the edge of the land zoned for residential development at North Lismore Plateau.

The estimated cost to Lismore City Council of servicing the North Lismore Plateau development with water and wastewater services is approximately \$19 million to \$22 million. This includes an allocation of \$5.5 million for part of the cost of constructing the new South Lismore Sewage Treatment Plant. This amount has been allocated based on the pro rata ratio of future loadings on this plant.

Of this amount, \$3 million has already been spent, with the remainder of estimated costs being planned to be spent over the next four years.

Whilst Council is responsible for bearing the up-front cost of providing this infrastructure; this amount can be recovered, over time, through the following sources of future income:

- Contributions paid by developers.
- Future charges paid by residents of the development.

When preparing its current Development Servicing Plan, Council chose to cap developer contributions for all development within the Lismore local government area. In the case of the North Lismore Plateau, this equalled an overall reduction of contributions payable of \$2,794 per lot. This figure includes reductions in both water and wastewater developer charges. Over the whole of the development, this amounts to an approximate figure of \$4 million.

Capping of contributions for the North Lismore Plateau required a cross-subsidy to be paid by existing customers. This subsidy is based on the typical residential bill paid by these customers. For customers connected to both water and sewer the typical cross-subsidy is \$9.77 per annum. For customers connected to Council's water supplies only this typical subsidy is \$6.04 per annum.

Council is currently reviewing its Development Servicing Plan. This may lead to different values of developer contributions being calculated. Changes in the value of developer contributions may result from changes in Council's capital works program, and the costs of construction of new infrastructure, since the plan was last reviewed in 2016. During preparation of this new Plan, Council has the opportunity to:

- determine if it wishes to cap contributions payable for development on the North Lismore Plateau;
- the amount of any capping of contributions; and
- the resulting cross-subsidy to be paid by existing customers.

Cross-over of issues raised with Development Application DA17/270 for NLP Subdivision

It is noted that a number of issues raised within the submissions also raise concerns with regard to the proposed North Lismore Plateau subdivision DA17/270 lodged by the Winten Group. These issues will be addressed separately in the assessment report for the Development Application.

Aboriginal Cultural Heritage Issues

This is a very sensitive issue that has been raised consistently throughout the re-zoning process of the land at North Lismore Plateau. To ensure this issue has been addressed in a respectful manner, Council has facilitated ongoing meetings with the North Lismore Plateau Registered Aboriginal Parties (NLP RAP). These meetings were initiated on 31 July 2013 and have continued to be held in accordance with OEH Guidelines for this purpose.

The NLP RAP has been engaged with various Aboriginal Cultural Heritage professionals throughout this process and were presented a draft Aboriginal Cultural Heritage Assessment (draft ACHA) report and draft Aboriginal Cultural Heritage Management plan (draft ACHMP) during 2017. Further consultation was conducted on the draft documents with final comments and feedback discussed at the meeting held on 19 August 2017. Further negotiations resulted in the two documents being adopted for this purpose, which were lodged with the Development Application in August 2017.

LCC showing total Disrespect for the local Aboriginal community in strategic planning and negotiations for VPAs

Extensive consultation has been conducted by Council starting with the re-zoning process which included engagement with the local Aboriginal community. The DA process has continued consultation process and introduced specialist Aboriginal

Heritage Consultants to liaise with the NLP RAP and work up plans for the development with their valued input. Council has also engaged an independent Aboriginal Heritage Consultant to review Council's actions and ensure proper respect for the local Aboriginal community in accordance with OEH guidelines.

The negotiations for VPAs have been conducted in accordance with Council's Policy and all legislative requirements."

Following consideration of the report Council subsequently resolved as follows:

- "1. Council accepts the draft Voluntary Planning Agreement at Attachment 1 to this report for Biodiversity Certification between Lismore City Council and the Winten Group and authorise the General Manager to execute the Agreement.*
- 2. Council accepts the draft Voluntary Planning Agreement at Attachment 2 to this report for Provision of Water and Wastewater Infrastructure between Lismore City Council and the Winten Group and authorise the General Manager to execute the Agreement."*

A condition of development consent will require the formal execution of the VPAs prior to the issue of any Subdivision Certificate.

11.4 Applicable Regulations

There are no additional requirements in accordance with the provisions of EPA Regulation 2000.

11.5 Social and economic impacts in the locality

The application documents advise as follows with regard to this issue:

"A Social Impact and Economic Development Assessment Report was prepared by RPS in May 2012 in relation to the proposed rezoning of the land. That report recommended that the development of the North Lismore Plateau provide adaptable, affordable and a diverse mix of housing in order to attract a diverse population to the area. That report also recommended that the development should acknowledge and provide a link to the history of the site. The proposed development provides for a diversity of housing form and density and is consistent with the recommendations of the report."

Council considers that the SIA prepared in May 2012 was still current and that an updated SIA was not warranted as much of the data contained within the original SIA remains current.

It is considered that the variety of lot sizes included in the proposed development provides for a diversity of house form and density. Additionally, the landscape design includes retention of trees with cultural significance that have been incorporated into the public recreation space. Further work has been undertaken in conjunction with NLP RAP on interpretive elements to be included within the final landscape design to provide a link to the history of the site.

The report prepared by RPS in May 2012 advised as follows with regard to the positive economic benefits from the development of the North Lismore Plateau to include the following:

- Accommodate future population growth for Lismore that cannot be accommodated in other areas due to issues of slope and flooding, in an area that has been earmarked as being suitable for future residential development consistently through planning processes.
- Future residents will generate retail expenditure on the site, in the Lismore CBD, throughout Lismore and the wider region.
- Generate revenue for the State Government in the form of stamp duty.
- Generate additional rate revenue for Lismore City Council.
- Additional employment opportunities will be created through the construction phase of the development.

- Ongoing employment opportunities will be created for the maintenance of the development.
- The small commercial centre will also provide employment opportunities.

All of these original presumptions are supported and considered to provide positive economic benefits for Lismore and the Northern Rivers region.

11.6 Suitability of the site for the development

The land has been identified as being suitable for the proposed residential subdivision with a neighbourhood business centre in regional and local strategic planning documents for many years.

The proposed subdivision at North Lismore Plateau for residential development will contribute to housing supply, choice and affordability. This is consistent with the Community Vision in Council's Community Strategic Plan relating to affordable housing and housing need.

The proposed subdivision at North Lismore Plateau will also directly contribute to the development of a vibrant CBD through its projected population, physical proximity and infrastructure linkages.

The North Lismore Plateau has significant cultural value for Lismore's Aboriginal community. The heritage assessment process has identified a number of significant sites which have been AHIMS registered. Should development proceed Council is committed to ensuring ongoing engagement with the Aboriginal stakeholders to ensure that cultural heritage is recognized in a manner consistent with the principles of Council's Reconciliation Action Plan. This is consistent with Imagine Lismore's Vision of Aboriginal Recognition.

Potential constraints relating to the site have all been addressed elsewhere in this report. The potential constraints included concerns with regard to the environment, cultural heritage, economic (including cost benefit) and infrastructure supply impacts. Each of these issues have been appropriately addressed and where potential risks and impacts are identified appropriate mitigation measures have been identified.

11.7 Submissions

The application was notified to adjoining and surrounding property owners and advertised in Council's *Local Matters* publication in accordance with the provisions of the *Environmental Planning & Assessment Act 1979* for notification of "nominated integrated development" for 30 days and Lismore DCP for the Notification and Advertising of Development Applications. As a result of the first round of notification and advertising, nineteen (19) submissions were received, the second round of notification and advertising eight (8) submissions were received during the exhibition period and three (3) submissions received shortly after the close of submissions, and the third round of notification and advertising seven (7) submissions were received.

A copy of all submissions received are attached to this report as **Attachment 7**. Each of the submissions received are summarised in order of receipt with an individual response included to address the issues raised in the summary table attached to this report as **Attachment 8**.

The key issues raised in submissions are addressed as follows:

11.7.1 Aboriginal Cultural Heritage

This is a very sensitive issue that has been raised consistently throughout the re-zoning process of the land at North Lismore Plateau. To ensure this issue has been addressed in a respectful manner, Council has facilitated ongoing meetings with the North Lismore Plateau Registered Aboriginal Parties (NLP RAP). These meetings were initiated on 31 July 2013 and have continued to be held in accordance with OEH Guidelines for this purpose.

The NLP RAP has been engaged with various Aboriginal Cultural Heritage professionals throughout this process and were presented a draft Aboriginal Cultural Heritage Assessment (draft ACHA) report and draft Aboriginal Cultural Heritage Management plan (draft ACHMP)

during 2017. Further consultation was conducted on the draft documents with final comments and feedback discussed at the meeting held on 19 August 2017. Further negotiations resulted in the two documents being adopted for this purpose, which were lodged with the Development Application in August 2017. The updated versions of the documents have been provided to NLP RAP as they have been received. It is noted that there was no new information included in the updated versions, they simply added more detail as requested by Council and OEH.

Extensive consultation has been conducted by Council starting with the re-zoning process which included engagement with the local Aboriginal community. The DA process has continued the consultation process and introduced specialist Aboriginal Heritage Consultants to liaise with the NLP RAP and work up plans for the development with their valued input. Council has also engaged an independent Aboriginal Heritage Consultant to review Council's actions and ensure proper respect for the local Aboriginal community in accordance with OEH guidelines.

11.7.2 Ecology / Flora and Fauna / Koala habitat

An Ecological Assessment was prepared by Peter Parker Environmental Consultations, July 2018 to accompany the application documents. Considering the highly disturbed and weed-infested vegetation that is present at the site, and general lack of diversity of fauna habitats, the methodology used for the flora and fauna surveys was generally reasonable and adequate for establishing the potential biodiversity values present at the site.

In conclusion, the assessment identified that it is unlikely that the proposal would result in a significant impact potentially occurring on any threatened flora and fauna species.

A condition of consent will require a Vegetation Management Plan to manage the vegetation removal, monitoring and management of the Hairy Joint Grass and Thorney Pea over the site, compensatory Koala plantings and the establishment of vegetated riparian corridors.

11.7.3 Stormwater runoff

The Stormwater Management Plan prepared by TGM in June 2017 reveals that once the Winten land is developed the post development discharge will be greater than the pre development. To ensure no adverse impacts from stormwater discharge, storage volumes have been calculated for the 1% AEP event and these have been used in the overall design for the end of line wetland detention basin. The detention basin solution ensures that compliance with Council standards for stormwater discharge is achieved from the site. The developer will be required to provide an access driveway to the stormwater detention devices to ensure Council can access for maintenance.

The overland flow paths throughout the development will be a mixture of grass swales and rock lined. The proponent has nominated that grass swales will be used on grades between 1% and 5 % whilst swales will be rock lined when grades exceed 5%. Rock filled gabion baskets and reno mattresses will be used where pipes outlet into grass swales. All open flow drainage channels will be required to maintain a depth x velocity ratio less than 0.4 to ensure safety for anyone moving around them, this will be further assessed during the construction certificate stage for each precinct.

11.7.4 Landslides

The landslips as referenced and detailed in submissions were not within the proposed development area, and appear to have been in a property adjacent to the site. Council is unable to provide further comments on the slip affected lands as it is in separate ownership to the proposed development. Additionally, the geotechnical report submitted with the application documents did not identify any areas of possible slip hazard within the upper land of the development. The issue of land slips within the development will be monitored by Council's Development Engineers during the construction phases.

11.7.5 Traffic / Roads

The external road network will need significant upgrade to have the capacity to cater for the completed NLP. The work done by TGM in 2012 highlighted 6 intersections leading from the NLP development to the CBD which will need to be upgraded. This work has formed the basis for the NLP Infrastructure Delivery Plan (IDP) which has identified how the section 94 levies will be used to complete these upgrade works.

The revised traffic impact assessment prepared by Rytenskild on the 4 July 2018 reveals that the network upgrades that were identified in the work done by TGM in 2012 will satisfactorily mitigate the impact of the traffic generated by the Winten development.

The only external works required by this proposal is the upgrade of Dunoon Road to provide an Auxiliary Left Turn (AUL) lane from the South and Channelised Right Turn (CHR) lane from the North. The design provided in the Roadworks and Drainage Plan Sheet 4 prepared by TGM dated 11/10/2016 is consistent with the upgrades required in the IDP and therefore will be adequate for the proposal.

A fire trail has been provided to give the development 2 access points to the wider road network in case of an emergency. The plans prepared by TGM show an 8.0m wide access that has a grade of under 15%, given this is to comply with RFS guidelines any areas steeper than 12% will need to be sealed.

11.7.6 Financial

Council's undertakings with regard to the provision of infrastructure at North Lismore Plateau is quite similar to that which happens with any development that occurs throughout Lismore (and elsewhere in NSW). That is, Council pays the cost of constructing infrastructure to service the development and recovers the cost through section 94 and section 64 charges as the development occurs.

In effect, when land is zoned for residential purposes, Council needs to make decisions around the timing of infrastructure. Previous resolutions of Council resulted in works commencing to provide the necessary trunk mains to the edge of the land zoned for residential development at North Lismore Plateau.

The estimated cost to Lismore City Council of servicing the North Lismore Plateau development with water and wastewater services is approximately \$19 million to \$22 million. This includes an allocation of \$5.5 million for part of the cost of constructing the new South Lismore Sewage Treatment Plant. This amount has been allocated based on the pro rata ratio of future loadings on this plant.

Of this amount, \$3 million has already been spent, with the remainder of estimated costs being planned to be spent over the next four years.

Whilst Council is responsible for bearing the up-front cost of providing this infrastructure; this amount can be recovered, over time, through the following sources of future income:

- Contributions paid by developers.
- Future charges paid by residents of the development.

When preparing its current Development Servicing Plan, Council chose to cap developer contributions for all development within the Lismore local government area. In the case of the North Lismore Plateau, this equalled an overall reduction of contributions payable of \$2,794 per lot. This figure includes reductions in both water and wastewater developer charges. Over the whole of the development, this amounts to an approximate figure of \$4 million.

Capping of contributions for the North Lismore Plateau required a cross-subsidy to be paid by existing customers. This subsidy is based on the typical residential bill paid by these customers. For customers connected to both water and sewer the typical cross-subsidy is \$9.77 per annum. For customers connected to Council's water supplies only this typical subsidy is \$6.04 per annum.

Council is currently reviewing its Development Servicing Plan. This may lead to different values of developer contributions being calculated. Changes in the value of developer contributions may result from changes in Council's capital works program, and the costs of construction of new infrastructure, since the plan was last reviewed in 2016. During preparation of this new Plan, Council has the opportunity to:

- determine if it wishes to cap contributions payable for development on the North Lismore Plateau;
- the amount of any capping of contributions; and
- the resulting cross-subsidy to be paid by existing customers.

11.7.7 Inadequate Public Exhibition of Plans / Documents:

As detailed at point 11.7 above the application documents have been extensively available for public view during three rounds of public notification and exhibition. Council forwarded approximately 400 adjoining owner notification letters during each of the three public notification periods, as well as advertised the application in Council's *Local Matters* publication, which is letter box dropped to every property and house within the Lismore local government area.

This level of publication consultation is considered appropriate for the purpose of this development application.

11.7.8 Grave site on North Lismore Plateau

It is noted that Everick archaeologists reported a possible grave site on the proposed development site on the basis of a configuration of stones which was assumed to be a marking of a historic grave. The police had carriage of the investigation in accordance with the *Coroners Act 2009* and engaged experts with archaeological experience in the identification of graves and in the identification of human skeletal remains.

The findings conclusively overturned a suggestion by a ground penetrating radar investigation that burials of two individuals may be present. In fact the ground comprises heavy clay quite unsuited to digging graves in comparison to sandy alluvial soils along the river valley distant from the NLP. It is also noted that NSW Police have legal jurisdiction in the matters of investigating human remains and it is understood that NSW Police arranged for the expert investigators, Tony Lowe and Denise Donlon, who are experienced in such matters to conduct the grave site investigation. This is detailed in the report documentation provided by Casey & Lowe, Archaeology & Heritage dated 14 March 2018.

11.8 Public interest

Whilst there have been issues of concern raised in submissions including (but not limited to) Aboriginal cultural heritage, ecology, stormwater runoff, traffic impacts of the development and inadequate community consultation the proposed subdivision is considered to be ecologically sustainable development and the orderly and economic use and development of land. The concerns raised in submissions have been comprehensively addressed within this report at section 11.7 and the Summary Table of submissions at Attachment 8.

The proposed development adequately addresses all legislative requirements and is considered to be in the public interest.

12 Section 7.11 Contributions Plan - NLP

The proposed development will result in increased demand for public services and amenities, and therefore Section 7.11 Contributions are applicable.

The following Levies would therefore apply under Section 7.11 of the Environmental Planning and Assessment Act 1979 and amounts payable are set out below.

Levy Area	Receipt No.	No. of Additional lots	Cost Per additional lot	Amount Payable
NLP - Open space and recreation facilities				
Residential Subdivision	785	388	3,562.18	1,382,126.84
NLP - Public Domain				
Residential Subdivision	786	388	1,867.66	724,652.08
NLP - Local traffic and transport				
Residential Subdivision	787	388	6,054.55	2,349,165.40
NLP - Urban traffic and transport				
Residential Subdivision	788	388	3,599.69	1,396,679.72
NLP - Section 7.11 Plan management				
Residential Subdivision	789	388	75.73	29,383.24
Total			15,159.82	\$5,882,006.28

13 Native Title (New South Wales) Act 1994

Council is aware that a Native Title claim has been made on behalf of the Widjabul Wia-bal People by NTSCORP for land within the Lismore local government area. The land the subject of this development application does not directly relate to any land covered by the native title determination application as it relates only to privately held freehold land over which native title has presumably been extinguished.

Council has provided advice to NTSCORP to the effect that Council disputes the existence of native title on Council owned land being Lot 12 DP 844585 and Lot 1 DP 772627 on the basis that the land has been the subject of freehold grants by the Crown to Council as the registered proprietor of the land.

It was acknowledged that there may have been some confusion about whether the proposed fire trail would traverse crown land, however it is confirmed that the proposed fire trail is located on Council owned land, to which Council has granted consent to the applicant to traverse. This matter is discussed further at Section 8.8 of this report with regard to the requirement for the applicant to enter into a Licence Agreement with Council.

14 Roads Act 1993 Approvals

The proposal requires works within the public road reserve, and as such, a permit under the provisions of s.138 of the *Roads Act 1993* must be obtained prior to those works being undertaken. This requirement is addressed in relevant conditions of consent.

15 Local Government Act 1993 Approvals

The proposal requires approval under the provisions of s.68 of the *Local Government Act 1993* which must be obtained prior to those works being undertaken. This requirement is addressed in relevant conditions of consent.

16 All Likely Impacts of the Development

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL

CONSIDERED

1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	Yes
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	ESD Principles and Climate Change	Yes
10.	All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

17 Consultation on Draft Conditions of Development Consent

The Draft Conditions of Development Consent were provided to the applicant as a courtesy to seek feedback. The proposed Conditions were generally supported with some changes requested. Negotiations between Council and the applicant will continue in this regard and an updated set of Draft Conditions of Development Consent will be provided to the Panel during the week prior to the Panel meeting on 17 October 2018.

18 Conclusion

The provisions of Section 79C of the *Environmental Planning and Assessment Act 1979* have been satisfactorily addressed and assessed as acceptable. The application is recommended for approval subject to the imposition of appropriate conditions of development consent as set out in Attachment No 1.

19 RECOMMENDATION

PURSUANT TO SECTION 80/91 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT:

- A. Northern Joint Regional Planning Panel, as the consent authority, grant consent to Development Application No. 5.2017.270.1, subject to the conditions in Appendix 1 to this report.