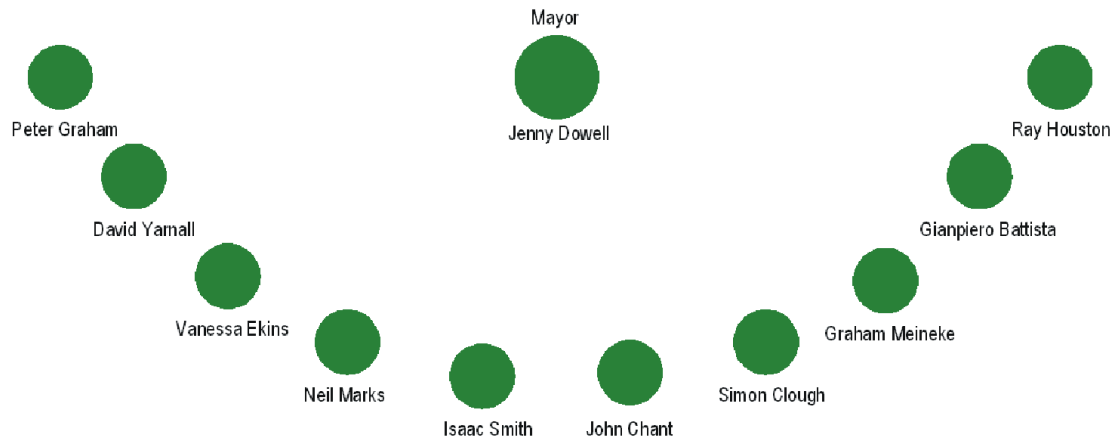


# Notice of Council Meeting



## Extra Ordinary Meeting

An EXTRA ORDINARY MEETING of LISMORE CITY COUNCIL will be held at the COUNCIL CHAMBERS, Oliver Avenue, GOONELLABAH on  
**Tuesday, 23 February, 2010, 6:00pm**  
and members of Council are requested to attend.

Paul G. O'Sullivan  
**General Manager**

16 February, 2010



# Agenda

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## **Opening of Meeting and Prayer (Mayor)**

## **Apologies and Leave of Absence**

Councillor Marks

## **Disclosure of Interest**

## **Public Access Session**

## **Reports**

Southern Trunk Main Wastewater Project ..... 1

Draft Lismore LEP Amendment No.38 & Planning Agreement – 237 Gungas Road, Nimbin..... 8



# Lismore City Council Community Strategic Plan 2008 - 2018



Guiding Principles	Outcomes
<b>Social Inclusion and Participation</b>	That all Lismore residents enjoy equal opportunities within a strong, inclusive community.
<b>Sustainable Economic Growth and Development</b>	That Lismore's economy is vibrant and development is environmentally and socially sustainable.
<b>Protect, Conserve and Enhance the Environment and Biodiversity</b>	That Lismore's natural ecology is protected and maintained in a healthy and robust state for future generations
<b>Best-Practice Corporate Governance</b>	That best-practice management principles pervade our business; that we are innovative, ethical, and our use of resources provides maximum benefits to the community.

Community Strategic Priorities	Outcomes
<b>Enhance Lismore as a Regional Centre</b>	That Lismore retains and builds on its regional service centre role, including the provision of key medical, legal and tertiary education functions
<b>Foster Youth Development</b>	That young people are included in our community and can safely pursue their interests and aspirations.
<b>Support an Ageing Population</b>	That older people have access to appropriate services and facilities to enhance their health and wellbeing.
<b>Provide Sustainable Land-use Planning</b>	That land-use planning is founded on principles of sustainability.
<b>Improve Catchment Management</b>	That catchment management is integrated and holistic, in order to achieve a sustainable and balanced use of natural resources.
<b>Revitalise the CBD</b>	That the CBD becomes a vibrant meeting place and a cultural and entertainment hub for the Northern Rivers region.
<b>Integrated Waste Cycle Management</b>	That Lismore minimises waste to landfill by reducing, reusing and recycling.
<b>Improve Roads, Cycleways and Footpaths</b>	That Lismore has an extensive transport network and is an accessible, safe and efficient city for motorists, cyclists and pedestrians.
<b>Mitigate Climate Change at a Local Level</b>	That Lismore is a leader in reducing carbon emissions and minimising the impacts of climate change.
<b>Develop and Support Art, Cultural, Sporting and Tourism Activities</b>	That our regional art, cultural and sporting facilities remain a major component of Lismore life and an increasingly popular attraction for domestic tourists.
<b>Integrated Water Cycle Management</b>	That Lismore maintains long-term water security for its growing population through the efficient use of this precious resource.
<b>Provide Greater Housing Choices</b>	That Lismore offers a diverse range of housing options to accommodate a variety of households.
<b>Improve Passive and Active Recreational Facilities</b>	That Lismore retains and builds on its regional recreation centre to attract major events and tournaments.

Corporate Foundations	Outcomes
<b>Efficient Use of Council Resources</b>	That we maximise the value of our resources, continually review our operations to ensure best value, eliminate waste and duplication, and gain the full service potential from our assets
<b>Engage With the Community</b>	That the community is informed and consulted about the issues that are relevant to their lives and we are fully accountable to the community for our operations.
<b>Promote a Constructive Corporate Culture</b>	That customers and staff experience a supportive organisation, with a strong sense of integrity, which responds to their needs and provides innovative and creative services.
<b>Whole of Council Corporate Planning</b>	That we have clear goals and act as one in their co-ordinated implementation, in order to maximise the return on resource investment and staff expertise.
<b>Providing Excellent Customer Service</b>	That our primary focus is to understand and respond to the needs of the community we serve.

# Report

<b>Subject</b>	<b>Southern Trunk Main Wastewater Project</b>
<b>File No.</b>	EF09/2511:ED10/2456
<b>Prepared by</b>	Strategic Engineer - Water and Wastewater
<b>Reason</b>	Orderly planning of wastewater infrastructure to cater for existing and future development.
<b>Objective</b>	To inform Council of developments with respect to planning of the proposed Southern Trunk Main wastewater infrastructure project. To obtain a resolution of Council to execute a loan agreement with the State Government and to engage NSW Public Works to provide project management services for this project.
<b>Strategic Plan Link</b>	Integrated Waste Cycle Management
<b>Management Plan Project</b>	Wastewater Services

## Overview of Report

This report provides an update on the proposed Southern Trunk Main wastewater infrastructure project, including the receipt of an offer from the State Government of a \$6 million interest free loan to assist funding of this project. The report recommends acceptance of this funding offer. It is also recommended that NSW Public Works be engaged to provide project management services for this project.

## Declaration of Interest – General Manager

*In accordance with the requirements of Council's Code of Conduct for all Council officials to ensure full disclosure in the interests of transparency and probity I wish to draw attention to the fact that I am the joint owner of a house property at City Acres – a locality adjacent to Chilcotts Grass and which may be impacted by the recommendation in this report.*

## Background

On 19 October 2009 a Council workshop was held which focussed on the capacity of the Goonellabah sewerage system and a review of Council's urban land release strategy. A key recommendation presented to this workshop was that a proposed wastewater project, known as the Southern Trunk Main, was the optimal solution for addressing capacity constraints within the Goonellabah sewerage system and the servicing of future urban land release areas. It was stressed that construction of the Southern Trunk Main was a high priority, given existing capacity constraints within the Goonellabah sewerage system, and the potential for these constraints to limit future development within Goonellabah.

On 3 November 2009 a further Council workshop was held to consider the financial implications of fast tracking the Southern Trunk Main. A series of reports was subsequently presented to Council at its December meeting. At this meeting Council resolved to amend its *Strategic Business Plan for Wastewater Services* to fast track the Southern Trunk Main to ensure its completion as soon as practicable and to delay the proposed Clunes Wastewater Scheme for a period of two years to enable

this to be achieved.

This report provides an overview of the Southern Trunk Main and recent developments in the implementation of this project.

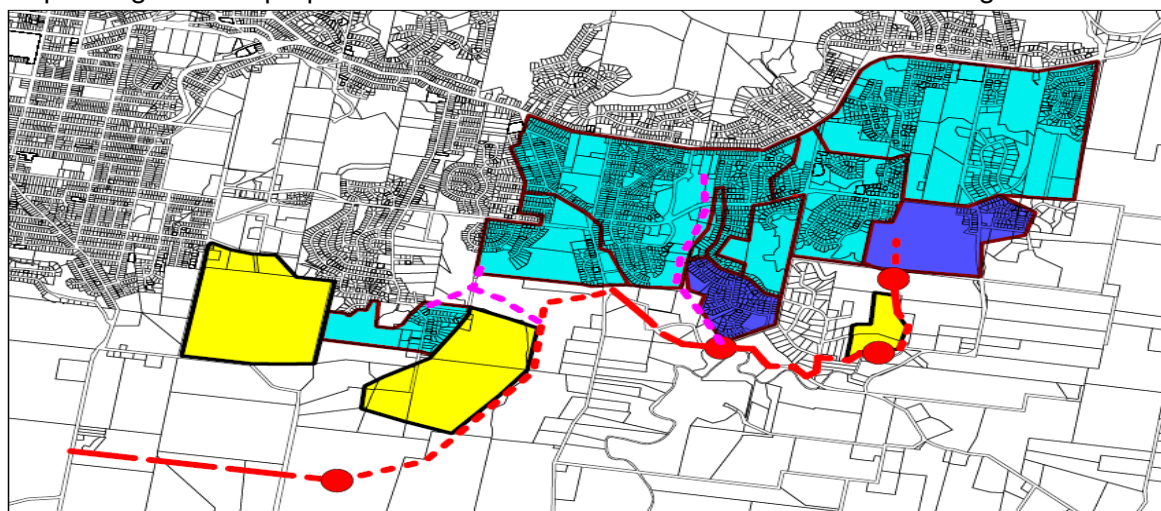
### Overview of Southern Trunk Main Project

The Southern Trunk Main (STM) is a major sewerage project involving the construction of approximately 6.7 km of pipelines and four major sewage pump stations.

The purpose of this project is:

- Provide relief for the existing Goonellabah sewerage system. Recent analysis indicates the existing system is nearly overloaded and does not have sufficient capacity to enable development of the remaining undeveloped residential land within Goonellabah. Relief will be provided to the existing system by diverting existing load, which is currently directed to this system, to the new Southern Trunk Main.
- Provide additional sewerage capacity to enable the development of proposed future urban release areas located to the south of East Lismore and Goonellabah (ie, the proposed Crawford, Invercauld and Chilcotts Grass rezonings).
- Through diverting load from the existing Goonellabah sewerage system it is planned to create sufficient reserve capacity within this system to enable future urban rezonings, located to the north of Goonellabah, to connect to this sewerage system (ie, the proposed Trinity Drive, Lagoon Grass and Pineapple Road rezonings). This will avoid the cost of providing major new infrastructure to service these areas.

The concept design for the proposed Southern Trunk Main is shown in the following illustration:



<b>Key</b>	
	Rising (Pumped) Trunk Sewer Main
	Gravity Trunk Sewer Main
	Sewage Pump Station
	Gravity Diversion Main
	Proposed Urban Land Release Area
	Existing Development Able to be Connected Direct to Southern Trunk Main
	Existing Development to be Diverted to Southern Trunk Main by Gravity Diversion Main

## Further Investigation Undertaken

In July 2009 Council engaged an engineering consultancy firm to undertake detailed computer modelling of the Goonellabah sewerage system. This consultancy included the review and updating of a previously developed model of this system and the use of this model to assess the performance of the system. Preliminary results of this modelling were presented to Council at its workshop of 19 October 2009. This preliminary modelling provided an assessment of the performance of the existing sewerage system when subjected to loading imposed by existing development of its catchment.

In November 2009 the above consultancy was extended to include computer modelling of several future scenarios. The first two of these scenarios assessed the performance of the existing Goonellabah sewerage system following continuing development of its catchment. The purpose of undertaking this modelling was to confirm initial 'desk top' analysis presented to the Council workshop in October 2009. (It had originally been intended that computer modelling of future scenarios would be available to be presented to this workshop but this had not been possible due to time constraints). The two scenarios modelled were:

1. Existing development within the catchment plus the additional load once all developments with current development consent are completed.
2. Full development of the catchment (ie, all existing vacant residential land fully developed).

A third scenario was also modelled, which investigated the impact of constructing the Southern Trunk Main and the associated diversion of load from the Goonellabah sewerage system. This scenario modelled the following:

3. • construction of the Southern Trunk Main;
  - diversion of existing development from the existing Goonellabah sewerage system to the Southern Trunk Main, as indicated in the illustration above, and full development of these areas;
  - connection of all future urban land release areas, located to the south of East Lismore and Goonellabah, to the Southern Trunk Main and full development of these areas;
  - full development of the remaining Goonellabah sewerage catchment; and
  - the future connection of future urban land release areas, located to the north of Goonellabah, to the existing Goonellabah sewerage system and full development of these areas.

Based on projected rates of growth, the above scenario involves a planning horizon of approximately 15 to 20 years.

The main purpose of the above modelling exercise was to determine design loadings for the Southern Trunk Main and, in particular, confirmation that proposed diversions of load to the STM would create sufficient capacity within the existing Goonellabah sewerage system to enable the future connection of proposed northern rezonings. A further result of this modelling was the development of a preliminary concept design and computer model of the STM, including indicative pipe and pump station sizes. This will provide a valuable resource in initial planning of the project.

This additional modelling has now been completed and indicates the following result for the first two scenarios. (These scenarios do not include the Southern Trunk Main).

- Once all developments with existing development consent (such as Waterford Park) are completed, all major pump stations in east Goonellabah will be operating near their design capacity. This effectively places a constraint on any further development of these catchments.



- If further development is permitted, overloading of the system will result. If full development of the Goonellabah catchment is reached, the model predicts the capacity of eastern pump stations would be far exceeded and significant stress would be evident along the major trunk lines within the system including the 'northern trunk main'. In this regard, the model predicts that surcharging (backing up) of major trunk lines and overflows would occur as a result. Interestingly, the model predicts that, for design flows, the capacity of Sewage Pump Station No. 16 (Wade Park) would not be exceeded. (This result is a more optimistic outlook than previous 'desk top' modelling.) The performance of this pump station is critical as it drains the whole Goonellabah catchment. However, while this pump station may have capacity, the remainder of the system is unable to convey flows to this pump station effectively.
- Although not modelled in any of these scenarios, it is clear that no reserve capacity is available within the existing sewerage system to enable the future connection of any proposed northern rezonings.

The third scenario modelled indicates that proposed diversions to the STM will relieve pressure on the eastern pump stations and trunk main systems, creating sufficient reserve capacity to enable connection of future northern rezonings. Some localised problems within the system are not resolved by construction of the STM. Determining possible solutions to these problems could form part of further investigations into this project to ensure future solutions can be integrated into the scheme at a later stage.

The modelling confirms the conclusions regarding capacity constraints within the existing Goonellabah sewerage system, as presented to the Council workshop of 19 October and the recommendation of the Southern Trunk Main as a solution to these constraints. It also verifies the subsequent strategic decision made by Council to bring forward construction of the Southern Trunk Main as a major priority.

## **Offer of Interest Free Funding from State Government**

In late January 2010 Council received an offer from the State Government of a \$6 million interest free loan to assist in funding of the Southern Trunk Main project. This offer was made as part of its Local Infrastructure Fund Program. The offer of this funding followed lodgement of an application by Council for funding under this program in August 2009. Repayment of the loan is required over a period of 10 years.

The offer of funding is subject to strict guidelines, which form part of the program. In particular:

- Substantial commencement of the project is required prior to 30 June 2010.
- Completion of the project is required within 18 months of the first funding advance. This is likely to require completion of the project by the end of 2011.

Council may be subject to significant penalties if these milestones are not reached, including repaying any outstanding moneys to the State Government.

Council must indicate its acceptance of the funding offer by returning an executed loan agreement by 1 March 2010 or the offer of funding will lapse. In order for Council to be able to make an informed decision regarding acceptance of this offer, an assessment of the feasibility of meeting these timelines is required. Consequently, since this offer was received, planning of this project has focussed on determining the feasibility of meeting the above timelines.

## Project Procurement

The offer of the interest free loan contains very tight timelines for commencement and completion of the project. In normal circumstances Council would need to run a number of tender processes to appoint the various consultants and construction contractors that will be required to progress the work. These processes could not be undertaken in the timelines that are set down as conditions of the loan.

Section 57 of the Local Government Act permits Council to engage the relevant Minister on its behalf to construct water, wastewater or stormwater works under the Public Works Act. This can be undertaken without the need to conduct tender processes. Further, such an engagement would include the necessary processes for land acquisition along the route of the new main.

In order to save time and ensure that Council meets the timelines attached to the loan offer, it is recommended that Council write to the Minister for Land and Water Conservation requesting that they undertake the work on Council's behalf. This is discussed further below.

## Preliminary Project Planning

On 1 February 2010 a meeting of relevant staff members was held to discuss the most effective way to implement the project and to assess the feasibility of meeting funding guidelines. This led to a decision to approach NSW Public Works (formerly the Department of Commerce), regarding the possibility of engaging the department to provide project management services for this project. Another outcome of this meeting was the formation of a project management team, consisting of relevant Program Managers and Strategic Engineer, to manage Council's implementation of this project.

Since then several discussions have been held between Council staff and representatives of Public Works. A draft proposal for the provision of project management services for this project has been submitted by Public Works which is considered of a high standard. Public Works has also prepared a preliminary project schedule which indicates that completion of the project, within the timeline specified above, is feasible.

At present, NSW Public Works is developing a final proposal for submission to Council, including their proposed fees. A revised budget estimate, using pipe and pump station sizes indicated by recent modelling, is also being prepared.

## Comments

### Financial Services

Council has resolved to proceed with the construction of the Southern Truck Main in 2010/11. The offer of a \$6.0 million interest free loan with favourable repayment terms is very attractive and would bring these works forward. While the loan agreement has typical terms and conditions, the key conditions are:

- a) the project must commence within 60 days of receiving the loan but not later than 30 June 2010, and
- b) the project must be completed within 18 months of the receiving the loan.

The ability to meet these key conditions is being assessed and will be provided to Councillors prior to the meeting.

As advised, NSW Public Works is revising the estimates for this project. Once received, financial modelling will be undertaken to assess the impact on future user charges for Wastewater Services. When available, this information will also be provided to Councillors prior to the meeting.

As it is proposed that Council borrow an additional \$6.0 million, the 2009/10-2012 Management Plan will



need to be amended to reflect this situation and the Division of Local Government advised of Council's intention.

### **Other staff comments**

Not required.

### **Public consultation**

A consultation plan for this project is yet to be developed, but will form an important part of this project. Of particular importance will be consultation and negotiation with affected landholders associated with acquisition of easements and land purchases necessary for this project to continue.

The project will include the preparation of a Review of Environmental Factors (REF), which will include both social and environmental impacts.

### **Conclusion**

Since Council's resolution of December 2009 to bring forward construction of the Southern Trunk Main, there have been significant developments with respect to the planning of this project.

Subsequent investigation and modelling has verified Council's strategic direction and confirmed the Southern Trunk Main to be an effective servicing strategy to cater for the next 15 to 20 years' growth of greater Lismore.

The offer of interest free funding for the STM project provides further impetus for the fast tracking of this project. A decision whether to accept this funding needs to be made prior to 1 March 2010.

Preliminary planning of this project has commenced, centred on negotiations with NSW Public Works to provide project management services for this project. A draft proposal for the provision of these services has been forwarded to Council, which is considered of a high standard. An initial program schedule has also been prepared by Public Works, which indicates it is feasible to construct the project within the timeframe specified by State Government funding guidelines. Public Works is currently preparing a revised budget estimate and a final proposal for the provision of project management services for the project. This additional information will be available prior to Council's extraordinary meeting of 23 February 2010. Updated financial modelling of the project, and its impact on Council's *Strategic Business Plan for Wastewater Services*, will also be available prior to, or at this meeting.

The following recommendations are made pending receipt of the above additional information. Should any amendment to recommendations be necessary, following receipt of this information, Councillors will be advised of these amendments prior to, or at the meeting.

**Recommendation (IS15)**

That:

1. Council enter into a loan agreement with the State Government, providing \$6 million in interest free loans towards financing of the proposed Southern Trunk Main, in accordance with the Local Infrastructure Fund Program.
2. In accordance with section 57 of the Local Government Act, Council write to the relevant minister requesting that NSW Public Works provide project management services for this project.
3. The General Manager and Mayor be authorised to sign and affix the Council Seal to the loan agreement or any other documents deemed necessary to complete this resolution.
4. The 2009/10-2012 Management Plan be amended to include a \$6.0 million loan from the Local Infrastructure Fund for the Southern Trunk Main.
5. The Division of Local Government be advised of the additional borrowing.

# Report

<b>Subject</b>	<b>Draft Lismore LEP Amendment No. 38 and Planning Agreement – 237 Gungas Road, Nimbin</b>
<b>File No</b>	EF09/1794:ED10/1933
<b>Prepared by</b>	Strategic Planning Coordinator
<b>Reason</b>	To inform Council of land owner concerns with the terms of a draft Planning Agreement associated with a draft amendment to the Lismore LEP2000 to allow rural residential subdivision in Gungas Road, Nimbin.
<b>Objective</b>	To obtain Council confirmation of the terms of the draft Planning Agreement.
<b>Strategic Plan Link</b>	Provide sustainable land use planning
<b>Management Plan Project</b>	Exhibit Draft LEP

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## Overview of Report

At Council's ordinary meeting of 13 November, 2007, Council resolved to prepare a draft amendment to the Lismore Local Environmental Plan 2000 to enable the creation of a 32 lot rural residential subdivision at 237 Gungas Road, Nimbin. The resolution also required that the draft Planning Agreement, the terms of which were approved at the Council meeting, be finalised prior to the public notification of the draft amendment. This has not yet occurred as the land owner considers some of the terms of the Planning Agreement unacceptable, in particular the extent of the road works. Staff have met with the land owner and applicant on a number of occasions and reached agreement about some changes that can be made to the draft Agreement. However, as the road works specified in the Agreement are based on the requirements of the Rural Housing Strategy and current Council practice, staff have generally maintained the requirements as approved by Council. It is considered that any significant change to the agreement, as has been proposed by the landowner, would require reconsideration by Council. This report recommends that the terms of the draft Agreement remain unchanged, with the exception of the amendments agreed to by staff and the land owner.

## Background

In March 2005 Council received a rezoning submission for Lot 2 DP 1080400 being 237 Gungas Road, Nimbin. The land is identified in Council's Rural Housing Strategy as having potential for rural residential settlement and is located approximately 3.5kms northeast of Nimbin. The locality plan is attached (Attachment 1). At Council's ordinary meeting of 13 November, 2007 Council resolved to:

1. *prepare a draft amendment to Lismore Local Environmental Plan 2000 pursuant to Section 54 of the EP&A Act 1979 to include Lot 2 DP 1080400, Gungas Road, Nimbin in Schedule 4 to allow subdivision to create 32 rural residential lots.*
2. *notify the Director General of Planning of Council's decision in accordance with Clause 9 of the EP & A Regulation 2000.*
3. *consult with relevant government and other agencies pursuant to section 62 of the EP&A Act.*
4. *advertise the draft LEP amendment and Planning Agreement for a period of twenty eight days following finalisation of the Planning Agreement and upon receipt of an authorisation to exercise its delegations from the Department of Planning.*

The first three actions have occurred and the applicant has undertaken additional studies as requested by the relevant government and other agencies. However, the draft Planning Agreement has not yet been finalised and therefore the draft LEP amendment and Planning Agreement have not been advertised.

The draft Planning Agreement has not yet been finalised as the land owner considers some of the terms of the agreement unacceptable, in particular the extent of the road works. The terms of the Planning Agreement were approved by Council at the November 2007 meeting. Staff have met with the land owner and applicant on a number of occasions and reached agreement about some changes that can be made to the draft Agreement. However, as the works specified in the Agreement are based on the requirements of the Rural Housing Strategy and current Council practice, staff have generally maintained the previously reported requirements. It is considered that any significant change to the agreement, as has been proposed by the landowner, would require reconsideration by Council.

This report is solely concerned with the draft Planning Agreement. It does not consider the merits of the proposed rural residential subdivision, as this assessment has already occurred. The layout plan of the proposed subdivision is Attachment 2 of this report.

### **Terms of the Draft Planning Agreement**

At Council's ordinary meeting of 13 November, 2007 Council approved the following terms to be included in the Planning Agreement:

- i) Any future development application for subdivision to be generally in accordance with the plans that form part of the rezoning submission.
- ii) A requirement that environmental rehabilitation works are carried out in accordance with approved plans. The works include weed removal and fencing of the endangered species and other areas to be rehabilitated and planting and monitoring of rehabilitation species.
- iii) A requirement that rehabilitation works for the dip site will take place during internal road construction and carried out in accordance with the approved plans, including a bond of 130% of the total cost for the proposed works, which is to be released upon satisfactory completion of the rehabilitation works.
- iv) Prior to the release of the subdivision certificate for Lots 7, 9, 11, 12, 13, 15, 20, 21, 22 & 30, the Lot shall have constructed a driveway from the road pavement to the proposed dwelling envelope, in accordance with Council's Vehicular Access Policy.
- v) The development shall be undertaken in 3 stages and stages are to progress in numerical order.
- vi) Prior to release of an allotment within proposed Stage 1 (Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 31 and 32) of the development the following works to Gungas Road shall be completed:
  - Gungas Road shall be constructed to a 6 metre sealed road on an 8 metre formation, with a suitable pavement to meet the requirements of Council's Development Design and Construction Specification, from Sheathers Bridge to a point 10 metres north of the southern intersection of proposed road No. 1 with Gungas Road.
  - The upgrading or replacement of the two existing causeway/bridges located upon Gungas Road between Tuntable Falls Road and Sheathers Bridge. Replacement/upgraded structures are to meet all requirements of Council's Development Design and Construction Specification and be of a width suitable for two way traffic.

- vii) Prior to release of an allotment within proposed Stage 2 (Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 29 and 30) of the development the following works to Gungas Road shall be completed:
- Gungas Road shall be constructed to a 6 metre sealed road on an 8 metre formation, with a suitable pavement to meet the requirements of Council's Development Design and Construction Specification, from the end of the works required prior to release of lots within stage 1 to a point 10 metres north of the northern intersection of proposed road No. 1 with Gungas Road.
  - The widening of Gungas Road between Tuntable Falls Road and Sheathers Bridge to provide a 6 metre wide sealed road on an 8 metre wide gravel formation.
- viii) Prior to release of an allotment within proposed Stage 3 (Lots 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28) of the development the following works to Gungas Road shall be completed:
- Gungas Road shall be constructed to a 6 metre sealed road on an 8 metre formation, with a suitable pavement to meet the requirements of Council's Development Design and Construction Specification, from the end of the works required prior to release of lots within stage 2 to the northern boundary of the property.
  - A 6 metre wide 2 coat bitumen seal for the full length of the road from Tuntable Falls Road to Sheathers Bridge. Works shall include reseal preparation incorporating heavy patching of existing pavement and crack sealing at locations as identified by Council's Rural Works Engineer, and shoulder grading.
- ix) Section 94 contributions collected for Gungas Road that have not been spent and which could, in accordance with the section 94 plan and relevant legislation, be spent on Gungas Road shall be allocated to the Stage 3 roadworks

The estimated cost of the above works is \$1.15m, of which roadworks represents just over \$1m. The estimated cost of the road works north of Sheathers Bridge (that is, the frontage of the land) is \$600,000. North of Sheathers Bridge the estimated cost is \$401,306 (including CPI).

### Land Owner Concerns

Though the applicant has previously agreed to the requirements contained in the Planning Agreement the land owner has now questioned them and does not accept the terms of the draft agreement, in particular those relating to the extent of road works. Engineering and Planning staff have met with the land owner and the applicant on a number of occasions to try to resolve the concerns and issues and agreement has been reached on some of the matters raised. However, with respect to the road works, staff have not been prepared to change the requirements as this would represent a fundamental shift in Council policy and practice. Below is the list of land owner concerns (paraphrased in some cases) in italics followed by comments from staff, including proposed changes.

1. *The amount of the bond, that is, \$1.19m is 'outrageous' along with the need for a bond.*

**Staff comment:** Section 93F(3)(g) of the *Environmental Planning and Assessment Act 1979* requires a Planning Agreement to provide for (among other matters) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer. Council's Planning Agreements Policy (Policy No. 5.3.2) states that Council's preferred form of security is by way of a bank guarantee to be lodged prior to the LEP amendment being made. The amount of security is calculated by adding together the estimated cost of all works specified in the Planning Agreement. The security is then released to the land owners on satisfactory completion of works. Staff have advised the land owner that a charge over land is also an acceptable form of security, subject to satisfying certain requirements. An amendment to the draft Agreement to change the form of security is possible, subject to the land owner demonstrating that the requirements can be satisfied.

2. *The Agreement is heavily biased in favour of Council, for example, the developer pays all Council's legal costs, Council has veto as to who purchases the subject land.*

**Staff comment:** Council's Planning Agreements are drafted to protect the interests of Council and the land owner. The standard form of agreement used by Council is based on a template prepared by the (then) Department of Infrastructure, Planning and Natural Resources as issued in a Practice Note on 19 July, 2005, and on legal advice received by Council. Changing or removing clauses such as the clause that is included to ensure that any purchaser of the land is aware that a Planning Agreement exists and is capable of performing their obligations under the agreement, is not supported.

3. *The Agreement would require the work to be carried out in accordance with any design standards and technical specifications specified by the Council. What if road construction standards change substantially between the signing of the Agreement and the commencement of Stage 3?*

**Staff comment:** The draft Agreement states that work required to be carried out by the land owner is to be completed in accordance with any design standard and specifications specified by the Council in relation to the work. Staff have agreed to add the words 'as at the date of this Agreement'. The draft Agreement can be amended accordingly.

4. *Why does the development have to be undertaken in the prescribed stages and following each other?*

**Staff comment:** The requirement to undertake the subdivision in stages and in numerical order relates to the sequence of the road works. Staff have agreed that the subdivision can be undertaken in 3 stages in any numerical order, subject to the relevant works being completed before the release of relevant lots (refer to v in the previous section of this report). The draft Agreement can be amended accordingly.

5. *The construction of the specified driveways (Lots 7, 9, 11, 12, 13, 15, 20, 21, 22 & 30) should not have to be undertaken by the land owner. What if a purchaser of one of these lots wishes to place the driveway elsewhere?*

**Staff comment:** Staff have undertaken a further review of the applicant's geotechnical report and consider that the driveways to Lots 9, 11 and 12 should be constructed for at least the first 140 metres prior to the release of the subdivision certificate for these lots. This is due to the significant works identified by the applicant's geotechnical report to provide suitable access through an area of "significant" slip hazard. If these lots were released without either remediation works or suitable construction of driveways through the areas of slip hazard, Council would be allowing lots to be created that require additional expense for the construction of driveway access above what would normally be expected when purchasing a lot for rural residential housing. No such requirement shall apply to the other lots originally identified as requiring driveway construction (Lots 7, 13, 15, 20, 21, 22 and 30). The draft Agreement can be amended accordingly.

6. The main point of contention for the land owner is the extent of the roadworks, in particular, the roadworks from Sheathers Bridge to Tuntable Falls Road. Below is the list of land owner concerns followed by comments from staff.

(a) *The road works contributions have to recognise Council's letter of 28/09/04, that is, contributions can be made on a 'per lot' basis. The letter was written after the adoption of the Rural Housing Strategy and advises that:*

- *An agreement needs to be entered into requiring the road to meet a 6m on 8m standard with causeway upgrades;*
- *Full costs of the road upgrading should be identified;*
- *Calculate the number of lots that can be created; and*
- *The contribution is then a function of the costs divided by the number of lots.*



*Council's offered payment regime is at odds with the Strategy's methodology and the land owner proceeded with the rezoning based on Council's letter i.e. payment on a per lot basis. Council's letter of September 2004 is binding on Council.*

**Staff comment:** Prior to addressing the letter referred to above, the principles for determining the extent of road works are contained in the Rural Housing Strategy, as follows:

*Localities suitable for closer rural settlement shall be accessible to the nearest urban area, major village or main road by a sealed road of adequate standard to accommodate increased traffic likely to be generated from existing and future development. Currently the minimum standard is a 6 metre wide seal on an 8 metre gravel formation, with adequate pavement quality. Where this standard of access currently does not exist, it must be economically feasible for future development to meet the costs of upgrading existing substandard access roads. In these circumstances landowners within a proposed rural residential area will be required to enter into a legal agreement with Council to bring the road up to the required standard prior to Council proceeding with the rezoning.*

*The development of areas considered suitable for closer rural settlement should make a positive contribution to the community development of these localities. Positive contributions may include reversal of population decline....substantial improvement in the standard of road access and public transport...*

The need to make a positive contribution to the localities is also reflected in the underlying principles of Planning Agreements. The Practice Note referred to in point 2. above includes the statement that, *"planning agreements... are a means to enable the NSW planning system to deliver sustainable development, through which key economic, social and environmental objectives of the State and local government can be achieved... they facilitate the provision of planning benefits by developers. A planning agreement that provides for a planning benefit involves an agreement by the developer to contribute part of the development profit for a public purpose."*

The implementation of the principles in the Rural Housing Strategy has varied among the rural residential rezoning proposals considered and, in some cases, adopted by Council depending on the location of the site and, with respect to roads that do not front the site, the timing of road upgrade works in Council's road works schedule.

A letter was sent to the applicant in September 2004 advising that a per lot contribution could be made for the works required between Tuntable Falls Road and Sheathers Bridge. The cost of these works was estimated at \$308,680 and included additional pavement width and the replacement of two (2) existing causeways. The letter advised that the applicant for a rezoning would be required to demonstrate that these works are able to be completed and one way of achieving this would be to enter into a legal agreement with Council that would provide a payment on a per lot basis at the time of creation of the lots. Based on a lot yield of 30, the per lot contribution would be \$10,290.

The rezoning application submitted in March 2005 did not respond to the September 2004 letter and additional information was requested. As the applicant did not provide the information requested the Development Engineer discussed the required works with the Manager, Operations and Director of Infrastructure Services who were of the opinion that there was limited benefit in the works to Council. Therefore they did not want to enter into an agreement that required Council to construct the works. This was relayed to the applicant who was advised that the above mentioned requirements of the Rural Housing Strategy still had to be addressed.

As no information regarding these requirements was provided by the applicant they were advised by email in September 2007 of the road works required and the preferred staging. The applicant confirmed that the land owner was happy with what was proposed and this was subsequently included in the draft Planning Agreement.

While it is acknowledged that the land owner proceeded on the basis of being able to make a per lot contribution for the works, it is also noted that Council advised the applicant well before the final assessment of the rezoning submission and the drafting of the Planning Agreement that Council was now not prepared to construct the works (and therefore accept a per lot contribution towards the works), and that an alternative means of addressing the requirements of the Rural Housing Strategy had to be proposed.

Staff sought legal advice in response to the applicant's contention that Council's letter of September 2004 is binding on Council. The legal advice is that Council is not bound by the letter for the following reasons:

*"Page 1 of the letter clearly sets out the obligation on the developer where it states, "...the Developers are required to propose an agreement which demonstrates that the access road will be upgraded to the required standard". The letter further states that, "one way of achieving [the obligation] would be to enter into a legal agreement and guarantee with Council that would provide a payment on a per lot basis at the time of creation of the allotments." It was up to the developer to adopt that option to satisfy the obligation when the option was available. If the option is no longer available Council cannot be compelled to enter into an agreement in the terms of the letter of September 2004.*

*The letter cannot be construed as any form of "contract" with the developer. It is a letter that sets out Council's requirements and suggests how the requirements could be met. The letter does not constitute an "offer" by Council to bind itself to a particular course of action."*

- (b) *65ha along Gungas Road is already appropriately zoned 1(c) (Rural Residential), 440 additional vehicle movements will be generated if the 65ha is developed and a 75% increase in vehicle movements can be expected if the 65ha is developed and Council could be forced into constructing Gungas Road at a cost to Council of about \$1m. The subject land's traffic generation will represent an increase of only 29% on the likely future traffic stream yet the land owner is being required to underwrite 100% of Gungas Road's reconstruction.*

**Staff comment:** The requirements for owners of land already zoned for rural residential development are different to those required as part of the rezoning process. For existing zoned land owners are required to widen the frontage of the site only to the standard adopted for rural residential development. The extent of works required for development of zoned land is based on precedent cases from the Land and Environment Court. The land owner is being required to upgrade Gungas Road beyond the frontage of his property because they are seeking a rezoning of rural land. Requirements for the standard of road infrastructure to be provided for land to be rezoned is set out in Council's Rural Housing Strategy. This strategy requires the development to be accessible to the nearest urban area by a road of a suitable standard to accommodate both existing and future traffic and that land owners enter into a legal agreement with Council to bring the road up to the required standard.

- (c) *The following clauses infer that Gungas Road has to be constructed twice by the land owner and that the work in 9.1.3 has to be ripped up and replaced with 10.1.3 works:*  
*Clause 9.1.3 Gungas Road is widened from Tutable Falls Road to Sheathers Bridge to provide a 6 metre wide sealed road on an 8 metre wide gravel formation;*  
*Clause 10.1.3 A 6 metre wide 2 coat bitumen seal for the full length of the road from Tutable Falls Road to Sheathers Bridge is completed including reseal preparation incorporating heavy patching of existing pavement and crack sealing at locations as identified by Council's Rural Works Engineer and shoulder grading;*

**Staff comment:** Gungas Road does not have to be constructed twice, nor does the work carried out under clause 9.1.3 have to be ripped up and replaced with the works under 10.1.3. Clause 9.1.3 requires the road to be widened beyond the existing sealed width and clause 10.1.3 requires the whole of the road to be resealed, giving the whole of the road width a suitable wearing surface. Staff have agreed to remove the requirement to undertake heavy patching of Gungas Road prior to sealing on the proviso that the offer to contribute any section 94 levies held by Council (refer to point ix in the previous section of this report) is also removed. The draft Agreement can be amended accordingly.

- (d) *The small rural residential developments considered by Council at its meeting of November 10, 2009 only have 'minor' or no road upgrading inclusions in the terms of the Planning Agreements.*

**Staff comment:** The draft Planning Agreements for the Rural Residential rezonings in Tullera and Nimbin reflect the circumstances of each site. There is no requirement to upgrade Dunoon Road in the Tullera proposal because the road already meets the standards specified by the Rural Housing Strategy. The draft Planning Agreement for the Nimbin site requires the frontage of the property to be upgraded and for the section of High Street from Nimbin Road to the property boundary to be upgraded, similar to the Gungas Road agreement.

- (e) *The 'original' Planning Agreement for the Cameron Road properties require the upgrading of Cameron Road for the frontage of the subject land only and a monetary contribution towards other road upgrading. Why does the Planning Agreement for Gungas Road not require only frontage upgrading? The land owner is offering to upgrade the frontage of his property and contribute \$10,000/lot for the upgrading of Gungas Road between Anderson Road and Tutable Falls Road, which reflects the basis of the Cameron Road Agreement.*

**Staff comment:** The Cameron Road Agreement requires the upgrading of Cameron Road as well as a per lot contribution to the upgrade of Cowlong Road. When the Cameron Road and Roseview Road rezoning submissions were considered by Council, it was identified that the land met the road standard requirement with Boatharbour Road back to Lismore being to standard; however Cowlong Road was below standard and would require upgrading to accommodate both existing and future traffic. The Group Manager of Works at the time agreed to Council being responsible for construction of the works as Cowlong Road was a high priority on Council's Rural Works program he saw benefit in Council accepting the liability associated with undertaking the works. Therefore a per lot contribution could be levied on the development to fund these works. This contribution was subsequently included in the adopted Planning Agreement associated with LEP20 (Cameron Road). The per lot contribution in the Planning Agreement of \$10,820 is to be applied to the upgrade of Cowlong Road to the Cameron Road intersection with the works to be undertaken by Council.

Unlike Cowlong Road, which is at the top of Council's Rural Capital Works Program, Gungas Road is not a high priority in the Program. Indeed it is not within the current 10 year program. A per lot contribution commits the Council to undertake the works upon payment of the contribution by the development. This would then require Council to reorganise its adopted program of works to prioritise these works above others. Council's road budget and priority roadworks list is under intense pressure to deliver improved outcomes. Elevating Gungas Road in the priority list to benefit a private development is a direct contradiction to Council's argument for increasing rates to address identified road funding shortcomings.

## **Comments**

### **Financial Services**

The proposed Planning Agreement requires all road upgrading works associated with the proposed development to be funded by the developer. If the works listed are required and the Planning Agreement changed so that the developer is not required to fund some of these works, then Council will be required to meet any shortfall from its funds.

### **Other staff comments**

#### **Executive Director Infrastructure Services and Development Engineer**

The Executive Director, Infrastructure Services and the Development Engineer have provided input to the foregoing section of this report.

#### **Executive Director Sustainable Development**

The key issue in this report is the consistent administration of roading contributions in rural-residential land releases. It is critical for elected members to understand how the roading contributions for the various cases are arrived at otherwise there will be lingering questions around the apparent inconsistency of similar cases.

The simplest way to briefly clarify the different ways of assessing roading contributions is to go through three examples:

1. The first is the proposal the subject of this report. This is a rezoning proposal. The key document in this case is the Rural Housing Strategy (RHS) where it is up to the applicant to propose via a planning agreement how they will meet the requirements of the RHS. In particular the RHS clearly states that such proposals are to meet the costs of upgrading existing substandard access roads. So where there are works required to upgrade the road to the specified standard it is up to the applicant to fund those works via a planning agreement. In this case Gungas Road is not on Council's high priority rural roads list. Council has no plan to undertake those works and hence a per lot contribution is not appropriate. It must be recognized that a per lot contribution approach has budget risks and work program implications.
2. Contrasting this is the Cameron Road case where it is a rezoning proposal under the same requirements of the RHS. However in this case Cowlong Road was a high rural roads priority with Council committed to undertaking the works. Therefore a contribution by way of per lot was appropriate as Council was willing to accept the risk of additional costs and the impact on work programming as the works are a priority for Council.
3. The rural-residential subdivisions that have occurred by way of development applications (DA's) in Gungas Road are on already zoned land. These developments pay a per lot contribution worked out on a per lot basis in accordance with the section 94 Contributions Plan with Council undertaking the works as under the Environmental Planning and Assessment Act this is the only mechanism available to impose conditions regarding road upgrading external to the frontage of the land.

## **Public consultation**

Public consultation on the draft LEP Amendment and draft Planning Agreement can occur once the draft Planning Agreement is finalised.

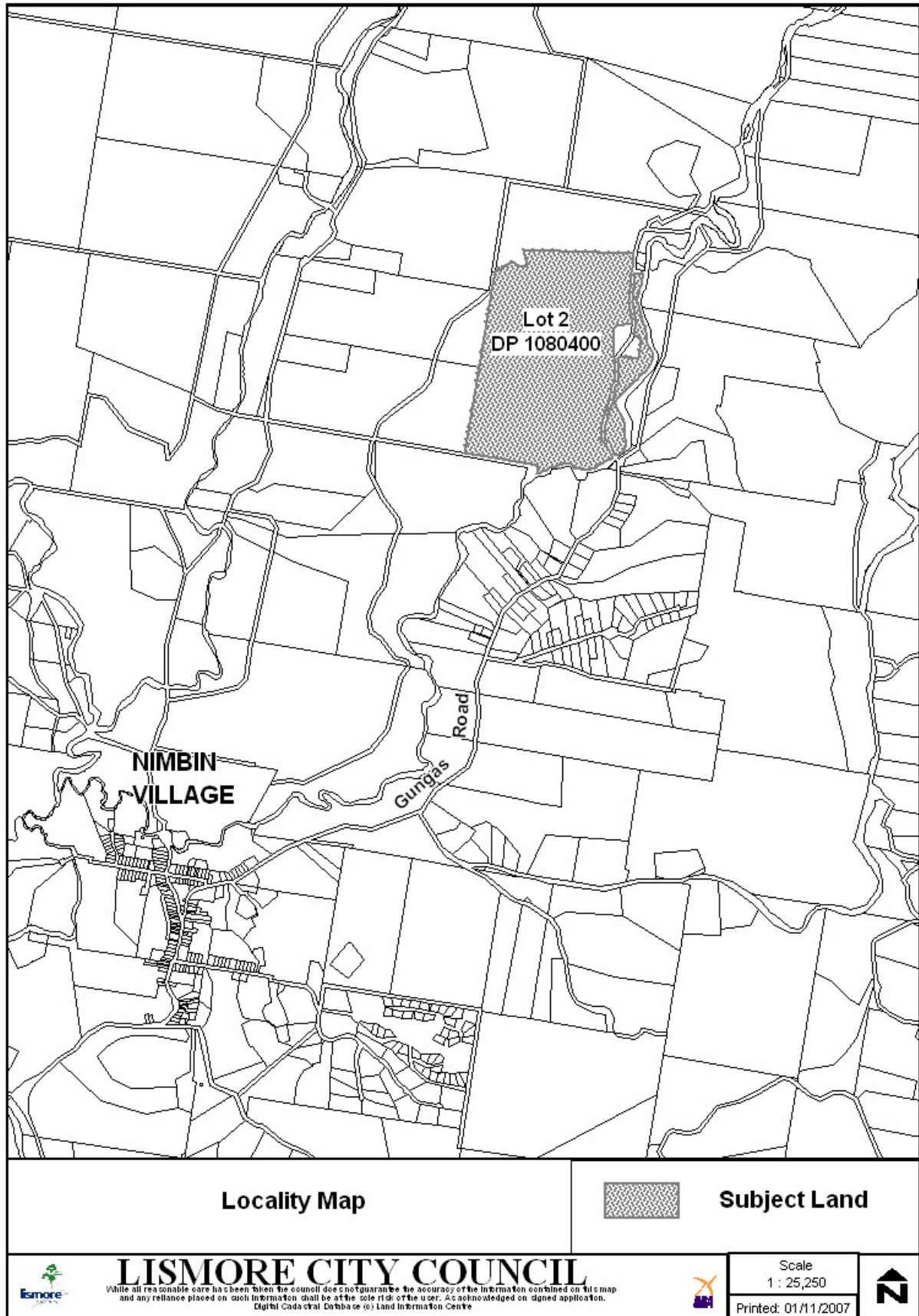
## **Conclusion**

The public notification of draft amendment 38 to the Lismore LEP2000 to enable 237 Gungas Road, Nimbin to be subdivided to create 32 rural residential lots is awaiting the finalisation of the draft Planning Agreement. The draft Planning Agreement has not yet been finalised as the land owner considers some of the terms of the agreement unacceptable, in particular the extent of the road works. The terms of the Planning Agreement were approved by Council at the 13 November, 2007 meeting. Staff have met with the land owner and applicant on a number of occasions and reached agreement about some changes that can be made to the draft Agreement. As the works specified in the Agreement are based on the requirements of the Rural Housing Strategy and current Council practice, it is recommended that the terms of the draft Agreement remain unchanged, with the exception of the amendments agreed to by staff and the land owner.

## **Recommendation**

That the terms of the draft Planning Agreement associated with draft LEP Amendment 38 for 237 Gungas Road, Nimbin remain unchanged, with the exception of the amendments agreed to by staff and the land owner and as detailed in points 3, 4 and 5 under the heading Land Owner Concerns in this report.

## Attachment 1 – Locality Plan







NOTE:  
CONTOURS DERIVED FROM LISMORE 10m GIS DATA, NODETAL AND CONTOUR SURVEY CARRIED OUT.

LEGEND  
 [X] PROPOSED BUILDING LOCATION (20 m<sup>2</sup> TYPICAL)  
 [□] PROPOSED EFFLUENT DISPOSAL (4000 L TYPICAL)

Rev	Description	Des	Drw	Date	Appd
J	Amend building site to 20m <sup>2</sup>	GM	OC	05/09/07	GM
I	COUNCIL SUBMISSION	GM	OC	08/09/07	GM
H	COUNCIL SUBMISSION	GM	OC	23/08/07	GM
G	PREVIOUSLY L/M040252-CV03	SH	OC	11/06/07	SH

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**CAUTION:** The information shown on this plan may be insufficient for some types of detailed design. LandPartners Limited should be consulted as to the suitability of the information shown herein prior to the commencement of any work based on this plan.

**GEOFF SHEARMAN**  
 REZONING/RURAL RESIDENTIAL  
 OF LOT 2, DP 108440  
 EXISTING LOT LAYOUT

**FIGURE 4**  
 PROPOSED LAYOUT

Scale: 1:2000 at A1 CAD file: LM040252-Fig 4(d).dwg  
 Datum: AHD C:\WCAD file: LM040252.cad



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**ASPECT north & KFM Partnership**

Sheet No. **4 of 12** Revision  
 Dep. No. **LM040252-Fig 4** Revision  
 PREVIOUSLY L/M040252-CV03

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