

ATTACHMENT 4 - GOVERNMENT AGENCY SUBMISSIONS - FINAL SUMMARY AND RECOMMENDATIONS

Agency	Issue/ Request	Comment/ Recommendation
G1 Lismore City Council 21.9.11	Notes several differences in the application of planning provisions along the boundary between the Lismore and Ballina LGAs.	Council has previously liaised with Lismore City Council with respect to the application of consistent provisions between the LGAs. However, there are some differences evident due to different methodologies that have been utilised. No change recommended.
G2 Richmond Valley Council 5.10.11	Advises that RVC has identified the Pacific Highway corridor in LEP mapping.	No change recommended (see response to RTA submission).
	Suggests minor map labelling corrections.	Recommend: Correction of map labelling as per submission.
	Queries prohibition of eco-tourist facilities.	The definition of eco-tourist facilities is not considered to be beneficial for application in the Ballina LEP. However, tourist and visitor accommodation is permitted in a variety of zones with the support of a special provision that guides the circumstances where the use occurs. This approach is considered to be more flexible and reflective of potential tourist uses in the shire. No change recommended.
	Queries the structure of the B6 Enterprise corridor as a closed zone.	The zone is intended to provide for specific land use outcomes and as such, permitted uses are listed with all other uses identified as prohibited. The DP&I has not raised objection to this approach. No change recommended.
	Queries the suitability of exempt development provisions associated with the commercial use of footpaths.	RVC suggest inclusion of a reference to the need for approval under Section 68 of the Local Government Act in relation to commercial use of footpaths to address circumstances where the Roads Act does not apply. Recommend: Inclusion of reference to s68 approval in exempt schedule relating to commercial use of footpaths.

Agency	Issue/ Request	Comment/ Recommendation
<p>G3 Department of Primary Industries Catchments & Lands 14.10.11</p>	<p>Zoning of Crown Land should be consistent with the purposes of reserves and adopted Plans of Management. It should not constrain the highest and best use of the land.</p> <p>Concern in relation to the application of E2 Environmental Conservation zone to Crown reserves in the coastal areas of Ballina Shire.</p> <p>Objection to the lack of flexibility in the E2 zone.</p>	<p>E2 zone has been applied based on the coastal and environmental values of the land.</p> <p>The Infrastructure SEPP provides for a variety of uses additional to those set out as permitted in the E2 zone land use table where undertaken by public authorities such as the Department. The Infrastructure SEPP provides for additional flexibility for public authorities in the E2 zone.</p> <p>Alternative zone arrangements examined. The E2 zone and provisions of the Infrastructure SEPP have been identified as the optimal mechanism (of limited options under the Standard LEP Instrument) to address land use outcomes on the coastal foreshore. Council has expressed concern to the DP&I about the limitations of the Standard Instrument in relation to coastal lands.</p> <p>No change recommended.</p>
	<p>Seeks permissibility of environmental protection works without development consent in all zones.</p>	<p>Environmental protection works are not permitted without consent in any zone in the draft LEP. This was originally on the basis of the definition of such works being too broad and inclusive of works that could have a significant impact on the environment or the surrounding community's amenity (principally coastal protection works). The definition has been adjusted by the DP&I to remove coastal protection works from its scope and as such, the permissibility of environmental protection based works in various zones may now be appropriate.</p> <p>Recommend: Amendment to land use tables to permit environmental protection works in all zones without development consent.</p>

Agency	Issue/ Request	Comment/ Recommendation
	<p>Requests integration of tourism within zone objectives and permissibility of tourist and visitor accommodation in the RE1 Public recreation zone.</p>	<p>The definition of tourist and visitor accommodation is quite broad and provides for hotels, motels, serviced apartments and backpackers.</p> <p>Tourist accommodation in the form of caravan parks is permitted with development consent in the RE1 zone under the Draft LEP. Permissibility of tourist and visitor accommodation with development consent on all land zoned RE1 is considered problematic given that this zone applies to all public reserves. Further, a change in the current policy approach of this nature is considered to warrant detailed consultation with the community. If it is intended to identify certain sites for tourist and visitor accommodation it is considered that a more appropriate approach may be to seek to apply the SP3 Tourist zone to particular sites. Further information would be required to support an argument for this approach and it is considered that the application of this zone would need to relate to specific reserves or precincts within reserves.</p> <p>As previously noted, the Infrastructure SEPP contains provisions which enable uses identified in Plans of Management to be undertaken on Crown Reserves.</p> <p>With respect to zone objectives, the RE1 zone incorporates reference to applicable plans of management and social and cultural outcomes which are relevant to tourism based land uses.</p> <p>No change recommended.</p>
	<p>Requests permissibility of dwelling houses in the RE1 Public recreation zone.</p>	<p>RE1 zoned land is intended for public recreation purposes and as such, dwelling houses are not considered to be a suitable use of the land.</p> <p>However, caretaker's dwellings may be a suitable land use depending on the use and purpose of the recreation area. These types of dwellings can be enabled on Crown land via the Plan of Management process and the use of Infrastructure SEPP provisions.</p> <p>No change recommended.</p>
	<p>Supports identification of land uses at the Lake Ainsworth Sport and Recreation Centre and Camp Drewe as additional permitted uses under Schedule 1 of the LEP.</p>	<p>No change recommended.</p>

Agency	Issue/ Request	Comment/ Recommendation
	<p>Objection to application of E2 Environmental Conservation zone to Crown land in vicinity of Carlisle Street, Sinclair Street, Pine Street and Short Street at Wardell.</p>	<p>The attributes of the subject land have been further reviewed since the Department's submission to the 2010 version of the draft LEP.</p> <p>The land contains substantial areas of vegetation considered to be of high conservation value which is linked to ecologically significant land to the north. This forms a corridor link between vegetation to the north and west of Wardell. The site is also partly located within Office of Environment and Heritage key habitat and corridor mapping for north-eastern NSW. As such, and despite the current residential zoning of much of the land, the site meets the criteria utilised for the application of the E2 Environmental Conservation zone.</p> <p>The Department indicates that the site may be suited for affordable housing outcomes and although this is meritorious in principle, the retention of a residential zone over the land does not guarantee an affordable housing outcome on the land.</p> <p>Ministerial Direction 3.1 indicates that draft LEPs should not contain provisions which will reduce the permissible residential density of land unless the Director General of the DP&I is satisfied that a variation to the direction is justified. Although an environmental study has not been completed as part of the Draft LEP 2011, the proposed zone arrangements are based on site specific assessment undertaken in relation to the characteristics of the land as part of the preparation of the 2011 LEP.</p> <p>No change recommended.</p>

Agency	Issue/ Request	Comment/ Recommendation
	<p>Objection to the application of an E2 Environmental Conservation zone to Crown land along The Coast Road at East Ballina (adjacent to Cronulla Street).</p>	<p>The attributes of the subject land have been further reviewed since the Department's submission to the 2010 version of the draft LEP.</p> <p>The land contains substantial areas of vegetation considered to be of high conservation value which is linked to ecologically significant land to the north. The site forms part of a corridor of vegetation of ecological value in the East Ballina locality. The site is also within Office of Environment and Heritage key habitat and corridor mapping for north-eastern NSW.</p> <p>There is some exotic vegetation located on the site which is not considered to be of substantial ecological value. However, it is surrounded by native vegetation of high conservation value, creating an isolated pocket of exotic vegetation on the site. The use of this land for urban purposes would likely have adverse impacts on the surrounding vegetation including endangered ecological communities. Development of this area would also likely be substantially limited by bushfire hazard management requirements.</p> <p>Despite the current residential zoning of much of the land, the site meets the criteria utilised for the application of the E2 Environmental Conservation zone.</p> <p>The Department indicates that the site may be suited for aged housing outcomes and although this is meritorious in principle, the retention of a residential zone over the land does not guarantee an affordable housing outcome on the land.</p> <p>Improved bushfire management is also cited as a potential benefit of developing the site. However, there is also no guarantee that this will be an outcome of site development and additional housing in the area, especially for the aged, may actually pose a greater bushfire hazard risk. Further, bushfire hazard management authorised under the <i>Rural Fires Act</i> is enabled under the LEP.</p> <p>Ministerial Direction 3.1 indicates that draft LEPs should not contain provisions which will reduce the permissible residential density of land unless the Director General of the DP&I is satisfied that a variation to the direction is justified. Although an environmental study has not been completed as part of the Draft LEP 2011, the proposed zone arrangements are based on site specific assessment undertaken in relation to the characteristics of the land as part of the preparation of the 2011 LEP.</p> <p>No change recommended.</p>

Agency	Issue/ Request	Comment/ Recommendation
G4 NSW Marine Parks Authority 19.10.11	Support for limitations on application of exempt and complying development within 100m of the Cape Byron Marine Park. Seeks inclusion of the area on a map.	<p>The LEP does not include mapping of areas to which exempt and complying development does not apply consistent with the Standard LEP Instrument framework. However, it may be beneficial to map such areas separate to the LEP maps to aid in the interpretation of exempt and complying development policy.</p> <p>A review of current mapping regarding exempt and complying development with a view to determining the benefit of maintaining an exempt and complying development exclusion map set is recommended.</p>
G5 Office of Environment and Heritage	<p>Strongly supports reduced range of permitted land uses in the E2 Environmental conservation zone.</p> <p>However, seeks prohibition of extensive agriculture which remains permitted with consent in the zone.</p>	<p>Extensive agriculture has been retained as a land use permitted with consent in the E2 Environmental Conservation zone in order to recognise that some areas of environmental value have been subject to agricultural activity (such as grazing in the understorey, bee keeping or grazing of cleared coastal land). In particular, the limited availability of environmental protection based zones has resulted in the E2 zone applying to both vegetated and coastal lands which can have different characteristics in relation to agricultural activity.</p> <p>However, it should be noted that the E2 zone reduces the range of agricultural activity permitted in areas of identified coastal or conservation values.</p> <p>No change recommended.</p>
	<p>Support for continued identification of high conservation value areas for inclusion in the E2 zone in the future.</p>	<p>No change recommended.</p>
	<p>Seeking identification of agriculture and extensive agriculture as permitted only with development consent in the E3 Environmental management zone.</p>	<p>Council has applied the E3 Environmental Management zone in a manner that recognises environmental values but acknowledges that the land is mostly under agricultural production (e.g. scenic areas, urban buffers and drinking water catchments). As such, agricultural land uses have been enabled in a similar manner to the RU1 Primary production and RU2 Rural landscape zones.</p> <p>No change recommended.</p>

Agency	Issue/ Request	Comment/ Recommendation
	<p>Support for reduced permissibility of land uses in the W1 Natural Waterways zone.</p> <p>Seeking further limitation of aquaculture land uses.</p>	<p>Council is unable to further refine the scope of aquaculture uses due to limitations in the Standard LEP Instrument dictionary. Further, the permissibility of aquaculture is influenced by SEPP 62 - Sustainable Aquaculture and the LEP has been prepared with regard for that instrument.</p> <p>No change recommended.</p>
	<p>Support for inclusion of coastal hazard areas as exclusions to application of exempt and complying development supported.</p> <p>Suggest adjustments to wording of several sections of exempt and complying development exclusions to remove duplicates and improve terminology.</p>	<p>Exempt and complying development exclusions based on information provided by the DP&I.</p> <p>Adjustments as suggested by OEH would improve the clarity of the exclusions list.</p> <p>Recommend: Adjustment to terminology and list as per OEH suggestion subject to agreement by the DP&I to modification of the text supplied by that Department.</p>
	<p>Support adoption of optional clause 5.9(9) in relation to preservation of trees or vegetation.</p>	<p>See body of report to Environmental and Sustainability Committee for detailed address of this matter.</p>
	<p>Concern that Aboriginal cultural heritage items are not incorporated in the LEP heritage schedule.</p>	<p>Mapping of items of Aboriginal cultural significance is not considered appropriate until Council has finalised protocols for the use and management of such information in consultation with the local Aboriginal community.</p> <p>It is recommended that the mapping of items of Aboriginal cultural significance under the LEP be discussed with the local Aboriginal community in developing protocols for information management as an outcome of the Ballina Shire Aboriginal Heritage Study. Where mapping is identified as being appropriate, an amendment to the LEP to incorporate the suitable items can be initiated. It is noted that OEH has offered to assist Council in engaging the local Aboriginal community.</p>
	<p>Notes variation between Council's exhibited flood planning clause and the model clause provided by the DP&I.</p>	<p>See body of report to Environmental and Sustainability Committee for detailed address of this matter.</p>

Agency	Issue/ Request	Comment/ Recommendation
	Supports strengthening of clause 7.8 - Natural areas and habitat but prefer reinstatement of reference to fragmentation.	It is intended that Council's DCP will provide specific reference to corridor values and fragmentation in support of the interpretation and application of clause 7.8. No change recommended.
	Notes the intent to address riparian areas and corridors via a separate biodiversity study.	Noted.
	Identifies several mapping inconsistencies.	Amendment to mapping recommended as follows: Lot 2 DP 844104 - adjust label to reflect E2 zone applied to the land. 'E' zones on map sheet 008 - adjust label to reflect E2 zone applied to the land east of Newrybar Swamp Road. Bend in Emigrant Creek - Apply E2 zone to reflect vegetated character of the land (change from E3 - this is consistent with 2010 version of the LEP).
	Suggests inclusion of updated coastal hazard mapping that accounts for State Government sea level rise benchmarks into LEP mapping.	Intent is to update LEP maps when revised coastal hazard mapping is available. No change recommended.
	Suggests application of E3 Environmental Management zone to coastal land that is predominately cleared.	E2 zone has been applied to coastal land whether cleared or vegetated to recognise the substantial environmental value associated with the coastal foreshore. No change recommended.
	Suggests zoning of an Island at the mouth of Emigrant Creek E2 Environmental Conservation.	W1 Natural waterways zone applied given that there is no cadastral definition of the island consistent with the use of cadastral information in applying waterways zones. No change recommended.

Agency	Issue/ Request	Comment/ Recommendation
<p>G6 Rous Water 21.10.11</p>	<p>Requests recognition of Wilsons Source drinking water catchment area within the LEP mapping.</p>	<p>Part of the Wilsons Source catchment is located in the north western part of the shire. The area is primarily comprised of farmland and was not identified for an E3 Environmental Management zone due to the scale of the Wilsons Source catchment and DCP provisions address the drinking water catchment values. In this regard, the E3 zone was considered to be onerous.</p> <p>Rous Water has suggested application of the drinking water catchment overlay to the land only. This would activate the drinking water catchment clause in the LEP where development consent is required. Given that the area is a drinking water catchment, that the overlay will not change the zone or the permissibility of a number of agricultural uses without development consent, it is suggested that the use of the overlay provides for suitable recognition of the catchment area in Council's planning framework.</p> <p>Recommend: Application of the drinking water catchment overlay to the Wilsons source catchment area.</p>
	<p>Request recognition of groundwater water sources within the LEP mapping.</p>	<p>Groundwater bore sites at Converys Lane and Lumley Park have not been identified in the LEP mapping as the application of an environmental zone to a radius around such land was considered onerous, particularly where land is currently subject to an urban zone.</p> <p>However, Rous Water has suggested application of the drinking water catchment overlay to the land only. This would activate the drinking water catchment clause in the LEP where development consent is required. Given that the area is a drinking water catchment, that the overlay will not change the zone or the permissibility of uses, it is suggested that the use of the overlay provides for suitable recognition of groundwater bore sites in Council's planning framework.</p> <p>The key consideration is the radius used to identify the bore sites. Rous Water has suggested a 1000m radius as a wellhead protection area. This is consistent with Council's identification of the bore sites in Chapter 18 of the Combined DCP.</p> <p>Recommend: Application of the drinking water catchment overlay to the groundwater bore sites at Converys Lane and Lumley Park area. No change is recommended to clause 7.5 as provisions identifying groundwater issues are contained in DCP Chapter 18 in support of the LEP.</p>

Agency	Issue/ Request	Comment/ Recommendation
<p>G7 NSW Roads and Traffic Authority 21.10.11</p>	<p>Requests the Alstonville Bypass, Ballina Bypass, Woodburn to Ballina, and Tintenbar to Ewingsdale upgrades of the Pacific highway along with remnant sections of the existing Bruxner Highway be zoned SP2. The documentation supporting the LEP renewal describing SP2 zoning should be modified to delete references to development with consent that are not compatible with the function of the State road network.</p>	<p>The SP2 Infrastructure zone has not been applied to road corridors on the basis that the Infrastructure SEPP enables highway road related uses. The uncertainty about the location of planned but not constructed road corridors and the extent to which properties would be affected was also of concern in applying the zone (i.e. it is not considered advantageous to Council to maintain a zoning pattern that may be subject to change without Council's direct knowledge as this may cause Council's LEP and associated advice to become inaccurate).</p> <p>There were also several changes in DP&I policy as to whether such road corridors should be zoned rather than rely on the provisions of the Infrastructure SEPP.</p> <p>It is intended that road corridors will be identified in a more conceptual fashion in Council's Local Growth Management Strategy.</p> <p>The application of the SP2 zone on a wide basis around road corridors is also considered too substantial a change at this point given that it has not been the subject of exhibition and relates to future use of land by the State government.</p> <p>No change recommended. However, it is suggested that Council review the suitability of the SP2 zone over road corridors 12 months from the gazettal of the 2011 LEP as road corridor construction and planning may be further advanced at that time.</p>
<p>G8 NSW Rural Fire Service 14.10.11</p>	<p>In relation to exempt development the RFS advise that home based child care facilities located on bush fire prone land require a Bush Fire Safety Authority under section 100B of the <i>Rural Fires Act</i>.</p> <p>Notes that all applications for the development of bushfire-prone lands will be required to comply with either Section 79BA of the <i>Environmental Planning and Assessment Act 1979</i> or Section 100B of the <i>Rural Fires Act 1997</i> depending on the nature of the proposed development.</p>	<p>No change recommended.</p>

Agency	Issue/ Request	Comment/ Recommendation
G9 Trade and Investment Resources and Energy Mineral Resources Branch 31.10.11	Suggest the general public may benefit from improved transparency in permissibility of mining uses in the land use tables.	Transparency in the land use tables is advocated and has been an objective of the LEP's preparation. However, the DP&I has advised that Council is not to list mining uses in the land use tables where their permissibility is determined by the Mining SEPP. No change recommended.
	Concern about the application of the E2 Environmental Conservation zone to mineral resources deposit areas. The permissibility of mining in the E2 zone via the Mining SEPP is acknowledged but the Department is concerned that this policy position may change and restrict access to mineral resources	The E2 zone has been applied based on the conservation value of land and this includes some known mineral resource sites. The E2 zone was considered to be a suitable zone as mining remains a permitted use by virtue of the permissibility of extensive agriculture in the zone under the Mining SEPP. As such, both the ecological and mining values of the land are accommodated under the LEP. It is not intended that the LEP unduly limit access to mineral resources. As such, where there is a change to policy associated with the E2 zone or the application of the Mining SEPP, it is recommended that Council review the application of the E2 zone to known mining resource sites. No change recommended at this time.
	Notes listing of extractive industry as permitted with consent in the W2 Recreational waterways zone but no reference to other forms of mining.	Extractive industry should not be listed in the W2 zone as its permissibility is determined by the Mining SEPP (see comments above). Recommend: Remove reference to extractive industry in W2 zone.
	Suggest inclusion of a reference to 'productive rural character' as part of Ru1 zone objectives.	The zone objective set is considered to adequately address the goal of productive agricultural activity in the zone. Further, the objective referred to in the submission is intended to encompass rural landscape character more generally, not necessarily active farmland alone. No change recommended.

Agency	Issue/ Request	Comment/ Recommendation
	Requests a reference to resource values in the objectives associated with minimum lot standards under clause 4.1.	<p>Given the potential for land use conflict associated with extractive resource activity and mining, and the rural location of significant areas of such resources, it is reasonable to include a reference to resources in association with agricultural and environmental values in the objectives of the subject provision.</p> <p>Recommend: Inclusion of a reference in the objectives for clause 4.1 indicating that the purpose of the clause is to reflect and reinforce the agricultural, resource and environmental values of rural land.</p>
G10 NSW Primary Industries 1.11.11	Request that Council apply a W1 Natural Waterways zone to waterways in rural areas or alternatively, apply a riparian land and waterways provision to acknowledge and address the aquatic habitat and corridor value of the waterways.	<p>The application of a waterway or environmental zone or overlay based framework to all substantial waterways and riparian areas in the shire is considered to warrant further consideration. However, at present, Council has limited and fragmented information to support the introduction of such a zoning regime.</p> <p>Council has resolved in principle to undertake the preparation of a biodiversity study for the shire including the mapping and address of corridor, riparian and koala habitat attributes. It is suggested that this forum is the appropriate mechanism to address the wider application of waterway and riparian targeted planning provisions in the LEP.</p> <p>No change recommended.</p>

Agency	Issue/ Request	Comment/ Recommendation
<p>G11 Family and Community Services Housing NSW 4.11.11</p>	<p>Request permissibility of a wider range of housing forms including residential flat buildings, dual occupancies and multi unit housing in the R2 Low Density zone.</p>	<p>The R2 Low Density zone has been applied to reflect the existing planning framework (under both the LEP and DCP) in the shire. That is, to maintain low density residential environments where they currently exist. Typically, these areas and the intended residential forms are identified in Council's current DCP framework.</p> <p>Notwithstanding this, consideration of residential density is considered to warrant further investigation and it is intended that density outcomes in Council's settlement areas will be reviewed upon the availability of sufficient information relating to flood planning and climate change planning. In particular, Council has resolved in principle to review the development potential of Ballina Island following completion of the Climate Action Strategy for the shire.</p> <p>Where the above review identifies that increased housing density outcomes may be appropriate, the LEP includes a number of mechanisms to allow for increased residential density (e.g. via use of the R3 Medium Density residential zone, subdivision standards and building height provisions).</p> <p>No change recommended.</p>
	<p>Building height in the Ballina urban area (set at 8.5m) is overly restrictive.</p>	<p>The general building height standard has been established to reflect potential for 2 storey construction consistent with the current building height standard applicable to the Ballina urban area.</p> <p>Building height standards will be reviewed as part of the above mentioned examination of urban density.</p> <p>No change recommended.</p>
	<p>Request that Council apply the R1 General Residential zone enabling higher and denser development outcomes in the Ballina urban area.</p>	<p>The R2 Low Density Residential and R3 Medium Density Residential zones have been applied as they are considered to provide the best match to the existing planning framework applicable in Ballina Shire.</p> <p>Zoning, subdivision and building height standards will be reviewed in relation to density outcomes as outlined above.</p> <p>No change recommended.</p>

Agency	Issue/ Request	Comment/ Recommendation
	Request to apply R3 Medium Density Residential zone to Housing NSW assets in the Treelands Crescent area.	<p>This precinct is considered to have some merit for the application of planning provisions that enable increased residential density outcomes. However, it is suggested that the further consideration of such outcomes should be informed by the outcomes of Council's floodplain risk management policy and climate change policy. These policies are not yet sufficiently advanced to support the review of residential density outcomes on Ballina Island.</p> <p>No change recommended.</p>
	Request to apply R3 Medium Density Residential zone to NSW Housing assets at West Ballina	<p>Similar to the Treelands Crescent area, parts of this precinct are considered to have some merit for the application of planning provisions that enable increased residential density outcomes. However, it is suggested that the further consideration of such outcomes should be informed by the outcomes of Council's floodplain risk management policy and climate change policy. These policies are not yet sufficiently advanced to support the review of residential density outcomes at West Ballina.</p> <p>No change recommended.</p>
	Request for increase to residential density in relation to Housing NSW assets in Alstonville.	<p>Residential density outcomes in Alstonville are linked to the consideration of outcomes in the Ballina locality. As such, it is intended that residential density across the shire will be reviewed concurrently once sufficient flood and climate change planning policy becomes available.</p> <p>No change recommended.</p>
	Suggest that the LEP should promote the supply of affordable housing.	<p>The LEP has been designed to enable a variety of housing forms and mechanisms are available to adjust the outcomes in residential areas over time.</p> <p>With respect to affordable housing, the LEP has limited influence on the provision of affordable housing beyond housing form and availability of residential land as it cannot control ownership or value.</p> <p>Affordable housing outcomes are also the subject of SEPP (Affordable Rental Housing) which provides for State based affordable housing outcomes. The LEP has been prepared with regard for this policy.</p> <p>No change recommended.</p>