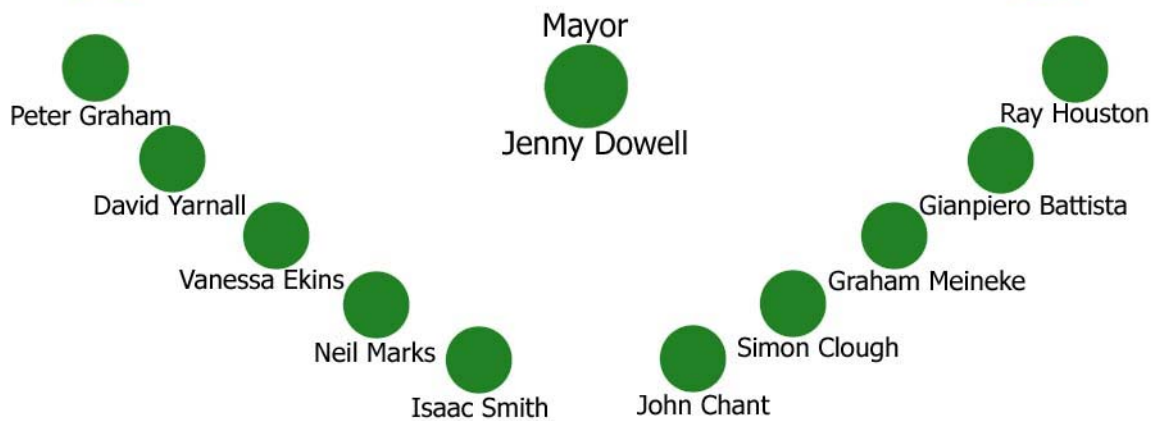


# Notice of Council Meeting



## Council

An EXTRA ORDINARY MEETING of LISMORE CITY COUNCIL will be held at the Council Chambers, 43 Oliver Avenue, Goonellabah on Thursday, 10 November 2011 6.00pm

Members of Council are requested to attend.

Gary Murphy  
**General Manager**

3 November 2011



# Agenda

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1. Opening of Meeting and Prayer (Mayor)
2. Apologies and Leave of Absence
3. Disclosure of Interest
4. Public Access Session
5. Mayoral Minutes
6. Reports
  - 6.1 Lismore Draft Local Environmental Plan 2010 - Recommended Amendments (site specific rezoning requests and lot sizes) ..... 1
  - 6.2 Lismore Draft Local Environmental Plan 2010 - Recommended Amendments and Re-Exhibition (the balance of the subjects)..... 6

# 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.

# Reports

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# Report

<b>Subject</b>	<b>Lismore Draft Local Environmental Plan 2010 - Recommended Amendments (site specific rezoning requests and lot sizes)</b>
<b>TRIM Record No</b>	BP11/869:EF09/821
<b>Prepared by</b>	Strategic Planning Coordinator - Integrated Planning
<b>Reason</b>	Requests to rezone rural land and requests to reduce the minimum lot size.
<b>Community Strategic Plan Link</b>	Provide Sustainable Land-use Planning

## Overview of Report

This report is to be read in conjunction with the principle report in this agenda on the public exhibition and finalisation of the Draft Lismore Local Environmental Plan 2010 (Draft LEP2010). This report addresses the submissions made to the DLEP requesting site specific rezoning of rural zoned land and reductions on minimum lot size. The report recommends amendments to the Draft LEP2010 and the public exhibition of the amended DLEP 2010.

## Background

### 1.0 Introduction

This report is to be read in conjunction with the principal report in this agenda on the public exhibition and finalisation of the Draft Lismore Local Environmental Plan (LEP) 2010. This report is separate to the main Draft LEP report in this agenda to allow Councillor/s to absent themselves from the decision making process on matters about which a pecuniary interest has been declared, but be involved in the debate and voting on the more substantial principal LEP report.

The matters that are the subject of this report are the issues raised by submissions to the Draft LEP requesting site specific rezoning of rural zoned land to a residential, village or industrial zone, along with site-specific requests to reduce the minimum lot size.

There are three (3) attachments to this report that should be read in conjunction with the report. Councillors will be familiar with the content of these attachments as they formed the basis of the Council briefing held on 4 August 2011. The Attachments are as follows:

- Attachment A provides the details of the submissions with respect to rezoning from rural to residential, rural residential or village zones and reduction of minimum lot size requests.
- Attachment B provides the details of the submissions with respect to rezoning from rural to an industrial zone or from a proposed business zone to a higher level of business zone.
- Attachment C contains the maps that show the proposed zone changes as recommended in Attachments A and B.

This report recommends that amendments are made to the Draft LEP2010. Such amendments are recommended to be publicly exhibited for at least 28 days along with other amendments to the Draft LEP2010 recommended in the first report in this Agenda.

## 2.0 Sufficient supply of residential, industrial and commercial land

The Director General (Department of Planning & Infrastructure) specified a number of matters that Council was required to address in preparing its comprehensive local environmental plan. These directions included the requirement that there is adequate and suitable land available for housing and employment to meet the needs of the Local Government Area (LGA) for the next 10 years.

The Lismore Local Environmental Study (LES) contains the details of projected population growth, supply of existing zoned land and proposed rezonings required to ensure an adequate supply of land. The LES concludes that the residential and industrial release areas proposed will ensure sufficient land is available for to meet projected housing, industrial and commercial needs to 2018.

The assessment of available and suitable land for residential development includes land in Trinity Drive, for which a rezoning submission was received and assessed. In December 2009 Council resolved to endorse in principle the inclusion of the land at Trinity Drive in a residential zone as a future amendment to the Draft LEP, subject to the satisfactory resolution of mitigation of impacts on the thorny pea and the matter being reported in detail back to Council.

## 2.1 Rezoning land in the Draft LEP for urban development

The current 1(d) Investigation Zone is a rural zone that identifies land to be investigated for rezoning suitability to an urban zone. It is not included in the standard LEP template as the concept of investigation zones has generally been made redundant through the introduction of regional and local land release strategies. Strategies such as the Lismore Urban Strategy, Village Development Strategy and Rural Housing Strategy are the principal mechanism for defining the location and extent of potential land release areas. Once land has been identified in a strategy, the onus is on the owner of the land to prepare and lodge a rezoning submission to have the land zoned to its identified potential use. This involves a detailed assessment of social, environmental and economic factors that apply to the proposal.

It is not the role of the new LEP to rezone potential new land release areas to a higher order residential or industrial zone. This will continue to be done through the landowner initiated rezoning process. With the exception of the Holland Street Infill urban release area and the Chilcotts Grass urban release area, all areas currently zoned 1(d) Investigation under the LEP 2000 will be zoned an appropriate rural zone under the draft LEP whether or not they are identified as potential release areas in the relevant local or regional land release strategy.

Not all land current zoned 1(d) has been translated to an urban zone.

## 3.0 Residential, rural residential and changes to minimum lot size

59 submissions were made to the draft LEP requesting a rezoning from a proposed rural zone to the Large Lot Residential, General Residential or Village Zone or requesting an amendment to the minimum lot size to allow increased subdivision potential. Attachment A contains the details of these requests, along with a response and recommendation.

The submissions were, in effect, 'mini' rezoning submissions that require community consultation and more detailed investigations in the context of:

- population projections and housing need;
- competing needs, such as protecting agricultural land, areas of conservation significance;
- constraints such as topography; and
- access to and proximity of services, facilities and infrastructure.

Therefore, in light of the adequacy of the amount land to be zoned for residential development in the draft LEP, existing (North Lismore Plateau) and known (future) planning proposals, the commencement of the housing strategy and planned preparation of the Growth Management Strategy, unless there was an anomaly with the boundaries of the residential, village or large lot residential zone or proposed minimum lot size (for example, if it is contrary to an approved development application), it is recommended that these requests are not accommodated in the draft LEP but deferred for consideration during the preparation of the Growth Management Strategy.

The contact details for the requests have been included in an Interested Persons database for the Housing Strategy and Growth Management Strategy. It is also recommended that the requests for specific sites to be included in the R1 General Residential, RU5 Village, R5 Large Lot Residential and IN2 zones be considered during the preparation of the Growth Management Strategy.

Issues A.6, A.22, A.30, A.48 and A.55 in Attachment A are the submissions on which an amendment to the Draft LEP is recommended. Note that Issue A.30 does not involve an amendment to a zone. This item relates to an error in the Draft LEP Instrument with respect to a proposed road corridor. Attachment C contains copies of the proposed map changes. The recommendations for amendments to the Draft LEP are listed in the highlighted text box below for ease of reference.

### **Recommendations ~ Residential, Large Lot Residential, Village Zone and Minimum Lot Size**

1. Amend the Draft LEP Land Zoning Map to change the area approved in development consent 06/38 applicable to Lot 1 DP 870760 and Lot 102 DP 242433, 65-101 Rous Road, Goonellabah, from RU2 Rural Landscape to R1 General Residential as shown on Map 1 in Attachment B.
2. Amend the Draft LEP Lot Size Map to change the area in the expanded R1 zone applicable to Lot 1 DP 870760 and Lot 102 DP 242433 65-101 Rous Road, Goonellabah, from AB 40ha to 400m<sup>2</sup>.
3. Amend the Draft LEP Land Zoning Map to change Lots 1, 3, 4, 5, 6 on DP 1028886, Shipway and Nimbin Road, Nimbin from RU2 Rural Landscape to R5 Large Lot Residential as shown on Map 2 in Attachment B.
4. Amend the Draft LEP Lot Size Map to change Lots 1, 3, 4, 5, 6 on DP 1028886, Nimbin Shipway and Nimbin Road, Nimbin from AB 40ha to a new category of 4 hectares.
5. Amend the table to Clause 5.1(2) in the Draft LEP Instrument to include the words '*RU1 Primary Production and marked "Classified road"*' in the first column and '*Roads and Traffic Authority*' in the second column.
6. Amend the Draft LEP Land Zoning Map to change the area of 'Lot 29' on development consent 94/519 for Lot 2 DP 1131930, 30 Ridgeland Close, Boatharbour from RU1 Primary Production to R5 Large Lot Residential as shown on Map 3 in Attachment B.
7. Amend Draft LEP Lot Size Map LSZ-005 to change the area of 'Lot 29' on development consent 94/519 for Lot 2 DP 1131930, 30 Ridgeland Close, Boatharbour from AB 40ha to a new category of 5 hectares.
8. Amend the Draft LEP Land Zoning Map to change the area of Lot 1 DP 851320, 340 Cross Road, Numulgi, identified as 1(c) Rural Residential in LEP 2000 from RU2 Rural Landscape to R5 Large Lot Residential as shown on Map 4 in Attachment B.
9. Amend the Draft LEP Lot Size Map to change the area of Lot 1 DP 851320 identified as 1(c) Rural Residential in LEP 2000 from AB 40ha to V2 2,500m<sup>2</sup>.

### **Issue A.21 – Minimum lot size for Nimbin**

Note that with respect to Issue A.21 in Attachment A, at the Council briefing on 4 August 2011, it was recommended that, in light of a recent development consent at 15 Alternative Way, Nimbin for a 21 lot subdivision and the provisions of Part B, Chapter 6 of the Development Control Plan, the draft LEP Lot Size Map applying to land identified as 'New Residential Village Precincts' in Chapter 6 be reduced from 1000m<sup>2</sup> to 800m<sup>2</sup>. However, subsequent information obtained about the Nimbin sewage treatment plant indicates that further analysis is required before reducing the minimum lot size to ensure sufficient capacity is available to accommodate increased future development. Therefore, it is recommended that the publicly exhibited minimum lot size of 1,000m<sup>2</sup> for Nimbin is retained.



## 4.0 Industrial and commercial

Attachment B details the submissions made requesting rezoning from rural to industrial or a change in the type of commercial zone or change in the type of industry zone. Seven (7) site specific submissions requested that the proposed rural zone be changed to the IN1 General Industry or IN2 Light Industry zone. Refer to Issues B.1, B.2, B.6, B.7, B.8, B.9 and B.11 in Attachment B.

For the reasons discussed in section 2.0 of this report, and similar to the approach outlined in section 3.0 with respect to residential, large lot residential and village rezonings, unless there was an anomaly with the proposed zone, it is recommended that these requests are not accommodated in the Draft LEP but deferred until the Growth Management Strategy is commenced. Therefore, only Issue C.1 with respect to 45 Three Chain Road and 30 Snow Street results in a 'rezoning' and a consequent amendment to the minimum lot size map.

One other 'rezoning' request is recommended. This relates to a change in the proposed B1 Neighbourhood Centre zone in Wyrallah Road as identified at Issues B.4 and B.5. It is recommended that the Wyrallah Road commercial precinct is included in the B2 Local Centre zone, including the property at 93 Wyrallah Road, which was erroneously included in the R1 General Residential zone.

Attachment C contains the proposed zone map changes.

### Recommendations ~ Industrial and Commercial Zone Changes

10. Amend the relevant Draft LEP 2010 Land Zoning Maps to change Lot 1 DP 547727 and Lot 2 DP 592195, 45 Three Chain Road and 30 Snow Street, South Lismore, from RU1 Primary Production to IN1 General Industrial as shown on 5 in Attachment C.
11. Amend the relevant Draft LEP 2010 Lot Size Maps to change Lot 1 DP 547727 and Lot 2 DP 592195, 45 Three Chain Road and 30 Snow Street, South Lismore from AB 40ha to U3 1500m<sup>2</sup>.
12. Amend the relevant Draft LEP 2010 Land Zoning Maps to change the Wyrallah Road commercial precinct in Girards Hill and East Lismore from B1 Neighbourhood Centre to B2 Local Centre as shown on Map 6 in Attachment C.
13. Amend the relevant Draft LEP 2010 Land Zoning Maps to change Lot 12 Sec 43 DP758615, 93 Wyrallah Road, Girards Hill from R1 General Residential to B2 Local Centre as shown on Map 6 in Attachment C.
14. Amend the Draft LEP 2010 Lot Size Maps to exclude Lot 12 Sec 43 DP758615, 93 Wyrallah Road, Girards Hill.

## 5.0 Public Re-exhibition of the Draft LEP

The principal report on the Draft LEP in this agenda recommends that the Draft LEP, as amended, is re-exhibited for a minimum of 28 days. With respect to the requests for rezoning from rural zones to urban zones and the requests for reduction in minimum lot size, it is noted that the future preparation of the Growth Management Strategy will also provide submitters with an opportunity for their land to be considered for future urban zoning.

## Sustainability Assessment

### Sustainable Economic Growth and Development

The Draft LEP includes sufficient land in an urban or rural residential zone to satisfy project population growth and industrial and commercial needs to 2018. The Housing Strategy and the future Growth Management Strategy will ensure needs beyond this date are considered and measures adopted to address these needs.

### Social Inclusion and Participation

The recommended public exhibition of proposed changes to the Draft LEP2010 will provide the opportunity for submissions.



## Protect, Conserve and Enhance the Environment and Biodiversity

The recommended public exhibition of proposed changes to the Draft LEP2010 will have little impact on the protection, conservation or enhancement of the environment.

## Best-Practice Corporate Governance

The proposed process for considering requests for additional land to be included in a residential, village or industrial zone is consistent with Council's Delivery Plan and principles of best-practice corporate governance.

## Public consultation

As noted in Section 4 of this report, the Draft LEP as amended, will be on public exhibition for at least 28 days. During this time there will be opportunity for submissions to be made.

## Conclusion

This second report related to the public exhibition and finalisation of the Draft Lismore LEP 2010 has been prepared as a separate report to allow Councillor/s to absent themselves from the decision making process on matters about which a pecuniary interest has been declared. The matters that are the subject of this report are the site-specific requests for rezoning of rural zoned land to a residential, village or industrial zone, along with site-specific requests to reduce the minimum lot size.

This report recommends amendments to the publicly exhibited Draft LEP 2010 where there were anomalies with the proposed boundaries of the residential, village, large lot residential zone and industrial zones or proposed minimum lot size (for example, if it is contrary to an approved development application). In all other cases it is recommended that the requests are not accommodated in the draft LEP but deferred for consideration during the preparation of the Growth Management Strategy.

## Attachment/s

- |  |                |
|--|----------------|
| 1. ATTACHMENT A - Draft LEP 2010 Submissions for zone changes to residential, large lot residential and village zone and requests to reduce the minimum lot size | (Over 7 pages) |
| 2. ATTACHMENT B - Draft LEP 2010 Submissions for zone and use changes - commercial and industrial  | (Over 7 pages) |
| 3. ATTACHMENT C - Zone Maps  | (Over 7 pages) |

## Recommendation

That:

1. Council endorse the recommendations for amendments to the exhibited Draft Lismore Local Environmental Plan 2010 as listed in sections 3.0 and 4.0 of this report and numbered 1 to 14 in the highlighted text boxes.
2. The requests for specific sites to be included in the R1 General Residential, RU5 Village, R5 Large Lot Residential and IN1 General Industrial Zones be considered during the preparation of the Growth Management Strategy.
3. The requests for reductions in minimum lot size in the Large Lot Residential and Village zones be considered during the preparation of the Growth Management Strategy.
4. Council endorse the inclusion of the submitters' details for the sites listed in Attachments A and B in the Interested Persons Lists for the Housing Strategy and Growth Management Strategy.

# Report

<b>Subject</b>	<b>Lismore Draft Local Environmental Plan 2010 - Recommended Amendments and Re-Exhibition (the balance of the subjects)</b>
<b>TRIM Record No</b>	BP11/871:EF09/821
<b>Prepared by</b>	Strategic Planning Coordinator - Integrated Planning
<b>Reason</b>	To finalise the Draft Lismore Local Environmental Plan
<b>Community Strategic Plan Link</b>	Provide Sustainable Land-use Planning

## Overview of Report

This report provides Council with an analysis of the submissions received in response to the public exhibition of the Draft Lismore Local Environmental Plan 2010 for a four (4) month period in 2010. The report recommends a number of changes to the publicly exhibited Draft LEP 2010 Instrument and Maps. Due to the extent of these changes, the report recommends that the Instrument and Maps, as amended, be publicly exhibited for a minimum of 28 days.

## Background

### 1.0 Introduction

At its April 2010 meeting, Council resolved to endorse the public exhibition and Community Engagement Plan for the Draft Local Environmental Plan 2010 (LEP). The Draft LEP was subsequently placed on public exhibition for 3 months from 29 April, 2010 to 29 July, 2010. This period was extended by one (1) month in accordance with a Council resolution at its July 2010 meeting. A Public Hearing was also held on 22 September, 2010 with respect to the proposed reclassification of Council owned land from 'community' to 'operational'. 1417 submissions to the draft LEP were received. Attachment 11 to this report contains the names and addresses of all submitters.

The purpose of this report is to provide Council with an analysis of the submissions received in response to the public exhibition of the Draft LEP 2010 and to obtain direction on the finalisation of the Draft LEP for submission to the Department of Planning & Infrastructure (DP&I). The report recommends a number of changes to the publicly exhibited Draft LEP 2010 Instrument and Maps. Due to the extent of these changes, the report recommends that the Instrument and Maps, as amended, be publicly exhibited for a minimum of 28 days.

Attachment 10 to this report contains the amended Draft LEP 2011 Instrument. The changes have been 'tracked' to allow ease of comparison with the publicly exhibited document.

Particular elements of the Draft LEP 2010 are the subject of a separate report in this agenda to allow Councillors to remove themselves from debate and decision making where a pecuniary interest has been declared (see section 1.1 below). Therefore, this report should be read in association with the second report contained in this agenda.

## 1.1 Interests and disclosures

Councillors and staff are subject to the requirements of the *Local Government Act 1993* (LG Act) with respect to disclosure of interests where there is a potential or perceived conflict associated with a decision. Council maintains the required registers for the disclosure of both Councillor and relevant staff interests.

Council staff involved in the preparation of the draft LEP were requested to consider and make appropriate disclosures in relation to the draft LEP. Councillors were also given the opportunity to identify potential pecuniary interests prior to reporting on the final draft LEP to assist Councillors in the consideration of their interests and identify items on which Councillors may feel unable to participate during deliberations.

Where a pecuniary interest has been declared by a Councillor and the interest relates to a specific (rather than general) matter in the final draft LEP that may be perceived as being of substantial advantage or disadvantage to a Councillor, the item has been kept separate from the consideration of the draft plan overall and is subject to a separate report in this agenda. This allows Councillors to participate in the decision making on the predominant elements of the draft LEP but withdraw from discussion and voting on the specific item as appropriate.

The matters that are the subject of the separate report relate to site specific requests for changes to the publicly exhibited zone. This principal report should be read in association with the second LEP report contained in this agenda.

It is noted that, in accordance with the requirements of the *Local Government Act 1993*, Councillors are still required to identify any pecuniary interests through the formal meeting structure when considering the LEP material.

## 1.2 Structure of the Report

The main body of this report consists of nine sections as follows:

- Section 2 provides an overview of the rationale for the LEP and the process followed to this point;
- Section 3 summarises the public exhibition process and provides an overview of submissions received;
- Section 4 contains an explanation of the Standard Instrument Principal Local Environmental Plan adopted by the State Government in February 2011, along with the implications for Lismore's LEP;
- Section 5 discusses the key issues identified in the submissions received and the responses proposed;
- Section 6 discusses the matters raised by staff and Councillors about the Draft LEP;
- Section 7 outlines the parcels of Council owned land to be rezoned and that Council intends to dispose of;
- Sections 8 and 9 outlines the steps to completion of the LEP and the recommended response to the submissions and public exhibition;
- Section 10 outlines recommended additional actions, including those outside the LEP, following the completion of the LEP.

Attachments 1 to 8 should be read in conjunction with this report. These attachments contain the summarised submitters' issues grouped by topic (or miscellaneous) along with associated responses and recommendations, along with supporting information such as a copy of the report into the Public Hearing. Councillors will be familiar with the content of these attachments as they formed the basis for the briefings provided to Council during the last two (2) weeks of July and first two (2) weeks of August

2011. Councillors were provided with copies of this material during and after the briefings. In some instances a recommendation made to a briefing was subsequently revised at a later briefing generally due to receipt of additional information. Where possible such changes are highlighted in this report.

Attachment 9 contains the matters raised by staff and Councillors and should also be read in conjunction with this report.

Attachment 10 contains the amended Draft LEP 2011 Instrument. The changes have been 'tracked' to allow ease of comparison with the publicly exhibited document.

Attachment 11 comprises the database of submitters' names and addresses.

Attachment 12 contains proposed zone map changes recommended in this report. Changes to LGA wide zone maps are not included.

## 2.0 Making the Draft Local Environmental Plan

### 2.1 Rationale for Making the LEP

On March 31, 2006 the State Government gazetted the Standard Instrument (Local Environmental Plans) Order 2006. The intention of the Order was to introduce consistency in the format and content for all principal LEPs throughout the State. The Order prescribed a standard template that was mandatory for all Councils. Lismore City Council was given three (3) years from the gazettal date of the Order to prepare a new comprehensive LEP based upon the Standard Instrument. Council resolved to prepare a new Local Environmental Plan in October 2006.

The LEP is intended to replace the existing Lismore LEP 2000 and will apply to development in the whole of the LGA. The new LEP will implement some of Council's land release strategies by rezoning land for residential, commercial and industrial development.

### 2.2 Process for Making the Local Environmental Plan

The Draft Lismore LEP has been, and will continue to be, prepared under the previous Part 3, Division 4 of the *Environmental Planning and Assessment Act 1979*. The provisions of Part 3, Division 4 have been replaced by the 'gateway' process, which became effective on 1 July 2009. However, when the new provisions were introduced, savings and transitional arrangements were put in place with respect to draft pending principal LEPs.

As Council satisfied the requirements of the Director-General in relation to the transitional arrangements, the making of the LEP remains subject to the previous Part 3, Division 4, sections 53-70 of the *EP&A Act 1979*. Table 1 below outlines the steps taken to comply with these sections of the Act. The Table also contains the workshops held with Council throughout the preparation of the draft LEP.

**Table 1: Preparation of the Draft LEP 2010 as Required by the *EP&A Act 1979***

EP&A Act	Actions
Section 54	In accordance with s54, in October 2006 Council resolved to prepare a new comprehensive Local Environmental Plan (LEP) consistent with the standard instrument. Council subsequently notified DP&I of its decision in accordance with s54.

EP&A Act	Actions
Sections 57 & 61	<p>The state government's LEP Review Panel determined that all new comprehensive LEPs would require a Local Environmental Study. The Director General subsequently issued specifications for the preparation of an environmental study to accompany the draft LEP as follows:</p> <ol style="list-style-type: none"> <li>1. Council should prepare a statement clearly identifying any changes between the existing controls and the proposed draft provisions together with justification for those changes.</li> <li>2. Council should ensure that there is adequate and suitable land for housing and employment to meet the needs of the LGA for the next 10 years.</li> <li>3. The environmental study should consist of a collation of all relevant planning documents (updated if necessary) to reflect the current planning situation in the City area, so as to make available for exhibition a document which is easily understood and includes all relevant documentation in one place.</li> <li>4. The environmental study should consider, if necessary, additional material in regard to the following: <ul style="list-style-type: none"> <li>• Provision of infrastructure to Greenfield release areas suggested in the draft FNCRS;</li> <li>• Strategic analysis of the need for further employment land in the City;</li> <li>• Update agricultural policy in relation to the conclusions of the Regionally Significant Farmland Project;</li> <li>• Updated Lismore CBD flood policy in light of the levee completion;</li> <li>• Any necessary update or review of heritage studies; and</li> <li>• Any necessary further review of community/operational land.</li> </ul> </li> </ol> <p>A Local Environmental Study was subsequently prepared by staff and including in the material for public exhibition.</p>
Section 62	<p>As required by section 62, and in accordance with the October 2006 resolution, Council consulted with the following government and other agencies and Councils at the commencement of and during the preparation of the draft LEP:</p> <ul style="list-style-type: none"> <li>• Department of Environment and Climate Change</li> <li>• Department of Water and Energy</li> <li>• Department of Primary Industries (agriculture, fisheries management and mineral resources divisions)</li> <li>• Department of Lands</li> <li>• NSW Roads and Traffic Authority</li> <li>• Department of Education and Training</li> <li>• North Coast Area Health Service</li> <li>• NSW Rural Fire Service</li> <li>• Country Energy</li> <li>• Telstra Australia</li> <li>• Rous Water</li> <li>• Ballina, Byron, Kyogle, Richmond Valley and Tweed Shire Councils.</li> </ul> <p>Following the receipt of the s65 certificate Council invited comment from the same government agencies and adjoining Councils.</p>
Section 64	<p>On 12 August, 2008 Council resolved to forward its Draft Lismore Local Environmental Plan and Local Environmental Study to the DP&amp;I with a request that the Director-General issue a public exhibition certificate. These documents were subsequently forwarded to the Department in accordance with Section 64.</p> <p>Council invited comment from relevant government agencies and neighbouring councils during the plan preparation as required by Section 62 of the EP&amp;A Act.</p>
Section 65	<p>On 30 March, 2010 the section 65 public exhibition certificate was received from the DP&amp;I. On 13 April, 2010 Council resolved to adopt the Community Engagement Plan for the public exhibition of the Draft Lismore Local Environmental Plan 2010.</p>

EP&A Act	Actions
Sections 66 & 67	The public exhibition of the Draft Lismore Local Environmental Plan 2010 occurred between 29 April, 2010 and 30 August, 2010. The exhibition was carried out in accordance with the requirements of Sections 66 and 67.
<b>COUNCIL WORKSHOPS</b>	
October 2006 - August 2008	Eight (8) Council workshops held during this period on: <ul style="list-style-type: none"> <li>• The Standard instrument</li> <li>• 2(f) Residential (Food Liabile) &amp; 3(f) Business (Flood Liabile) zones</li> <li>• Urban zones (including residential release areas) (February 2008)</li> <li>• Rural zones (February 2008)</li> <li>• Vegetation mapping project (April 2008)</li> <li>• Industrial land release areas (April 2008)</li> <li>• Heritage provisions (February 2008)</li> <li>• The draft Plan (August 2008)</li> </ul>
August 2008 – December 2009	Six (6) Council workshops held on: <ul style="list-style-type: none"> <li>• The purpose of Local Environmental Plans (February 2009)</li> <li>• Translation of the standard template into the draft LEP (April 2009)</li> <li>• Environmental Issues including extent of proposed zones (June 2009). The EDO made a presentation to this workshop further to a Council resolution on 10 February, 2009 to invite the Environmental Defenders Office to make a presentation at a LEP workshop</li> <li>• Council land reclassification (July 2009)</li> <li>• Rural Residential, Commercial and Industrial, Floodplain Management (August 2009)</li> <li>• Overview of the draft LEP including changes made to the draft since August 2008 as a result of state government policy direction or Council decisions, for example, land reclassifications. (December 2009)</li> </ul>
<b>STUDIES TO SUPPORT THE PREPARATION OF THE DRAFT LEP</b>	
<p>The Far North Coast Regional Strategy (FNCRS) requires new LEPs to protect and zone land with high State or regional environmental, vegetation, habitat, waterway or wetlands values. This requirement led to the need for more detailed mapping to identify these features at an appropriate scale for use in the LEP. The Director-General's specifications for the preparation of the LES also required an update of Council's flood policy and review of heritage items. To assist with these studies Council obtained funding of \$100,000 from the DP&amp;I to:</p> <ul style="list-style-type: none"> <li>• Produce an accurate 1:15000 digital vegetation map for the Lismore LGA, including urban areas, but excluding State Forest, National Parks and non-woody agricultural land. (\$65,000)</li> <li>• Review heritage items in Lismore for inclusion in schedule 5 of the LEP. (\$20,000)</li> <li>• Update Council's flood mapping to provide an accurate basis for flood overlay maps and flood planning controls in the LEP. (\$15,000)</li> </ul>	

Section 8.0 of this report outlines the remaining steps in the process to complete the preparation of a new local environmental plan for the LGA.

### 3.0 Public exhibition of Draft Lismore LEP2010

#### 3.1 Duration of exhibition and activities undertaken

Table 2 below summarises the exhibition period for the draft Lismore LEP 2010, material produced and the activities undertaken during, and immediately after, the public exhibition period. The legislation requires a minimum exhibition period of 28 days. Council has complied with this requirement along with the minimum specifications relating to the notice and the information that is required to be publicly available throughout the exhibition period.

**Table 2: Public Exhibition – Information and Activities**

Exhibition Activity	Description
Length of public exhibition	Four (4) months from 29 April 2010 to 30 August 2010 (Note: the initial 3 month period was extended by Council resolution at the July 2010 meeting).
Notification and information at commencement and for duration of exhibition	<ul style="list-style-type: none"> <li>• Formal notice placed in the Echo at commencement. From July 2011 formal notice placed weekly in the Echo and the Northern Star (Saturdays).</li> <li>• Notification on Council's website with links to:               <ul style="list-style-type: none"> <li>➢ Draft LEP 2010 instrument;</li> <li>➢ Local Environmental Study;</li> <li>➢ LEP Grid Maps;</li> <li>➢ Interactive mapping;</li> <li>➢ Rezoning submissions;</li> <li>➢ Council land reclassification documentation;</li> <li>➢ Other related information, such as copies of SEPPs and s117 directions;</li> <li>➢ 17 Fact Sheets on different aspects of the draft LEP;</li> <li>➢ Template submission form.</li> </ul> </li> <li>• Discs with above information able to be purchased for a nominal fee.</li> <li>• All information available on the website was placed in hard copy at:               <ul style="list-style-type: none"> <li>➢ Council's Corporate Centre in Goonellabah;</li> <li>➢ CBD Centre;</li> <li>➢ Library in Lismore CBD; and</li> <li>➢ The Nimbin Visitor Information Centre.</li> </ul> </li> </ul>
Direct correspondence	<ul style="list-style-type: none"> <li>• 2100 letters sent to:               <ul style="list-style-type: none"> <li>➢ land owners and adjoining owners of proposed land release areas;</li> <li>➢ land owners with zone or other changes regarded as 'significant' e.g. where the standard template did not have an equivalent zone, such as current urban 'flood zones' or changes to, or increase in, an environmental protection zones or properties proposed to be added to the heritage list.</li> </ul> </li> <li>• 70 letters sent to interest groups including progress associations, farming interest groups (NSW Farmers Assoc, Macadamia Society etc), Chambers of Commerce, development industry (planning consultants, UDIA, real estate agents, surveyors etc). The letters advised of the commencement of public exhibition and offered to provide a briefing to each group.</li> <li>• Letters sent to all state government departments and agencies, Rous Water, Richmond River County Council, Telstra, Country Energy, Northern Rivers Catchment Management Authority and adjoining Councils.</li> <li>• On request letters or emails sent in response to enquiries.</li> <li>• All submissions acknowledged in writing.</li> </ul>
Dedicated website use	<ul style="list-style-type: none"> <li>• 8,124 hits on the website during 4 month period;</li> <li>• All information on the draft LEP continues to be available on the website.</li> </ul>
Briefings	<ul style="list-style-type: none"> <li>• State and other agencies (1)</li> <li>• Adjoining Councils (1)</li> <li>• Development Industry (1)</li> <li>• Policy Advisory Groups (3)</li> <li>• Environmental interest groups (2)</li> <li>• Lismore Chamber of Commerce (1)</li> <li>• Information stands at Clunes, Dunoon, Nimbin and Wyrallah Halls</li> <li>• Presentations at Lismore Workers Club, Goolmangar Hall and McLeans Ridges Hall</li> <li>• Richmond River Canegrowers, NSW Sugar Milling Co-op, individual cane growers</li> </ul>



<b>Exhibition Activity</b>	<b>Description</b>
Staffing	<ul style="list-style-type: none"> <li>Up to three (3) strategic planners until end July 2010, two (2) until end of August 2010 responding to enquiries by phone, email and letter;</li> <li>Contact Centre staff fielding enquiries by telephone and at front counter and the CBD centre.</li> </ul>
Site inspections	At the request of land owners site inspections were undertaken.
Media	<ul style="list-style-type: none"> <li>Media releases at commencement of exhibition.</li> <li>Radio interviews</li> <li>TV interview</li> <li>Articles and regular advertisements in the Northern Star, the Echo and Village newspapers, i.e., Clunes Clues, Dunoon Gazette, Nimbin Good Times, Rosebank Village Journal.</li> <li>Article in Rural Weekly</li> </ul>
Public Hearing (LG Act 1993)	<ul style="list-style-type: none"> <li>Held 22 September, 2010 into proposed Council land reclassification. Seven (7) people made submissions to the Hearing.</li> <li>Report into the Public Hearing available on Council's website and at the Corporate Centre.</li> </ul>
<b>Post Formal Exhibition</b>	<b>Description</b>
Submitter presentations and updates	Five (5) submitter presentations at City Hall in November and December 2010. 55 submitters made presentations to Councillors about the draft LEP. Submitters have been notified in writing of the submitter hearings and the July/August 2011 Council briefings along with updates.

### 3.2 Process for reviewing submissions

As noted in section 1.0 of this report, 1417 submissions were received. While the official public exhibition period closed on 30 August 2010, Council continued to receive submissions after the closing date with a small number being received during the first half of 2011. While staff did not encourage late submissions, it was agreed that if requested, late submissions would be accepted.

Staff commenced the review of the submissions with a summary of each submission. The summarising process allowed staff to identify the key issues. Common issues were grouped for ease of review, response and presentation to Council and submitters. Council received funding under the Department of Planning and Infrastructure's (DP&I) LEP Acceleration Fund to assist with the review of, and response to submissions. This funding was used to engage:

- Ecologist/s to 'ground truth' proposed Environmental Protection zones (or lack thereof), with the agreement of land owners who had made submissions;
- An independent planning consultant to review the basis and methodology of the proposed rural zones, RU1 and RU2;
- An engineering consultant to review the proposed flood planning map for those areas where detailed flood modelling has not been undertaken;
- Planning consultants to assist in summarising submissions and proposing policy responses to submissions.

An internal Draft LEP Review Team was formed comprising the Director of Sustainable Development, Manager of Integrated Planning, Strategic Planning Coordinator and Strategic Planner to review the issues raised and possible responses, including changes to the draft LEP. As required, the team drew on the expertise of technical and other staff, including the Strategic Engineer, Manager of Finance, Manager of Assets & Support Services, Director of Infrastructure Services, Manager of Development and Compliance and the Manager of Business Services.

As discussed in Section 5.0 below, advice was also sought from the (then) Department of Industry & Investment and the NSW Farmers Association with respect to rural zones and related matters.

The Draft LEP Review Team presented the issues and recommended responses to these issues to the following Councillor briefings in July and August 2011:

- 26 July 2011: Rural zones and related issues, such as rural boundary adjustment.
- 27 July 2011: Environmental Protection Zones and related issues.
- 28 July 2011: Urban and Rural Residential Land Release Areas and Council land reclassification.
- 3 August 2011: Flood planning and changes to flood zones.
- 4 August 2011: Requests for residential and business zone changes and related issues.
- 10 August 2011: State Government, adjoining Councils and other agency submissions, heritage matters, miscellaneous.

The material presented to these briefings forms the basis for this Council report and its recommendations.

### 3.3 Overview of community submissions

Table 3 below provides a summary of the general location of submitters.

**Table 3: Number and Location of Submitters**

Area	Number
Lismore Urban <ul style="list-style-type: none"> <li>• Chilcotts Grass</li> <li>• East Lismore</li> <li>• Goonellabah</li> <li>• Lismore Heights</li> <li>• Lismore</li> <li>• North Lismore</li> <li>• Richmond Hill</li> <li>• South Lismore</li> </ul>	405
Lismore Rural	643
Villages	146
Outside Lismore LGA but within the region	30
Outside Lismore LGA & the region	72

Table 4 provides a summary of the broad issues about which the community made submissions. Note that this table compiles the number of submissions whereas Table 3 relates to the number of submitters.

**Table 4: General Issues and Number of Submissions**

General Issue	Number	Percentage
Rural zones & related issues	990	70%
Environmental Protection	142	10%
Changes to flood zones & mapping	86	6%
Request for zone & minimum lot size change – residential/rural residential	59	4%
Urban & Rural Residential Release Areas	51	4%
Other	28	2%
Council land reclassification	20	1%
Government & other agency	20	1%
Heritage	9	<1%
Request for zone change – industry/ commercial	7	<1%
Uses in industry/business enterprise zones	5	<1%

It is clear that the dominant issues related to the proposed rural and environmental protection zones and related measures. Note that these are broad groupings that do not reflect all the detail within individual submissions. A significant number of submissions relate to the proposed zones for the areas that are currently included in a 'flood zone' along with the flood planning area map.

### 3.4 Government agencies

The following State government agencies made submissions to the Draft LEP. Attachment 7 summarises the issues raised by the submissions. These are discussed in more detail in Section 5.8.1 of this report.

- Land & Property Management Authority State Property Authority (SPA)
- Department of Lands
- Department of Industry & Investment
- NSW Communities Office of Liquor, Gaming & Racing
- Dept of Education & Training
- Department of Environment, Climate Change & Water
- Transgrid
- Department of Transport & Infrastructure
- NSW Roads & Traffic Authority
- Australian Rail Track Corporation Ltd
- Department of Transport.

### 3.5 Other agency

Richmond River County Council, Rous Water and the Northern Rivers Catchment Management Authority made submissions about a range of issues relevant to their portfolios. These are included at Attachment 7 and discussed in more detail in Section 5.8.2 below.

### 3.6 Adjoining Councils

Ballina and Kyogle Shire Councils made submissions generally to the effect that zones differ along the boundaries. This generally reflects the different land use issues, characteristics and constraints of particular areas but also the different policy approaches by each Council. It is not proposed to amend any of the zones simply on the basis that adjoining Councils have adopted different zones.

The details of the adjoining Councils' submissions are contained in Attachment 7. As no changes are recommended, these submissions are not further reviewed in this report.

### 3.7 Council's Policy Advisory Groups

Two (2) of Council's Policy Advisory Groups made submissions, the Sustainable Environment PAG and the Infrastructure Assets PAG. Both groups raised the same concern with the DP&I's direction that rail corridors be included in the same zone as the adjoining land. This is reviewed in more detail, along with other issues raised by SEPAG in section 5.8.3 below.

### 4.0 Standard LEP Amendment February 2011

The Standard Instrument (Local Environmental Plans) Amendment Order 2011 was published on 25 February 2011. The Order introduced a number of amendments to the Standard Instrument. The amendments include changes to the compulsory text of the Standard Instrument, modification of dictionary terms and the inclusion of additional optional provisions that can be used at the discretion of Council.

Table 5 below contains a summary of the key changes to the Standard Instrument along with recommendations regarding the adoption of optional provisions and amendments to the land use table. Where the changes are mandatory, amendments are not necessary and the recommendation is 'for noting'.

Note that these are not the only amendments recommended to the permissibility of particular uses. Sections 5 and 6 of this report contain recommendations with respect to submitters' issues and staff and Councillor issues, some of which involve amendments to the land use tables.

Attachment 10 to this report contains the amended Draft LEP 2011 Instrument that incorporates these changes and other amendments as recommended in the following sections of this report. The changes are 'tracked' in the text to allow ready comparison with the exhibited Instrument.

**Table 5: Amendments to Standard Instrument Provisions and Definitions**

Clause/ Definition	Discussion	Recommendation
<b>Clarifying the intent of the zones</b>	<p>A number of minor changes have been made to the mandated land uses within various zones. These include directions associated with new land uses (such as "respite day care centres"), and revised and new objectives for some zones.</p> <p>A new objective has been included in the IN1 General Industrial Zone and IN2 Light Industrial Zone to highlight that the purpose of industrial zones is for industrial uses.</p>	For noting.
<b>Land Use Table directions</b>	<p>Standard LEP Template directions are provided to assist Councils with the use of zone objectives and to provide standard language for Land Use Tables. Two new Land Use Table directions are included in the Template. The directions are not to form part of the text of a Standard Instrument LEP. However, as discussed below, staff consider that Direction 5 should be included as a Note.</p> <p><u>Direction 4</u> Direction 4 requires "respite day care centres" to be permitted wherever a "child care centre" is permitted in the Land Use Table.</p>	Insert the content of Land Use Table Direction 5 in the Draft LEP as a "note" at the beginning of the Land Use Table.

Clause/ Definition	Discussion	Recommendation
	<p><b>Direction 5</b>            Direction 5 clarifies which terms in the Dictionary are land use terms and may be included in the Land Use Tables. However the distinction is not made in the Dictionary itself and the Standard LEP directions will be removed when the Lismore LEP is made. Therefore, there will be no mechanism to distinguish between land use terms and non-land use terms in the LEP. For example, "industrial activity" is not identified as a land use term and therefore cannot be listed in the Land Use Table. However, it is listed in the Dictionary with "industrial retail outlet", "industrial training facility" and "industry". There will be nothing in the LEP to indicate that "industrial activity" is not a land use for which development consent cannot be sought.</p> <p>The DP&amp;I supports the content of Direction 5 being included as a note in the LEP.</p>	
<b>Clause 2.6 Subdivision Consent</b>	<p>The mandatory clause 2.6 has been amended to delete the provisions regarding subdivisions for public roads, reserves and other public purposes as well as minor boundary adjustments. These provisions are now contained in <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.</p>	For noting
<b>Clause 3.3 Environmentally sensitive areas excluded</b>	<p>The compulsory clause was amended to insert an additional exclusion criteria regarding exempt and complying development. The amendment clarifies that land reserved under the <i>National Parks and Wildlife Act 1974</i> is excluded from exempt and complying development.</p>	For noting
<b>Clause 4.1AA Minimum subdivision lot size for community title schemes</b>	<p>This clause is optional if clause 4.1 is adopted. As the Lismore Draft LEP included Clause 4.1 (Minimum subdivision lot size), Council would be able to use the new optional provision. Clause 4.1AA applies to the subdivision of land under a community title scheme and requires the minimum lot size of any such lots created to meet the minimum lot size shown on the Lot Size Map.</p> <p>The exhibited Draft LEP included clause 4.2C, which requires consistency of a strata or community title subdivision with the minimum lot size in the RU1, RU2, E1, E2 and E3 zones. This clause is considered adequate and the use of the new optional clause is not recommended.</p> <p><i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> provides for strata subdivision of buildings as complying development without any minimum lot size requirements. Strata subdivision is generally limited to residential, business and industrial zones. Strata title and community title subdivision are similar with regards to the ownership and management of common areas.</p>	No change to the exhibited Draft LEP as the optional clause 4.1AA is not to be used.

Clause/ Definition	Discussion	Recommendation
<p><b>Clause 5.4 controls relating to miscellaneous permissible uses</b></p>	<p>Clause 5.4 is mandatory and specifies controls on miscellaneous permissible uses. Minor amendments are proposed to the provisions including the way the maximum permitted floor area of industrial retail outlets and secondary dwellings is to be calculated.</p> <p>In summary the publicly exhibited Clause 5.4 calculates the floor area by reference to a percentage of the <i>combined</i> floor areas of the retail outlet and the industry and the combined floor area of the secondary dwelling <i>and</i> the principal dwelling. The new Clause 5.4 refers to a percentage of the industrial use only and the principal dwelling only.</p> <p>The new Clause 5.4 states:</p> <p>(4) <b>Industrial retail outlets</b>  <i>If development for the purposes of an industrial retail outlet is permitted under this Plan, the retail floor area must not exceed:</i></p> <p>(a) <i>[insert number not more than 67]% of the gross floor area of the industry or rural industry located on the same land as the retail outlet, or</i></p> <p>(b) <i>[insert number not more than 400] square metres, whichever is the lesser.</i></p> <p>The exhibited Clause 5.4 specified 40% of the combined gross floor area of the <i>industrial retail outlet and the building on which the relevant industry is carried out</i> and the area in part (b) to be 500m<sup>2</sup>.</p> <p>On review of it is considered that 30% of the gross floor area of the main industrial building is more appropriate and the exhibited 500m<sup>2</sup> maximum is excessive and should be replaced with 400m<sup>2</sup>.</p> <p>With respect to secondary dwellings clause 5.4 states:</p> <p>(9) <b>Secondary dwellings</b>  <i>If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:</i></p> <p>(a) <i>60 square metres,</i></p> <p>(b) <i>[insert number]% of the total floor area of the principal dwelling.</i></p> <p>The exhibited Clause 5.4 specified 25% of the combined floor area of the <i>principal dwelling and the secondary dwelling</i>.</p> <p>Upon review it is considered that 25% of the floor area of the principal dwelling only is appropriate. The gross floor area does not include the area of terraces and balconies.</p>	<p>Amend Clause 5.4 (4) to specify that industrial retail outlets are not to exceed 400m<sup>2</sup> or 30% of the gross floor area of the associated industry or rural industry, whichever is lesser.</p> <p>Amend Clause 5.4 (9) to specify that secondary dwellings are not to exceed whichever of the following is greater: 60m<sup>2</sup> or 25% of the total floor area of the principal dwelling.</p>

Clause/ Definition	Discussion	Recommendation
<p><b>Clause 5.5 Development within the coastal zone</b></p>	<p>Clause 5.5 is compulsory if land to which the LEP applies includes land within the coastal zone. Approximately 1,200ha or 0.9% of the total LGA around Broadwater is in the coastal zone in accordance with the <i>NSW Coastal Policy 1997</i>.</p> <p>The provisions of clause 5.5 have been amended by removing the coastal hazard associated issues from matters which must be taken into consideration in the assessment of development applications, and inserting them into the list of matters which the consent authority must be satisfied of. This amendment has the effect of elevating the significance of these coastal hazard issues.</p>	<p>For noting</p>
<p><b>Clause 5.8 Conversion of fire alarms</b></p>	<p>The name of NSW Fire Brigades has been changed to Fire and Rescue NSW.</p>	<p>For noting</p>
<p><b>Clause 5.9 Preservation of trees or vegetation</b></p>	<p><b>The changes to Clause 5.9 are discussed in more detail in Section 5.2.5 of this report and Attachment 2 to this report.</b></p> <p>In summary, the amendment to the Standard Instrument introduces a new subclause (9), which applies to particular zones including R5, E2 and E3. It enables Council to require approval for certain activities and clearing permitted without approval under the <i>Native Vegetation Act 2003</i>. The clearing permitted under the <i>Native Vegetation Act 2003</i> without approval includes clearing for routine agricultural management activities (RAMAs) and clearing of native vegetation regrowth (native vegetation that has regrown since 1990).</p> <p>The use of the optional subclause (9) represents the closest alignment with Council's current policy of requiring development consent for tree removal in environmental protection zones.</p> <p>Minor amendments to the clause include the addition of biodiversity values in the clause objective and clarification of the relationship of the clause with the compulsory heritage provisions of clause 5.10.</p>	<p>Amend Clause 5.9 to insert the optional subclause 5.9(9).</p>
<p><b>Clause 5.9AA Tree or vegetation not prescribed by development control plan</b></p>	<p>This new compulsory clause applies to any tree or other vegetation that is not of a species prescribed by a development control plan, and permits the removal, lopping etc of such trees without development consent.</p> <p>The Lismore Development Control Plan (DCP) Chapter 14 – Tree Preservation Order describes the vegetation that requires consent from Council for removal, lopping etc. The TPO currently applies to all zones other than rural zones. Exemptions apply e.g. trees within 2m of a dwelling, dead trees, environmental weeds etc.</p> <p>Chapter 14 will require amending to reflect the new zones and to provide an up to date reference of environmental weeds.</p>	<p>For noting</p>



Clause/ Definition	Discussion	Recommendation
<b>Clause 5.10 Heritage conservation</b>	Minor amendments are proposed to this compulsory clause to reflect changes to Dictionary terms and provide guidance on the use of the Heritage Map. Clarification is also provided regarding the need for development consent.	For noting
<b>Clause 5.13 Eco-tourist facilities</b>	<p><b>The permissibility of ‘eco-tourist facilities’ is also discussed in Issue 1.8 in Attachment 1 to this report.</b></p> <p>This clause is compulsory if “eco-tourist facilities” are permitted with consent. The introduction of the “eco-tourist facilities” land use term partially fills the void created by the lack of flexibility for rural tourism under the Standard Instrument. The closest equivalent definition is farm stay accommodation, which must be linked to a working farm as a secondary business to primary production.</p> <p>The new eco-tourist facilities definition and associated clause does present some problems including: merit based criteria within the definition itself; confusion associated with the exclusion of the term from the group term “tourist and visitor accommodation”, and a location requirement in or adjacent to an area with special ecological or cultural features.</p> <p>Whilst the eco-tourist facilities definition and associated clause does not provide the utility of the Lismore LEP 2000 “rural tourist facility” definition, it does allow for temporary or short-term accommodation for visitors in a non-urban environment.</p>	Amend the land use table so that “eco-tourist facilities” are permitted with consent in RU1, RU2 and E3 zones, which compels the use of clause 5.13.
<p><b>The Dictionary</b></p> <p>Over seventy amendments have been made to dictionary terms in the Standard Instrument by the DP&amp;I. Where the revision to a land use term involves renaming or a minor amendment, it is recommended that the permissibility of the land use in each zone is maintained in the Draft LEP as publicly exhibited, except where an amendment has otherwise been recommended.</p>		
<b>bee keeping</b>	<p><i>Bee keeping</i> is included in the definition of <i>extensive agriculture</i>. The new Dictionary now defines it as a stand alone land use so it can be permitted if appropriate in areas not suited to broader agricultural activities. As it is a new stand alone definition it has to be included in the Land Use Tables.</p> <p><i>Extensive agriculture</i> was exhibited as permitted without consent in RU1, RU2, RU3, RU5 and R5; and permitted with consent in RE1 and RE2. It is proposed to include bee keeping in the Tables in accordance with this. Section 5.0 of this report recommends that <i>extensive agriculture</i> is permitted without consent in E3. Therefore, it is recommended that bee keeping also be permitted without consent in the E3 zone.</p>	<p>Amend the Land Use Tables to make bee keeping:</p> <ul style="list-style-type: none"> <li>• Permitted without consent in the RU1, RU2, RU3, RU5, R5 and E3 zones.</li> <li>• Permitted with consent in RE1 and RE2.</li> <li>• Prohibited in all other zones.</li> </ul>
<b>boat building and repair facility</b>	The exhibited <i>boat repair facilities</i> definition has been renamed to clarify the inclusion of boat building.	And the Land Use Tables to replace <i>boat repair facilities</i> with <i>boat building and repair facility</i> .

Clause/ Definition	Discussion	Recommendation
	<p>The superseded <i>boat repair facilities</i> were exhibited as permitted with consent in B6, IN1, IN2 and W2 zones and prohibited in all other zones. It is proposed that the new term simply replace <i>boat repair facilities</i> in the Land Use Tables.</p>	
<p><b>camping ground</b></p>	<p>Camping ground was part of the definition of <i>caravan park</i> but is now also defined as a new stand alone land use so it can be permitted if appropriate in areas not suited to caravan parks. As it is a new stand alone definition it has to be included in the Land Use Tables.</p> <p><i>Caravan parks</i> were exhibited as permitted with development consent in RU2, RU5, R1, RE1, RE2 and E3. Issue 1.1 in Attachment 1 recommends an amendment to the Land Use Table so that <i>caravan parks</i> are permitted with development consent in RU1. It is recommended that camping ground be permissible in the same zones as caravan parks.</p>	<p>Amend the Land Use Tables to include <i>caravan park</i> as:</p> <ul style="list-style-type: none"> <li>• Permitted with consent in RU1, RU2, RU5, R1, RE1, RE2 and E3 zones.</li> <li>• Prohibited in all other zones.</li> </ul>
<p><b>eco-tourist facility</b></p>	<p>A new land use term for low impact tourist use located in or adjacent to an area with special ecological or cultural features.</p>	<p>Amend the land use table so that “eco-tourist facilities”:</p> <ul style="list-style-type: none"> <li>• permitted with consent in RU1, RU2 and E3 zones</li> <li>• Prohibited in all other zones.</li> </ul>
<p><b>garden centre</b> <b>landscaping material supplies</b> <b>plant nursery</b></p>	<p>These three (3) terms replace the exhibited <i>landscape and garden supplies</i>. <i>Garden centre</i>, <i>landscaping material supplies</i> and <i>plant nursery</i> are all new terms which separate the growing component from the supplies and garden centres that were in the superseded definition <i>landscape and garden supplies</i>. This enables them to be considered individually in different zones and provides more flexibility.</p> <p><i>Landscape and garden supplies</i> were exhibited as permitted with development consent in RU1, RU2, RU5, R5, B1, B2, B3, B6, IN1 and IN2 zones.</p> <p><i>Garden centres</i>, <i>landscaping material supplies</i> and <i>plant nurseries</i> are mandated under the SI as permitted with consent in B2, B3, B4, and B6 and prohibited in E2, E3 and W1 zones.</p> <p>The recommendations generally maintain a status quo with the exhibited superseded <i>Landscape and garden supplies</i> with the exception of the mandated B4 permissibility and the prohibition of <i>garden centres</i> from industrial zones. Over 80% of 24 SI LEPs that have been made have prohibited garden centres from all industrial zones.</p> <p>The new definition of <i>garden centre</i> is quite broad and includes the potential for an expanded retail component and an ancillary restaurant, as follows:</p>	<p>Amend the Land Use Tables to include the following:</p> <p><b>garden centre</b></p> <ul style="list-style-type: none"> <li>• Permitted with consent in RU1, RU2, RU5, B1, B2, B3, B4, and B6 zones.</li> <li>• Prohibited in all other zones.</li> </ul> <p><b>landscaping material supplies</b></p> <ul style="list-style-type: none"> <li>• Permitted with consent in RU1, RU2, RU5, B2, B3, B4, B6, IN1 and IN2 zones.</li> <li>• Prohibited in all other zones.</li> </ul> <p><b>plant nursery</b></p> <ul style="list-style-type: none"> <li>• Permitted with consent in RU1, RU2, RU5, R5, B2, B3, B4, B6, IN1 and IN2 zones.</li> <li>• Prohibited in all other zones.</li> </ul>

Clause/ Definition	Discussion	Recommendation
	<p><b>garden centre</b> means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may, if ancillary to the principal purpose for which the building or place is used, include a restaurant or cafe and the sale of any the following:</p> <p>(a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,</p> <p>(b) pets and pet supplies,</p> <p>(c) fresh produce.</p> <p><b>Note.</b> Garden centres are a type of <b>retail premises</b>—see the definition of that term in this Dictionary.</p>	
<b>general industry</b>	<p>The industry group term now includes three categories (subsets/sub-terms) including the exhibited <i>light industry</i> and <i>heavy industry</i> and the new <i>general industry</i>, which is defined as ‘a building or place (other than a heavy industry or light industry) that is used to carry out an industrial activity.</p> <p><b>Note.</b> General industries are a type of <b>industry</b>—see the definition of that term in this Dictionary.</p> <p>General Industries are mandated under the SI as permitted with consent in the IN1 zone and prohibited in E2, E3, W1 and W2 zones.</p> <p><i>Light industry</i> was exhibited as permitted with consent in RU5, B6, IN1 and IN2. <i>Heavy industry</i> was exhibited as permitted with consent in IN1 zones.</p>	<p>Amend the Land Use Tables to make <i>general industry</i>:</p> <ul style="list-style-type: none"> <li>• Permitted with consent in the IN1 zone.</li> <li>• Prohibited in all other zones.</li> </ul>
<b>hardware and building supplies</b>  <b>timber yard</b>	<p>These are new terms that are based on the previous <i>timber and building supplies</i> definition. <i>Timber yard</i> is now a stand alone land use enabling increased flexibility.</p> <p><i>Timber and building supplies</i> was exhibited as permitted with consent in B1, B3, B6, IN1 and IN2 zones.</p> <p><i>Hardware and building supplies</i> are mandated under the SI as permitted with consent in B2, B3, B4 and B6 and prohibited in E2, E3 and W1 zones.</p> <p><i>Timber yards</i> are mandated under the SI as permitted with consent in B2, B3 and B4 zones and prohibited in E2, E3 and W1 zones.</p>	<p>Amend the Land Use Tables as follows:</p> <p><b>hardware and building supplies</b></p> <ul style="list-style-type: none"> <li>• Permitted with consent in B1, B2, B3, B4, B6, IN1 and IN2 zones.</li> <li>• Prohibited in all other zones.</li> </ul> <p><b>timber yard</b></p> <ul style="list-style-type: none"> <li>• Permitted with consent in B1, B2, B3, B4, B6, IN1 and IN2 zones.</li> <li>• Prohibited in all other zones.</li> </ul>
<b>high technology industry</b>	<p>This is a new land use term that provides for certain types of established and emerging sectors that rely on non-polluting technologies. <i>High technology industries</i> are mandated under the SI as permitted with consent in B6, IN1 and IN2 and prohibited in E2, E3, W1 and W2 zones. As it is a type of ‘industrial activity’, it is recommended that its permissibility be the same as for <i>light industry</i>.</p>	<p>Amend the Land Use Tables to make <i>high technology industries</i>:</p> <ul style="list-style-type: none"> <li>• Permitted with consent in B6, IN1 and IN2 zones.</li> <li>• Prohibited in all other zones.</li> </ul>

Clause/ Definition	Discussion	Recommendation
<b><i>industrial training facility</i></b>	<p>This is a new land use term to cover vocational training in an activity (such as fork lift or truck driving) associated with an <i>industry, rural industry, extractive industry</i> or <i>mining</i>.</p> <p><i>Industrial training facility</i> is mandated as permitted with consent in IN1 and IN2 zones.</p>	<p>Amend Land Use Tables to make <i>industrial training facility</i>:</p> <ul style="list-style-type: none"> <li>• Permitted with consent in IN1 and IN2 zones.</li> <li>• Prohibited in all other zones.</li> </ul>
<b><i>mooring pen</i></b>	<p>This is a new land use term to provide for the mooring or berthing of a boat. Birthing or mooring facilities are also included in the revised <i>marina</i> definition. Permissibility is not mandated under the SI for this land use.</p> <p>The related term <i>mooring</i> was exhibited as permitted with consent in W1 and permitted without consent in W2. The definitions of <i>mooring</i> and <i>mooring pen</i> are:</p> <p><b><i>mooring</i></b> means a detached or freestanding apparatus located on or in a waterway and that is capable of securing a vessel, but does not include a mooring pen.</p> <p><b><i>mooring pen</i></b> means an arrangement of freestanding piles or other restraining devices designed or used for the purpose of berthing a vessel.</p>	<p>Amend the Land Use Tables to make <i>mooring pen</i>:</p> <ul style="list-style-type: none"> <li>• Permitted with consent in RU1, RU2, W1 and W2 zones.</li> <li>• Prohibited in all other zones.</li> </ul>
<b><i>open cut mining</i></b> <b><i>underground mining</i></b>	<p>These are new definitions to distinguish between different forms of <i>mining</i>. <i>Mining</i> is no longer a Dictionary term that can be used in the Land Use Table. Mining was exhibited as permitted with consent in the RU1, RU2 and RU3 zones.</p> <p><i>Open cut mining</i> is permitted with development consent on land where development for the purposes of agriculture or industry may be carried out (Mining SEPP). Council has been instructed by DP&amp;I to remove SEPP regulated development from the land use table. On this basis, the LEP can only regulate open cut mining in the E2 and E3 zones. If Council adopts the recommendation to permit extensive agriculture without development consent in the E3 Zone (refer Section 5.1 below), the LEP will only be able to regulate in the E2 zone (it is automatically prohibited in E1).</p> <p>The Standard Instrument LEP mandates <i>open cut mining</i> as permitted with consent in the RU1 Primary Production zone.</p> <p><b>Note:</b> The existing SI LEP <i>extractive industries</i> land use term is also regulated by the mining SEPP in the same manner as the new term <i>open cut mining</i>. That is, it is permissible where agriculture and industry are permissible. Minor amendments should be made to the land use table so that extractive industries are listed as permitted with consent in the RU1 zone and prohibited in the E2 zone (and E3 zone if the recommendation to permit extensive agriculture is not adopted).</p>	<p>Amend the Land Use Tables as follows:</p> <p><b><i>open cut mining</i></b></p> <ul style="list-style-type: none"> <li>• Permitted with consent in RU1 (mandated).</li> <li>• Prohibited in E2 zones (and E3 zone if the recommendation to permit extensive agriculture is not adopted).</li> </ul> <p><b><i>underground mining</i></b></p> <ul style="list-style-type: none"> <li>• Not to be used in the Land Use Table.</li> </ul> <p><b><i>Extractive industries</i></b></p> <ul style="list-style-type: none"> <li>• Permitted with consent in the RU1 and E3 zone.</li> <li>• Prohibited in all other zones.</li> </ul>

Clause/ Definition	Discussion	Recommendation
<b><i>respite day care centre</i></b>	<p>A new land use term added to ensure provision of short term temporary relief for carers of people with a disability, or the elderly in a wide variety of zones. Land Use Table Direction 4 requires <i>respite day care centres</i> to be permitted wherever a <i>child care centre</i> is permitted in the Land Use Table.</p> <p>The draft LEP was exhibited with child care centres being permitted with consent in RU5, R1, R2, R5, B1, B2, B3, B4, B6, IN1, IN2, RE1 &amp; RE2. Attachment 9 (Section 6 of this report) includes a recommendation to prohibit child care centre in IN1 and IN2 zones.</p> <p><i>Respite day care centres</i> are mandated under the SI as permitted with consent in RU5, R1, B1, B2, B3 and B4 zones.</p>	<p>Amend the Land Use Tables to make <i>respite day care centres</i>:</p> <ul style="list-style-type: none"> <li>• Permitted with consent in RU5, R1, R2, R5, B1, B2, B3, B4, B6, RE1 &amp; RE2 zones.</li> <li>• Prohibited in all other zones.</li> </ul>
<b><i>Wharf or boating facilities</i></b>	<p>A new term that enables councils to permit facilities associated with a wharf or boating outside designated ports.</p> <p>Development for the purpose of wharf or boating facilities may be carried out by or on behalf of a public authority without consent on any land under the Infrastructure SEPP. Council has been instructed by DP&amp;I not to include SEPP regulated development in the Land Use Table. However, Council can regulate <i>wharf or boating facilities</i> carried out by non-public authorities.</p>	<p>Amend the Land Use Tables to make <i>wharf or boating facilities</i>:</p> <ul style="list-style-type: none"> <li>• Permitted with consent in RU1, RU2, B3, B4, B6, IN1, IN2, RE1, RE2, W1 and W2 zones.</li> <li>• Prohibited in all other zones.</li> </ul>

Attachment 10 contains the amended Draft LEP 2011 Instrument that incorporates these changes and other amendments as recommended in the following sections of this report. The changes are 'tracked' to allow ease of comparison with the publicly exhibited Draft LEP.

## 5.0 Submission issues and responses

This section of the report outlines the key issues raised by submissions. Each of the following sections provides a summary of the main issues raised by submissions. Attachments 1 to 8 contain the details of the issues along with more detailed planning responses, options (where relevant) and staff recommendations for responding to these issues. As noted in section 1.2 above Councillors will be familiar with the content of these attachments; however they should be read in conjunction with this report. The recommendations in these attachments relevant to each issue are included in this section of the report in highlighted text boxes for ease of reference.

### 5.1 Rural zones and related issues

Attachment 1 comprises the summarised submitters issues, responses and recommendations with respect to rural zones and related matters. The dominant issue related to landowners' concerns about the meaning and potential impact of the RU2 Rural Landscape Zone on the ability of farmers to continue farming or to change from one form of agriculture to another.

#### 5.1.1 Rural Landscape zone

The RU2 zone was perceived to be a 'de facto' environmental protection zone and there was confusion and a lack of clarity about the difference between the two rural zones. While the basis for the distinction between the two zones was largely related to agricultural quality of the land, viable farming operations

exist in the LGA on a range of different soil types and classifications. It was therefore difficult for many to accept the need for two different rural zones on the basis of land quality.

The objectives for the RU2 Zone, the first one of which is the same as the RU1 Primary Production Zone, along with the permissibility of most forms of agriculture without Council consent, means that the RU2 Zone was intended to be a 'farming' zone. The distinction in practical terms between the two zones related to the proposed ability for landowners to undertake a wider range of non-agricultural uses in the RU2 Zone than in the RU1 Zone.

In light of the considerable community angst about the rural zones and how they were derived, Council engaged a planning consultant, Chris Pratt from Planning Resolutions, to undertake an independent peer review of the methodology and basis for the zones. As outlined in Attachment 1, this review recommended that the RU2 Zone be retained but restricted to the steeper and more marginal rural land in the LGA.

However, staff considered the retention of the RU2 Zone in such areas, essentially in the northern part of the LGA, to have little utility for the following main reasons:

1. The physical constraints of these areas would mean that the proposed non-agricultural activities, such as eco-tourist facilities, would have difficulty obtaining development consent.
2. Restricting non-agricultural activities such as eco-tourist facilities, to such areas would deny landowners in the RU1 Zone the ability to diversify. Such facilities can and do operate alongside viable farming operations that still retain the land in primary production.

It is therefore recommended that, with the exclusion of parts of the high risk flood prone areas of urban Lismore, the RU2 zone is replaced by the RU1 zone. The objectives for the RU2 Rural Landscape zone will also need to be amended to reflect the changed extent and intent for the zone. Reference should be made to section 5.8 of this report for discussion about the use of the zone in the Lismore urban flood prone areas.

In addition to the peer review and to address concerns raised by some submitters about the lack of 'farming' input to the mapping and the LEP, the Department of Industry & Investment was requested to provide comment on the Chris Pratt report, and the NSW Farmers Association reviewed and provided a response to the report and the staff recommendation. These are discussed in Attachment 1.

The Association endorsed the staff recommendation to adopt the RU1 zone as the main primary production zone. Staff would like to acknowledge the important input of the NSW Farmers Association to this process, in particular the time and commitment by Kath Robb, the Executive Councillor for this region.

The Association also provided the following comment:

- *The current planning system is not adequately providing for the future needs of agriculture. Accordingly the Farmers Assoc would like to work with the Council to develop:*
  - *an Agricultural Strategy for the Shire;*
  - *a solution for spatial planning and subdivision of rural land that retains viable units of agricultural land, meshes with settlement planning and planning for biodiversity, carbon farming & climate change adaptations and clarifies the role of CMAs;*
  - *solutions to conflicts that arise between farming and residential.*
- *Ideally this work could be progressed via a pilot project with the support of the Dept of Planning & Infrastructure.*

Council Staff verbally advised the NSW Farmers Association that they believe the proposal has considerable merit but a commitment from Council to such a project would need to be determined in light of other work priorities and availability of staff and other resources. The NSW Farmers Association has recently advised that the Association is still working on the feasibility of developing such a project.

## 5.1.2 Non-agricultural uses

The adoption of one main rural zone results in the need to expand the non-agricultural uses proposed to be permitted with Council consent. The uses of note are *information and education facilities, caravan parks, restaurants, rural land sharing communities and eco-tourist facilities*.

With respect to rural land sharing communities (RLSC), under Lismore LEP2000 these uses are permissible with development consent on land within zones 1(a) General Rural and 1(c) Rural Residential where the land is also shown on the potential RLSC map in the Rural Housing Strategy. The potential RLSC map was reduced in area in the Draft LEP as this land use was proposed to be restricted to the RU2 zone.

The elimination or reduction of the RU2 zone would need to be accompanied by an amendment to the potential rural landsharing community development map as retaining a superseded RU2 boundary has little merit.

## 5.1.3 Rural boundary adjustment

The Lismore Draft LEP Instrument provided for the subdivision of rural land with consent to adjust common rural boundaries where one or more lots are less than the minimum lot size. A 10% maximum area variation applies, as required by the DP&I. This caused a lot of concern among submitters and Council staff. On review, it is considered that the use of clause 4.1(3a) is both confusing and superfluous when a primary production lot, with no specified minimum lot size can be created under the SEPP (Rural Lands) 2008. The DP&I has indicated that it is working on a boundary adjustment model clause, which if correctly drafted, has the potential to eliminate confusion surrounding the issue.

## 5.1.4 Aims of the LEP and Zone Objectives

As outlined in Attachment 1 to this report, it is proposed to include the word 'agriculture' in the Aims of the Plan to reinforce the significant economic and social contribution the sector makes to the Lismore LGA.

The proposed objectives in the RU2 zone relating to scenic values caused particular concern about the assessment process for new farming activities such as dairies or sheds. These objectives will become superfluous if Council adopts the recommendation to significantly reduce the extent of the RU2 zone, and they will not be consistent with the nature of the areas in which the revised RU2 zone would apply. The objective relating to fragmentation of rural land will also be unnecessary.

With respect to the recommended expanded extent of the RU1 zone and the proposed increase in the permissible non-agricultural uses in the RU1 zone, it is considered that the zone objectives should reflect the permissibility of non-agricultural uses and the need to ensure such uses do not conflict with agriculture or detract from the character of the rural environment. This matter was not considered at the Council briefing. It is recommended that the existing LEP 2000 1(a) General Rural Zone objective number (b) is included in the RU1 zone (refer recommendation 3 in the box below).

## 5.1.5 Other rural issues

A range of other issues were raised by submissions, many of which were requests for clarity. Reference should be made to Attachment 1 for further details. These requests did not result in any recommendations for amendment.



### 5.1.6 Recommendations

The highlighted text box below contains the recommendations related to the above issues, along with others detailed in Attachment 1.

#### Recommendations ~ Draft LEP2010 Rural Zones & Related Matters

1. Amend the Draft LEP Land Zoning Maps LZN001-013 to change the RU2 Rural Landscape Zone to RU1 Primary Production Zone with the exception of publicly exhibited RU2 land located in urban high risk flood prone areas, as shown on Map 1 in Attachment 12.  
**Note: The extent of the proposed amended RU2 zone in North Lismore is further reduced by the recommendation in Section 6 of this report with respect to the inclusion of Council owned land in the RE1 Public Recreation zone.**
2. Amend the Draft LEP Instrument to delete the following three (3) proposed RU2 Rural Landscape Zone objectives:  
*To discourage the fragmentation of rural land.*  
*To allow a range of uses that compliment the scenic values of the land, such as recreation areas, environmental facilities and rural tourist facilities.*  
*To ensure development does not detract from the scenic natural values of the rural area.*  
**Note: Recommendation 20 below inserts a new objective to the RU2 zone that reflects the flood risk of these areas.**
3. Amend the Draft LEP Instrument Land Use Table for the RU1 Primary Production zone to insert the existing LEP 2000 1(a) General Rural Zone objective number (b) as follows:  
*To enable a range of other uses to occur on rural land providing such uses do not conflict with existing or potential agriculture and do not detract from scenic amenity and character of the rural environment.*
4. Amend the Draft LEP Instrument Land Use Table for the RU1 Primary Production zone to include *information and education facilities, caravan parks, restaurants, rural land sharing communities and eco-tourist facilities* as uses permitted with consent.
5. Amend Clause 7.5 (1) to allow rural land sharing communities to occur in the RU1 zone by replacing RU2 Rural Landscape with RU1 Primary Production.
6. Replace the Draft LEP Potential Rural Land Sharing Area Maps with Map 4: Areas Potentially Suitable for Rural Land Sharing Communities in the Lismore Rural Housing Strategy 2002, with the exception of areas proposed to be included in the E2 Environmental Conservation, E3 Environmental Management and R5 Large Lot Residential Zones.
7. Amend Draft LEP Instrument Land Use Table Clause 1.2 (2) Aims of Plan to add the word “*agriculture*” to the second aim of the plan so as to read:  
*To stimulate and strengthen the role of Lismore as a regional centre for agriculture, business, education, health, recreation, tourism and the arts.*
8. Amend the Draft LEP Instrument to clause 4.1(3a) regarding rural boundary adjustments.
9. Amend the Draft LEP Instrument to include the following in Schedule 2 Exempt Development in the Draft LEP Instrument:
  - *Farm dams within zones RU1, RU2 (if applicable) and R5 authorised under the Water Management Act 2000.*
  - *Farm irrigation systems within zones RU1, RU2 (if applicable) and R5, authorised under the Water Management Act 2000.*

## 5.2 Environmental Protection Zones and related matters

### 5.2.1 Extent of Environmental Protection Zones

The proposed E2 Environmental Conservation and E3 Environmental Management zones and some of the ‘environmental protection maps’ and clauses caused widespread concern. Table 1 in Attachment 2 to this report contains the summary of the issues, discussion and recommendations.

The following statistics relate to the proposed use of the E2 Environmental Conservation and E3 Environmental Management zones and submissions received:

- 306 allotments were proposed for E2 or E3 (including existing 7(a) & 7(b) zoned land);
- 177 landholders own proposed E2 or E3 zoned land;
- 54 landholders made submissions regarding proposed E2 or E3 zones on their land;
- 50 landholders objected to the use of E2/E3 on their land (28% of E2/E3 landholders);
- 44 site visits were conducted;
- 4 submissions requested an E zone on land owned by submitter;
- 39 submissions requested general expansion of E zones.

All landholders who lodged a submission regarding the proposed use (or requesting their use) of either E2 or E3 zones on their land were offered the opportunity to have the accuracy and validity of the proposed or zone ground truthed. Most landowners accepted the offer and site visits were conducted in late 2010 and early 2011 by an ecologist and a strategic planner. The aim of the site inspections was to assess the vegetation within the proposed or requested environmental protection zones and to check the validity and accuracy of the zone boundaries.

The ecologists' reports were sent to all landholders whose property was inspected. Councillors have also received copies of these reports. These reports were used to assist in developing options and recommendations for land proposed to be zoned E2 and E3.

The outcomes of these site visits are detailed in Table 2 in Attachment 2. The result of the ground truthing is the recommended 'trimming' of zone boundaries to reflect the extent of the vegetation of significance and ensure consistency with application of the criteria described in the Local Environmental Study (LES). This 'trimming' extends to land on which no submissions were received or where a site inspection did not take place.

The site visits and ecologists' review also led to the recommended inclusion of additional land in the E2 and E3 zones but only where requested by landowners and where the vegetation satisfied the criteria in the LES.

Community members and some state and other agencies made submissions suggesting that environmental protection zones should be expanded. It is recommended that this issue is considered during the development of the Biodiversity Management Strategy, which will explore appropriate policy responses, including incentives, to biodiversity conservation and management.

## 5.2.2 Permissibility of Agriculture

The publicly exhibited Draft LEP proposed that all forms of agriculture become prohibited in the E2 and E3 zones. Agriculture requires the consent of Council in existing environmental protection zones in the Lismore LEP2000.

The rationale for the prohibition of all agricultural landuses was the potential inconsistency with zone objectives, along with the provisions of the SEPP (Mining, Petroleum Production and Extractive Industries) 2007, which permits mining (open cut), petroleum production and extractive industries with consent on land in which agriculture or industry are permissible. These land uses could impact negatively on the ecological values of the land within the zone.

The farming community and 'environmental' groups considered that the prohibition on grazing in particular is unnecessary in terms of environmental protection objectives. For this and other reasons outlined in Table 1 in Attachment 2, it is recommended that extensive agriculture is permitted without Council consent in the E3 zone. The other forms of agriculture are proposed to remain prohibited including aquaculture, intensive livestock agriculture, intensive plant agriculture and livestock processing industry.

It is recommended that agriculture remain prohibited in the E2 Environmental Conservation zone.

## 5.2.3 Overlay maps

### **Natural Resources Sensitivity – Biodiversity Map**

The proposed Natural Resources Sensitivity – Biodiversity (NRSB) overlay map, and the associated Clause 7.9, was considered by many as having the same effect as a land use zone and would result in undue restrictions being placed on agriculture. There was also a lot of concern about the accuracy of the map with some of the areas described on the map as ‘native vegetation’ being either cleared or dominated by camphor laurel or horticulture.

The overlay maps do not in any way resemble a zone in application as they do not restrict any activities or require any response by a landowner unless a development or use requires Council consent. As most forms of agriculture undertaken in the LGA do not require Council consent, the overlay maps have very limited impact on farming.

However, there do appear to be inaccuracies in the mapping, in particular of areas described as ‘native vegetation’. It is also acknowledged that, apart from the public exhibition period for the Draft LEP, the community had very little opportunity to be involved in the vegetation mapping or the development of responses to managing impacts on areas with possible conservation significance. For these reasons it is recommended that the Natural Resources Sensitivity – Biodiversity Map and its associated Clause 7.9 in the Instrument are deleted.

It is noted that Council will still have the ability, on a case by case basis, to require an assessment of the impact of proposed development on areas of native vegetation under s79C of the *EP&A Act 1979*.

Note that no property inspections were undertaken in relation to the Natural Resources Sensitivity Overlay map due to the extent of the area and the vegetation mapping that is occurring as part of the Biodiversity Management Strategy.

### **Water Supply Protection Map**

The objective of the Water Supply Protection Map and the associated Clause 7.6 is to maintain the quality of surface and groundwater resources accessed for the provision of urban water. The clause applies to the Wilsons River catchment and the proposed Dunoon Dam catchment, which are shown on the map. The objective of the clause remains valid and is consistent with Rous Water policy and Council’s Water Sensitive Design Development Control Plan. It is therefore recommended that the clause is retained and the map amended to include the catchment for the Rocky Creek Dam and Nimbin water supply catchment areas.

## 5.2.4 Riparian Land and Waterways

Clause 7.8 - Riparian Land and Waterways of the Draft LEP applies to land that is a watercourse or situated within 40m of the top of the bank of a watercourse. The clause provides for an assessment of the potential adverse impacts of development (that requires consent) on the watercourse (including bed, shore and bank stability) and riparian habitats and ecosystems.

Many submitters are concerned that the clause will result in landowners being required to fence their creeks, regardless of whether development is proposed. This is simply not correct. The clause largely reflects the requirements of the *Water Management Act 2000* and it is recommended that it remain in the LEP.

### 5.2.5 Preservation of trees or vegetation

Clause 5.9 Preservation of trees or vegetation was an optional clause in the original Standard LEP template. It was included in the Draft LEP as it is similar to the tree preservation clause in the current Lismore LEP2000. In the February 2011 Standard Instrument (Local Environmental Plans) Amendment Order the clause is now a compulsory clause. However, there is a new optional subclause (9) that would require development consent for tree removal in the R5 Large Lot Residential, E2 Environmental Conservation and E3 Environmental Management zones, where exemptions apply under the *Native Vegetation Act 2003* (NV Act).

Exemptions from approval under the NV Act include Routine Agricultural Management Activities (RAMAs) and the removal of non-protected regrowth. RAMAs include native vegetation removal for the maintenance of rural infrastructure etc. Non-protected regrowth may include native vegetation that has regrown since 1 January 1990.

The use of the optional provision would give Council a partial regulatory role for tree removal in the R5 Large Lot Residential, E2 Environmental Conservation and E3 Environmental Management zones. All other forms of tree removal in the environmental protection zones, including removal of protected regrowth and remnant native vegetation, would require approval under the NV Act. Council is not the consent authority under this Act.

It is recommended that subclause (9) is included in the Draft LEP.

### 5.2.6 Other Environmental Protection issues

Similar to the rural zones and related matters, many comments and questions were made that required clarification but do not result in recommendations for change to the Draft LEP. Other issues that are not discussed above are detailed in Attachment 2 and the recommendations captured in the highlighted text box below.

### 5.2.7 Recommendations

The highlighted text box below contains the recommendations related to the above issues, along with others detailed in Attachment 2.

#### Recommendations ~ Draft LEP2010 Environmental Protection

10. Amend the relevant Draft LEP Land Zoning Maps to modify the boundaries of the E2 Environmental Conservation zone and E3 Environmental Management zone as detailed in Table 2 in Attachment 2 to this report.  
**Note: As affected land owners and Councillors have received copies of these maps they are not reproduced here.**
11. Amend the relevant Draft LEP Land Zoning Maps to rectify anomalies in the boundaries of the remaining (after amending for 10 above) exhibited E2 and E3 Zones on which site inspections did not occur, excluding E2 and E3 zones adjacent to the R1 General Residential Zone or RE2 Private Recreation Zone on draft LEP Land Zoning Maps LZN – 007, 008, 011 & 012. Where the publicly exhibited E zone boundary extends beyond the environmental asset and into forestry, cropping, grazing land, mapped sugar cane land or the like it is to be replaced with the surrounding rural zone.
12. Delete Draft LEP Natural Resources Sensitivity – Biodiversity Maps NRB-001, NRB-002, NRB-003, NRB-004, NRB-005, NRB-009 and NRB-013.
13. Delete Draft LEP Instrument Clause 7.9 Natural Resources Sensitivity - Biodiversity.
14. Amend the Draft LEP Instrument Land Use Table for the E3 Environmental Management zone to include:
  - i) *extensive agriculture* as a use permitted without consent; and
  - ii) *eco-tourist facility* as a use permitted with consent.

15. Amend the relevant Draft LEP Water Supply Protection Maps to include the Rocky Creek Dam and the Nimbin water supply catchment areas.
16. Amend the relevant Draft LEP Water Supply Protection Map to correct the key for the inundation and catchment areas for the proposed Dunoon Dam.
17. Amend Draft LEP Instrument Clause 5.9 Preservation of trees or vegetation to include the optional sub-clause (9) from the Standard Instrument (Local Environmental Plans) Amendment Order 2011.
18. Amend the Draft LEP Land Zoning Maps ZN-004 and ZN-005 as shown on Map 2 in Attachment 12 to:
  - i) include Rocky Creek Dam in the SP2 Infrastructure zone with the purpose shown as *water supply system*; and
  - ii) include the land owned by Rous Water surrounding the dam in the E3 Environmental Management zone; and
  - iii) include the adjoining eastern allotment, Lot 4 DP 755752, with the exception of the inundated portion of the dam, in the E1 National Parks and Nature Reserves zone.
19. Amend the Draft LEP Instrument Clause 1.2 (2) Aims of Plan as follows:
  - In Aim 5 add the word *'enhance'* to *'protect and sustain'* so as to read: *To protect, sustain and enhance Lismore's natural environment particularly native flora and fauna.*
  - In Aim 7, change the word *'promote'* to *'ensure'* so as to read: *To ensure development that is consistent with the principles of ecologically sustainable development (ESD).*

### 5.3 Flood Planning Area and 'Flood Zone' changes

#### 5.3.1 Flood Zones, maps and the Standard Instrument

In the Standard Instrument (Local Environmental Plans) Order 2006 there were no equivalent zones to the current 'flood zones', that is, 2(f) Residential (Flood Liable), 3(f) Services Business (Flood Liable) and 1(r) Riverlands zones. This has not changed in the Standard Instrument (Local Environmental Plans) Amendment Order 2011. Instead flood prone land is identified on the LEP Flood Planning Map and Clause 7.3 provides criteria for development on land identified on the Flood Planning Area map. This means that all land in these zones under the Lismore LEP 2000 must be rezoned to comply with the standard zones provided in the template.

The Draft LEP Flood Planning map is intended to indicate the extent of the 1 in 100 year ARI design flood across the LGA. In accordance with DP&I requirements, the degrees of hazard (Floodway, High Risk, Flood Fringe) are not shown, apart from the Floodway in the Lismore urban area. Within the urban area extensive modelling has been undertaken in the past to identify the extent of the flood hazard in a range of events. The Draft LEP Flood Planning map is a composite of this mapping and the estimated extent of the flood prone lane in the rural areas. In the rural areas flood risk is currently indicated by the 1(r) Riverlands zone.

#### 5.3.2 Submissions to proposed rezoned 2(f) areas

The current 2(f) zone is essentially a residential zone that additionally permits a range of light industrial uses, although in accordance with clause 22 of the LEP2000, new dwellings are not permissible in some areas where the flooding hazard is categorised as either 'floodway' or 'high flood risk' in the Lismore Floodplain Management Plan.

The most appropriate zoning for the areas zoned 2(f) was determined through an evaluation of existing land uses, surrounding land uses, the level of flood hazard and access to flood evacuation routes. The Local Environmental Study provides the detailed assessment of these areas and the rationale for the proposed zones.



Attachment 3 details the property specific submissions made with respect to the proposed new zones for land currently in the 2(f) zone. In North Lismore the submissions relate to the proposed RU2 Rural Landscape Zone. The review of issues raised by these submissions has not resulted in a recommendation to change the zone to either the R2 Low Density Zone or an Industrial zone due to flood hazard, surrounding land uses and availability of land zoned for industrial development.

However, in response to concerns about limited opportunities for non-residential development compared to the current zone, it is recommended that additional uses be permitted with consent in the RU2 zone, specifically 'light industry' and 'vehicle repair station'. This recommendation also reflects the limited agricultural role such land will have along with the current permissibility of light industry uses in the 1(r) Riverlands zone.

An additional objective is recommended for inclusion in the RU2 zone to recognise its application in the high flood risk urban areas of Lismore.

To reflect the increase in the freeboard for dwellings in flood prone areas from 300mm to 500mm, a recommendation is made to increase the building height limit in flood prone residential zones to 9 metres. It is noted that the Height of Buildings Map does not apply to the RU2 zone.

In South Lismore, some of the concerns relate to the inclusion of former 2(f) land in the R2 Low Density Residential zone and the consequent reduction in potential for such land to be used for non-residential purposes. Where the properties are located in predominantly residential areas, such as Casino Street, no change to the exhibited R2 zone is recommended.

Other land owners objected to the change from a residential zone to the IN1 General Industrial zone due to their desire to live in South Lismore and retain a high level of residential amenity. In these instances it has been recommended that the R2 zone replaces the IN1 zone.

The proximity of the proposed IN1 zone to proposed residential zoned land in South Lismore was also raised. At the southern end of Barnes Avenue it is recommended that the IN1 zone is changed to IN2, which will extend the IN2 zone adjacent to the properties fronting Maloney Avenue.

Additional consideration is given to industrial zones adjacent to residential land in section 6.0 of this report and Attachment 9.

### 5.3.3 Submissions to proposed rezoned 3(f) areas

The current LEP2000 3(f) zone is a commercial zone although it does not permit retail premises. The intention of the zone is to provide for service type businesses at the fringe of the main commercial area and to encourage a range of commercial uses that are not adversely affected by flooding. Flood modelling for the Lismore Floodplain Management Plan demonstrated that the location of the 3(f) zones does not necessarily correlate with the areas experiencing the greatest flooding hazard. The restriction on shops in these areas is also considered unnecessary.

Therefore, those areas currently zoned 3(f) that are more or less contiguous with the CBD are proposed to be zoned B3 Commercial Core. Areas such as Wyrallah Road, North Lismore and South Lismore currently zoned 3(f) are proposed to be zoned B1 Neighbourhood Centre. As discussed in the second report in this agenda, only the proposed zone for the Wyrallah Road business precinct attracted submissions. Reference should be made to that report for the recommendation in response to those submissions.

## 5.3.4 Submissions to proposed rezoned 1(r) areas

The current 1(r) Riverlands zone is a rural zone that applies to rural land that is flood affected. Much of this land is proposed to be included in the RU1 Primary Production zone. However, in the urban area, such as North Lismore and South Lismore, existing 1(r) zoned land is generally proposed to be included in the RU2 Rural Landscape zone, along with some areas currently zoned 2(f).

While the inclusion of land in the Lismore urban area in a rural zone appears to be illogical, the existing land uses, flood hazard and characteristics of the particular areas make it unsuitable for inclusion in an urban zone that could permit more intense urban development. There is also no suitable zone in the LEP template.

## 5.3.5 Flood mapping outside the Lismore urban area

In preparing the Draft LEP Flood Planning map, consideration was given to the extent of the 1(r) Riverlands zone and a search was undertaken of Rous records for historical flood stream gauge data that could assist in determining the extent of a 1 in 100 year flood outside of the Lismore urban area. Data was also sought from the SES and Bureau of Meteorology but there was little information available.

In March 2010 the Richmond River Flood Mapping Study was finalised and provided to Councils. Unfortunately this mapping was not available for inclusion in the Flood Planning map when the Draft LEP was finalised for public exhibition.

The mapping produced by this Study, which is based on extensive flood modelling, changes some areas that were mapped as being affected by a 1 in 100 year ARI flood in the publicly exhibited Draft LEP map. As this Study represents the best knowledge available for the Richmond River catchment, it is proposed that the mapping that was produced from this Study will replace the Draft LEP Flood Planning Map for the affected area. Issue 3.17 in Attachment 3 describes the Study in more detail and responds to property specific objections to the Draft Map.

In response to concerns raised by land owners about the extent of the Flood Planning map in the remainder of the LGA outside the urban area (generally the 'northern' part), Worley Parsons was engaged in February 2011 to devise an acceptable method for estimating the extent of the 1 in 100 year event, with the dominant focus being areas outside those in which modelling has already been undertaken.

Issue 3.18 in Attachment 3 describes the method that was used in more detail to produce a revised Flood Planning map for the affected areas. As this appears to represent the best knowledge available for the area affected, it is proposed that the mapping that was produced from this exercise will replace the draft Flood Planning Map.

It should be noted that the Flood Planning Map only shows the estimated extent of a 1 in 100 year ARI design flood and does not indicate depth or hazard.

Issue 3.19 in Attachment 3 responds to the property specific objections to the Draft Map. It should be noted that, while reasonably extensive areas have been excluded from the Flood Planning Map as a result of the work undertaken by Worley Parsons, other areas of the LGA are now included. Of particular note is Nimbin.

### 5.3.6 Flood Planning Clause

Is noted in section 5.3.1 above, the Draft LEP Flood Planning does not show the degrees of hazard (Floodway, High Risk, Flood Fringe), apart from the Floodway in the Lismore urban area. Fine scaled modelling of flood hazards to define floodways and areas of differing flood hazard was undertaken by Patterson & Britton in 2001. The resulting flood hazard categories were adopted with the adoption of the Lismore Floodplain Management Plan (FMP) 2002.

Each category represents a different level of flood hazard in terms of potential risks posed to human life and property, which requires varying levels of restriction on new development for land within each category. Following the adoption of the Lismore FMPlan 2002, Clause 22 of the current Lismore LEP2000 and Chapter 8 of the Lismore DCP were amended to include the hazard category map and the development controls.

Clause 22 of the LEP2000 and Chapter 8 of the DCP have been very effective in controlling the location and form of residential, industrial and commercial development in the high flood risk urban areas of Lismore. However, the DP&I do not support this clause in its current form being included in the new LEP for Lismore. Indeed, the DP&I's model clause for flooding does not even allow for reference to Council's FMP, DCP or the hazard categories (apart from floodway).

It is acknowledged that the model clause does allow for an assessment of the impact of development in the flood planning areas, including areas that have not been accurately mapped. However, while there is scope for minor amendments to the existing Clause 22 (especially in light of the recent DA in Rhodes Street for a house relocation), it does provide very clear guidance to applicants and Council staff about where new development will and will not be considered. It therefore means that applicants are not put through unnecessary assessment processes, which could result from the DP&I's model clause.

Staff recommend that Council continue to pursue this matter with DP&I to develop an alternative clause that satisfies Council, appropriately recognises the flood hazards in Lismore and satisfies the Standard Template drafting specifications of the DP&I.

### 5.3.7 Recommendations

The highlighted text box below contains the recommendations related to the above issues detailed in Attachment 3.

#### Recommendations ~ Draft LEP2010 Flood Planning

20. Amend the Draft LEP Instrument Land Use Table to insert the following objective in the RU2 Rural Landscape Zone:  
*To enable a range of other uses that are compatible with the flood hazard associated with the land.*
21. Amend the Draft LEP Instrument Land Use Table for the RU2 Rural Landscape Zone to include 'light industry' and 'vehicle repair station' as uses permitted with consent.
22. Amend the Draft LEP Height of Buildings Map to insert a new category of 9.0m and apply this height limit in the R1 and R2 zoned areas, including the area affected by the amendment in 23 below, that are also mapped as 'flood planning area' on the Flood Planning Map.
23. Amend the relevant Draft LEP Land Zoning Map to change the IN1 General Industrial zone to the R2 Low Density zone on the northern side of Newbridge Street extending to Crown Street as shown on Map 3 in Attachment 12.  
**Note that this map contains other changes proposed in South Lismore with respect to the proposed IN1 General Industrial zone, as discussed in Section 6.0 below.**
24. Amend the relevant Draft LEP Land Zoning Map to change the IN1 General Industrial zone to IN2 Light Industrial zone in Casino Street, specifically 128-136 and 145-155 Casino Street as shown on Map 4 in Attachment 12.



25. Amend the relevant Draft LEP Land Zoning Map to change the IN1 General Industrial zone to IN2 Light Industrial zone in the Barnes Avenue area of South Lismore as shown on Map 5 in Attachment 12.  
**Note that this map contains other changes proposed in South Lismore with respect to the proposed IN1 General Industrial zone, as discussed in Section 6.0 below.**
26. Amend the Draft LEP Flood Planning Map to reflect the extent of the 1 in 100 year ARI design flood as shown in:
- i. The regional flood analysis prepared by Worley Parsons 2011; and
  - ii. The March 2010 Richmond River Flood Mapping Study.

## 5.4 Urban and Rural Residential Land Release areas

### 5.4.1 Urban Land Release areas

Five (5) separate areas in the Lismore urban area are proposed to be rezoned from a rural zone to an urban zone. The City Acres estate, currently zoned 1(c) Rural Residential, is also proposed to be included in the General Residential zone. While not strictly an urban release area, as it is adjacent to the Chilcotts Grass release area, and may result in more residential development, submissions relating to the proposed zone are considered in this section.

Rezoning reports were submitted and assessed by staff for all of the proposed urban land release areas. These were included in the Draft LEP public exhibition material. Attachment 4 contains the table of submitters issues, responses and recommendations.

It is noted that most of the submissions on the urban release areas related to concerns about the impact of future development, or aspects of development (such as roads), on fauna and flora. This indicates the value that residents place on the 'natural' areas in the urban environment.'

### Development Control Plans

Clause 6.3 of the Draft LEP provides that development on land in an urban release area shall occur in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land. The clause states that development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified below has been prepared for the land:

- (a) *a staging plan for the timely and efficient release of urban land making provision for necessary infrastructure and sequencing,*
- (b) *an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
- (c) *an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
- (d) *a network of passive and active recreational areas,*
- (e) *stormwater and water quality management controls,*
- (f) *amelioration of natural and environmental hazards, including bushfire, flooding, land instability and site contamination, and in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,*
- (g) *detailed urban design controls for significant development sites,*
- (h) *measures to encourage higher density living around transport, open space and service nodes,*
- (i) *measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
- (j) *suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*

This clause provides Council, the community and the developers with a high level of certainty about the agreed form of development and how it will occur. Despite approving the public exhibition of the Draft LEP that proposes the urban release areas with the related clause 6.3, the DP&I has since advised that industrial areas should not be mapped as urban release areas and the 'cut-off' for residential areas to be mapped as urban release areas is 150 lots. The indicative lot numbers for Holland Street and Chilcotts Grass are less than 150 lots and South Lismore is an industrial area. It is proposed to retain all the exhibited urban release areas on the Urban Release Area map unless the DP&I require it to be amended.

It is noted that Council has the ability to prepare site specific Development Control Plans regardless of Clause 6.3 and staff recommend that the relevant matters specified in clause 6.3 should be incorporated into any DCPs for Council's publicly exhibited urban release areas.

### **Chilcotts Grass and City Acres**

The submissions to the Chilcotts Grass and the adjoining City Acres rezoning proposals expressed concern about the impact of development on Tucki Tucki Creek and its associated flora and fauna.

Council engaged an ecologist to undertake an assessment of the proposal and the concerns raised by submitters. The assessment concludes that these concerns can be addressed by increasing the riparian buffer and rehabilitation area in some parts of the site, undertaking additional assessment of ecological issues during the preparation of the development control plan and ensuring that appropriate controls are included in the development control plan and subsequent development approvals. Minor amendments are proposed to the boundary of the RE1 Public Recreation Zone, as shown on Map 6 in Attachment 12.

### **Crawford/Southern Cross University (SCU) Land**

Two (2) submissions were received in relation to the proposed rezoning of the 'Crawford Land', owned by the Southern Cross University, from 5 Special Uses – Technology Park and 7(b) Environment Protection (Habitat) to the B4 Mixed Use, IN1 General Industrial and E3 Environmental Management zones. Both submissions were from the landowner and relate to the use of the IN1 zone and the minimum lot size in the E3 zone. Staff support the use of the B4 Mixed Use zone across the whole site and a reduction in the minimum lot size for the E3 zone from 40ha to 10ha.

### **Holland Street**

A significant number of submissions were received with respect to the potential impact of the proposed road connection from Allambie Drive to the new residential area. This connection was shown in the rezoning submission included in the public exhibition material. Submitters were also concerned that the proposed extent of the RE1 Public Recreation zone might not be sufficient to protect the habitat of the platypus.

A recommendation is made to increase the extent of the RE1 Public Recreation Zone to a minimum of 40m from the top of the bank of Tucki Tucki Creek. This results in minor amendments to the zone map, as shown on Map 7 in Attachment 12. It is also recommended that, in future planning and development of this site, the road connection from Allambie Drive to the new residential area not proceed.

### **Invercauld Road**

The proposed rezoning of the Invercauld Road land is to the R1 General Residential and E3 Environmental Management zones. Submissions related to protection of habitat for koalas in the north-western part of the site, stormwater management and a property specific matter connected to a proposed road shown on the Concept Plan submitted with the rezoning application.

A review of the site and the rezoning application by an ecologist resulted in a recommendation to the Draft LEP Council briefing held on 28 July, 2011 that consideration be given to expanding the extent of the E3 Environmental Management zone in the north-eastern part of the site to achieve a minimum width

of 100m. Staff noted at the briefing that this recommendation could change as a consequence of the Invercauld Road Charrette. The Charrette would also clarify preferred road connections.

The Charrette was conducted on 18-19 August 2011. A review of the proposed E3 zone boundary during the course of the Charrette showed that the extent of the publicly exhibited E3 zone in the south western part of the site was not consistent with the rezoning application and the proposed extension to a width of 100m in the north-east of the site is not warranted. Map 9 in Attachment 12 shows the proposed amended zone map.

## **South Lismore**

Two (2) industrial areas were publicly exhibited as urban release areas. One relates to the site on the southern side of Bunnings. No submissions were received with respect to this proposed rezoning and it is proposed to proceed with the change of zone to B6 Enterprise Corridor.

The more significant rezoning involves the area land located between the South Lismore flood levee and Hollingworth Creek and includes council owned land. The land is located on the eastern and western side of Caniaba Street and extends the area of industrial land from Wilson Street South to approximately the railway line. The area proposed to be zoned IN1 General Industrial and IN2 Light Industrial is currently zoned 1(r) Riverlands.

The main concerns raised with respect to this rezoning relate to the potential impacts of increased flooding as a result of the land being filled to accommodate industrial development, and the need to ensure that this occurs in conjunction with the proposed airport floodway excavation. Staff consider that this issue, proposed road connections and possible bridging of Hollingworth Creek and potential impacts on riparian values can be addressed during the preparation of the Development Control Plan and any necessary planning agreements with land owners.

## **5.4.2 Rural Residential**

Two (2) areas of rural zoned land are proposed for 'release' for the purpose of rural residential subdivision. These were proposed following landowner rezoning submissions made in accordance with the Lismore Rural Housing Strategy and assessed by Council staff. The two (2) proposals are summarised as follows:

### **13 and 13A High Street, Nimbin**

The subject land is located at the southern end of Nimbin. The north-eastern corner of the site fronts High Street, which extends into Falls Road. The site's frontage to Falls Road is approximately 430 metres. Currently comprising two (2) lots with an area of 4.29ha, it is proposed to include the land in the R5 Large Lot Residential zone and, subject to approval of a development application, enable the land to be subdivided into four (4) lots: 3740m<sup>2</sup>, 6434m<sup>2</sup>, 1.5ha and 1.77ha. A draft Planning Agreement signed by the landowners and included in the public exhibition material will ensure environmental rehabilitation and appropriate road upgrade works are undertaken.

No submissions were received with respect to this rezoning proposal. It is noted that the landowners and Council must sign the Planning Agreement, and a suitable security deposited with Council prior to the final LEP being forwarded to the Department of Planning and Infrastructure for making.

### **357 Dunoon Road, Tullera**

The site at 357 Dunoon Road, Tullera has an area of 35.06ha and is on the western side of Dunoon Road. It is proposed to include part of the site fronting Dunoon Road in the R5 Large Lot Residential zone and, subject to approval of a development application, enable the land to be subdivided into five (5) lots rural residential lots, one of which will contain the existing rural dwelling: 7030m<sup>2</sup>, 5225m<sup>2</sup>, 4960m<sup>2</sup>, 7200m<sup>2</sup> and 4885m<sup>2</sup>. The residual lot will be included in the RU1 Primary Production zone. A draft

Planning Agreement signed by the landowners and included in the public exhibition material will ensure environmental rehabilitation and roadworks are undertaken.

Community objections to the proposed rezoning were received and concerns were raised by the RTA about access to Dunoon Road. Attachment 4, Issue 4.7 outlines how these issues have been addressed by the applicants to the satisfaction of Council staff. The revised plans for the subdivision were submitted by the applicant and this will be referenced in the draft Planning Agreement, which will be further exhibited. These plans are included in Attachment 4. It is recommended that the proposed rezoning proceed. A copy of the amended draft Planning Agreement is included as Attachment 4(a).

Similar to the Planning Agreement for the Nimbin rural residential rezoning, the Agreement will need to be signed by the landowners and Council and a suitable security deposited with Council prior to the LEP being forwarded to the DP&I for making.

## 5.4.5 Recommendations

The highlighted text box below contains the recommendations related to the above issues and detailed in Attachment 4.

### **Recommendations – Draft LEP2010 Urban and Rural Residential Land Release Areas**

27. Amend the Draft Land Zoning Maps for the Chilcotts Grass and Holland Street Urban Release Areas to extend the boundaries of the RE1 Public Recreation zone to a minimum distance of 40m from the top of the bank of Tucki Tucki Creek, as shown on Map 6 and Map 7 in Attachment 12.
28. Amend the relevant Draft LEP Land Zoning Map for the Crawford Land Urban Release Area to change the IN1 General Industrial zone to B4 Mixed Use zone, as shown on Map 8 in Attachment 12.
29. Amend the relevant Draft LEP Lot Size Map to change the minimum lot size for the part of the 'Crawford Land' in the E3 Environmental Management zone to 10ha, insert a new category of 10ha on the Lot Size Map and delete the minimum lot size for the part of the site in the B4 zone.
30. Amend the boundaries of the R1 General Residential and the E3 Environmental Management zones on the Draft LEP Land Zoning Map for the Invercauld Road Urban Release Area in accordance with the 'Buffer width to creek plan' prepared at the Invercauld Road Charrette 18-19 August, 2011 and shown on Map 9 in Attachment 12.
31. Amend the boundaries of the Draft LEP Urban Release Area Map URA-010 to reflect the changes in the residential zone boundaries as detailed in 27 and 29 above.

### **Recommendations ~ Non-Draft LEP2010**

- (i) Do not proceed with the proposed road link from Allambie Drive to Holland Street when preparing the Development Control Plan for the Holland Street Urban Release Area.
- (ii) Amend the draft Planning Agreement for 357 Dunoon Road, Tullera as shown in Attachment 4(a) to:
  - reference the revised Development Subdivision Plan dated October 2011 prepared by Newton Denny Chapelle;
  - specify the manner in which relevant road works will be completed prior to the release of all lots; and
  - delete the requirement to close the road reserve.
- (iii) Publicly exhibit the amended draft Planning Agreement for 357 Dunoon Road, Tullera contemporaneously with any re-exhibition of the Draft LEP.

**Note the section 6.0 recommendations below with respect to the inclusion of the Tullera and Nimbin land in Schedule 1 of the Draft LEP.**

## 5.5 Council Land Reclassification

At the September 2009 meeting Council resolved, pursuant to Sections 27 and 31 of the *Local Government Act 1993*, to reclassify 73 parcels of land from 'community' to 'operational' land in the LEP. In addition, at its February 2010 meeting Council resolved to reclassify the land at 603 Ballina Road occupied by Rochdale Theatre from 'community' to 'operational'. Table 1 in Attachment 5 to this report contains the list of parcels.

The *Local Government Act 1993* requires all land vested in a Council (except a road or land to which the *Crown Lands Act 1989* applies) to be classified as either 'community' or 'operational'. The classification will generally be achieved by a Local Environmental Plan. The preparation of the draft LEP was seen as an opportunity to review and amend, where appropriate, the classification of Council owned land.

The purpose of classification is to identify clearly that land which should be kept for use by the general public (community) and that land which need not (operational). The major consequence of classification is that it determines the ease or difficulty with which land may be alienated by sale, lease or some other means.

The *Local Government Act 1993* provides that any land acquired by Council that is not classified as community or operational is, at the end of three (3) months, taken to have been classified under an LEP as community land. With respect to the first 73 parcels listed in Attachment 5, either the resolution was not made for the land to be classified as operational or the resolution was made and the administrative process not carried out.

With respect to the land at 603 Ballina Road, a change in the 'community' classification is essential if Council decides to dispose of the property, a matter that was considered in the full budget review in 2009.

The process undertaken to date to reclassify the Council owned land, including the public exhibition, has occurred in accordance with the relevant sections of the *Environmental Planning & Assessment Act 1979*, the *Local Government Act 1993* and the DP&I's requirements set out in Practice Note PN09-003: Classification and reclassification of public land through a local environmental plan. To this end, detailed information about the process and about each parcel of land is contained in the Council land reclassification report and its six appendices. These reports are on Council's website.

Attachment 5 to this report contains the summary of issues raised by submitters about the proposed land reclassifications, options and recommendations.

### 5.5.1 Public Hearing into Council Land Reclassification

Section 29 of the *Local Government Act 1993* requires Council to arrange a Public Hearing under section 68 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in respect of any proposal to reclassify community land as operational land. The purpose of a Public Hearing is to give the community an opportunity to make submissions to an independent party, either in person or in writing, about the proposed reclassification. The chair of the Public Hearing also prepares a report that must be considered by Council.

The Public Hearing was held on 22 September, 2010 and presided at by Pamela Westing, who met the independence criteria of the Act. Seven (7) members of the public made submissions to the public hearing and requested to be heard. In addition, two written submissions were provided by persons who did not attend the public hearing. As required by the *Local Government Act 1993*, the report on the Public Hearing was made available to the public within four (4) days of its receipt by Council. A copy of Pamela Westing's report is included at Attachment 5(a).

The purpose of the report into the public hearing is to present for Council's consideration the views of the public who participated in the hearing, not to recommend whether to reclassify any parcel of land. The report presents the views of the public who participated in the hearing for consideration by Council along with other factors.

The report into the public hearing made the following conclusions, which incorporate recommendations set out in section 2.0 of the public hearing report:

*Seven members of the public made submissions at the public hearing in respect of 11 of the 74 parcels of land being proposed for reclassification from "community" to "operational" in Draft Lismore Local Environmental Plan 2010. In addition, two written submissions were provided at the hearing. There were no representations to the public hearing in respect of the remaining 63 parcels of land.*

*All the land of concern is in the vicinity of Riverview Park, South Lismore, and for the purposes of this report it is generally discussed in two sections: the land east of Hollingworth Creek; and the land west of Hollingworth Creek, which includes the developed recreational facilities at Riverview Park.*

### **Land East of Hollingworth Creek**

*Two of the submissions relating to the land east of Hollingworth Creek supported the proposed rezoning and reclassification to enable the current occupation of part of the land by a transport company to be formalised and to continue. The remainder of the submissions relating to this area opposed the rezoning and/or the reclassification. In general, the opposing submissions do not want the industrial use of the land to continue for a number of reasons. Some of these relate to the perceived need to use the land for community purposes, including for car parking and pedestrian access to Riverview Park.*

*It is beyond the scope of this report to examine the merits of the proposed community uses, or the accuracy of the statements about sensitive flora on the site. However, in making its decision on the future of this land, Council should consider:*

- The option of rezoning and reclassifying only that part of "Riverview Park East" (16 Taylor Street, (Lot 1 DP122285) that is intended to be leased or sold to the adjoining landowner; i.e. a partial reclassification. The land to be reclassified "operational" and the land to be zoned IN1 General Industrial zone should coincide;*
- The need to retain or provide practical public access to the remainder of "Riverview Park East" including to Council's pump station. The land at 14 Taylor Street (Lot 2 Sec 7 DP4372) may be particularly important in this regard;*
- The need to consider the environmental significance of vegetation on the land prior to any development or disposal of it;*
- The long-term needs of the community for recreational land in the vicinity, especially given the popularity of Riverview Park.*
- Community views that there is the potential to provide car parking at 'Riverview East'.*

### **Land West of Hollingworth Creek (Riverview Park)**

*Riverview Park is comprised of a number of separate parcels of land, some of which are affected by boundary encroachments (in both directions) with adjoining land. Two of the parcels proposed for reclassification to "operational" are being reclassified so that they may be dedicated as public roads formalising access to the park. Apart from general objections to reclassification, there were no specific objections relating to these two parcels.*



*Other submissions were concerned about the potential loss of community land and the fact that an “operational” classification would legally enable the Council to sell or lease Riverview Park. Although the Council reports state the intention to reclassify the Park back to “community” once the boundary issues have been resolved, the current Council cannot guarantee that will happen or when it will happen. It would help allay community fears if Council pursued a partial reclassification of Riverview Park, so that only those areas proposed to be sold or swapped with the adjoining landowner were classified “operational”. The major area of Riverview Park would remain “community.”*

*Part of Riverview Park is comprised of part of an unformed road reserve that is proposed to be zoned B6 Enterprise Corridor, the same as the zoning of the private land it adjoins. However, part of the road reserve is within the developed recreational area of Riverview Park. If the whole of this road reserve is rezoned B6, the part of the land within the Park will have an anomalous zoning that will need to be addressed in future. If the partial reclassification option is pursued, Council should consider adjusting the proposed zoning of the road reserve to part RE1 Public Recreation, and part B6 Enterprise Corridor, to maintain consistency between the land classification and the zoning.*

*In summary, in respect of this area, Council should consider:*

- *Reclassifying only those parts of the land to “operational” that are to be transferred to a private owner;*
- *Seeking to zone the unformed road reserve to zones appropriate to its uses after it is reclassified (i.e. part RE1 and part B6).*

### 5.5.3 Riverview Park

#### **‘Riverview Park East’**

The objections to the reclassification were also generally objections to the proposed rezoning of part of ‘Riverview Park East’ to IN1 General Industrial. In response to the submissions to and the recommendations in the Public Hearing report relating to ‘Riverview Park East’, an ecologist was engaged to undertake an inspection of the site and the immediate vicinity. The ecologist’s conclusions and recommendations are included in Attachment 5.

The maintenance and rehabilitation of significant vegetation can occur regardless of the zone and the use of the land. As the land owner Council can impose conditions on any lease to mitigate potential impacts of development and, in the area that is proposed to remain in the Public Recreation zone, can ensure staff mowing and maintenance practices do not impact on the threatened species.

Staff also reviewed the recommendations of the Draft Sport and Recreation Strategy. As the proposed future cycleway/footpath network does not include formalised access to ‘Riverview Park East’, it is considered more appropriate for the existing informal access along Taylor Street to be retained.

With respect to the Richmond River County Council pump station, access is currently achieved via Hollingworth Street and this can and will be maintained under any future leasing arrangements.

The partial reclassification of ‘Riverview Park East, i.e. the area that coincides with the proposed extent of the IN1 General Industrial zone is supported. It is noted that, apart from the area of Council owned land on which a building has encroached, Council has not expressed any intention to sell the land in the IN1 zone to the adjoining owner.

## **'Riverview Park' (Land west of Hollingworth Creek)**

The major part of Riverview Park is west of Hollingworth Creek. The land that is proposed to be zoned RE1 Public Recreation corresponds to the current 6(a) Recreation zone. It comprises one large allotment (182A Union Street with an area of 60890m<sup>2</sup>), which is the part predominantly used for recreation, and a number of adjoining small lots. Two (2) of the small lots (184 Union Street and 208 Union Street) are currently used as access to Riverview Park, with 208 Union Street being at the southern end adjacent to Mills Transport. Prior to dedication as road the land is required to be classified as operational land.

The recommendation of the public hearing report to consider partial reclassification of 182A Union Street has merit. However, as indicated in the Public Hearing report, there are difficulties in describing this in the Standard Instrument template (unlike the partial reclassification of 'Riverview Park East', where the boundaries of the proposed IN1 zone could be referenced). Therefore, it is proposed to reclassify the entire lot to operational. Should this reclassification be adopted by Council in the final LEP, a Council resolution can be made at that time to reclassify the lot to 'community' when the LEP is made. This should reduce any uncertainty the community may have about Council's intentions. It is considered that the whole of 184 Union Street, which is only 689m<sup>2</sup> in area, should be reclassified to operational to allow the easy resolution of the road dedication.

The report's reference to a road reserve is to an allotment at the southern end of the Park. As it is a road reserve it does not have a Lot and DP number. The proposed zone is B6 Enterprise Corridor as it is adjacent to land that is proposed to be included in the B6 zone (Mills Transport). While not connected to the land reclassification, changing the zone of this lot to part RE1 Public Recreation is supported as it is effectively part of Riverview Park. This is shown on Map 10 in Attachment 12.

### 5.5.4 Other submissions to Council Land Reclassification

As evidenced in Attachment 5, submissions to the draft LEP on this matter were mostly consistent in content with the submissions made to the public hearing, that is, they related almost entirely to the proposed reclassification of Riverview Park.

A number of submitters commented that community land should be for the use of all residents and should not be reclassified as 'operational'. However, not all Council owned land is generally accessible to the public due to the nature of the use, such as sewerage treatment plants. Almost all of the land to be reclassified is proposed as such to correct administrative errors and/or reflect Council decisions relating to management of the property.

Apart from amending the proposed reclassification of some of the Riverview Park allotments, it is recommended that the reclassification of Council owned lots from 'community' to 'operational' proceed.

### 5.5.5 Recommendations

The highlighted text box below contains the recommendations related to the Council land reclassification as detailed in Attachment 5 and the discussion in 5.5.4 above.

#### **Recommendations – Draft LEP2010 Council Land Reclassification**

32. Amend the Draft LEP Instrument Schedule 4 Part 1 to include part only of Lot 1 DP 122285 at 16 Taylor Street as shown on Map 10 in Attachment 12. The boundaries are to be the same as the boundaries of the proposed IN1 General Industrial Zone.
33. Amend the Draft Land Zoning Map to change part of the B6 Enterprise Corridor zone on the road reserve to RE1 Public Recreation zone as shown on Map 10 in Attachment 12.



## 5.6 Requests for Rural 'Rezoning' and reduction in minimum lot size

Refer to the second report in this agenda.

## 5.7 Heritage

Submissions on heritage related to Eltham, items previously nominated by the community but not included in the draft LEP, Aboriginal cultural heritage and the inclusion of a new item. Attachment 6 contains the details of the issues raised by community submissions. A number of state government agencies also made submissions with respect to heritage issues. Reference should be made to Attachment 7 for these details. It is noted that no changes to the Draft LEP are recommended in response to the state agency submissions.

### 5.7.1 Rosebank Dry Stone Wall

A dry stone wall in Rosebank was nominated by the land owners. This wall had previously been unable to be located. It is recommended that it is included as a heritage item in Schedule 5 of the Draft LEP.

### 5.7.2 Eltham Railway Cottage and Memorial Avenue of trees

The Eltham Railway Cottage building and site were recommended for inclusion as a heritage item by the heritage adviser. The LES states that, as options for moving the cottage were being considered, inclusion of both current and proposed site within the proposed Eltham Heritage Conservation Area would maximise flexibility. The Cottage was therefore not included in as a Heritage Item.

However, the Eltham Community Foundation has been actively seeking the restoration of this building for a number of years and has recently been in discussion with the relevant personnel in the Department of Transport to seek the best way forward. Although the building is in a state of disrepair, the Foundation has received written advice from a builder that it is capable of being restored. The Foundation has recently provided a copy of this advice to Council and it is included in Attachment 6(a)

At the Council Draft LEP briefing on submissions about heritage issues, staff recommended that the Railway Cottage not be included as a Heritage Item. However, in light of the recent building advice provided by the Eltham Community Foundation, the importance of the Cottage to the community and its historical significance, it is considered that it should be included in the LEP as a Heritage Item. The Eltham Railway Cottage is the only surviving Gatekeeper's Residence on the (1894) Lismore to Byron Bay Rail Line in the LGA, and is the oldest, most original and best example of such time and iron cottages on the Tweed Branch Line.

### 5.7.3 Aboriginal cultural heritage

The protection of items, sites and landscapes with Aboriginal cultural heritage significance was raised by a number of submitters, including state government agencies and the Northern Rivers Catchment Management Authority. The LES provides the following information:

*The 'Ngulingah Site Identification & Management Project' identified a number of sites with cultural heritage values and describes their significance. Many of these sites are on private property, but some are on Ngulingah holdings or Crown lands. Ngulingah would like LEP protection for these sites, but does not want them clearly identified; nor does it want to include a description of the significance of the sites, which may contain confidential information.*

*Council has agreed to assist the Land Council in liaising with owners of private property containing cultural heritage sites. Due to the sensitive nature of some of the information, and the potential need for lengthy negotiations with some landowners, it was decided that identification of Aboriginal cultural sites would proceed separately to the current LEP preparation process. Upon final agreed identification of Aboriginal cultural heritage sites, a separate LEP amendment can be undertaken.*

It is recommended that Council consider the identification of Aboriginal cultural heritage sites and landscapes as a project in a future Delivery Plan.

## 5.7.4 Items of 'Low' Local Heritage significance

A submission was received proposing the inclusion of the Uniting Church in Bexhill as a Heritage Item. At the Council Draft LEP briefing on Heritage, staff recommended that the Church not be included as a Heritage Item without further discussion with the landowner.

At the Draft LEP briefing, Councillors questioned the rationale behind the designation of buildings/places as having 'low' local significance and whether further consideration could be given to reviewing such items for inclusion in the LEP. The following is a brief summary of the background to the inclusion of Heritage Items in the Draft LEP. A more detailed explanation is contained in the LES.

Following the preparation of the Lismore City-wide Heritage Study, Council in 1998 resolved to prepare an amending LEP which would list built items and places recommended by the Study consultants as being of State, regional or high local significance, and include some localities as heritage conservation areas. Council did not resolve to include 'low local heritage' items in the LEP.

The Heritage Study itself was not reviewed in the preparation of the Draft LEP. Instead, in 2007 the community was asked to identify additional buildings or places of significance that may not be currently included as heritage items, or within heritage conservation areas, within the Lismore LEP.

All 'low local heritage' items identified in the 1994 Study were inspected where possible. Landowners of these items were contacted with an explanation of the purposes and benefits of LEP listing. A large proportion of owners objected to listing within the LEP. Indeed, of the 64 'low local heritage' items, only five owners agreed to LEP listing. Council decided no further action be taken for these items, especially as they were not considered to be under pressure for removal or redevelopment.

With respect to items described as having '*low local heritage significance*', the categorisation of local items as having 'high' or 'low' significance is not recognised by the NSW Heritage Council. In a document titled *Levels of Heritage Significance (2008)* it is stated that, '*an item either has, or does not have, local, state, national or world significance. The Heritage Council of NSW does not recognise any other level of significance for heritage in NSW. Other sub-classifications or additional levels such as 'low local significance', 'high local significance', 'low state significance' or 'regional' are not recognised.*'

In response to the questions raised by Councillors and in light of the views of the NSW Heritage Council, it is recommended that consideration be given in the next Delivery Plan to a project that reviews the classifications used in the 1994 Heritage Study, along with the application of these categorisations to the items nominated as having 'low local heritage significance'.

## 5.7.5 Heritage Inventory

The Lismore City-wide Heritage Study was accompanied by an inventory of around 650 buildings and places. The inventory comprises photograph/s of items and notes on the significance, or lack thereof, of the building or place. Of the total items identified in the study, only a small number were identified as having heritage significance. The majority of items were recommended for 'recording only', through inventory sheets and photographs to be kept as a record.

This inventory has recently been electronically scanned, making it available for viewing by the community and for linking to Council's Authority system for staff reference as required.

### 5.7.6 Recommendations

The highlighted text box below contains the recommendations related to the above issues, as detailed in Attachment 6. The recommendations include those that require further consideration by Council following the finalisation of the Draft LEP.

#### Recommendations ~ Draft LEP2010 Heritage

34. Amend Part 1 of Schedule 5 Environmental Heritage of the Draft LEP Instrument and the Draft LEP Heritage Map to include:

- the Eltham Railway Cottage adjacent to Johnston Road, Eltham as a Local Item; and
- the Dry Stone Wall at 356 Ridgewood Road, Rosebank as a Local Item.

#### Recommendations ~ Non-Draft LEP2010

- (i) Consider the inclusion of a Heritage Significance Review Project in a future Delivery Plan that:
- Reviews the original basis in the 1994 Lismore City Heritage Study for categorising properties as having 'low local significance' and the list of properties with 'low local significance' not included in the Draft LEP, in consultation with the property owners; and
  - Identifies (appropriately) items and areas with Aboriginal cultural heritage significance in consultation with the Aboriginal Land Council and property owners.
- (ii) Consider the preparation of a Significant Tree Register in conjunction with the Parks Coordinator.

## 5.8 State Government, other Agency and Policy Advisory Groups

### 5.8.1 State Government Agencies

Attachment 7 summarises and reviews all submissions received from state government agencies. Some of the issues raised were generic insofar as they could be applicable to any LEP e.g. comments from the Department of Transport, or were more relevant to site specific development control plans.

Others, in particular from the Office of Environment and Heritage (formerly DECCW), were very detailed and dissected the Draft LEP clause by clause. Many of these issues related to the DP&I's Standard Template or requests for additional or expanded clauses, which are matters for the particular department to pursue with the DP&I.

In other instances issues raised have already been considered and addressed in the review of community submissions. Where possible, staff have recommended changes to the Draft LEP and Maps in response to state government department comment.

### 5.8.2 Other Agencies

Richmond River County Council (RRCC), Rous Water and the Northern Rivers Catchment Management Authority (NRCMA) made submissions to the Draft LEP as summarised in Attachment 7.

#### Richmond River County Council

Some of the issues by the RRCC, in particular, the absence of a 'flood zone' and the inappropriateness of certain types of housing in high flood risk areas, are matters that need to be pursued with the DPI. The DP&I has consistently advised that a 'flood zone' will not be supported. The Department considers that, if a land use is not appropriate, it should be prohibited in a particular zone and zones should not be based on a particular hazard.

This approach does not recognise areas that have historically been residential and should be maintained as such. It is not valid to simply rezone these areas to industrial or commercial. However, it is valid to restrict the types and density of housing that are permissible. Further, the use of the word 'flood' in a zone name immediately makes a house purchaser aware of potential risks.

The R2 Low Density Residential Zone is proposed in the predominantly residential high risk flood prone areas and envisages very little increase in housing in these areas. An objective has been included in the Lismore Draft LEP to reflect the flood risk. The name of the zone does not imply any flood risk. This is reflected in the new Standard Instrument issued in February 2011, which makes it compulsory to include 'group homes' and 'boarding houses' as uses permitted with consent in the Low Density Residential zone.

The publicly exhibited Draft LEP did not include Group home as a permitted use in the Low Density Residential Zone. 'Group homes' are not appropriate in high risk flood areas. Group homes accommodate some of the most vulnerable people in the community and it is highly undesirable for such homes to be permissible in the highest flood risk areas in Lismore. This would put unacceptable stress on residents and those who manage such homes, along with the SES if evacuation is necessary.

## **Rous Water and NRCMA**

Issues raised by Rous Water and the NRCMA that staff consider warrant amendment of the Draft LEP have been addressed in recommendations elsewhere in this report. Refer to section 5.2 above.

### 5.8.3 Council's Policy Advisory Groups

A common issue of concern raised by the Infrastructure and Sustainable Environment Policy Advisory Groups (PAGs) relates to the inclusion of the rail corridor in the same zone as adjoining land. While staff accept that some infrastructure may be more appropriately zoned in accordance with adjoining zones, it is considered that zoning the rail corridors as such does not identify appropriately the importance of this infrastructure to the community. It is also fair to say that the community regards the state government's proposal with a degree of suspicion that reflects an underlying intention to dispose of the land. Further, the community is not prepared to accept that the corridors have no potential to be re-instated as some form of public transport corridor.

It is recommended that the rail corridor is included in the SP2 Infrastructure zone. It is noted that this is very unlikely to be supported by the DP&I.

The SEPAG submission included recommendations about the mapping of environmental protection zones and the permissibility of some uses in these zones. These matters have been addressed in Attachment 2 and Section 5.2 of this report.

SEPAG also recommend strengthening clause 2.3(2) of the Draft LEP to provide greater certainty that zone objectives will be reflected in decision making. This is supported by Council staff although it is noted that the amendment is not consistent with the clause in the Standard Instrument and is not likely to be supported by the DP&I.

### 5.8.4 Recommendations

The highlighted text box below contains the recommendations related to the above issues, as detailed in Attachment 7. Note that some of the recommendations in Attachment 7 have been addressed in earlier sections of this report and are therefore not duplicated below.

#### **Recommendations ~ Draft LEP2010 State Government and Other Agencies and PAGs**

35. Amend Draft LEP Land Zoning Map LZN-007 to change the RE2 Private Recreation Zone of Lot 1 DP930931 and Lot 1 DP189297 at the Lismore Showgrounds to the RE1 Public Recreation zone, as shown on Map 11 in Attachment 12.
36. Amend the Draft LEP Instrument Land Use Table for the RE1 Public Recreation zone to include 'entertainment facility' and 'function centre' as uses permitted with consent.
37. Amend the Draft LEP Instrument Land Use Tables for the IN1 General Industrial and IN2 Light Industrial Zones to include 'extractive industry' as a use permitted with consent.

38. Amend Draft LEP Land Zoning Maps LZN-008 and LZN-012 to change the SP2 Infrastructure zone for Lismore High School to the R1 General Residential zone, as shown on Map 12 in Attachment 12.
39. Amend the relevant Draft LEP Land Zoning Maps to include the rail corridor in the SP2 Infrastructure zone with the purpose shown as '*rail corridor*'.
40. Amend Clause 7.6 (1) to read:  
*The objective of this clause is to protect drinking water catchments from the impacts of development by minimising impacts on the quality and quantity of water entering the drinking water storages.*
41. Replace Draft LEP clause 2.3(2) with the following:  
*The consent authority must not grant consent to the carrying out of development in a particular zone unless it is of the opinion that the proposed development is consistent with the objectives of the zone.*

## 5.9 Miscellaneous issues

Miscellaneous issues are those identified in submissions that do not fit neatly into any of the broad groupings discussed in the preceding sections. Attachment 8 provides the details of these miscellaneous items. Four (4) of these issues result in recommendations for amendments to the Draft LEP.

One of these, Issue 8.19 relating to plant nursery permissibility in the rural zones, is addressed in Table 5 in Section 4.0 of this report with respect to the changes made in land use definitions the February 2011 Standard Instrument Order.

Issue 8.3, 8.4 and 8.5 in the Attachment correspond to Councillor questions and proposals regarding the application of the two industrial zones in the Draft LEP, especially in proximity to residential areas, along with the permissibility of some non-industry uses in these zones. Refer to Attachment 9 and section 6.0 below.

### Recommendations ~ Draft LEP2010 Miscellaneous

42. Amend Draft LEP Schedule 2 Exempt Development to delete all reference to water tanks.
43. Amend the relevant Draft LEP Land Zoning Maps as follows:
  - As shown on Map 13 in Attachment 12, change the portion of 793 Ballina Road Goonellabah (SP 53527), occupied by the media centre office from IN1 General Industrial Zone to B1 Neighbourhood Centre, as shown on Map 12 in Attachment 12.
  - As shown on Map 13 in Attachment 12, change the proposed IN1 General Industrial zone land on the western side of Holland Street to IN2 Light Industrial in Holland Drive, De Re Drive, Pignat Drive, the western side of Centenary Drive and Oliver Ave (excluding Lot 71 DP 876840 and Lots 734 & 735 both in DP1078465) and retain the IN1 zone in the remainder of the estate;
  - As shown on Map 13 in Attachment 12, change the IN1 General Industrial zone east of Holland Street to IN2 excluding the media centre land as described above.
44. Amend the Draft LEP Lot Size Map to delete the minimum lot size for the portion of the media centre site to be zoned B1.
45. Amend the Draft LEP Instrument Land Use Table for the IN1 General Industrial and the IN2 Light Industrial zones to change 'bulky goods premises' from 'prohibited' to 'permitted with consent'.

## 6.0 Additional matters raised by Staff and Councillors

During and after the public exhibition period staff in the Sustainable Development directorate, in particular those involved in development assessment, were requested to review the Draft LEP and note any 'anomalies' or other issues that may need to be reviewed prior to the finalisation of the Draft LEP. This was a very useful exercise that led to a number of matters needing review and amendment. Many of these issues involve mapping anomalies. All are detailed in Attachment 9.

Attachment 9 also includes matters raised by councillors during the Draft LEP briefings held in July and August 2011. One issue relates to the application of the industry zones, especially where they adjoin residential areas, and the permissibility of non-industry uses in these zones.

Recommendation 45 above addresses the inclusion of 'bulky goods premises' as a permitted use. In addition it is recommended that 'rural industries' also be made permitted with consent in the IN1 General Industrial Zone.

It is noted that the inclusion of 'bulky goods premises' is contrary to practice notes issued by the DP&I and the mandatory zone objective inserted in the IN1 zone in the Standard Instrument in February 2011. However, staff consider that these practice notes do not reflect local issues but are more relevant to metropolitan centres and therefore recommend pursuing the matter further with the DP&I.

The publicly exhibited Draft LEP proposed that 'child care centres' be permitted with consent in the industry zones, which is consistent with the existing 4(a) Industrial zone. However, 'child care centres' are not industrial or commercial in nature and are permitted in a range of other zones. It therefore recommended that it be made prohibited.

## Places of Public Worship

A number of requests have been received from Councillors since the Draft LEP Briefings about the proposed prohibition of '*places of public worship*' in the industrial zones. Reasons advanced in support of 'contemporary' '*places of public worship*' being permissible are as follows:

- They use amplified voices for singers; electronic keyboards and electric guitars, bass guitars with sub woofers, drum kits, sometimes with double kick pedals and involve '*lots of noisy excited people singing*';
- The main meetings are on the week-end predominantly Sunday morning and night when almost all businesses are closed, which eliminates concerns about excess noise levels and car parking is available;
- The above points mean they are not appropriate in residential areas;
- Commercial areas are usually too expensive for them to consider.

The above points are all valid reasons for considering these types of uses in industrial areas. However, some of the larger churches, like some indoor recreation centres, also consume large areas of land, which has implications for the supply of industrial land for industrial and related uses. For this reason, and because place of public worship is permitted with consent in the residential zones, the village zone, the business zones and the private recreation zone, staff recommend that place of *public worship* remains prohibited in the industrial zones.

However, if Council resolves to include it as a use permitted with consent the Draft LEP can be amended accordingly prior to public exhibition.

The recommendations for change to the Draft LEP, as detailed in Attachment 9, are included in the highlighted text box below.

### Recommendations ~ Draft LEP2010 Staff and Councillors

46. Amend the Draft LEP Instrument to remove reference to R5 Large Lot Residential Zone in clause 4.2A.
47. Amend the Draft LEP Instrument Clause 6.3(3)(c) to read:  
(c) an overall landscaping strategy for the protection and enhancement of riparian areas and areas of ecological significance, including koala habitat, visually prominent locations, and detailed landscaping requirements for both the public and private domain.
48. Amend the Draft LEP Acid Sulfate Soils map to include the drains listed in Schedule 8 of the current Lismore LEP2000.
49. Amend Draft LEP Instrument Clause 7.5(2)(b) to read:  
*part of the land is located within an area shown as potentially suitable for rural landsharing community development on the Potential Rural Landsharing Community Development Map, and*



50. Amend the Draft LEP Instrument Clause 7.7(1) to include:
  - (d) *stormwater drainage or on-site conservation,*
  - (e) *suitable road access.*
51. Amend the Draft LEP Instrument Schedule 2 Exempt development and Schedule 3 Complying development to reflect recent amendments to *SEPP (Exempt and Complying Development Codes) 2008* and *SEPP (Infrastructure) 2007*.
52. Amend the Draft LEP Instrument Schedule 2 Exempt development to include the draft exemption clauses publicly exhibited by the DP&I in March 2010 and December 2010.
53. Amend the Draft LEP Land Use Table for the B3 Commercial Core Zone to make *shop top housing* permitted with consent.
54. Amend the Draft LEP Land Use Table for the B2 Local Centre Zone to make *environmental protection works* permitted without consent.
55. Delete *riparian lands map* definition from the Dictionary.
56. Delete the definition of water catchment map from the Draft LEP Dictionary and replace with:  
*Water Supply Protection Map means the Lismore Local Environmental Plan 2011 Water Supply Protection Map.*

#### Land Zoning Map Changes

57. Amend the relevant Draft LEP Land Zoning Maps as shown hatched on Maps 14 to 24 in Attachment 12 to include:
  - Lot 11 DP 549608, Skyline Road, in the SP2 Infrastructure Zone for the purposes of a cemetery (Map14 Attachment 12);
  - Lot A DP 203679, 10 Molesworth Street Lismore and Lots 5 & 6 both in DP 536743, 4 & 6 Cambrian Street Lismore in the RE1 Public Recreation zone (Map 15 Attachment 12);
  - Lot 4, DP 883395, 404 Cowlong Road McLeans Ridges in the R5 Large Lot Residential zone (Map 16 Attachment 12);
  - Lot 2 DP 215212, 206 Woodlawn Avenue, in the RU1 Primary Production zone (Map 17 Attachment 12);
  - Lot 123 DP 755729, 2 Duncan Road, Numulgi, in the RU1 Primary Production zone Map 18 Attachment 12);
  - Lot 2 DP 876069, 454 Boatharbour Road, from RU1 zone to R5 zone (Map 19 Attachment 12);
  - Lot 17 DP 23950745, 45 William Blair Ave in the R1 General Residential Zone (Map 20 Attachment 12);
  - Lot 29 DP262148, 3 Barr Scott Drive, in the R1 General Residential Zone (Map 21 Attachment 12);
  - Slaters Creek, south east of Lake Street, in the W2 Recreational Waterway Zone (Map 22 Attachment 12);
  - Lot 8 DP 709768, 1 Pine Street North Lismore in the RE1 Public Recreation Zone (Map 22 Attachment 12);
  - The area of North Lismore shown hatched on Map 22 in Attachment 12 in the RE1 Public Recreation;
  - The area of Lot 9 DP 771616, 43 Oliver Avenue, Goonellabah south of the car park in the RE1 Public Recreation Zone (Map 23 Attachment 12);
  - The area of Cook Street adjoining the R2 Low Density Residential zone in the IN2 zone as shown on Map 5 in Attachment 12);
  - The area on the western side of Taylor Street and both sides of Foleys Road, South Lismore in the IN2 zone as shown on Map 24 in Attachment 12); and
  - The parts of Elliott Road, Phyllis Street and Casino Street (eastern end) shown hatched on Map 3 in the IN2 Light Industrial zone.

#### Lot Size Map Changes

58. Amend the relevant Draft LEP Lot Size Maps to:
  - remove a minimum lot size for Lot 11 DP 549608 (Skyline Road), Lot 1 DP 175557 and Lot A DP 414929 (Woodlawn Road) and Slaters Creek south-east of Lake Street North Lismore;
  - add a new category of 5ha to the key;
  - apply a minimum lot size of 5ha to Lot 4 DP 883395 (404 Cowlong Rd), Lot 2 DP1088740 and Lot 7 DP1074077 (5A Whispering Valley Drive);
  - apply a minimum lot size of 1 hectare to Lot 2 DP 876069 (454 Boatharbour Road).
  - apply a minimum lot size of 40ha to RU2 zoned land in Crown, Ostrom, Frank, Zara and Alida Streets, South Lismore;

- apply a minimum lot size of 40ha to Lot 3 DP780400 (13 High Street, Nimbin) and Lot 21 DP 1031582 (357 Dunoon Road, Tullera);
59. Amend the Draft LEP Lot Size Map LSZ-005 for the R5 Large Lot Residential Zone development approved by DA 5.2010.77 in Cameron Road, McLeans Ridges to apply the following minimum lot sizes:
- *Minimum lot size of 10 hectares:* Lot 31 (9.2ha) and Lot 105 (4.8ha)
  - *Minimum lot size of 3 hectares:* Lot 22/23 (1.5ha), Lot 36 (2.7ha), lot 206 (1.5ha), Lot 208 (1.5ha), Lot 300 (3ha) and Lot 401 (2.2ha)
  - *Minimum lot size of 1 hectare:* the remainder of the R5 Large Lot Residential lots.

#### Amendment of Schedule 1

60. Include 13A High Street Nimbin, Lot 1 DP 107523 and 13 High Street Nimbin, Lot 3 DP708400 in Draft LEP Schedule 1 – Additional permitted uses. The purpose is for a subdivision to create a maximum of 4 Large Lot Residential lots.
61. Include Lot 21 DP 1031582, 357 Dunoon Road, Tullera in Draft LEP Schedule 1 – Additional permitted uses. The purpose is for a subdivision to create a maximum of 5 Large Lot Residential lots within the R5 portion of the allotment.
62. Include in Draft LEP Schedule 1 – Additional permitted uses LEP2000 Amendment 29 (Stony Chute Road, Nimbin), as listed in schedule 4 LEP 2000, excluding the sunset provision.

#### Height of Buildings Map Changes

63. Amend the key to the Draft LEP Height of Buildings Map as follows:
- Area I – 8.5m
  - Area L – 11.5m
  - Area N – 14.5m
  - Area P – 17.5m
  - Area Q – 20.5m
  - Delete the letter “T” on Height of Buildings Map HOB-007 and replace with “P”.
64. Amend the Draft LEP Height of Buildings Map to extend its application to allotments included in a residential zone by the above Land Zoning Map amendments and apply the height of 8.5m to such allotments.
65. Amend Part 1 of Draft LEP Schedule 5 Environmental Heritage and the Draft LEP Heritage Map to include the whole of the former Lismore High School at 152 Keen Street, Lismore as a Local Item.

#### Industry Zone Land Use Tables

66. Amend the Draft LEP Land Use Tables for the IN1 and IN2 Zones to change *child care centre* from ‘permitted with consent’ to ‘prohibited’.
67. Amend the Draft LEP Land Use Table for the IN1 General Industrial zone to change *rural industries* from ‘permitted with consent’ to ‘prohibited’.

## 7.0 Rezoning of Council Owned Land

When Council exhibits a draft LEP that involves rezoning Council owned land that it intends to dispose of, additional information needs to be provided in accordance with the document prepared by the DP&I’s “Best practice Guidelines for LEPs and Council Land” January 1997.

The Guidelines require that a written statement must be provided that describes Council’s interest in the land and the reasons for rezoning the land and this statement must be publicly exhibited with the Draft LEP. A written statement prepared in accordance with these Guidelines was exhibited with the Draft Lismore LEP2010.

The land parcels identified in the statement are listed below, along with the proposed zone change and comments on any submissions received about the proposed rezoning:

### **Airport Industrial Estate, Krauss Ave South Lismore (Lots, 4, 5, 6, 7, 8 and 22 DP1093668)**

The land is currently zoned 4(a) Industrial in the Lismore LEP 2000. The proposed rezoning to B6 Enterprise Corridor zone is consistent with Council’s decision to apply the B6 zone to the Union Street/Bruxner Highway corridor. The type of development that will result from the rezoning will not be



substantially different to existing development opportunities in the 4(a) Industrial zone. No submissions were received with respect to this land and the zone change.

## **260 Oliver Avenue (Lot 71 DP 876840)**

This allotment is located on the eastern edge of the industrial estate in Goonellabah. The lot is currently zoned part 4(a) Industrial and part 1(a) General Rural. Approximately 4,800m<sup>2</sup> (in the north-eastern corner) of the 28,050m<sup>2</sup> lot is currently in the 1(a) zone. The rezoning will extend the industrial zoning to the whole of Lot 71 DP 876840. The draft LEP 2010 will increase the industrial zoning on this lot to create a zone boundary consistent with the cadastral boundary. The proposed industrial zoning aligns with the existing industrial zoning in this area from 4(a) Industrial to IN1 General Industrial. No submissions were received with respect to this land and the zone change.

Council's Corporate Centre 43 Oliver Avenue, Goonellabah (Lot 9 DP 771616)

Council's Corporate Centre is currently zoned 5 Special Uses 'Public Buildings' and the draft LEP proposes to include the whole site in the B2 Local Centre zone. In the Draft LEP it is not necessary to zone the land specifically for public buildings, as the use is permissible in the adjoining proposed commercial zone, being B2 Local Centre zone. Council staff made the only 'submission' with respect to the proposed rezoning. This is discussed in more detail in Attachment 9 and a recommendation made to reduce the extent of the B2 zone as shown on Map 23 in Attachment 12.

## **16 Taylor Street, South Lismore (Lot 1DP122285)**

The land is currently zoned RE1 Public Recreation. Part of the lot is proposed to be included in the IN1 General Industrial zone to reflect the existing use of the land. There is a building encroachment on a small portion of the land. The combined reclassification and rezoning of the land will enable Council to undertake a boundary adjustment with the adjoining land owner. It is intended that this portion of the land will be disposed of to the adjoining land owner. Council intends to retain ownership of the remaining portion that is included in the IN1 zone and enter into appropriate leasing arrangements.

Council sought to resolve this matter in 2007 through a reclassification of the land under LEP Amendment No. 33. However, the (then) Department of Planning advised that reclassification would not be supported unless consideration was given to including the land in an appropriate zone (rather than the Recreation zone), rather than simply reclassifying the land and leasing it for industrial purposes.

The rezoning to IN1 is proposed as it reflects the historical use of part of the land. Given that this area is not used for recreation purposes, the proposal will not effectively result in a loss of park land.

Submissions were received in relation to the proposed rezoning. The issues raised have been addressed in Attachment 5. It is recommended that the proposed rezoning of part of this lot proceed.

## **111 Tweed Street (Lot 1 DP942), 113 Tweed Street (Lot 2 DP942), 115 Tweed Street (Lot 3 DP942), 117 Tweed Street (Lot 4 DP942), 119 Tweed Street (Lot 5 DP942), 121 Tweed Street (Lot 6 DP942), 123 Tweed Street (Lot 7 DP942), 107 & 107 Tweed Street (Lots 33-35 Section 3 DP975080), North Lismore**

The above lots were proposed to be rezoned from 6(a) Recreation to RU2 Rural Landscape as they are generally used for grazing and not public recreation. Some submissions questioned how Council could rezone its own land to gain benefit while including other land owners in zones that would downgrade potential development. Further to Issue 9.33 in Attachment 9 (recommendation 57 above) this area is proposed to be changed from RU2 to the RE1 Public Recreation Zone as shown on Map 21 Attachment 12.

## **91 and 97 Tweed Street (Lot 1 & 2 DP197047), North Lismore**

These lots are proposed to be rezoned from 2(f) Residential (Flood Liable) to RU2 Rural Landscape. These lots were acquired for 'floodplain management' purposes. Due to the high flood risk in this area

the lot is not suitable for urban development and the most appropriate zone in the standard template is considered to be the RU2 zone. No submissions were received.

## **97 Caniaba Street (Lot 2 DP596412), South Lismore**

This land was acquired for the purpose of floodplain management and future industrial development. Part of the allotment on the southern side of the levee wall is proposed to be zoned IN1 General Industrial and is included in the South Lismore Urban Release Area. The other part is to be included in the RU1 Primary Production zone. Submissions were received about the proposed zoning of the land in the Urban Release Area. These are discussed in Attachment 4 and Section 5.4 above. It is recommended that the proposed rezoning proceed.

## 8.0 Steps remaining for the finalisation of the Draft LEP

Section 2.0 of this report outlines the legislative process for the preparation of the Draft LEP to the public exhibition stage and how Council has satisfied these requirements. The steps remaining in the process to complete the preparation of a new local environmental plan for the LGA are described below.

### 8.1 Consideration of submissions

Section 68 of the *EP&A Act 1979* requires Council to consider submissions and make any alterations it considers are necessary to the draft local environmental plan arising from its consideration of submissions or matters raised at any public hearing. An alteration need not relate to a submission. Sections 5.0, 6.0 and 7.0 of this report, the second report in this agenda and the attachments provide all information relevant to the submissions along with recommendations for alteration of the Draft LEP. Some of these alterations (Section 6) do not relate to submissions.

Section 68 also provides that council may (but need not) give public notice of and publicly exhibit, wholly or in part, a draft local environmental plan that has been altered. Section 9 below outlines the options with respect to public exhibition of the amended Draft LEP.

### 8.2 Reporting to Director-General following (any) Public Exhibition

Following any re-exhibition of the amended Draft LEP, consideration of submissions and adoption of the LEP, a 'section 68 report' is submitted to the Director-General.

Section 69 of the *EP&A Act 1979* involves reporting within the DP&I where the Director-General prepares a report on the Draft LEP for the Minister for Planning & Infrastructure.

### 8.3 Making the Local Environmental Plan

Section 70 of the *EP&A Act 1979* provides the decision-making framework for the Minister, who may make the plan as submitted, make the plan with alterations, or not make the plan. A decision by the Minister to make the LEP means that it will be finalised and become law upon publication by the NSW government.

## 9.0 Options for the Draft LEP

The following options are available to Council to finalise the Draft Lismore LEP2010.

### 9.1 Submit the Draft Lismore LEP 2010 as exhibited

Under this option Council would submit the draft LEP to the DP&I for completion in the form in which it was publicly exhibited. This approach is not responsive to the submissions received or the opportunities identified by the community, staff and councillors for improvements to the publicly exhibited Draft LEP. This option is not recommended.

## 9.2 Publicly exhibit Amended Draft Lismore LEP 2010

This option involves Council endorsing any amendments (as recommended in this and the second report in the Agenda) to the Draft LEP2010 and publicly exhibiting all or part of the altered Draft LEP. Exhibiting part only of the altered Draft LEP has been discussed at a number of Council briefings as a way of expediting the finalisation of the Draft LEP. However, this would require determining which alterations are 'substantial' and defining the parts that do not need to be re-exhibited. This would be difficult to achieve and confusing for the community, submitters and Council.

Alternatively, Council could adopt the recommended amendments and finalise the LEP without further exhibition. This approach is not recommended as it is considered both warranted and desirable for the revised draft LEP to be available to the community for further consideration prior to finalisation.

Given the significant time and energy invested by submitters to the Draft LEP, along with the broader community interest in the outcomes of the Draft LEP deliberation process, it is recommended that the whole of an amended Draft LEP is publicly exhibited for a minimum period of 28 days.

It is proposed that this formally commence on 17 November, 2011 with completion prior to the closure of Council for the Christmas period. Staff will then review any submissions in the New Year and report them to Council with recommendations for any further amendment prior to adoption of the LEP for submission to the DP&I and making of the Plan by the Minister.

The amended Draft LEP will be described as the Draft Lismore Local Environmental Plan 2011.

## 9.3 Defer completion of the Draft Lismore Local Environmental Plan 2010

Under this option, Council would defer completion of the LEP until the completion of studies such as the Biodiversity Management Strategy. This option is not recommended as it would delay the completion of the LEP unnecessarily and for an indefinite period. It will also delay the rezoning of land for residential and other urban development.

## 9.4 Do not proceed with the Draft LEP

Council could elect to not proceed any further with the preparation of its Draft LEP. This course of action is not recommended for the following reasons:

- It will unnecessarily and substantially delay the release of land for residential development. The need for additional appropriately zoned land for housing in Lismore is a significant issue for Council and the community as demonstrated in the results of the recently completed Lismore Housing Analysis;
- Landowners of proposed urban release areas would be required to submit planning proposals to amend the current Lismore LEP2000. This would be an unfair impost in light of the significant resources invested by landowners to date in submitting rezoning proposals;
- The dominant issues raised by submitters have been responded to in the review of submissions and the recommendations for amendment to the draft LEP; and
- Council has invested significant staff and financial resources in the preparation of the Draft LEP.

## 10.0 Actions Post LEP adoption

A number of 'non-LEP' recommendations are included in this report. The majority of these will require more detailed consideration by staff and Council in light of current priorities and available staff and financial resources. In addition to these projects the Lismore Development Control Plan will require amending to achieve consistency with the LEP. These will include changes to zone names and dictionary terms and alignment with LEP building height limits, minimum lot sizes and floor space ratios. These amendments will form the subject of separate reports to Council in the New Year.

## Sustainability Assessment

### Sustainable Economic Growth and Development

The re-exhibition of the Draft LEP is a further step in the process of achieving a new Local Environmental Plan for Lismore that will have a positive impact on economic growth and development, primarily through the rezoning of rural land for urban development.

### Social Inclusion and Participation

This proposal has little impact on social inclusion and participation.

### Protect, Conserve and Enhance the Environment and Biodiversity

This report recommends amendments to the publicly exhibited Draft LEP that are relevant to environmental protection. The proposed amendments are recommended to be publicly exhibited and further consideration of this matter will occur following the public exhibition period.

### Best-Practice Corporate Governance

The Draft LEP2010 was on public exhibition for four (4) months. The team approach to the issues that were raised in the submissions received during that period and the engagement of technical and independent expertise as required has resulted in a coordinated response. This response forms the basis for the recommendations in this report and represents a best practice approach to resolving complex issues.

## Public consultation

Subject to endorsement of recommendations to amend the Draft Lismore LEP 2010, it is proposed that the amended Draft LEP, now described as Draft Lismore LEP2011, is publicly exhibited for a minimum period of 28 days. This is to formally commence on 17 November, 2011 and close on 19 December, 2011.

The amended LEP Instrument and Maps and all associated information will be available on Council's website and hard copies will be placed in the Corporate Centre, the CBD Centre and the Nimbin Visitor Information Centre. A 'Fact Sheet' will also be prepared outlining the key amendments to the Draft LEP.

Owners of land that is proposed to be changed to a different zone to the publicly exhibited zone, for example, from the IN1 General Industrial to the IN2 Light Industrial zone, will be notified in writing of the proposal at the beginning of the public exhibition period. This will include land owners who may now be affected by the Flood Planning Map.

## Conclusion

Council publicly exhibited for community input the Draft Lismore Local Environmental Plan 2010 (LEP) in 2010 for four (4) months. 1417 submissions were received. This report, and the second report in this agenda, provide Council with an analysis of the issues raised by the submissions and recommends a number of changes to the publicly exhibited Draft LEP 2010 Instrument and Maps. Due to the extent of these changes, it is recommended that the Instrument and Maps, as amended, be publicly exhibited for a minimum of 28 days.

## Attachment/s

1. ATTACHMENT 1 -Rural Issues (Over 7 pages)
2. ATTACHMENT 2 - Environmental Protection submissions (Over 7 pages)
3. ATTACHMENT 3 - Flood Planning (Over 7 pages)
4. ATTACHMENT 4 - Urban & Rural Residential Release Areas (Over 7 pages)
5. ATTACHMENT 4a - Amended Draft Planning Agreement - 357 Dunoon Road, Tullera for Public Exhibition (Over 7 pages)
6. ATTACHMENT 5 - Land Reclassification Issues (Over 7 pages)
7. ATTACHMENT 5a - Public Hearing Report into Council Land Reclassification (Over 7 pages)
8. ATTACHMENT 6 - Heritage Issues (Over 7 pages)
9. ATTACHMENT 6a - Eltham Community Foundation - Eltham Railway Cottage (Over 7 pages)
10. ATTACHMENT 7 - Government, Agency, adjoining Councils and PAG Issues (Over 7 pages)
11. ATTACHMENT 8 - Miscellaneous Issues (Over 7 pages)
12. ATTACHMENT 9 - Matters Raised by Staff and Councillors (Over 7 pages)
13. ATTACHMENT 10 - Amended Draft LEP Instrument (Over 7 pages)
14. ATTACHMENT 11 - Database of names and addresses of submitters (Over 7 pages)
15. ATTACHMENT 12 - Zone Maps (Over 7 pages)

## Recommendation

That Council:

1. Amend the Draft Lismore Local Environmental Plan 2010 (Draft LEP2010) as exhibited incorporating:
  - (a) the recommended Draft LEP2010 amendments listed in Sections 5.1 to 5.9 and Section 6.0 of this report and associated consequential adjustments to descriptions, numbering and plan formatting; and
  - (b) the recommended amendments with respect to the Standard Instrument (Local Environmental Plans) Amendment Order 2011 as set out in Table 5 Section 4.0 of this report; and
2. Publicly exhibit the amended Draft Lismore Local Environmental Plan 2011 (incorporating the above amendments and those from the previous report) in accordance with the terms of the *Environmental Planning and Assessment Act 1979* for a period of at least 28 days.
3. Receive a further report in relation to the public exhibition of the amended Draft Lismore Local Environmental Plan 2011 prior to finalisation of the Plan for submission to the Department of Planning and Infrastructure.
4. Adopt the recommendations outlined in the report entitled: non-Draft Local Environmental Plan 2010 recommendations which reflect actions that do not involve specific amendments to the Draft LEP2010.