

# D E V E L O P M E N T   A S S E S S M E N T   R E P O R T

<b>Panel Reference</b>	PPSNTH-88
<b>DA Number</b>	DA5.2021.221.1
<b>LGA</b>	Lismore City Council
<b>Proposed Development</b>	To undertake staged subdivision comprising 742 residential lots, 2 neighbourhood business lots, 1 residue lot (future residential), 14 public reserve lots and associated infrastructure, 45 new roads, road widening and road closures, bulk earthworks, essential services (water, sewer, power & telecommunications), stormwater management facilities, landscaping and environmental rehabilitation.
<b>Street Address</b>	DP 118555 lot 1, DP 772626 lot 3, DP 755729 lot 35, DP 772626 lot 2, DP 772626 lot 1, DP 303296 lot 2, LOT: 1 DP: 596437, LOT: 20 DP: 1148069, LOT: 1 DP: 1191684, LOT: 21 DP: 1148069, LOT: 2 DP: 1191684, LOT: 1 DP: 1243923, LOT: 2 DP: 1243923, LOT: 1 DP: 1213795, DP 755729 lot 113, DP 570029 lot 2, LOT: 1 DP: 1192319, LOT: 2 DP: 1213795 101 Dunoon Road NORTH LISMORE, 103 Dunoon Road NORTH LISMORE, 103A Dunoon Road NORTH LISMORE, 103B Dunoon Road NORTH LISMORE, 103C Dunoon Road NORTH LISMORE, 103D Dunoon Road NORTH LISMORE, 263 Dunoon Road NORTH LISMORE, 273 Dunoon Road NORTH LISMORE, 273A Dunoon Road NORTH LISMORE, 177A Hewitt Road NORTH LISMORE, 15 Pagottos Ridge Road NORTH LISMORE, 9 McLeay Road NORTH LISMORE, 11 McLeay Road NORTH LISMORE, 41 McLeay Road NORTH LISMORE, 43 McLeay Road NORTH LISMORE, 54 McLeay Road NORTH LISMORE, 54A McLeay Road NORTH LISMORE, 84 McLeay Road NORTH LISMORE
<b>Applicant</b>	Michael Hercus and Allura Parklands Pty Ltd
<b>Land Owner(s)</b>	Mr A J & Mrs D L Purtle Mrs V Giacomini Giacmor Pty Limited Mr F Basso & Ms S Novkovic Mrs M L & Mr G & Mrs L Mazzorana Mrs L Massorana Mr A R & Mrs F M Riordan
<b>Date of DA lodgement</b>	5 May 2021
<b>Total number of Submissions</b>	84 submissions
<b>Number of Unique Objections</b>	30
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 6 of the State Environmental Planning Policy Planning Systems 2021)</b>	Development that has a capital investment value of more than \$30 million
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• North Coast Regional Plan 2036</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• State Environmental Planning Policy (Koala Habitat Protection) 2021</li> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• State Environmental Planning Policy (Primary Production) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• Lismore Local Environmental Plan 2012</li> <li>• Lismore Development Control Plan – Part A <ul style="list-style-type: none"> <li>○ Chapter 1 Residential Development</li> <li>○ Chapter 5A Urban Residential Development</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Chapter 8 Flood Prone Lands</li> <li>○ Chapter 11 Buffer Areas</li> <li>○ Chapter 13 Crime Prevention Through Environmental Design</li> <li>○ Chapter 14 Vegetation Protection</li> <li>○ Chapter 15 Waste Minimisation</li> <li>○ Chapter 22 Water Sensitive Design</li> <li>• Lismore Development Control Plan – Part B <ul style="list-style-type: none"> <li>○ Chapter 10 North Lismore Plateau Urban Release Area</li> </ul> </li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• External Referral Responses</li> <li>• Internal Referral Responses</li> <li>• Proposed DA Plans</li> <li>• Summary table of submissions</li> </ul>
<b>Clause 4.6 requests</b>	There are no clause 4.6 application requests relating to the proposed development.
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Aboriginal cultural heritage</li> <li>• ecology</li> <li>• landslip</li> <li>• stormwater</li> <li>• traffic impact</li> </ul>
<b>Report prepared by</b>	Craig Bradridge
<b>Report date</b>	28 November 2022

#### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

#### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Not applicable**

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**No**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

#### Conditions

Have draft conditions been provided to the applicant for comment?

**No**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## 1 Executive Summary

Lismore City Council received a Development Application (DA) on 5 May 2021 for the proposed subdivision of land at North Lismore Plateau (NLP). The proposal involves the creation of 742 residential lots, 2 neighbourhood business lots, 1 residue lot (future residential), 14 public reserve lots and associated infrastructure, 45 new roads, road widening and road closures, bulk earthworks, essential services (water, sewer, power & telecommunications), stormwater management facilities, landscaping and environmental rehabilitation.

The DA is regionally significant development, as defined in Schedule 6 of the *State Environmental Planning Policy Planning Systems 2021*, as the proposed development has a capital investment value of more than \$30 million. The Northern Regional Planning Panel is the consent authority.

The DA is Integrated Development as provided under Division 4.8 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), in order for the development to be carried out, the following approvals are required:

- General Terms of Approval (GTA) from the NSW Rural Fire Service and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*
- General Terms of Approval (GTA) from the NSW office of Water and a controlled activity approval from Natural Resources Access Regulator ('NRAR') in accordance with Part 3 of Chapter 3 *Water Management Act 2000*
- General Terms of Approval (GTA) from the NSW Department of Planning and Environment (Heritage) in accordance with section 58 of the *Heritage Act 1977*
- Concurrence from Transport for NSW (TfNSW) under section 138 (2) of *Roads Act 1993*.

The application has been referred to NRAR, NSW RFS, DPIE (Heritage) and TfNSW as Integrated Development. GTA have been received by NSW RFS however issues remain regarding the maintenance of external perimeter fire trail of which Council is not satisfied. Concurrence and GTA from other external referral parties remain outstanding.

The relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter are as follows.

Clause 4.6 (contamination and remediation) of *State Environmental Planning Policy (Resilience and Hazards) 2021* is to be considered in determining development application. This has been considered by Council and Council is satisfied.

Clause 2.119 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* for development with frontage to classified road the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the safety, efficiency and ongoing operation of the classified road will not be adversely affected. This clause has not been satisfied.

Any development or activity which triggers Part 7 of the *Biodiversity Conservation Act 2016* (BC Act) and is likely to significantly affect threatened species and must be accompanied by a Biodiversity Development Assessment Report (BDAR). A BDAR was submitted with the application however amendments were required. The BDAR is no longer accessible on the Biodiversity Offset Assessment Management System (BOAMs), consequently the BAM Credit calculations cannot be assessed. Issues pertaining to Part 7.8 of the BC Act remain outstanding.

Clause 5.31 of *Lismore Local Environmental Plan 2012* provides that development consent must not

be granted to development on land in a flood planning area unless the consent authority is satisfied the development is compatible with the flood function and behaviour on the land. This clause has been satisfied.

Clause 6.4 of *Lismore Local Environmental Plan 2012* provides that development consent must not be granted to development in a drinking water catchment unless the consent authority is satisfied the provisions of 6.4 (4) have been achieved. This clause has not been satisfied.

Clause 6.9 of *Lismore Local Environmental Plan 2012* provides that development consent must not be granted unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available when required. This clause has not been satisfied.

The application fails to demonstrate compliance with, or provided insufficient information on, a multitude of development controls relating to the *Lismore Development Control Plan (DCP)*. Further detail on specific controls are provided in the DCP table of this report.

In relation to relevant matters of s4.15 of the EP&A Act, the information provided in the DA fails to demonstrate that the site is suitable for the development proposed.

The likely impacts of the development, including environmental impacts on both the natural and built environments and impact to aboriginal heritage are not acceptable in its current form. The application is not considered to be in the public interest and the application should be refused.

## **2 Background**

The DA was lodged with Council on 5 May 2021 and has been protracted due to the scale of the development and the body of work required to satisfy a compliant application. The application has been halted by requests for additional information and differences of opinion around significant issues coupled with the changeover of applicant/developer and assessing officer. Despite the application being lodged on 5 May 2021, there are still substantial unresolved issues. On the 24 October 2022 the Norther Regional Planning Panel, being the consent authority, requested that the application be determined in the week of 12 December 2022.

NLP's location means it is of strategic importance to the rejuvenation of Lismore providing (predominately) flood free elevated residential land. NLP land release aims to 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.

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, local growth management strategies and the Far North Coast Regional Strategy. 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 subject land is 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*.

As part of its comprehensive planning for the NLP, in consultation with TPG (now known as Plateau North Property Group (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).

The applicant attended a formal pre-lodgement meeting with Council on 11 December 2018 and 25 March 2021. Formal minutes of the meeting were provided to the applicant that provided an outline of the technical reports required and matters to be addressed in any future development application to be lodged with Council. Many of the issues initially raised in the pre-lodgement meeting(s) remain outstanding.

### **3 Description of Proposal**

The proposal seeks consent to undertake a staged subdivision comprising 742 residential lots, 2 neighbourhood business lots, 1 residue lot (future residential), 14 public reserve lots and associated infrastructure, 45 new roads, road widening and road closures, bulk earthworks, essential services (water, sewer, power & telecommunications), stormwater management facilities, landscaping and environmental rehabilitation.

Specifically, the proposal involves eight precincts to implement the subdivision and improvements as follows:

- Precinct 1 – 69 residential lots, 2 neighbour business lots and 1 public reserve
- Precinct 2 – 114 residential lots and 1 public reserve
- Precinct 3 – 60 residential lots
- Precinct 4 – 129 residential lots and 1 public reserve
- Precinct 5 – 98 residential lots and 4 public reserves
- Precinct 6 – 145 residential lots and 4 public reserves
- Precinct 7 – 78 residential lots and 1 public reserve
- Precinct 8 – 49 residential lots and 2 public reserves
- Construction of 45 new roads, road widening and road closure, bulk earthworks – cut and fill, water, sewer, power and telecommunication infrastructure, stormwater management facilities, landscaping, environmental rehabilitation and public reserve infrastructure works.

The proposal constitutes nominated integrated development in accordance with s4.46 of the *Environmental Planning and Assessment Act 1979*. Approval from NSW Natural Resource Access Regulator is required in accordance with *Water Management Act 2000*, approval from Transport for NSW in accordance with *Roads Act 1993*, approval from the NSW Department of Planning and Environment (Heritage) in accordance with the *Heritage Act 1977* and approval from NSW Rural Fire Service in accordance with *Rural Fires Act 1997*.

The lot layout plan below gives an overall view of the proposed subdivision at Figure 1 with a proposed plan set provided in *Attachment 3* of this report.



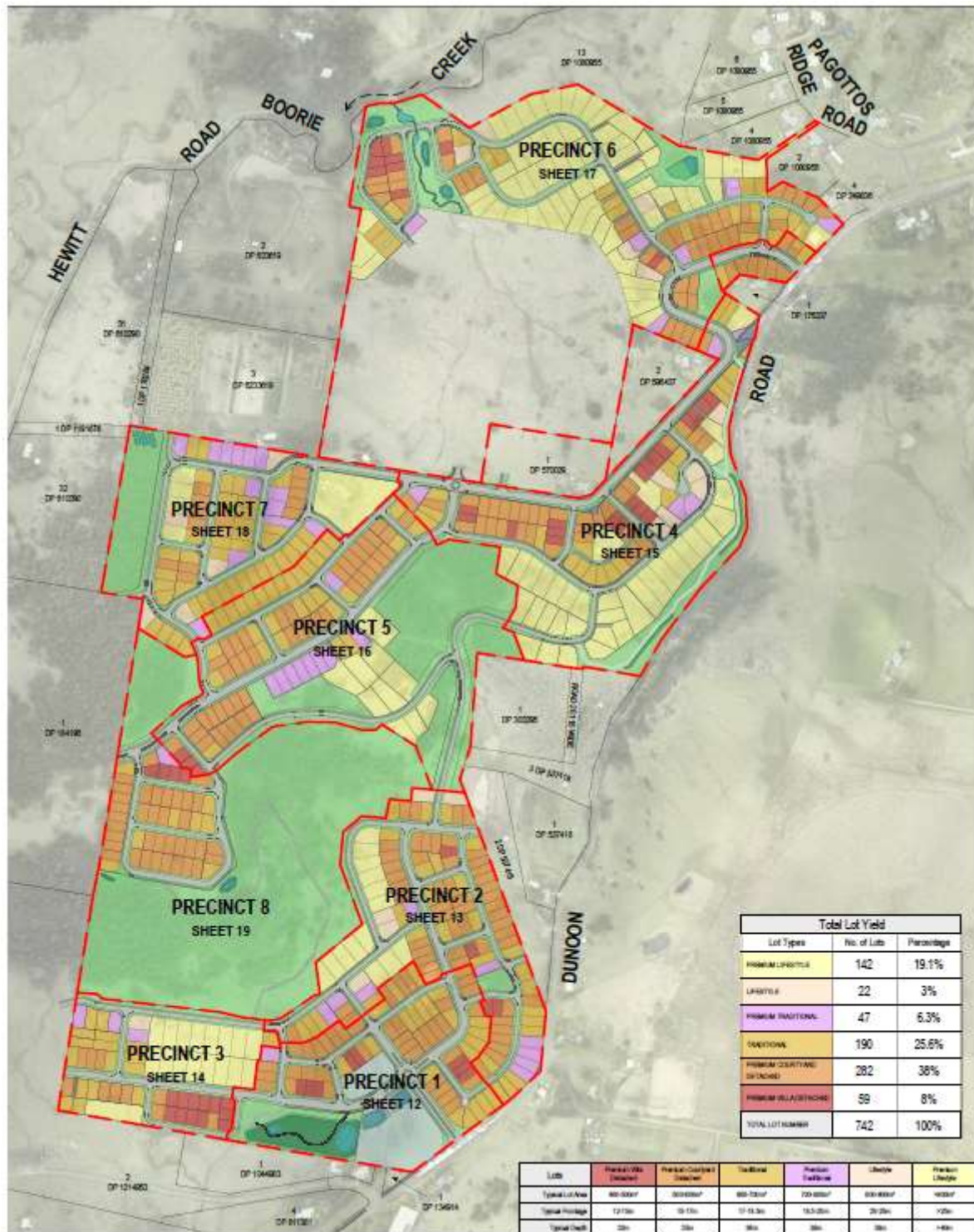


Figure 1: Lot layout of the proposed subdivision



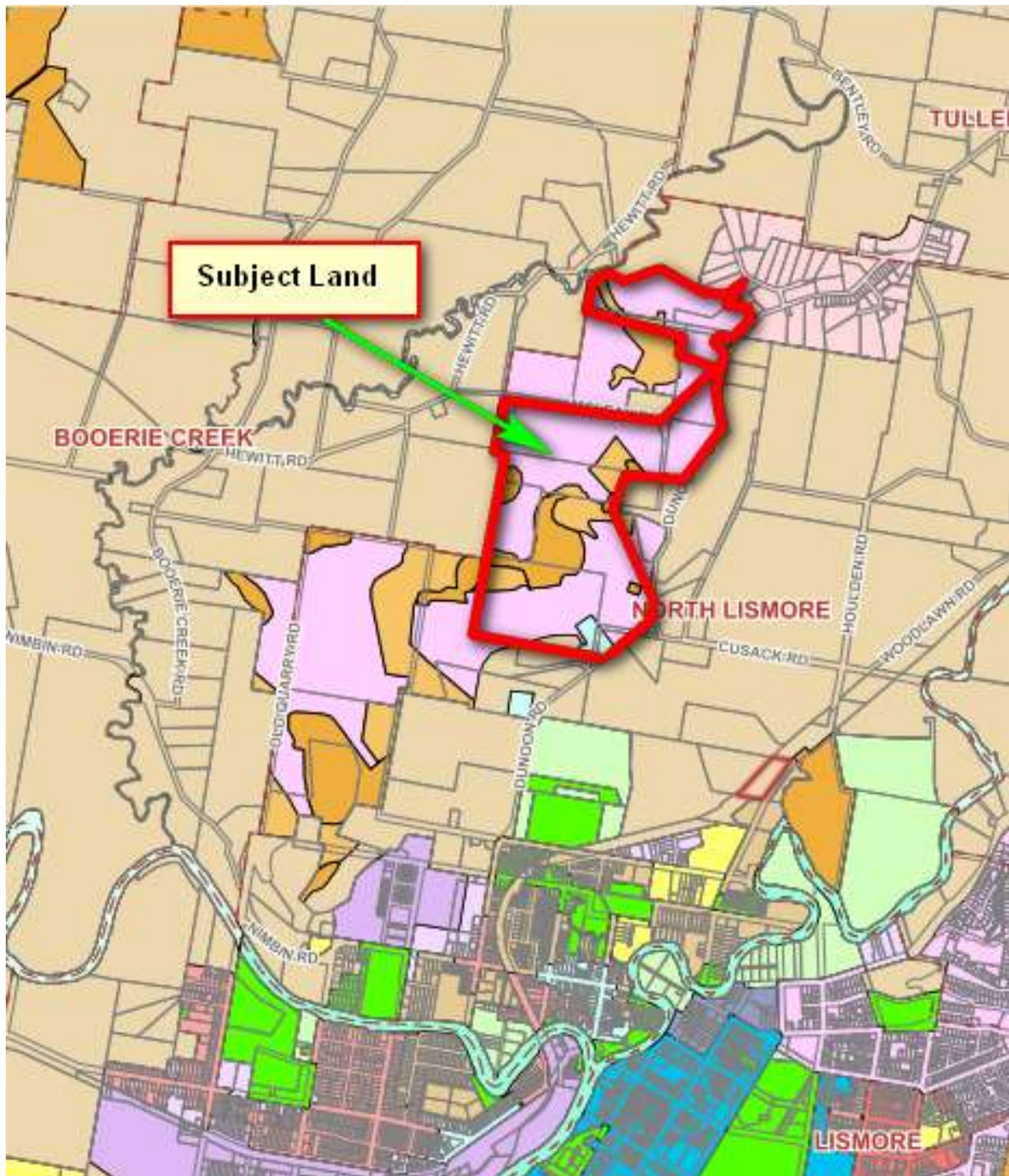


Figure 2: Locality map with zones

#### 4 Description of Locality

Adjoining and surrounding land uses are predominantly agricultural holdings and rural residential holdings of various sizes and supporting a variety of land uses including rural residences, horticulture grazing, and lifestyle lots. Other land uses within the broader locality include the Lismore Showground, Go-Kart Track, Lismore Saleyards, and North Lismore Industrial Estate. Land to the north-east of the site is a rural residential subdivision.

The southern edge of the development site adjoins land known as the 'Winten land'. Development Application 5.2020.462.1 was lodged with Council for the Winten land on 3 November 2020 and has been determined for approval by Lismore City Council on 14 September 2021 for development of 95 residential lots (with total potential of approximately 390 residential lots). This matter was also the

subject of an unsuccessful appeal to the Land & Environment Court, with the Development Consent upheld.

## **5 The Site**

A large portion of the site comprises part of the elevated plateau referred to as the 'North Lismore Plateau.' The plateau sectors typically are bounded by steep rocky slopes extending down to the floodplain below, although the north eastern sector of the site connects to the elevated hamlet of Tullera and more extensive ridgeline and plateau land to the north. The plateau portions of the site range in elevation from approximately 95m up to 130m, whilst the lower southern and south eastern portions of the site range from approximately 11m to 55m.

The development is approximately 1.3km to 2.4km north, northwest of the Lismore CBD. The property consists of eighteen (18) land holdings with a combined area of 126.11ha with frontages to Dunoon Road and McLeay Road. The topography of the land ranges from the lower foot slopes (15m AHD) up steep side slopes to flat elevated plateau lands at elevation of approximately 100 – 120m AHD. The northern end of this area has two gullies running through it that combine and flatten towards the southern end of the site. To the east of the valley floor the land slopes up at approximately 15% towards Dunoon Road having a generally westerly aspect. To the north and west of the valley the land slopes up at around 25% to the edge of the RU1 boundary, from there slope increases to around 30% until it reaches the top of the plateau area. This land has an easterly and southerly aspect.

The majority of the site and surroundings has been cleared in the past, primarily for agricultural purposes. The overall extent of native vegetation cover within the site is a mixture of native rainforest species and the high threat exotic (HTE) tree species of Camphor Laurel and/or Privet. The site also contains occurrences of three threatened flora species, the Thorny Pea, the Arrow-head Vine and the Hairy Jointgrass. Although there is one historic record of Sweet Myrtle within the development zone, this individual could not be relocated.

Significant site constraints exist, the site is very steep in some areas, is bushfire prone land, and the southernmost section is partly subject to inundation during a flood event.

## **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

S94 Contributions Plan (S7.11)

Environmental Planning & Assessment Act 1979

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Koala Habitat Protection) 2021

State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Primary Production) 2021

State Environmental Planning Policy (Transport and Infrastructure) 2021

Nominated Integrated Development

Biodiversity Conservation Act 2016

Environmental Planning and Assessment Act 1979



## **7 Policy Controls**

Lismore Development Control Plan

Community Consultation Plan – Appendix 1 (*Council's Community Engagement Strategy and Community Participation Plan*)

1.2.20 Council Briefings Policy

1.8.4 Undergrounding of Electricity Mains & Provision of Street Lighting

1.8.6 Undergrounding of Telephone Plant in Subdivisions

5.2.4 Naming of New Roads

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

5.3.3 Provision of Public Transport Infrastructure Policy

5.17.8 Sustainability, Viability & Amenity of Rural & Urban Land

5.17.9 Pressure Sewer Systems Policy

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 is included with this report as **Attachment 2**.

### **8.1 Building**

The application has been reviewed with the following comment provided.

Insufficient detail is provided to enable a determination of the impacts of the subdivision in relation to BCA compliance for the existing buildings setbacks and bushfire assessment requirements.

### **8.2 Environmental Health**

The application has been reviewed and comments provided, with concerns remaining regarding noise and stormwater quality. Council's Environmental Health Officer advises that significant challenges remain in addressing road traffic noise particularly nominated precincts 1,2, 4 & 6 that have proposed lots immediately adjacent to Dunoon Road. Additionally, the DA nominates quarrying activities having the potential to create significant impacts (construction emissions) upon adjoining rural dwellings. The existing acoustic report is to be amended to include modelling for these properties and activities.

An amended acoustic report remains outstanding. The assessment of noise impacts cannot be finalised until the additional information above is submitted and assessed.

### **8.2 Environmental Health (on-site)**

The application has been reviewed and comments provided. Sewerage services are proposed for the development and existing On-Site Sewage Management Systems (OSSM) are to be decommissioned, removed and rehabilitated. Issues remain around how the staging of the development and the decommissioning of the existing OSSM systems shall take place whilst ensuring that treatment area buffer areas do not encroach on the lots being created.

### **8.3 Water and Sewer**

The application has been reviewed and comments provided, with no objections raised subject to the imposition of appropriate conditions.

#### **8.4 Engineering/Traffic/Stormwater Drainage**

The application has been reviewed by Council's Development Engineer and provides the comment that, 'given the significance of the outstanding engineering issues that remain to satisfy them, a substantial redesign of the development is required'.

#### **8.5 Landscaping Design / Council assets**

The application has been reviewed by Council's Project Manager – Infrastructure & Open Space, with comments provided requesting a concise 'Landscape Plan' to demonstrate compliance with the criteria set out within Council's Vegetation Management Development Control Plan.

#### **8.6 Ecology**

No updates to the Biodiversity Development Assessment Report (BDAR) have been received. The BDAR is no longer accessible on the Biodiversity Offset Assessment Management System (BOAMS), consequently the BAM Credit calculations cannot be assessed. In the absence of an updated BDAR there is insufficient detail provided to enable a full ecological assessment.

#### **8.7 Aboriginal Cultural Heritage**

A significant shortfall with the application is a lack of consultation and documentation in regards to 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.

Mr Neville Baker of Baker Archaeology has undertaken reviews of the documentation provided and is of the position that the submitted material fails to meet Council's statutory requirements in fulfilling due diligence. Further discussion can be found on this aspect of the application under section 11.6.1 *Aboriginal Cultural Heritage* contained within this report.

### **9 Integrated Referrals**

#### **9.1 NSW Natural Resources Access Regulator (NRAR)**

NRAR has not issued general terms of approval. A letter requesting further information was received from NRAR on 15 June 2021 with a second request for additional information on 20 October 2021, a response provided by the applicant on 15 June 2022.

A predominate issue preventing the application progressing in terms of watercourse treatment is the proposal seeks to completely remove - fill and pipe, a second order watercourse (identified as Watercourse F in the proposal). The removal of a 2nd order watercourse is not consistent with NRAR guidelines and is not supported by NRAR. NRAR has requested that the subdivision layout be amended so as to maintain this 2nd order watercourse and associated riparian zone in accordance with NRAR guidelines.

Issues relating to the proposed treatment of waterways remains outstanding.

#### **9.2 NSW Rural Fire Service**

General terms of approval were received on 28 March 2022 however, condition 2 of the general conditions require the proposed perimeter track *to be in the care and control of Council or under a community title scheme*.

Maintenance of the proposed perimeter track by Council is not supported by Council's assets department and the proponent is not prepared to enter into a 'community title' scheme. An

unsuccessful attempt by the proponent has been made to alter condition 2 proposing the individual management of a perimeter fire access tracks. The NSW RFS was unable to support this notion stating that the individual management of a perimeter fire access tracks will not provide a consistent on-going management but rather a ad-hoc haphazard management regime that will render the perimeter fire trails in-accessible. This issue remains outstanding.

### **9.3 Transport for NSW**

Concurrence from TfNSW under section 138 (2) of *Roads Act 1993* for proposed works on a classified road (Dunoon Road) remains outstanding. A response has been provided from TfNSW regarding CI 104 of the ISEPP however, concurrence for the Section 138 remains unresolved.

### **9.4 Department of Premier and Cabinet (Aboriginal Cultural Heritage)**

It is likely aboriginal objects will be disturbed by the proposed development. This is due to the extent of earthworks and that a number aboriginal objects that have been discovered in the locality and the cultural Aboriginal significance of the land. For these reasons, the application was referred to this department as integrated development under section 58 of the *Heritage Act 1977* (approval in respect of the doing or carrying out of an act, matter or thing referred to in s 57(1)). Heritage NSW returned the application with the following response:

*Heritage NSW advises that it is the responsibility of the proponent to ensure that they comply with Part 6 of the National Parks and Wildlife Act 1974. If Aboriginal objects are present, or likely to be present, and the proposed activity will harm those objects, an Aboriginal cultural heritage assessment must be undertaken. This assessment should inform appropriate management and mitigation measures, which may include the requirement for an Aboriginal Heritage Impact Permit. Heritage NSW recommends that the Aboriginal cultural heritage assessment is guided by the following documents: • Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in New South Wales (OEH 2011). • Consultation with the Aboriginal community undertaken in accordance with the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 (DECCW 2010). • Satisfy the requirements of the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (DECCW 2010).*

An acceptable Aboriginal cultural heritage assessment remains outstanding. Further discussion can be found on this aspect of the application under section 11.6.1 *Aboriginal Cultural Heritage* contained within this report.

## **10 External Referrals**

A copy of all Government department responses is attached to this report as **Attachment 1**.

### **10.1 Ngulingah Local Aboriginal Land Council**

The application was referred to the Ngulingah Local Aboriginal Land Council (Ngulingah LALC) on 18 May 2021. Council's records for this application do not show that a response has been received to date.

### **10.2 Transport for NSW**

The application was referred to Transport for NSW and comments were received on 3 June 2021. A response has been provided with regard to CI 104 of the ISEPP with a number of issues to be addressed in an amended TIA. Concurrence from TfNSW under section 138 (2) of *Roads Act 1993* for proposed works on a classified road (Dunoon Road) and an amended TIA remains outstanding

## 10.4 Essential Energy

The application was referred to Essential Energy and general comments were received on 9 July 2021.

## 10.5 NSW Police

The application was referred to NSW Police with comments provided on 10 June 2021.

## 10.6 Rous County Council

The application was referred to Rous County Council (RCC) with comments provided on 25 June 2021. The overarching conclusion of their assessment was that the performance objectives identified in the stormwater management plan, are not adequate to protect water quality in receiving waters contained within a water catchment area.

RCC recommended that the storm water treatment regime be designed with consideration the development is located within a water supply catchment and that a neutral or beneficial effect on water quality test be applied to any proposed stormwater management approach. RCC requested that LCC and the proponent address the issues and requirements outlined as part of this development proposal process.

This aspect of the application remains outstanding, for more discussion on stormwater quality see the *11.6.5 Stormwater runoff / management* section of this report.

# 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

#### Part 1 Preliminary

##### Aim of the Plan (cl 1.2)

The subject application has **not provided sufficient information** (or the information provided is not at a satisfactory standard) that demonstrates the proposed development is consistent with the following aims of the Plan:

- (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, (namely non compliances with Lismore Development Control Plan – Part B North Lismore Plateau Urban Release Area)
- (e) to protect, sustain and enhance Lismore's natural environment, particularly native fauna and flora,
- (f) to minimise the adverse effects of natural hazards, particularly flooding, bush fire and land instability,
- (g) to ensure that development is consistent with the principles of ecologically sustainable development.

#### Part 2 - Permitted or Prohibited Development

##### Zone objectives and Land Use Table (cl 2.3)



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.

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*.

Having regard to the objectives of the above zones, it is considered that the subject application is **not consistent with** the following objectives of the zone(s):

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To retain areas of unique natural vegetation, particularly rainforest remnants and ecologically endangered communities.
- To encourage the retention of wildlife habitats and associated vegetation and wildlife corridors.

As such, consent to the development should not be granted.

#### **Subdivision – consent requirements (cl 2.6)**

Consent is being sought by way of this application.

#### **Part 4 – Principal Development Standards**

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

#### **Minimum subdivision lot size (cl 4.1)**

The minimum subdivision lot size in the R1 General Residential zone is 300m<sup>2</sup> and each of the proposed allotments exceed this minimum lot size.

The remainder of the land is zoned RU1 Primary Production, E2 Environmental Conservation or E3 Environmental Management all with a minimum lot size of 40ha, and B1 Neighbourhood Centre which does not have a prescribed minimum lot size.

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.

#### **Exceptions to Minimum Subdivision Lot Sizes for Certain Split Zones (cl 4.2E)**

Any resulting lot / residue land and all rural or environmental zoned land within the site is to comply with the provisions of 4.2E. This aspect of the application is satisfactory.

## Part 5 – Miscellaneous Provisions

### Heritage Conservation (cl 5.10)

The proposed development **is considered inconsistent** with the following objectives of this clause:

- (a) to conserve the environmental heritage of Lismore,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Clause 5.10 (8) requires the consent authority to consider *the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment*. Until further investigation is undertaken, council is unable to determine what impact the proposed development would have on the heritage significance of the land as required by clause 5.10 8(a) of this clause.

**An adequate investigation and assessment has not been provided**, further conversation is provided under section *11.6.1 Aboriginal Cultural Heritage* of this report.

### Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones (cl 5.16)

The objective of this clause is to minimise potential land use conflict between existing and proposed development on land in the rural, residential, and environmental protection areas.

The proposed development **fails to provide adequate and accurate information** to determine whether the development is likely to have a significant impact on the rural residential land uses in the vicinity of the development. Further conversation is provided under section *11.6.7 Noise Impact to adjoining properties* of this report.

### Flood planning (cl 5.21)

A relatively small portion of the site is mapped as being partially affected by the 1% AEP flood event with a level of 12.9m AHD. It is considered that the proposal satisfies (or can satisfy with conditions) the criteria provided in 5.21 (2) of this clause.

However, additional commentary considering the February 2022 floods is still required to afford whether matters need to be redressed and or any significant variances arise out of reviewing the context of that flood to those previous.

## Part 6 – Additional Local Provisions

### Earthworks (cl 6.2)

There is **insufficient information** provided to determine whether the application will not have a *detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land or disturbing relics*.

It its current form, it is likely that the proposed development will have:

- a **detrimental effect** on, drainage patterns and soil stability in the locality of the development
- **adverse impacts** on waterways, Wilson River drinking water catchment and environmentally sensitive areas
- There is a high probability that the development **will disturb relics**

#### **Drinking water catchments (cl 6.4)**

Council **is not satisfied** that the proposed development is designed, sited and will be managed to avoid any significant adverse impact on water quality and flows. An acceptable stormwater treatment system has not been provided. Further discussion in this regard is provided under section 11.6.5 *Stormwater runoff / management* of this report.

#### **Airspace operations (cl 6.5)**

The proposal relates to low lying land below the 30m AHD natural contour line and is not likely to be of any concern to the aerodrome.

#### **Essential services (cl 6.9)**

Reticulated water and sewer is currently not available. There is **insufficient information** in regard to the provision of the supply of water and reticulated sewer for Council to be satisfied that the proposed development complies with this clause. See further discussion under section 11.8.2 *Availability of Water & Sewer Infrastructure and Voluntary Planning Agreement (VPA)* of this report.

#### **State Environmental Planning Policy (Resilience and Hazards) 2021**

Clause 4.6 - Contamination and remediation, of *State Environmental Planning Policy (Resilience and Hazards) 2021* is to be regarded prior to determining development application. This aspect of the application has been considered and Council is satisfied on this matter. For further details on contamination and remediation please see Environmental Health Officers referral in *Attachment 2*.

#### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

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 the SEPP. The proposed development therefore comprises traffic generating development in accordance with the provisions of the SEPP and was duly referred to Transport for NSW (TfNSW).

A response was received by TfNSW on 3 June 2021 providing comments/concerns regarding aspects of the application that were subsequently requested to be addressed by the applicant. These concerns have not been adequately addressed.

Council is therefore not satisfied that the safety, efficiency and ongoing operation of the classified road will not be adversely affected. This clause has not been satisfied.

#### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Any development or activity which triggers Part 7 of the *Biodiversity Conservation Act 2016* (BC Act) and is likely to significantly affect threatened species must be accompanied by a Biodiversity Development Assessment Report (BDAR). A BDAR was submitted with the application however amendments were required by Council. An amended BDAR was requested to include detail regarding:

- Mapping and assessment of scattered paddock trees/small stands of trees including the relevant BAM calculations,
- A clear map of native trees including Koala Food Trees (KFT's) to be retained within proposed development footprint,
- Further detail regarding the assessment process for the clear determination of the presence and absence of each candidate species credit species including effort and limitations to surveys,
- Clear justification for conducting surveys for threatened flora outside the specified times,

- Explanation of the methodology for mapping the Hairy Joint Grass species polygons and justification for excluding some areas of PCT 887,
- Reassessment and identification of indirect impacts on habitats and threatened species during construction phase with particular reference to the threatened microbats and bird species known to occur on the site. and
- Further detail regarding proposed road strike mitigation measures that address habitat enhancement and connectivity.

At the time of writing this report no updates to the BDAR have been received. The BDAR is no longer accessible on the Biodiversity Offset Assessment Management System (BOAMs), consequently the BAM Credit calculations cannot be assessed.

### **State Environmental Planning Policy (Koala Habitat Protection) 2021**

*State Environmental Planning Policy (Biodiversity and Conservation) 2021* requires Council to consider whether the development will impact on koala habitat. Matters relevant to koala SEPP at the time of the DA lodgement were addressed in the BDAR.

The BDAR reported a targeted search (SAT) for the koala, was undertaken 2012. The current 2017 study was limited to identifying koala food trees on site. Only two koala food trees (KFTs) are identified in the submitted BDAR with the vegetation and habitat on site is reported to not constitute core koala habitat in accordance of the definition within the relevant koala SEPP.

It is noted that where two KFT's are recorded on site, the actual location of the trees is not reported nor is there a plan of trees that are to be retained (as described above under BC Act). Greater certainty is required regarding the proposed treatment of KFT within the proposed development footprint.

### **SEPP (Primary Production and Rural Development) 2021**

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

### **State Environmental Planning Policy (Planning Systems) 2021**

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

### **North Coast Regional Plan 2036**

The proposed development is not considered consistent with primary directions of the *North Coast Regional Plan 2036* including:

#### ***Direction 2: Enhance biodiversity, coastal and aquatic habitats, and water catchments.***

##### **Comment**

The proposed development has not demonstrated that it would enhance biodiversity or the riparian zones or adequately implement the principles of 'avoid, minimise, offset'.

#### ***Direction 3: Manage natural hazards***

##### **Comment**

The subject site is bushfire prone, the development has not proposed adequate arrangements to maintain a perimeter access track that is imperative to the proposed bushfire protection plan.

#### ***Direction 18: Respect and protect the North Coast's Aboriginal heritage***

##### **Comment**



The proposed development has not considered (to an acceptable standard) the potential impacts on Aboriginal cultural heritage values.

Harm to Aboriginal objects and places, or areas of significance to Aboriginal people, should be avoided. There has not been adequate investigation to ensure Aboriginal objects and places are protected, managed and respected in accordance with legislative requirements and the wishes of local Aboriginal communities.

## 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 Lismore Development Control Plan

The application has been assessed against the relevant controls in the Lismore DCP as indicated in the following compliance table. The application fails to comply with numerous development controls, comments are provided where the proposal does not comply.

### 1. Development Control Plan Compliance Table

LISMORE DEVELOPMENT CONTROL PLAN		
	Complies Yes/No	Relevant Comments
<b>North Lismore Plateau</b>		
<b><i>Development Principles</i></b>		
Principle 1	No	<p>Due to insufficient information and or absence of satisfactory noise and stormwater management plan, Landscape plan(s), TIA and compliant road network, details of the provision of reticulated water and sewer, a completed BDAR, the proposed development is <u>not</u> deemed consistent with the following principals:</p> <p><b>Principle 1</b> - Planning and design of the subdivision as a whole, and the individual buildings within it, must address key sustainable development principles and deliver, for example, reductions in water and energy consumption and generation of waste and greenhouse gases.</p> <p><b>Principle 5</b> - The development will offer a street network ranging from laneways through to major collectors that promotes a vibrant living and friendly space that will be inviting to walk, play and cycle in safety. The network will strive to provide equality between the various transport modes of walking, cycling, bussing and driving. Streets will be considered an extension to the open space network and will be attractively landscaped with species that reflect and support the local ecology.</p> <p>The street network shall be of a permeable nature providing:</p> <ul style="list-style-type: none"> <li>• High levels of internal accessibility and good external connections</li> <li>• Manageable street spacing and intersection spacing providing walkable and economically efficient blocks</li> <li>• Networks that are legible for active transport</li> </ul>
Principle 2		
Principle 3		
Principle 4		
Principle 5		
Principle 6		
Principle 7		
Principle 8		
Principle 9		
Principle 10		
Principle 11		
Principle 12		

		<ul style="list-style-type: none"> <li>• Public transport access.</li> </ul> <p><b>Principle 7</b> - Infrastructure and essential services such as sewerage, water and roads will be delivered in a timely manner to support the projected future population and meet community needs, without compromising the environmental values of the area.</p> <p><b>Principle 8</b> - Development will protect and improve ecological systems, biodiversity and the environmental values of the area. Areas of native vegetation which have inherent value in terms of conserving biodiversity, landscape visual amenity and/ or water quality will be retained and consolidated as an integral part of the development.</p> <p><b>Principle 9</b> - Development incorporates the integration between urban planning and the management, protection and conservation of the urban water cycle while supporting healthy ecosystems, lifestyles and livelihoods through smart management of all water usage. This may be achieved by addressing the following fundamental principles</p> <ul style="list-style-type: none"> <li>• Minimise impacts on existing natural features and ecological processes</li> <li>• Minimise impacts on natural hydrologic behaviour of catchments</li> <li>• Protect water quality of surface and ground waters</li> <li>• Minimise demand on the reticulated water supply system</li> <li>• Improve the quality of and minimise polluted water discharges to the natural environment</li> <li>• Incorporate collection treatment and/or reuse of runoff, including roofwater and other stormwater</li> <li>• Reduce run-off and peak flows from urban development</li> <li>• Minimise wastewater generation</li> <li>• Increase social amenity in urban areas through multi-purpose green space, landscaping and integrating water into the landscape to enhance visual, social, cultural and ecological values.</li> <li>• Add value while minimizing development costs (e.g. drainage infrastructure costs)</li> <li>• Account for the nexus between water use and wider social and resource issues</li> <li>• Harmonise sing water cycle practices across and within the institutions responsible for waterway health, flood management, pollution prevention and protection of social amenity.</li> </ul>
<b>Aboriginal Cultural Heritage</b>		
4.1 Identification, Assessment & Management	No	<p>As discussed in <i>11.6.1 Aboriginal Cultural Heritage</i> section of this report, Council has not been provided with updated information to adequately assess the DA. The following acceptable solutions have <u>not</u> been undertaken to an acceptable standard:</p> <p><b>A1.2</b> The first development application for subdivision of land at North Lismore Plateau, is to provide an 'Aboriginal Cultural Heritage Assessment Report' (ACHAR) detailing</p>

		<p>the outcomes of further field survey and/or archaeological investigations in the areas identified in Appendix F. The investigations and reporting are to be carried out by a suitably qualified Heritage Management consultant.</p> <p>The ACHAR is to detail the methodology and findings of targeted resurvey and/or monitoring investigations post vegetation clearance. The investigations are to be carried out in accordance with current, relevant NSW Office of Environment and Heritage guidelines such as:</p> <ul style="list-style-type: none"> <li>• <i>‘Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW’</i> and</li> <li>• <i>‘Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010’</i></li> <li>• <i>‘The Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW’.</i></li> </ul> <p>The report is to include a ‘Statement of Heritage Significance’ for each item and/or place identified. Copies of the ACHAR are to be provided to all registered Aboriginal parties, the Ngulingah Local Aboriginal Land Council, Widjabul Wia-bal Native Title claimants and any other relevant Aboriginal stakeholder group(s).</p> <p><b>A1.3</b> The first development application for subdivision of land at North Lismore Plateau is to provide along with the ‘Statement of Environmental Effects’ an ‘Aboriginal Cultural Heritage Management Plan’ for:</p> <ul style="list-style-type: none"> <li>• all AHIMS registered sites (refer Appendix J - map of Aboriginal heritage items identified in 2012 field survey), and all other site(s) of Aboriginal cultural heritage significance identified through further field survey/ archaeological investigations.</li> </ul> <p>The ‘Aboriginal Cultural Heritage Management Plan’ is to be prepared by a suitably qualified Heritage Management professional and include the following minimum requirements:</p> <ul style="list-style-type: none"> <li>• further consultation with the registered Aboriginal stakeholder group, following on from the process initiated by Converge Community &amp; Heritage in 2012 for the preparation of the ‘Cultural Heritage Assessment Report’;</li> <li>• if the abovementioned consultation commences more than 12 months after any previous consultation with the registered stakeholder group, it is to include a new round of advertising to provide new opportunity for members of the Aboriginal community to register their interest;</li> <li>• detailed recording of all features;</li> <li>• detailed site specific management protocols;</li> <li>• a monitoring plan for identified areas;</li> <li>• further research as required;</li> <li>• an ‘Interpretation Strategy’, details of which are described in P2 and A2.1 in the following section of this DCP titled Cultural Heritage.</li> </ul>
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		<p>The ACHMP is to be submitted for approval by Lismore City Council and the NSW Office of Environment &amp; Heritage (or relevant concurrence agency) along with the Statement of Environmental Effects as part of the first development application for subdivision of land at NLP. Copies of the ACHMP are to be provided to the registered Aboriginal stakeholders, the Ngulingah Local Aboriginal Land Council and any other relevant Aboriginal stakeholder group(s) prior to lodgement of the DA.</p> <p><b>A2.1</b> Proponents take reasonable and practicable steps to:</p> <ol style="list-style-type: none"> <li>1. identify whether or not Aboriginal objects are, or are likely to be, present in an area</li> <li>2. determine whether or not activities associated with their proposed development are likely to harm Aboriginal objects, and</li> <li>3. determine whether an AHIP application is required in accordance with NSW Office of Environment and Heritage guidelines 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales'.</li> </ol> <p><b>A2.2</b> In circumstances where harm to Aboriginal objects and places cannot be avoided, the proponent has obtained the approval of the Director General of the NSW Office of Environment &amp; Heritage for an 'Aboriginal Heritage Impact Permit' (AHIP), prior to Council assessment of the DA commencing.</p> <p><b>A3.1</b> For subdivision of land, where an 'Aboriginal Cultural Heritage Management Plan' (ACHMP) is required, this plan includes an 'Interpretation Strategy' (refer P2 and A2.1 in the following section of this DCP titled Cultural Heritage).</p>
<b>Cultural Heritage</b>		
5.1 Identification, Assessment & Management	No	<p>The following acceptable solutions have <u>not</u> been undertaken to an acceptable standard:</p> <p><b>A1.2</b> For subdivision of land, where the subject land is identified in Appendix G, or through further field investigations, as containing one or more identified heritage feature(s), further research and assessment is to be carried out to determine whether, or not, such feature(s) are of heritage significance. In order for a site to be considered significant, it must meet at least two of the seven heritage criteria outlined in the NSW Office of Environment and Heritage guideline "Assessing Heritage Significance." A 'Statement of Significance' is to be prepared by a suitably qualified Heritage Management professional. The 'Statement of Significance' is to include the following information:</p> <ul style="list-style-type: none"> <li>• A history of the site and its place within the larger local and regional history, based on local records and sources</li> <li>• Undertake a comparative analysis;</li> <li>• Undertake a site inspection and recoding of the features</li> <li>• A statement of significance from earlier work;</li> <li>• Recommendations for further management if the site is determined to be of significance.</li> </ul>



<b>Urban Subdivision</b>		
6.1 Stormwater Management	No	<p>As discussed in the <i>11.6.5 Stormwater runoff / management</i> section of this report, Council has not been provided with updated information to adequately assess this aspect of the DA. It is considered that the proposal has <u>not</u> satisfied the following acceptable solutions of this section:</p> <p><b>A2.1</b> Drainage lines and watercourses are designed and landscaped in accordance with best practice guidelines. An example of a best practice guideline is "Natural Channel Design Guidelines" Brisbane City Council, 2003.</p> <p><b>A3.1.</b> Vegetated riparian corridors are retained or established in accordance with NSW Office of Water guidelines "Controlled activities on waterfront land - Guidelines for riparian corridors on waterfront land" NSW Office of Water, July 2012.</p>
6.2 Flora and Fauna Conservation	No	<p>P1 requires:</p> <p>Areas of ecological value and significance within the North Lismore Plateau are identified, conserved, rehabilitated and appropriately managed in perpetuity, in accordance with an approved 'Environmental Management Plan' (EMP). An EMP is prepared for each of the three landowner areas identified in the map shown in Appendix I.</p> <p>A BDAR and VMP was submitted with the application however amendments were required. The BDAR is no longer accessible on the Biodiversity Offset Assessment Management System (BOAMs), consequently the BAM Credit calculations cannot be assessed and a satisfactory reporting in this space has not been received. It is considered that the proposal has <u>not</u> satisfied the following acceptable solutions of this section: <b>A1.1, A1.2, A1.3 A1.4</b></p>
6.3 Landscape Planning & Environmental Management	No	<p>There is no Landscape Plan available for various locations along the Dunoon Road interface. There is a plan available for Local Park Node 4, but this is above the road and not a significant visual concern. Additional information required how each complies with the criteria set out within the DCP.</p> <p>In addition to above and relative to this clause a plan of individual trees to be retained/cleared in the R1 zone has not been received and it is proposed to encase 1st and second order water courses. Management of the vegetated riparian zones, storm water detention areas are not demonstrated the Vegetation Management plan as required. It is considered that the proposal has <u>not</u> satisfied the following acceptable solutions of this section: <b>A1.1, A1.2, A2.1, A3.1, A5.1, A5.2, A10.1, A10.2.</b></p>
6.4 Public Open Space	No	<p>A concise 'Landscape Plan' is required that shows clearly how the proposal aligns with the Performance Criteria and Acceptable Solutions within the DCP. It is considered that the proposal has <u>not</u> satisfied the following acceptable solutions of this section: <b>A3.2, A4.1, A5.1</b></p>

6.5 Pedestrian and cycle path network	Yes	Pedestrian and cycle paths appeared to be included however detail is lacking. These details could be conditioned, but it is best practice to have the information submitted concurrently with the remainder of the application.
6.6 Staging of infrastructure delivery	No	<p>There are no details of staging or infrastructure delivery provided with the subject DA. The consortium of property owners of the subject land, named Plateau North Property Group (PNPG), was and has continued to be unwilling to enter into a tripartite VPA, which was the original intention for North Lismore Plateau. See more on the element of the application under the <i>11.8.2 Availability of Water &amp; Sewer Infrastructure and Voluntary Planning Agreement (VPA)</i> section of this report.</p> <p>It is considered that the proposal has <u>not</u> satisfied the following acceptable solutions of this section: <b>A3.2, A4.1, A5.1</b></p>
6.7 External road works	No	The development proposes an intersection on Dunnon Road however detailed design plans, TIA and concurrence from TfNSW remain outstanding.
6.8 Internal street design	No	<p>Numerous roads are proposed with widths and grades that do not comply with the DCP and there has been no justification provided to these non-compliances.</p> <p>See Council's Development Engineers Referral contained within <i>Attachment 2 – Internal Referral Responses</i> for detailed assessment.</p>
Table 1 – NLP Street Network Characteristics	No	
6.9 Lot sizing for housing diversity	Yes	
6.10 Lot orientation and configuration for solar access	Yes	
Section 7 & 8 relate to Dwellings and development in the neighbourhood centre.	N/A	N/A
Flood Prone Lands		
Development Controls (Floodway, High Flood Risk, Flood Fringe and Low Flood Risk, CBD)	Yes	Generally, complies, but note other comments throughout the report.
Residential		
Commercial		
Rural Areas		
Buffers		
Conflicts in Land Uses	No	<p>The Buffer DCP requires distances of 1000m from extractive industries and rural dwellings. Activities proposed such as crushing and screening as well as blending to stockpile will be required on the development site. This nominates a significant quarrying activity having the potential to have significant impacts (construction emissions) upon adjoining rural dwellings. Details on this aspect of the application (such as noise impact reports, mitigation measures ect.) remain outstanding and have not been satisfied.</p>
Recommended Buffers		
Crime Prevention Through Environmental Design		
Rationale	No	<p>The parks shown as LP7 and LPN4 are not supported for safety reasons as there is no “passive surveillance” opportunities and the parks may become entrapment areas.</p>
Guidelines for Development Assessment		

Surveillance (i.e. sit and design of buildings, subdivision design, landscaping, and lighting)		Parks, pathways and cycleways must be designed to meet the requirements of CPTED.
Access Control and Target Hardening		
Territorial Reinforcement		
Defensive Space		
Waste Minimisation		
Relationship with Legislation	No	A Site Waste Minimisation and Management Plan (SWMMP) or other documentation that addresses the requirements of this DCP chapter was not submitted.  The SWMMP must include justification for the areas where the kerbside/ road frontage space intended to be occupied by 'wheelie bins' exceeds 75% of the site's available kerbside/ road frontage space. This information remains outstanding.
Handling Waste		
Development and Construction Certificate Application		
Urban Residential Subdivision		
4.1 Element - Lot Layout	Yes	The proposed development generally complies with the controls in this section.
4.2 Element - Street Networks	Yes	This section deals with the standards required for the street network which differs from the North Lismore Plateau Chapter. The North Lismore Plateau Chapter prevail in the subject DA.
4.3 Element – Steet Design, Construction and On-Street Parking	No	Non compliance with <b>A15</b> . The grade of the lot frontages prevents driveways being provided in accordance with the requirements of the Northern Rivers Design and Construction Manual.
4.4 Element - Pedestrian and Cyclist Facilities	Yes	Pedestrian and cycle paths appeared to be included however detail is insufficient. These details could be conditioned.
4.5 Element – Public Transport	No	There are no details pertaining to public transport. It is considered that the proposal has <u>not</u> satisfied the following acceptable solutions of this section: <b>A21, A22, A23.1, A23.2, A23.3</b> .
4.6 Element - Public Open Space	No	The subject DA has not supplied sufficient detailed information to satisfy <b>A24</b> , or the information provided does not comply.
4.7 Element - Essential Services	No	The subject DA has not supplied sufficient detailed information to satisfy <b>A27.1, A28, A30</b> , or the information provided does not comply.
4.8 Element -Water Quality Management	No	The subject DA has not supplied sufficient detailed information to satisfy <b>A31</b> , or the information provided does not comply.
4.9 Element – Street Trees	Yes	
4.10 Element - Biodiversity Conservation	No	The subject DA has not supplied sufficient detailed information to satisfy <b>A33.1, A33.2</b> , or the information provided does not comply.
4.11 Element – Aboriginal Cultural Heritage	No	The subject DA has not supplied sufficient detailed information to satisfy <b>A33.1, A33.2</b> , or the information provided does not comply.
Vegetation Protection		
4.2 Information required for development applications	No	The application does not include information about the vegetation or the proposed treatment of the native vegetation in the R1 zone.

5 Clearing of vegetation on rural land and high biodiversity value land	No	<p>The development application has not adequately demonstrated compliance with the Ecological Setbacks from High Conservation Value areas as set out in Table 4.</p> <p>The subject DA has not supplied sufficient detailed information to satisfy <b>4.2, 4.6, 5.3</b> or the information provided does not comply.</p>
<b>Water Sensitive Design</b>		
22.4 Performance Criteria	Yes	
22.6 Water sensitive Design Measures	No	<p>With regard to treatment devices that will become public infrastructure, Council limits the array of treatment options that will be accepted as public infrastructure. The applicant was advised that the bio pod bioretention system was not a treatment device option at a pre DA lodgement meeting.</p> <p>The subject DA has not supplied sufficient detailed information to satisfy <b>22.6, 22.7</b> or the information provided does not comply.</p> <p>Nevertheless, Council will not accept <i>bio pods</i> within our road reserves and or on public land.</p>
<b>Residential Development</b>		
4.1 Element – Setbacks, Design, Density and Height	No	<p>As existing dwelling houses are to be retained and contained with new lot boundaries assessment is required to be undertaken of setbacks, BCA and bushfire requirements. Adequate detailed information has not been supplied in order for this requirement to be undertaken.</p>
4.4 Element - Open Space and Landscaping	No	
4.5 Element – Earthworks, Retaining Walls and Erosion controls	No	
4.6 Element – Off Street Car Parking, Carports, Garages, Outbuildings and Driveways	No	<p>Adequate information has not been provided to assess if the retained dwellings will meet open space requirements, heights of retaining walls required for earthworks, off street car parking requirements.</p>

#### 11.4 Planning Agreement

The developer has not offered to enter into planning agreement or draft planning agreement as provided under section 7.4 of the Act. See further discussion under section *11.8.2 Availability of Water & Sewer Infrastructure and Voluntary Planning Agreement (VPA)* of this report.

#### 11.5 Applicable Regulations

The application has been notified in accordance with requirements under Clause 57 of *EPA Regulation 2001*.

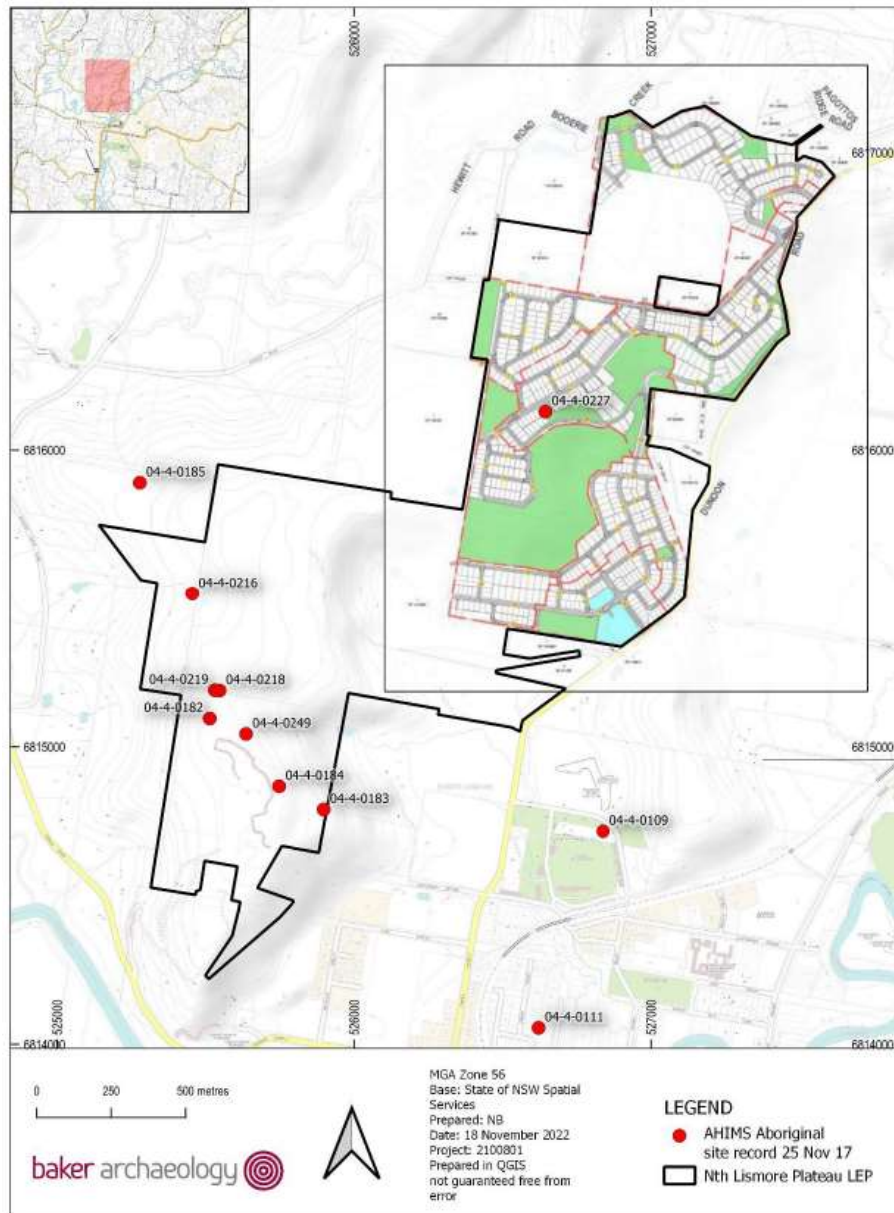
As explained earlier in this report, a Biodiversity Development Assessment Report (BDAR) is required to be submitted in accordance with the requirements of Division 6.2 and Part 7 of *Biodiversity Conservation Regulation 2017*. A BDAR was submitted with the application however amendments were required, the BDAR is no longer accessible.



## 11.6 Likely impacts

### 11.6.1 Aboriginal Cultural Heritage

Items and places of Aboriginal cultural heritage significance have been identified within the North Lismore Plateau land release area. These sites have since been registered on the 'NSW Aboriginal Heritage Information Management System' (AHIMS) as illustrated below.



**Figure 3: The DA area AHIMS registered Aboriginal sites**

In 2012, as a part of the re-zoning process, investigations into Aboriginal heritage at North Lismore Plateau were undertaken in consultation with the local Aboriginal community and in accordance with the following NSW Office of Environment and the following Heritage guidelines:

- 'Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW'
- 'Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010'
- 'The Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW'.

The resultant 'Cultural Heritage Assessment Report' made a number of recommendations in regards to the protection and on-going management of Aboriginal heritage items. These recommendations

are reflected in the performance criteria and acceptable solutions contained within LCC *North Lismore Plateau Urban Release Area DCP* and applicable to future development applications at North Lismore Plateau. Criteria in the DCP stipulate that a 'Aboriginal Cultural Heritage Management Plan' (ACHMP) is to be submitted with the first development application for subdivision of land at North Lismore Plateau along with the 'Statement of Environmental Effects' for approval by Lismore City Council and the NSW Office of Environment & Heritage (or relevant concurrence agency).

An *Aboriginal Cultural Heritage Management Report* (ACHMP) undertaken by Myall Coast Archaeological Services was submitted with the application. Due to the probability that an aboriginal object would be disturbed by the proposed development, the application was referred to Heritage NSW as integrated development. Heritage NSW returned the application with the following response:

*Heritage NSW advises that it is the responsibility of the proponent to ensure that they comply with Part 6 of the National Parks and Wildlife Act 1974. If Aboriginal objects are present, or likely to be present, and the proposed activity will harm those objects, an Aboriginal cultural heritage assessment must be undertaken. This assessment should inform appropriate management and mitigation measures, which may include the requirement for an Aboriginal Heritage Impact Permit. Heritage NSW recommends that the Aboriginal cultural heritage assessment is guided by the following documents: • Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in New South Wales (OEH 2011). • Consultation with the Aboriginal community undertaken in accordance with the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 (DECCW 2010). • Satisfy the requirements of the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (DECCW 2010).*

Council engaged the services of an independent consultant with suitable qualifications and experience to review the *Aboriginal Cultural Heritage Management Report* undertaken by Myall Coast Archaeological. Mr Neville Baker of Baker Archaeology review of the original *Aboriginal Cultural Heritage Management Report*, can be summarised as follows:

*I have reviewed the ACHMP report and find it does not provide the level of information required by relevant Heritage NSW guidelines, the relevant Development Control Plan (DCP) or "The Conservation Plan" publication to which the DCP refers as a necessary guideline. The shortcomings are numerous, and the proponent would be well-advised to completely revisit the Aboriginal heritage requirements of the DCP and relevant guidelines.*

A letter was submitted by Council to the applicant requesting a 'Aboriginal Cultural Heritage Management Plan' that met the requirements of the DCP and NSW best practice for Due Diligence in NSW be lodged. The response from the applicant was as follows:

*This is not necessary and should not have happened as the actual Aboriginal Cultural Heritage Assessment Report prepared for the whole of the North Lismore Plateau Rezoning Area has already been accepted and approved under the rezoning process. What was required by Council for the Allura Parklands DA was a Cultural Heritage Management Report to fit in with the overarching Aboriginal Cultural Heritage Assessment Report already approved.*

A supplementary report was provided by the applicant again undertaken by Myall Coast Archaeological Services. In the supplementary report the proponent argued that prior Aboriginal heritage reports should be considered satisfactory for the DA and that a proposed covenant with the registered Aboriginal parties should be considered a satisfactory approach to managing Aboriginal heritage values on the land. The applicant maintained that the application is not integrated development under the Act.

A review of the supplementary report by Myall Coast Archaeological Services was undertaken by Mr Neville Baker of Baker Archaeology that again found the report failed to meet Council's statutory requirements for the same reasons as in the earlier advice and further:

*As stated in previous review, there is a registered Aboriginal archaeological site (AHIMS site 04-04-0227) as well as intangible Aboriginal socio-cultural value to the DA land. Development plans may warrant application for an AHIP and therefore may trigger integrated development – but we don't know, because no Aboriginal heritage reports have been produced in accordance with relevant guidelines to demonstrate how this registered Aboriginal site 04-04-0227 is to be managed within the development. The documents from Mr Roberts (Myall Coast Archaeological Services ) do not address statutory requirements for an Aboriginal Cultural Heritage Assessment Report and Aboriginal Cultural Heritage Management Plan completed in accordance with Heritage NSW guidelines and Council requirements under the DCP. There's not even a map of Aboriginal sites or the proposed development impacts in the undated ACHMP. The absence of an acceptable ACHAR and ACHMP in any development approval leaves Council unacceptably vulnerable to legal challenge.*

The most recent update on this aspect of the application is that the new applicant has engaged a new heritage consultancy. On the 2 November 2022, Council was provided with a *notice of intent to prepare an Aboriginal Cultural Heritage Assessment* for the proposed development.

#### **11.6.2 Access/Traffic to the site**

A Traffic Impact Assessment (TIA) was submitted with the application. The TIA was referred to TfNSW, in letter dated 3 June 2021 TfNSW provided comments in regard to the TIA. Council requested that the submitted TIA be amended to address the concerns raised in the letter dated 3 June 2021 and to provided clarification around the roll out (staging) of proposed works.

At the time of this report an updated TIA has not been provided to Council and therefore the application has insufficient information to accurately assess the traffic impacts of his development.

##### **11.6.2.1 Proposed Lot frontages**

The submitted Slope Analysis plans shows that many lots across the subdivision have frontages in excess of 25% slope and (as advised in pre-lodgement meetings) this is not supported by Council. The maximum grade for a residential driveway is 25% and frontages steeper than this cause non compliances with future dwelling applications. Council has advised there are two options in regard to this issue:

- a) Redesign the earthworks to ensure lot frontages have a maximum grade of 25%; or
- b) Provide driveway designs to indicative building envelopes for any lot with a frontage that exceeds 25%. These driveways will then be required to be constructed with the subdivision works.

Additional information received in June 2022 identified that 24 lots have frontages in excess of 25% grade. The applicant provided an example steep driveway design for 1 lot only. As the initial request was for the maximum grade to be reduced or a driveway design for each lot be supplied, there is insufficient information at this time to support the current lot layout.

##### **11.6.2.2 Proposed Road Grades**

The submitted plans show roads with grade more than 16% and in some cases up to 20%. This did not meet the requirements of DCP Part B Chapter 10 and thus justification for the proposed variations to the DCP for the roads more than 16% was sought. The justification was to also be accompanied

by a typical access design for each situation of grade exceedance (<1%, 1-2%, 2-3% and 3-4%) that complies with the Northern Rivers Development and Design Manual Section D3.08.

The applicant provided justification in response to the RFI that relied on existing roads within the Lismore LGA being non-compliant. Council advised this justification was not adequate and that it needed to be site specific.

Further additional information was received in June 2022 after an online meeting with the applicant where the number of roads exceeding the grade requirements had been significantly reduced. However, no justification has been provided as to how these grades are unavoidable or how the variation meets the performance criteria of the DCP. *Attachment 2 - Internal Referral Responses* of this report contains the Development Engineers referral that contains a table that illustrates the proposed road widths and their non compliances status against Council's DCP. There is currently insufficient justification provided in relation to road grades to support the current road layout.

### 11.6.3 Bulk Earthworks

The original proposal was for 728,733m<sup>3</sup> of cut and 710,776m<sup>3</sup> of fill resulting in a 17, 957m<sup>3</sup> excess of cut material. Whilst these volumes of cut and fill are quite large, it is Council's Development Engineer's opinion that the non-compliant road grades are a result of trying to minimise bulk earthworks, compliant road grades could be achieved by undertaking more earthworks on the site.

### 11.6.4 Floodplain risk in the event of a flood

The development has been assessed in relation to flood impacts. It has been determined that the development will not adversely impact the existing flood characteristics of the area and all residential lots will be located above the 1% AEP flood level of 12.9m AHD. Residential blocks in the flood effected area (pink line represents 1% AEP flood level) are proposed to be filled (blue shading) and areas of public space would be cut (pink shading), this results in the net impact within the flood prone area to be 3,900m<sup>3</sup> of cut which results in additional flood storage.

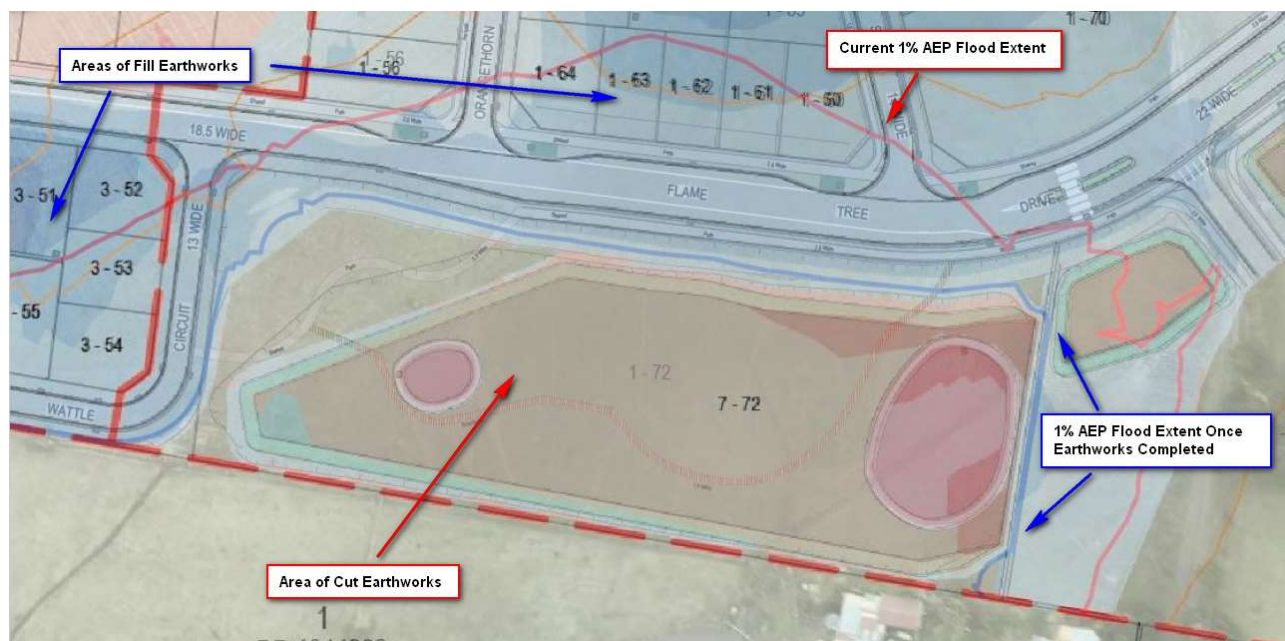


Figure 3: Plan showing earthworks and flood extents

Further to the above the earthworks plans and plan above show that no roads within the development will be inundated during the 1% AEP flood event and all vehicles will have multiple access locations onto Dunoon Road.

### 11.6.5 Stormwater runoff / management

The primary issue relating to stormwater management is a lack of proposed approved detention and infiltration devices. Two methods employed by the proposed stormwater management plan (SWMP) is retention of storm water from future dwelling rainwater tanks and the use of bioretention devices (Biopods) to be located in nature strips in the roadway.



**Figure 4: Biopod stormwater management device**

Council had previously advised the applicant (during the pre-lodgement meeting and request for information) that it did not support the use of Biopod stormwater devices that were shown within the stormwater management plan (SWMP). The primary reason for not accepting these devices was the difficulty in maintaining these systems and the potential for them to fail because of a lack of maintenance. It was requested that the SWMP be redesigned and Biopod stormwater devices removed in favour of end of centralised line treatments.

The SWMP also referenced the use of 10kL rainwater tanks for each lot with an assumption that 5kL will be dedicated to active storage. Council advised that it could not prescribe the use of a tank that is greater than the Basix requirements (3kL) and therefore it was requested that the SWMP be amended to remove the on-site detention from each lot.

Additional information was received in February 2022 and the usage of rainwater tanks had been removed. The commentary from the consultant was that *The Allura Parklands SWMP report can be updated to remove the use of tanks if required but they are not essential to managing peak discharge across the development area.*

However, in regard to the use of “Biopods” this was still shown. Council has had subsequent phone conversations with the stormwater consultant where it was agreed that an alternative solution will be considered.

The application was referred to Rous County Council (RCC) with comments provided on 25 June 2021. The overarching conclusion of their assessment being that *the performance objectives identified are not adequate to protect water quality in receiving waters contained within a water catchment area.*

RCC recommended that the storm water treatment train be designed with consideration that the development is located within a water supply catchment and that a ‘neutral or beneficial effect on water quality’ test be applied to any proposed stormwater management approach. It was requested that LCC and the proponent address these issues and requirements outlined above as part of the amended SWMP.



Council to date has not received and amended compliant SWMP based on the above requirements. The technical reporting has not been submitted that satisfied the requirements of DCP Chapter 22 and the development cannot be supported from a stormwater quality perspective.

#### **11.6.6 Ecology / Flora and Fauna / Koala habitat**

Any development or activity which triggers Part 7 of the *Biodiversity Conservation Act 2016* (BC Act) and is likely to significantly affect threatened species must be accompanied by a Biodiversity Development Assessment Report (BDAR). A BDAR was submitted with the application however amendments were required by Council. An amended BDAR was requested to include detail regarding:

- Mapping and assessment of scattered paddock trees/small stands of trees including the relevant BAM calculations,
- A clear map of native trees including Koala Food Trees (KFT's) to be retained within proposed development footprint,
- Further detail regarding the assessment process for the clear determination of the presence and absence of each candidate species credit species including effort and limitations to surveys,
- Clear justification for conducting surveys for threatened flora outside the specified times,
- Explanation of the methodology for mapping the Hairy Joint Grass species polygons and justification for excluding some areas of PCT 887,
- Reassessment and identification of indirect impacts on habitats and threatened species during construction phase with particular reference to the threatened microbats and bird species known to occur on the site. and
- Further detail regarding proposed road strike mitigation measures that address habitat enhancement and connectivity.
- RFS Bush fire APZ's and perimeter tracks are proposed to occur on private property further detail is required enable determination.
- Both the VMP mapping and the Bushfire report must demonstrate (consistently with each other) that both the objectives are achieved. That is both inner and outer APZ not to be accommodated within reserves and C2 and C3 Zones.

At the time of writing this report no updates to the BDAR have been received. The BDAR is no longer accessible on the Biodiversity Offset Assessment Management System (BOAMs), consequently the BAM Credit calculations cannot be assessed and the ecological assessment cannot be supported.

*State Environmental Planning Policy (Biodiversity and Conservation) 2021* requires Council to consider whether the development will impact on koala habitat. Matters relevant to koala SEPP at the time of the DA lodgement were addressed in the BDAR.

The BDAR reported a targeted search (SAT) for the koala was undertaken 2012. The current 2017 study was limited to identifying koala food trees on site. Only two koala food trees (KFTs) are identified in the submitted BDAR with the vegetation and habitat on site is reported to not constitute core koala habitat in accordance with the definition within the relevant koala SEPP.

It is noted that where two KFT's are recorded on site, the actual location of the trees is not reported nor is there a plan of trees that are to be retained (as described above under BC Act and Council's DCP). Greater certainty is required regarding the proposed treatment of KFT within the proposed development footprint.

Any vegetation removal that is ancillary to an activity that requires development consent under Part 4 of the *Environmental Planning and Assessment Act* must be clearly identified with the development



application. The application does not include the prescribed information about the vegetation or the proposed treatment of the native vegetation in the R1 zone, specifically:

- A plan that shows the location and extent of the vegetation proposed to be removed in relation to property boundaries and existing or proposed buildings and existing other vegetation
- Reason for proposed vegetation removal
- Identification of species, number of trees and/or area (m<sup>2</sup>) of other native vegetation including ground covers not defined as tree to be removed.
- Approximate heights and diameter

The proposed development has the following outstanding ecological issues that require addressing in submitted plans, VMP and BDAR:

- The Vegetation Management Plan should specifically include measures to rehabilitate native vegetation on side slopes on the eastern slopes (including Dunoon Road)
- Provide for wildlife corridors through the site
- Retain existing Koala food trees and provide for additional plantings where relevant,
- Provide specific measures to conserve habitat movement corridors of the *Echidna* with dual respect for the species and in acknowledgment of the cultural heritage significance of the species at the location.
- demonstrated compliance with the Ecological Setbacks from High Conservation Value areas as set out in Table 4 of Council's Vegetation Management DCP.

#### **11.6.6.1 Ecology Callistemon Parkway and Blackbean Way**

The proposed route of Callistemon Parkway and Black Bean Way is not supported on both ecological and geotechnical issues (further details provided on the geotechnical aspect in *11.8.1 Geotechnical constraints* section of this report). This is due to insufficient steps taken to avoid in the first instance, and minimise the impacts on the identified biodiversity values within the C2 Environmental Conservation (C2 Zone), C3 Environmental Management (C3 Zone).

Callistemon Parkway and Black Bean Way is not supported for the following ecological reasons:

- a. Causes excessive fragmentation of High Conservation Value (HCV) vegetation relative to patch size,
- b. Increases edge effect causing light pollution and weed threat to retained HCV vegetation
- c. Decrease in habitat suitability to threatened fauna known to occur on the site,
- d. Increased road strike potential due to positioning roads through high conservation value vegetation patch,
- e. Insufficient assessment of the indirect impacts resulting from fragmentation created by the has been provided, as well as potential impacts on fauna from traffic traversing this sensitive area,
- f. Imposition of long term difficult to manage biosecurity liability to council for future roadside HCV vegetation management.
- g. Engineering concerns must be addressed so that a wholistic approach is taken, from the earthworks cross sections presented the impact of the cutting the road has a footprint of up to 60 meters and perhaps much wider when it comes to construction and
- h. Is inconsistent with the NLP Structure Plan and the objectives and the C2 and C3 Zones.

Reportedly, an alternate route was investigated however it was found to be in conflict with a sensitive aboriginal cultural heritage matter (the alternate route is not known as is the location of the sensitive aboriginal cultural heritage matter).

### 11.6.7 Noise Impact to adjoining properties

Council's Environmental Health Officer advises that significant challenges remain in addressing road traffic noise particularly nominated precincts 1, 2, 4 & 6 that have proposed lots immediately adjacent to Dunoon Road. Additionally, the DA nominates quarrying activities having the potential to create significant impacts (construction emissions) upon adjoining rural dwellings. The existing acoustic report is to be amended to include modelling for these properties and the quarrying activities.

An amended acoustic report remains outstanding. The assessment of noise impacts cannot be finalised until the additional information above is submitted and assessed.

### 11.7 Social and economic impacts in the locality

The proposed subdivision provides both social and economic benefits to the locality.

### 11.8 Suitability of the site for the development

In relation to relevant matters of s4.15 of the EP&A Act the information provided in the DA fails to demonstrate that the site is suitable for the development proposed. This can be demonstrated by outlining issues around availability of services and development in areas of high landslip. Aspects relating to traffic impacts could be included also.

#### 11.8.1 Geotechnical constraints

Review of the geotechnical report submitted with the DA raised some serious concerns relating to the areas shown as very high landslip risk, shown red on the map extract below. As the area is classed as very high landslip risk, Council does not support residential development and infrastructure within this area. It must also be noted that this geotechnical assessment was not supplied during any pre-lodgement meetings otherwise Council would have raised this issue before the submission of the DA.

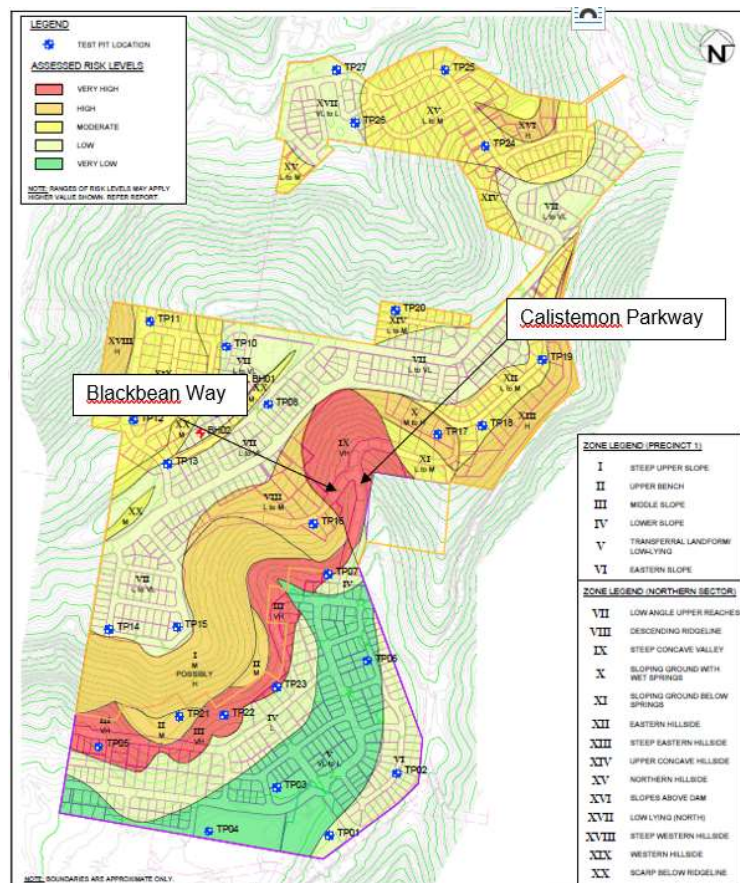


Figure 4: Slope Risk Assessment from Geotechnical Assessment

Council acknowledges that the submitted geotechnical assessment does provide some options to reduce the risk of land slip however, this appears to only relate to “dwelling specific studies”. It is also noted that the proposed roads, being identified as Calistemon Parkway and Blackbean Way have non-compliant road grades, which is considered a dangerous situation in this location.

Additional information was requested to provide design details on how the very high landslip risk areas could be managed and utilised for the subdivision in a safe way.

After this RFI various meeting (in person and online) were held with the applicant to inform them of what Council’s expectations were in regards to satisfying the geotechnical RFI and that if the information was not submitted, Council could not support roads or allotments in those areas. The minutes of the meetings were conveyed to the applicant with additional information requested as follows:

- *Provide wholistic justification for the road/s traversing the areas highlighted in the Landslip Risk Map in red and marked IX VH. The Landslip Risk Assessment for Zone IX states “The assessed risk for Zone IX (Moderate to Very High) is not considered tolerable per Table 11.3, and will hence require specific engineering investigation and design advice for the development of the roadway. Any lots within this zone will need a detailed geotechnical*
- *engineering assessment undertaken which is to further consider the slope risk and engineering measures required for development. For the residential lots, it is envisaged that significant subsoil and surface drainage measures and engineered retention structures will be required. With these measures installed, it is envisaged that the likelihood of instability will reduce by one or two magnitudes; resulting in a maximum of **Moderate** risk for the residential lots, which is considered tolerable.”*
- *The justification must demonstrate to Council there is an acceptable level of risk for not only the roads but also the surrounding allotments with regard to potential for land slip. Council requires certainty that the allotments in the VIII, X and XI areas will have no risk of land slip for future dwelling construction. (See also further elements below)*
- *The information shall be supported by a constraints overlay that looks at any flow-on effect as a result of the infrastructure being located in this very high risk area.*
- *An assessment of bushfire threat on the parcels of land within the orange area denoted as VIII Low to Medium, and any further impact on vegetation / ecology as a result of any APZs needs to be provided.*
- *Ecological impacts as a result of the fragmentation created by the roadways needs to be addressed, as well as potential impacts on fauna from traffic traversing this sensitive area.*
- *Provide a detailed scope and design of the works required to reduce the risk level for any residential allotments or road infrastructure in Zone III and Zone IX. The scope and design shall also consider any areas of very high slope risk adjacent to the residential allotments or road infrastructure.*

In response to this RFI and after a further online meeting with Council staff to discuss moving the geotechnical issue forward a further Geotechnical Report was submitted. The report was reviewed with the following findings.

<b>Geotechnical Report Issues</b>	<b>Comment (Dev Eng.)</b>
Section 5.1 – Assumptions The consultant has assumed the soil profile based on nearby samples and no new samples were taken in the area of concern	The RFI from 4 May 2022 requested that justification be provided. In this regard as no sampling has been undertaken and they are just assuming the soil profile, therefore I do not believe that adequate justification has been provided

Section 5.3.1 Case 1 The consultant is relying on 1V:1H batters for the typical sections	Council does not nor has ever supported steep batters, typically we support 1:4 with some exceptions being made for 1:2 if properly vegetated, but to my knowledge never 1:1
Section 5.3.3 case 3 The consultant is relying on 1V:1H batters for the typical sections	Council does not nor has ever supported steep batters, typically we support 1:4 with some exceptions being made for 1:2 if properly vegetated, but to my knowledge never 1:1
4 <sup>th</sup> May 2022 RFI Letter Dot Point E subpoint 3	No constraints overlay show to determine full extent of works. Allura Parklands Additional Geotechnical Assessment is more preliminary design and does not show detailed designs or limits of works
4 <sup>th</sup> May 2022 RFI Letter Dot Point E subpoint 6	Allura Parklands Additional Geotechnical Assessment is more preliminary design and does not show detailed designs or extent works required
4 <sup>th</sup> May 2022 RFI Letter Dot Point E subpoint 7	Allura Parklands Additional Geotechnical Assessment is more preliminary design and does not show detailed designs or extent of works required

As can be seen in the table above the geotechnical consultant and applicant made a variety of assumptions that were not previously discussed with Council. Further to this the RFI relating to this issue had 7 dot points requiring input from various professions and not just geotechnical.

Therefore, upon review of all geotechnical information provided for the areas marked as very high landslip risk, a final RFI was sent to applicant which stated;

*Adequate justification has not been provided to support the road/s traversing the areas highlighted in the Landslip Risk Map in red (as shown on page 2 of Council's correspondence dated 22 October 2021 and page 3 of Council's correspondence dated 4 May 2022). Additionally, the following is advised:*

- a) It is reiterated that the roads proposed in this location are not in accordance with the adopted 'Urban Release Area Structure Plan' (Appendix A) in DCP Chapter 10 – NLPURA.*
- b) The information provided did not include a constraints overlay to address any flow on effect as a result of the infrastructure being located in this very high risk area. The information provided is preliminary design only and does not show detailed designs or limits of work.*
- c) The consultant's report assumes the soil profile based on nearby samples and no new samples were taken in the area of concern.*
- d) The consultant report is relying on 1V:1H batters for the typical sections. Council does not support steep batters to this extent.*
- e) The justification did not demonstrate to Council that there is an acceptable level of risk for not only the roads but also the surrounding allotments with regard to potential for land slip.*
- f) This section of the North Lismore Plateau was zoned C2 Environmental Management and C3 Environmental Conservation as a result of extensive research, including ecological / vegetation and planning constraints mapping, during the charrette process and the re-zoning of the land proposed for development at the North Lismore Plateau.*
- g) The subdivision layout must be updated to remove the roads from this location within the proposed development.*
- h) In the interests of progressing the development application no further discussion or correspondence will be entered into regarding this issue.*
- i) It is acknowledged the level of non-compliance with maximum road*

There has been no additional geotechnical information submitted to address the points above, nor has the lot layout been amended to remove infrastructure and lots from within the very high landslip risk areas. Therefore, as the requested information has not been submitted (or amended) the application in its current form cannot be supported from a geotechnical perspective as Council cannot be certain that the areas of very high landslip risk will not adversely impact the development.

#### **11.8.2 Availability of Water & Sewer Infrastructure and Voluntary Planning Agreement (VPA)**

The proposed development is reliant on reticulated water and sewer. There have been discussions with NLP developers in relation to a Voluntary Planning Agreement (VPA) to deal with internal servicing of the NLP zoned land with trunk water and sewer infrastructure. Those discussions are ongoing, and the Infrastructure Development Plan (IDP) for servicing the NLP is currently under review in response to more recent detail in future development planning being available.

Planning agreements must be voluntary on the part of the developer/applicant. Council cannot compel an applicant to enter into a VPA, and so at present there cannot be any conditioning to that effect.

The consortium of property owners of the subject land, named Plateau North Property Group (PNPG), was and has continued to be unwilling to enter into a tripartite VPA, which was the original intention for North Lismore Plateau.

After negotiations with PNPG stalled in or around 2017, PNPG instructed Ross Fox of Fishburn Watson O'Brien to act for them in mid-2019. Over the next two years or so, there were extensive meetings with Council staff, Council's Solicitor, PNPG staff and Ross to progress matters concerning the VPA – mainly water and wastewater infrastructure. A non-binding Heads of Agreement was negotiated (although not formally signed) and then after agreement from PNPG, Council's Solicitor drafted a VPA which was sent to Ross Fox on 30 March 2022.

A substantive response to the draft VPA has not been received to date. Accordingly, if the VPA with Allure Parklands was to be re-activated, there would still be a significant amount of work to do.

The intention of the VPA was to cater for development across the plateau by efficiently rolling out developer-paid infrastructure and creating a mechanism for developers to recover infrastructure costs from future developers. Unfortunately, that aim has proven difficult to realise.

In short, a key question arising from the VPA (or lack thereof) is whether Allure Parklands can adequately service its development in terms of water and wastewater. There may be capacity for initial stages (aided by pump stations etc), but it is difficult to see how further stages can be approved in the absence of trunk mains being installed, and through land not associated with Allure Parklands.

The proponents of the subject application are required to acquire and secure suitable easements through Winten Lands for the extension of the sewer to their site. No details are provided in this regard

Provisions of CI 6.9 of LLEP 2012 expressly states that development consent must not be granted to development unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available when required. In this regard, Council is not satisfied that adequate arrangements have been made for the provision of the supply of water and the disposal and management of sewage.

## **11.9 Submissions**

For public exhibition the DA was advertised in Lismore City Council's *Local Matters* publication between 26 May 2021 and 25 June 2021. The DA was notified to the North Lismore Plateau Registered Aboriginal Parties (NLP RAP), adjoining and nearby property owners and occupants between 13 May 2021 and 25 June 2021. 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". 84 submissions were received with 83 objecting and 1 in support, the issues raised in submissions are included within the body of this report.

Each of the submissions received are summarised in order of receipt with the issues raised in the summary table attached to this report as **Attachment 4**.

The key issues raised in submissions are as follows:

- Aboriginal cultural heritage
- ecology
- landslip
- stormwater
- traffic impact

These aspects of the application are discussed throughout this report.

## **11.10 Public interest**

The likely impacts of the development, including environmental impacts on both the natural and built environments are not acceptable in its current form. The application proposes infrastructure and housing in areas identified as high land slip that is a public safety issue. The considerations around Aboriginal Heritage have not been adequately investigated. Due to the numerous shortfalls identified, the development, as presented, is not considered 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.

## **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 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.

## **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.

## **15 Local Government Act 1993 Approvals**

The proposal requires approvals under the provisions of s.68 of the *Local Government Act 1993*.

## **16 Consultation on Draft Conditions of Development Consent**

As the application is recommended for refusal there are no draft conditions of consent.



## 17 Conclusion

As has been demonstrated by this report, the proposed development fails to achieve a raft of statutory benchmarks provided in the *Lismore Local Environmental Plan 2012* and *Lismore Development Control Plan*, *State Environmental Planning Policy (Transport and Infrastructure) 2021*, *Biodiversity Conservation Act 2016* and *Environmental Planning and Assessment Act 1979*.

The proposed development fails to provide, with sufficient detail, adequate reporting on important aspects such as Aboriginal heritage. In other areas such as stormwater design and road layout the development fails to achieve best practice benchmarks or proposes to employ design features that are unacceptable to council.

The development relies on reticulated water and sewer however there are no details about how this infrastructure is going to be realised with plans of landowners entering into a Voluntary Planning Agreement not eventuating.

Significant outstanding issues which remain unresolved are as follows:

- Aboriginal cultural heritage
- Stormwater
- Availability of reticulated water and sewer
- Geotechnical
- Lot layout issues – i.e. road through E zones
- Slope of land / driveways / building houses
- Ecological impact
- Noise impact
- Bushfire management

General terms of approval remain outstanding from NSW Natural Resources Access Regulator, NSW Department of Planning and Environment (Heritage) and Concurrence from Transport for NSW. NSW Rural Fire Service have issued their GTA however issues remain regarding the maintenance of external perimeter fire trail of which Council is not satisfied.

Accordingly, with the lack of information, which has been clearly articulated and the inability to form a lawful view on the validity of the proposal, the recommendation is for Refusal.

## 18 Recommendation

Pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979* it is recommended that development application no. 5.2021.221.1 to undertake staged subdivision comprising 742 residential lots, 2 neighbourhood business lots, 1 residue lot (future residential), 14 public reserve lots and associated infrastructure, 45 new roads, road widening and road closures, bulk earthworks, essential services (water, sewer, power & telecommunications), stormwater management facilities, landscaping and environmental rehabilitation, be **REFUSED** for the following reasons;

1. The proposed development is **not consistent** with primary directions of the *North Coast Regional Plan 2036* including:

*Direction 2: Enhance biodiversity, coastal and aquatic habitats, and water catchments.*

The proposed development has not demonstrated that it would enhance biodiversity or the riparian zones or adequately implement the principles of 'avoid, minimise, offset'.

*Direction 3: Manage natural hazards*

The subject site is bushfire prone, the development has not proposed adequate arrangements to maintain a perimeter access track that is imperative to the proposed bushfire protection plan.

*Direction 18: Respect and protect the North Coast's Aboriginal heritage*

The proposed development has not considered (to an acceptable standard) the potential impacts on Aboriginal cultural heritage values.

2. The proposed development is nominated integrated development and **has not been granted** General Terms of Approval (GTA) from the *NSW office of Water* and a controlled activity approval from *Natural Resources Access Regulator* ('NRAR') in accordance with Part 3 of Chapter 3 *Water Management Act 2000*.
3. The proposed development is integrated development and **has not been granted** general terms of approval from the *NSW Department of Planning and Environment (Heritage)* in accordance with section 58 of the *Heritage Act 1977*.
4. The proposed development is integrated development and **has not been granted** Concurrence from *Transport for NSW (TfNSW)* under section 138 (2) of *Roads Act 1993*.
5. Whilst General Terms of Approval have been received by NSW RFS, issues remain outstanding regarding the maintenance of external perimeter fire trail of which Council is **not satisfied**.
6. The proposed development does not satisfy, or is inconsistent with, the following provisions of *Lismore Local Environmental Plan 2012*, clause(s);

1.2 – Aims of the Plan, the proposed development is **inconsistent with** the following aims of the Plan:

(a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, (namely non compliances with Lismore Development Control Plan – Part B North Lismore Plateau Urban Release Area)

(e) to protect, sustain and enhance Lismore's natural environment, particularly native fauna and flora,

(f) to minimise the adverse effects of natural hazards, particularly flooding, bush fire and land instability,

(g) to ensure that development is consistent with the principles of ecologically sustainable development.

2.3 – Zone objectives and Land Use Table, the proposed development is **inconsistent with** the following zone objectives:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.

- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To retain areas of unique natural vegetation, particularly rainforest remnants and ecologically endangered communities.
- To encourage the retention of wildlife habitats and associated vegetation and wildlife corridors.

5.10 - Heritage conservation, the proposed development is considered **inconsistent** **with** the following objectives of this clause:

- (a) to conserve the environmental heritage of Lismore,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

and has not satisfied cl.5.10 (8)a being:

(8) Aboriginal places of heritage significance, the consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance—

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement),

6.2 – Earthworks, (1) there is **insufficient information** provided to determine whether the application will have detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land or disturbing relics.

(3) In its current form, it is likely that the proposed development will have:

- (a) a detrimental effect on, drainage patterns and soil stability in the locality of the development
- (f) impact on or is likely to disturb relics
- (h) adverse impacts on waterways, Wilson River drinking water catchment and environmentally sensitive areas

6.4 - Drinking water catchments, (1) It is considered that that the proposed development **does not achieve** the objective of this clause to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.

(4) Council is **not satisfied** that:

(a) the development is designed, sited and will be managed to avoid any significant adverse impact on water quality and flows, or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

6.9 - Essential services, Council is **not satisfied** that adequate arrangements have been made for the supply of water, management and disposal of sewage, management of stormwater drainage and suitable vehicular access

7. Clause 2.119 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* for development with frontage to classified road. **Insufficient information** has been provided to satisfy Council the safety, efficiency and ongoing operation of a classified road will not be adversely affected.
8. The Biodiversity Development Assessment Report (BDAR) submitted with the application is no longer accessible on the Biodiversity Offset Assessment Management System (BOAMs) and consequently the BAM Credit calculations cannot be assessed. Any development or activity which triggers Part 7 of the *Biodiversity Conservation Act 2016* (BC Act) and is likely to significantly affect threatened species and must be accompanied by a BDAR. Pertinent matters pertaining to Part 7.8 of the BC Act **remain outstanding**.
9. The proposed development has **not demonstrated** acceptable solution(s) (or provided sufficient information) to the following sections of *Lismore Development Control Plan, Part A Chapter 1 – Residential Development –*
  - 4.1 Element – Setbacks, Design, Density and Height
  - 4.4 Element - Open Space and Landscaping
  - 4.5 Element – Earthworks, Retaining Walls and Erosion controls
  - 4.6 Element – Off Street Car Parking, Carports, Garages, Outbuildings and Driveways
10. The proposed development has **not provided** acceptable solution(s) to the following sections of *Lismore Development Control Plan, Part A, Chapter 5A Urban Residential Subdivision –*
  - Element 4.3 – Street Design, Construction and On-Street Parking
  - Element 4.5 – Public Transport
  - Element 4.6 – Public Open Space
  - Element 4.7 - Essential Services
  - Element 4.8 - Water Quality Management
  - Element 4.10 - Biodiversity Conservation

- *Element 4.11 – Aboriginal Cultural Heritage*

11. The proposed development is not consistent with principles 1, 5, 7, 8, 9 of *Lismore Development Control Plan, Part B, Chapter 10 - North Lismore Plateau Urban Release Area*.
12. The proposed development has **not demonstrated** acceptable solution(s) to the following sections of *Lismore Development Control Plan, Part B - North Lismore Plateau Urban Release Area* –
  - *Element 4.1 – Aboriginal Cultural Heritage Identification, Assessment & Management*
  - *Element 5.1 - Cultural Heritage Identification, Assessment & Management*
  - *Element 6.1 – Stormwater Management*
  - *Element 6.2 - Flora and Fauna Conservation*
  - *Element 6.3 - Landscape Planning & Environmental Management*
  - *Element 6.4 - Public Open Space*
  - *Element 6.6 - Staging of infrastructure delivery*
  - *Element 6.7 - External road works*
  - *Element 6.8 - Internal street design*
13. The proposed development has **not demonstrated** acceptable buffer distances consistent with the *Lismore Development Control Plan, Part A, Chapter 11- Buffer Areas*.
14. The proposed development has **not demonstrated** acceptable solution(s) to the relevant sections of *Lismore Development Control Plan, Part A, Chapter 14 – Vegetation 14* –
  - *Information required for development applications*
  - *Clearing of vegetation on rural land and high biodiversity value land*
15. The proposed development has **not demonstrated** acceptable solution(s) regarding clause 22.6 *Water sensitive Design Measures* of *Lismore Development Control Plan, Part A Chapter 22 – Water Sensitive Design*
16. Insufficient information has been provided in terms of likely environmental impacts, inclusive of acoustic impact, to sensitive receivers (residence) (EP&A Act Cl 4.15 1(b)).
17. Insufficient information has been provided in terms of likely environmental impacts to the built and natural environment (EP&A Act Cl 4.15 1(b)).
18. The proposed development is not in the public interest, because of the risk to the safety due to land slip and for all the preceding reasons (EP&A Act Cl 4.15 (e)).

## Attachments

- Attachment 1** External Referral Responses
- Attachment 2** Internal Referral Responses
- Attachment 3** Proposed DA Plans
- Attachment 4** Summary table of submissions