



# Planning Proposal

## Amendment to Kyogle Local Environmental Plan 2012

Amendment No. 10 –Deferred Matter Areas

28 February 2019



# Introduction

## Overview

This Planning Proposal explains the intended effect and justification for the proposed amendment to the *Kyogle Local Environmental Plan 2012* (KLEP) – i.e. referred to as the LEP Amendment. The amendment has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the relevant Department of Planning and Environment guidelines including *A guide to preparing planning proposals, 2012* (the Guideline).

The Council at its Ordinary Meeting of 14 March 2016 resolved to prepare an amendment to its KLEP to:

- 1) *Include the 'Deferred Matter' areas as RU1 Zone land in the Zoning Maps; recognise the Deferred Matters areas as part of the KLEP in the Land Application Map; identify relevant minimum lot sizes for the Deferred Matters areas in the Lot Size Maps based on the adjoining minimum lot sizes for any land with a similar intended use*
- 2) *Remove any reference to 'Deferred Matters areas on any maps or document of the KLEP*
- 3) *Rezone existing RU2 Zone land to RU1 Zone as shown in the Zoning Maps of KLEP*
- 4) *Remove the RU2 Zone Land Use Table and any other reference to the RU2 Zone in KLEP*
- 5) *Include 'places of public worship' as a land use that is permissible with development consent within the RU1 Zone*

The recommendations referred to in items 1) and 2) above are consistent with the final recommendations of the *Northern Councils E Zone Review Final Recommendations Report* (the Final Recommendations Report) which was released by the New South Wales Department of Environment and Planning in October 2015. The Deferred Matter Areas reflect the original areas identified by a previous Council as potential E Zone areas. The proposed E Zone areas were not progressed by the then Planning Minister for Kyogle Council, subject to further investigation by the State and the KLEP was gazetted without the inclusion of the E Zones. The affected areas were omitted (or 'deferred') from the KLEP pending the outcome of the further investigations. The relevant local statutory planning instrument controls for the deferred areas have been those under the relevant Interim Development Orders that apply, being:

- *Interim Development Order No. 1 – Shire of Kyogle; and*
- *Interim Development Order No. 1 – Shire of Terania.*

This Planning Proposal for the Deferred Matter Areas in the KLEP is to zone the affected land RU2 Rural Landscape consistent with the recommendations of the Final Recommendations Report and the Gateway Determination dated 7 June 2017, with the exception of two small areas within the Kyogle town area which are more appropriately zoned for residential and public recreation purposes.

Once the Deferred Matter Areas are removed from the KLEP the Interim Development Orders currently applying to the affected lands can be repealed as they will have no more direct effect on any land within the Kyogle Local Government Area (i.e. all land will be subject to the local planning instrument provisions of the KLEP).

## Removal of Deferred Matter Areas (originally proposed E Zones)

The Final Recommendations Report required that:

*"Kyogle Council should apply a rural zone, equivalent to the zone in the superseded Interim Development Order, to the land which was proposed to be zoned E2 or E3 and was deferred from the Kyogle LEP 2012, until such time as investigations are completed to identify appropriate E Zones or additional mapped planning controls."*

The 'rural zones' denoted in the IDOs are identified as "Non-urban" zones, being:

- Non-urban "A"
- Non-urban "B"

The deferred matters lands highlighted in the KLEP are almost exclusively zoned Non-urban "A" under the IDOs (i.e. with the exception of some small parcels of land within the Kyogle township. The Non-urban "B" zoned land was applied to land within 400 metres of main roads. Council is proposing to apply Zone RU2 Rural landscape to

the deferred matters; this Zone is considered to be equivalent to that which would otherwise apply under the IDOs – i.e. the Non-urban “A” zone.

## Revised Mapping

The Planning Proposal identifies amendments to the existing maps of the KLEP. The amendments apply the adjacent zoning and planning controls (e.g. height control, minimum lot size, flood planning, etc) to the deferred matter locations. Proposed maps are included in this Planning Proposal at Attachment B.

## Preparation of Planning Proposal

The subject Planning Proposal has been prepared by Kyogle Council following a resolution of Council made at its Ordinary Meeting of 14 March 2016 (see Attachment A). The proposed LEP Amendment, if it is to proceed, will be the 10<sup>th</sup> amendment undertaken by Kyogle Council to its KLEP.

The Planning Proposal reflects the findings and recommendations of the Final Recommendations Report from the NSW Government – a copy of this report is not attached but can be separately obtained from NSW Department of Planning and Environment records. The Planning Proposal, as it relates to the Deferred Matter Areas, is consistent with the Section 9.1 Direction 2.5 issued by the NSW Minister for Planning on 25 February 2016.

This Planning Proposal has been amended as required by the Gateway Determination to proceed with the proposed LEP Amendment under Section 3.34 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that was issued subject to the following conditions:

*Prior to community consultation the planning proposal is to be amended as follows:*

- (a) *The existing RU2 Rural Landscape Zone is to be retained, including all lands currently zoned RU2 Rural Landscape;*
- (b) *All deferred lands are to be zoned RU2 Rural Landscape unless identified as State or regionally significant farmland by the Department’s ‘Northern Rivers Farmland Protection Project 2005’*
- (c) *Table 1 in part 2 Explanation of Provisions is to be amended to:*
  - i. *Include the Flood Planning Map in the list of map amendments;*
  - ii. *Remove the proposed amendments to clause 4.6 of the Standard Instrument Principle LEP*
- (d) *Discussion on Section 9.1 Direction (formerly 117) 5.10 Implementation of Regional Plans is to be included in Table 3 of the planning proposal.*
- (e) *Discussion on Direction 5.1 Implementation of Regional Plans is to be omitted as the Far North Coast Regional Strategy no longer applies;*
- (f) *The project Timeline in Part 6 of the planning proposal is to be updated; and Part 4 of the planning proposal is to be amended to include maps that show an extract of Land Zoning Map – Sheet LZN\_004CA depicting the existing deferred areas in the Kyogle town area and the location of the proposed R1 General Residential and RE1 Public Recreation zones and development standards that will be applied to this land.*

## Site Identification

The proposed LEP Amendment will apply to land in the Kyogle Council local government area that is currently within the Deferred Matter areas of the KLEP.

Presently, the areas identified as Deferred Matter areas are omitted from the controls of the KLEP and are instead affected by the Council’s other statutory planning instruments, being:

- a) Interim Development Order No. 1 – Shire of Kyogle; and
- b) Interim Development Order No. 1 – Shire of Terania

Removal of the Deferred Matter Areas from KLEP and replacing them with Zone RU2 (or residential and recreation zonings for two select few locations within the town of Kyogle) will enable the Interim Development Orders to be repealed.

## **Existing Planning Controls**

The KLEP commenced on 11 February 2013 and is in the format of the NSW Standard Instrument for LEPs. The proposed amendment to the KLEP proposes to zone all areas identified as Deferred Matter (i.e. mapped as 'DM' areas) as Zone RU2 Rural landscape, except for two locations within the Kyogle town area, which are to have applied a zone that is consistent with adjoining land i.e. RE1 Public Recreation or R1 General Residential Zone. All other Maps that form a part of the KLEP and which contain areas affected by the DM areas identified in the Land Use Maps are to be mapped in conformity with adjoining affected areas.

Details of the individual proposed changes are provided in Part 2 of this Planning Proposal (see Table 1) and the amended maps are included in Attachment B.

# Part 1 – Objectives and Intended Outcomes

## Objectives

The objectives of the proposed amendment are to:

- 1) Align the KLEP with the Planning Minister’s Section 9.1 Direction (2.5) affecting the previously intended E Zones and Deferred Matter areas in the LEP.
- 2) Remove any uncertainty regarding the future of previously unclear E Zone areas within the Kyogle Local Government Area.
- 3) Provide for a single local planning instrument to affect land within the Kyogle Local Government Area.

## Intended Outcomes

The intended outcomes of the proposed amendment are:

1. Provide greater clarity and certainty for development and use of rural land across the Kyogle Local Government Area.
2. Give effect to the Planning Minister’s Section 9.1 Direction (2.5).
3. Provide a more streamlined local land use planning framework to help attract investment to the region.

## Part 2 – Explanation of Provisions

The proposed amendments to KLEP are summarised in Table 1 below.

**Table 1 Summarised Amendments to Kyogle Local Environmental Plan 2012**

Section of KLEP	Proposed Amendment
<b>Part 1 Preliminary</b>	
Clause 1.3 (1A) Land to which Plan applies	<ul style="list-style-type: none"> <li>Removal of Clause 1.3(1A)</li> </ul>
Clause 1.7 Maps a) Land Zoning Maps: <ul style="list-style-type: none"> <li>Sheet LNZ_001A</li> <li>Sheet LZN_001B</li> <li>Sheet LZN_001C</li> <li>Sheet LZN_002A</li> <li>Sheet LZN_002B</li> <li>Sheet LZN_002C</li> <li>Sheet LZN_002CA</li> <li>Sheet LZN_003A</li> <li>Sheet LZN_003B</li> <li>Sheet LZN_003C</li> <li>Sheet LZN_003D</li> <li>Sheet LZN_004A</li> <li>Sheet LZN_004B</li> <li>Sheet LZN_004C</li> <li>Sheet LZN_004CA</li> </ul> b) Flood Planning Map <ul style="list-style-type: none"> <li>Sheet FLD_004</li> </ul> c) Height of Building Map <ul style="list-style-type: none"> <li>Sheet HOB_004CA</li> </ul> d) Land Application Map <ul style="list-style-type: none"> <li>Sheet LAP_001</li> </ul> e) Lot Size Map <ul style="list-style-type: none"> <li>Sheet LSZ_001</li> <li>Sheet LSZ_002</li> <li>Sheet LSZ_002B</li> <li>Sheet LSZ_002C</li> <li>Sheet LSZ_003</li> <li>Sheet LSZ_003B</li> <li>Sheet LSZ_003D</li> <li>Sheet LSZ_004A</li> <li>Sheet LSZ_004B</li> <li>Sheet LSZ_004C</li> </ul> Heritage Map <ul style="list-style-type: none"> <li>Sheet HER_002A</li> <li>Sheet HER_004CA</li> </ul>	a) Land Zoning Maps <ul style="list-style-type: none"> <li>Deferred Matter (DM) locations on Sheet LNZ_004CA to be mapped as RE1 Public Recreation or R1 General Residential according to the zoning of the immediately adjacent land</li> <li>All other indicated Land Zoning Map sheets, other than Sheet LNZ_004CA to replace Deferred Matter (DM) location with RU2 Rural Landscape zoning</li> </ul> b) Flood Planning Map <ul style="list-style-type: none"> <li>The two Deferred Matter locations on Flood Planning Map Sheet FLD_004 to be mapped as being within the Flood Planning Area.</li> </ul> c) Height of Building Map <ul style="list-style-type: none"> <li>The Deferred Matter area on Sheet HOB_004CA to be zoned R1 General Residential is to be mapped as 'J - 9 metre' height</li> </ul> d) Land Application Map <ul style="list-style-type: none"> <li>All Deferred Matter areas on Sheet LAP_001 to be omitted</li> </ul> e) Lot Size Map <ul style="list-style-type: none"> <li>All affected Deferred Matter areas to be mapped as having minimum lot size as per adjacent land – i.e. as shown on amended map sheets</li> </ul> f) Heritage Map <p>Deferred Matter areas located on land that is in Schedule 5 of the KLEP as Items or Archaeological Sites of Local Heritage Significance are to be mapped as Heritage Items or Archaeological Sites.</p>

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Section of KLEP	Proposed Amendment
Clause 1.8 Repeal of planning instruments applying to land	<ul style="list-style-type: none"> <li>Removal of Note referring to Interim Development Orders as this will no longer be applicable if Deferred Matter Areas are replaced with RU2 Zone</li> </ul>
<b>Part 2 Permitted or prohibited development</b>	
Land Use Table	<ul style="list-style-type: none"> <li>Include 'Place of public worship' as a use that is permissible with consent in Zone RU1 Primary Production</li> </ul>
<b>Maps</b>	
All maps	<ul style="list-style-type: none"> <li>All Maps to be amended as indicated for clause 1.7 (see above) and as per Attachment B</li> </ul>

## Part 3 – Justification

### Section A – Need for the Planning Proposal

#### 1. Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is a result of NSW State Government initiated investigations into the application of E Zones by Councils on the Far North Coast of NSW. The recommendations of the Final Recommendations Report and subsequent Section 9.1 Direction are that Kyogle Council should apply a rural zone equivalent to the zone in the superseded Interim Development Order to the land which was proposed to be zoned E2 or E3 and was deferred from the Kyogle LEP 2012. The equivalent zoning is Zone RU2 Rural landscape. An exception exists for some minor parcels of land located within the Kyogle Township which are to be zoned R1 General Residential or RE1 Public Recreation.

#### 2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Minister's Section 9.1 Direction (2.5) mandates an amendment to the Council's KLEP to rectify the situation regarding the Deferred Matter areas.

#### 3. Is there a net community benefit?

The proposed LEP amendment will provide greater certainty for development within the Kyogle Local Government Area rural locations through a more robust approach affecting environmentally sensitive areas, in keeping with the findings of the Final Recommendations Report.

### Section B – Relationship to the strategic planning framework

#### 4. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Council resolved to prepare the draft LEP amendment at the time when the former Far North Coast Regional Strategy was still in place. This Strategy has subsequently been superseded by the North Coast Regional Plan which was approved by the Minister for Planning on 26 March 2017. The following addresses the Planning Proposal's consistency with the current plan.

#### North Coast Regional Plan

The North Coast Regional Plan recognises the importance of agriculture land and protection of 'Important Farmland'. The Planning Proposal is consistent with the overall intent and specific goals of the Plan. It enables Important Farmland within Kyogle to be used for intended purposes while also providing a level of recognition of rural landscape qualities as a significant contributor to the region's character and amenity.

#### 5. Is the Planning Proposal consistent with the Council's Community Strategic Plan, or other local strategic plan?

#### Kyogle Community Strategic Plan

The Planning Proposal is consistent with the vision of the *Kyogle Community Strategic Plan 2016-2026* (Kyogle CSP) which is:

*Ready to Grow*

The CSP has been drafted around four key themes, one of which is "Agriculture". The CSP recognises the importance of agriculture in contributing to the local area economy, landscape and lifestyle and includes the following 'priority action':-



*Review and amend the Kyogle Local Environmental Plan to allow for a variety of activities in rural areas and ensure removal of any barriers to development that enhances the agricultural sustainability and economic viability of rural land.*

The Planning Proposal is directly consistent with this action of the CSP.

## 6. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The relevant State Environmental Planning Policies that affect the planning proposal are summarised in Table 2.

**Table 2 Summary of Planning Proposal Consistency with SEPPs**

<b>SEPP Title</b>	<b>Planning Proposal Consistency</b>
<i>State Environmental Planning Policy (State and Regional Development) 2011</i>	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land or development.
<i>SEPP (Exempt and Complying Development Codes) 2008</i>	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land or development.
<i>State Environmental Planning Policy (Rural Lands) 2008</i>	<p>The SEPP principles are:</p> <ul style="list-style-type: none"> <li>a) The promotion and protection of opportunities for current and potential productive and sustainable activities in rural areas.</li> <li>b) Recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State.</li> <li>c) Recognition of the significance of rural land uses to the State and rural communities, including social and economic benefits of rural land use and development.</li> <li>d) In planning for rural lands, to balance the social, economic and environmental interests of the community.</li> <li>e) The identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land.</li> <li>f) The provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities.</li> <li>g) The consideration of impacts on services and infrastructure and appropriate location when providing for rural housing.</li> <li>h) Ensuring consistency with any applicable regional strategy of the Department of Planning or any Applicable local strategy endorsed by the Director General.</li> </ul> <p>The Planning Proposal is consistent with the relevant Planning Principles of the SEPP.</p> <p>The Planning Proposal will not alter the opportunity for consent to be granted for rural land sharing communities, as permitted by Schedule 3 of the SEPP.</p>
<i>State Environmental Planning Policy (Infrastructure) 2007</i>	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land or development.
<i>State Environmental Planning Policy (Temporary Structures) 2007</i>	The SEPP provisions applying to temporary structures are not affected by the Planning Proposal.
<i>State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007</i>	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land or development.

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SEPP Title	Planning Proposal Consistency
<i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land or development.
<i>State Environmental Planning Policy No. 64 - Advertising and Signage</i>	The SEPP provisions applying to advertising and signage are not affected by the Planning Proposal.
<i>State Environmental Planning Policy No. 62 - Sustainable Aquaculture</i>	Not applicable to Planning Proposal.
<i>State Environmental Planning Policy No. 55 - Remediation of Land</i>	Not applicable to Planning Proposal.
<i>State Environmental Planning Policy No. 52 - Farm Dams and Other Works in Land and Water Management Plan Areas</i>	The SEPP provisions applying to farm dams and other works in land and water management plan areas are not affected by the Planning Proposal.
<i>State Environmental Planning Policy No. 50 - Canal Estate Development</i>	Not applicable to Planning Proposal.
<i>State Environmental Planning Policy No. 44 - Koala Habitat Protection</i>	The SEPP provisions applying to koala habitat protection are not affected by the Planning Proposal.
<i>State Environmental Planning Policy No. 21 - Caravan Parks</i>	The SEPP provisions applying to caravan parks are not affected by the Planning Proposal.
<i>State Environmental Planning Policy No. 33 - Hazardous and Offensive Development</i>	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land or development.
<i>State Environmental Planning Policy No. 30 - Intensive Agriculture</i>	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land or development.
<i>State Environmental Planning Policy No. 19 - Bushland in Urban Areas</i>	The SEPP provisions applying to bushland in urban areas are not affected by the Planning Proposal.
<i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land.

**7. Is the Planning Proposal consistent with the applicable Ministerial Directions (Section 9.1 directions)?**

The Section 9.1(2) Directions that affect the planning proposal and consistency of the overall proposed amendments are summarised in Table 3.

**Table 3 Summary of Planning Proposal Consistency with s9.1 Directions**

Section 9.1 Direction	Planning Proposal Consistency
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	The Planning proposal does not affect business or industrial zoned land
1.2 Rural Zones	This Direction requires that existing rural zones are not rezoned to a residential, business, industrial, village or tourist zone.

Section 9.1 Direction	Planning Proposal Consistency
	The Planning proposal does not propose the zoning of affected land to any zone other than the RU2 Rural Landscape Zone with the exception of some small parcels of land within the Kyogle town area that have been to date identified as deferred matter areas; the latter zoning is to ensure consistency with the urban/public recreation character of the affected land
1.3 Mining, Petroleum Production and Extractive Industries	The Direction does not apply to the Planning Proposal.
1.4 Oyster Aquaculture	The Direction does not apply to the Planning Proposal.
1.5 Rural Lands	The Direction affects rural zoned land. Any draft LEP must be consistent with the planning principles of the Rural Lands SEPP. The Planning Proposal does not prejudice existing rural development from proceeding and makes no significant change to existing land use zoning provisions affecting development.
<b>2. Environment and Heritage</b>	
2.1 Environment Protection Zones	The Planning proposal does not affect any existing Environmental Protection Zones.
2.2 Coastal Protection	The Direction does not apply to the Planning Proposal.
2.3 Heritage Conservation	The Planning Proposal does not affect State or existing KLEP heritage provisions. Existing provisions will still apply to any site or building that is affected by development that is, in principle, provided for by the Planning Proposal.
2.4 Recreation Vehicle Areas	The Direction does not apply to the Planning Proposal.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	The Planning Proposal seeks to amend the zoning of Deferred Matter areas to a rural zone and is a consequence of, and directly consistent with, this Direction.
<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	The Planning Proposal does not affect the existing operation of the Direction regarding residential development.
3.2 Caravan Parks and Manufactured Home Estates	The Planning Proposal does not affect the existing operation of the Direction regarding caravan parks and manufactured home estates.
3.3 Home Occupations	The Planning Proposal does not affect the provisions that relate to home occupations.
3.4 Integrating Land Use and Transport	The Planning Proposal does not affect the location of any existing or proposed zones or change existing transport choices.
3.5 Development Near Licensed Aerodromes	The Direction does not apply to the Planning proposal.
<b>4. Hazard and Risk</b>	
4.1 Acid Sulfate Soils	The Planning Proposal is unlikely to affect any acid sulfate soils. Kyogle is not known for the presence of acid sulfate soils.
4.2 Mine Subsidence and Unstable Land	The Direction does not apply to the Planning proposal.
4.3 Flood Prone Land	Existing flood prone land provisions in KLEP are not affected by the

Section 9.1 Direction	Planning Proposal Consistency
	Planning Proposal
4.4 Planning for Bushfire Protection	Existing bushfire protection provisions in KLEP are not affected by the Planning Proposal
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies	The Direction does not apply to the Planning proposal.
5.2 Sydney Drinking Water Catchments	The Direction does not apply to the Planning proposal.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	This Direction relates to State and Regional significant agricultural land and precludes the rezoning of such land or significant non-contiguous farmland for urban or rural residential purposes.  This planning proposal is consistent with this Direction as it does not propose to zone any land that is mapped as State or Regionally Significant Farmland for residential or urban purposes.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	The Direction does not apply to the Planning proposal.
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18/06/10)	The Direction does not apply to the Planning proposal.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	The Direction does not apply to the Planning proposal.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	The Direction does not apply to the Planning proposal.
5.8 Second Sydney Airport: Badgerys Creek	The Direction does not apply to the Planning proposal.
5.9 North West Rail Link Corridor Strategy	The Direction does not apply to the Planning proposal
5.10 Implementation of Regional Plans	The Planning proposal is consistent with the Direction as it responds to the North Coast Regional Plan's action to protect important farmland. The planning proposal is consistent with the overall and specific goals of the plan.
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	The Planning Proposal does not alter any existing concurrence, consultation or referral requirements.
6.2 Reserving Land for Public Purposes	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	The Planning Proposal proposes to use existing standard zoning and general provisions within KLEP. No site specific provisions are proposed by the Planning Proposal.

## **Section C – Environmental, social and economic impacts**

### **8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?**

It is unlikely that critical habitat or threatened species, populations or ecological communities or their habitats will be affected by the Planning Proposal. Any proposed assessable development is already subject to environmental assessment provisions under the EP&A Act. This requirement does not change as a result of the proposed LEP amendment. All other state and commonwealth legislative provisions affecting the environmental assessment of development proposals regarding critical habitat, threatened species, populations or ecological communities are not affected by the Planning proposal.

Existing environmental management provisions in KLEP will still apply to any proposed assessable development.

### **9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

There are no other specific adverse environmental effects that are expected to result from the proposed development.

### **10. How has the planning proposal adequately addressed any social and economic effects?**

The Planning Proposal is consistent with the Council's Community Strategic Plan and its economic development strategy. Rural activities and agriculture play a significant economic and social role in Kyogle forming the basis of much of its economy and non-urban landscapes. The Planning proposal intends to provide greater land use planning certainty for the Council's rural lands by reducing the number of local planning instruments that apply to the local government area.

## **Section D – State and Commonwealth interests**

### **11. Is there adequate public infrastructure for the planning proposal?**

The Planning Proposal does not materially affect existing land use patterns within the rural areas and is not likely to result in any greater demand for public infrastructure that is not already able to be dealt with as part of the local, state and commonwealth government strategic infrastructure planning practices.

### **12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Consultation was undertaken with relevant State agencies as per the conditions of the Gateway determination. State agencies did not raise any substantive objections to the proposed amendment.

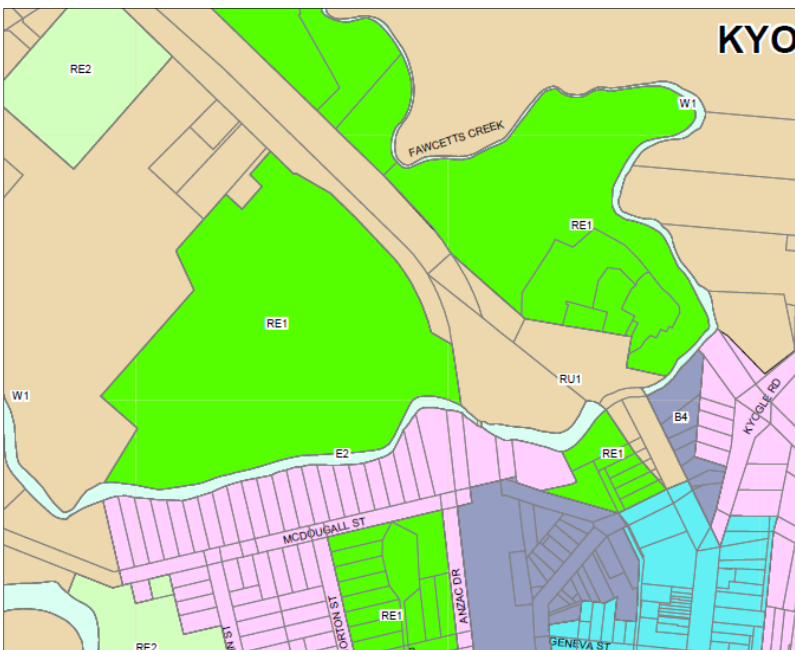
## Part 4 – Mapping

The proposed LEP amendment includes a number of Map amendments referred to in Table 1 and shown in Attachment B. Below are extracts of existing and proposed LEP Land Zoning Maps demonstrating the zone changes to be applied to the two Deferred Matter areas within Kyogle town area.

Existing Zone Map Sheet LZN\_004CA



Proposed Zone Changes to Map Sheet LZN\_004CA





## Part 5 – Community Consultation

Community consultation was undertaken as specified in 5.5.2 of the ‘Guide to preparing local environmental plans’ and involved:

- a) Placing a notice in the October 31, 2018 edition of the Richmond River Express Examiner.
- b) Placing a notice on Council’s website.

The period of exhibition ran from 31 October 2018 to 30 November 2018 being a period of 30 days. The owners of individual properties affected by the proposed amendment were not notified as this would have been impractical given there are over 450 affected parcels.

Fifteen (15) submissions were received of which fourteen were addressed to Council whilst one was addressed to the Minister for Planning and cc’d to Council. Thirteen submissions were from individuals, the remaining two were from groups who represent primary producers being NSW Farmers (Northern Rivers Branch) and the Richmond River Beef Producers Association.

All submitters were opposed to the proposed LEP amendment. There were a number of common grounds for objection and these are listed in the table below along with Council’s comments:

GROUND FOR OBJECTION	COMMENTS
1. Zone RU2 is not supported, all agricultural land should be in Zone RU1.	The Gateway Determination issued by the Department of Planning is clear that Zone RU2 must be applied to deferred matter areas and that Zone RU2 must be retained.
2. Zone RU2 will restrict the agricultural use of the land.	The reason for this assertion is not clear given that land uses and development that are permissible with or without consent are the same for Zone RU1 as RU2. This includes <i>extensive agriculture</i> (grazing) and <i>intensive plant agriculture</i> (horticulture and cropping) which are permitted without consent in both zones. Any State Environmental Planning Policies (SEPPs) which may allow ancillary activities, structures or development for agricultural purposes also apply over both zones.
3. Multiple zones on rural properties will be difficult for property owners to comply with or identify.	Similar to the comments above, there is no difference between permissible uses applying in each zone, nor the application of SEPPs, meaning there is no need for property owners to differentiate between the Zones or determine their accurate location on ground in order to carry out normal agricultural practices.
4. Zone RU2 will devalue rural properties.	There is no evidence to support this assertion. Rural properties in the Kyogle LGA have not devalued since the LEP was gazetted in 2012 even though Zone RU2 was applied to rural land. The value of land is determined principally by the state of the economy, the property market and in the case of productive rural land, conditions in the agricultural industry.
5. The proposed LEP amendment is not consistent with Council’s March 2016	The inconsistency is acknowledged however, the planning proposal is consistent with the Gateway Determination which

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<p>resolution and the Department of Planning should not interfere with a Council decision.</p>	<p>is a State Government directive.</p>
<p>6. Richmond Valley and Tenterfield Shire LEPs feature only Zone RU1- why can this not be the case in Kyogle LGA?</p>	<p>As noted above, the application of both RU1 and RU2 is a requirement of the Department of Planning's Gateway Determination.</p>
<p>7. RU2 Zone will not protect farmland to the same degree that RU1 will.</p>	<p>Protection of good quality agricultural land is a key objective of State government land use planning rules as well as Council's own land use planning provisions. Provisions which directly seek to protect good quality agricultural land, include:</p> <ul style="list-style-type: none"> <li>• Mapping of all Regionally Significant Farmland on the North Coast was carried out by the State Government in 2005.</li> <li>• Ministerial direction 5.3 states that Council cannot rezone Regionally Significant Farmland for urban or residential purposes.</li> <li>• The development criteria in Council's Development Control Plan that apply to rural land reference the Regionally Significant Farmland mapping and seek to avoid fragmentation of, and impacts on, this land.</li> </ul> <p>Existing planning rules protect good quality agricultural land independent of the Land Use Zone that is applied under the LEP. Therefore, Zone RU2 will not provide any lesser protection of farmland than RU1.</p>
<p>8. RU2 Zone may lead to environmental zones being applied to this land in future.</p>	<p>Zone RU2 is a rural zone and provides no basis for application of an environmental zone in future. Any future undertaking by Council to investigate further changes to land use Zones would require a Council resolution.</p>

In conclusion, the grounds for objection raised by submitters are not considered to present any valid planning grounds to change or not proceed with the LEP amendment.



## Part 6 – Project Timeline

The indicative timeline for the completion of the planning proposal is as shown in Table 4.

**Table 4 Indicative Planning Proposal Timeline**

Plan Making Step	Estimated Completion
Commencement of Gateway determination	15 December 2016
Government agency consultation	To be as specified in the Gateway determination. The anticipated timeframe is 28 days and is expected to be undertaken concurrently with the public exhibition period.
Commencement and completion for public exhibition period.	Timeframe for public exhibition is minimum 28 days. October 2018- November 2018
Public hearings	Not applicable
Consideration of submissions	December 2018- February 2019
Further Consideration by Council	March 2019
Date of submission to the Department to finalise	March 2019
Anticipated date the Council makes the LEP, if delegated	N/A- Council has not been granted delegation to make the plan.
Anticipated date Council will forward making of the LEP to the Department for notification	N/A

# Attachments

**Attachment A – Council Ordinary Meeting Minute – 14 March 2016**

**ITEM 13B PLANNING SERVICES REPORT**

**13B.1 DEVELOPMENT APPLICATIONS DETERMINED AND  
OUTSTANDING FOR THE PERIOD 30 JANUARY 2016 TO 29  
FEBRUARY 2016**

**REPORT BY PLANNING AND ENVIRONMENT  
CONTACT EXECUTIVE MANAGER PLANNING AND ENVIRONMENT  
MANFRED BOLDY**

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**140316/11 RESOLVED**

Moved by Councillor Lindsay Passfield, seconded by Councillor Ross Brown.

That Council Receive and note the information contained in the report Development Applications Determined and Outstanding for the 30 January 2016 to 29 February 2016.

**CARRIED**

**FOR VOTE - Unanimous vote  
ABSENT. DID NOT VOTE - Janet Wilson**

**13B.2 PLANNING PROPOSAL TO AMEND THE KYOGLE LOCAL  
ENVIRONMENTAL PLAN 2012 RU1 AND RU2 ZONED LAND AND  
DEFERRED MATTER AREAS**

**REPORT BY: PLANNING AND ENVIRONMENT  
CONTACT: EXECUTIVE MANAGER PLANNING AND ENVIRONMENT  
SERVICES, MANFRED BOLDY**

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**140316/12 RESOLVED**

Moved by Councillor Michael Reardon, seconded by Councillor John Burley.

That Council:

1. Receive and note the report on the proposed amendment of the KLEP to:
    - a. Include the 'Deferred Matter' areas as RU1 Zone land in the Zoning Maps; recognise the Deferred Matters areas as part of the KLEP in the Land Application Map; identify relevant minimum lot sizes for the Deferred Matters areas in the Lot Size Maps based on the adjoining minimum lot sizes for any land with a similar intended use
    - b. Remove any reference to 'Deferred Matters areas' on any maps or document of the KLEP
    - c. Rezone existing RU2 Zone land to RU1 Zone as shown in the Zoning Maps of KLEP
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- d. Remove the RU2 Zone Land Use Table and any other reference to the RU2 Zone in KLEP
- e. Include 'places of public worship' as a land use that is permissible with development consent within the RU1 Zone Land Use Table
2. Amend the *Kyogle Local Environmental Plan 2012* (KLEP), through the preparation of a Planning Proposal generally in accordance with the changes outlined in Item 1 and as discussed in detail in this report
3. Authorise the General Manager to prepare a Planning Proposal consistent with the contents of this report and submit the Planning Proposal to the Department of Planning and Environment (the Department) for review and Gateway Determination.
4. On receipt of a Gateway Determination stating that Council may proceed with the LEP amendment, the General Manager be authorised to make any necessary changes to the Planning Proposal in accordance with the requirements of the Department and undertake the necessary administrative procedures of the LEP amendment process in accordance with the provisions of Part 3 Division 4 of the EP&A Act, including public consultation
5. On conclusion of public consultation, a further report is to be presented to Council outlining the outcomes of consultation, including submissions received.

**CARRIED**

FOR VOTE - Unanimous vote

ABSENT, DID NOT VOTE - Janet Wilson

Councillors Lindsay Passfield and Ross Brown called for a division under section 375A of the *Local Government Act 1993*.

For	Against
Councillor Danielle Mulholland	
Councillor John Burley	
Councillor Robert Dwyer	
Councillor Maggie Creedy	
Councillor Chris Simpson	
Councillor Ross Brown	
Councillor Lindsay Passfield	
Councillor Michael Reardon	

**Attachment B – Draft (Amended) LEP Maps**