



IRF 22/237

Plan finalisation report – PP-2020-1397 (PP_2020_KYOGL_001_00)

Kyogle LEP 2012 – Amendment No 14 – Activation of
Kyogle Central Business District

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future

Contents

1	Introduction.....	2
1.1	Overview.....	2
1.1.1	Name of draft LEP	2
1.1.2	Site description	2
1.1.3	Purpose of plan.....	3
1.1.4	State electorate and local member.....	3
2	Gateway determination and alterations	3
3	Public exhibition and post-exhibition changes	3
3.1	Submissions during exhibition.....	4
3.1.1	Submissions objecting to and/or raising issues about the proposal.....	4
3.2	Advice from agencies.....	4
3.3	Post-exhibition changes.....	4
4	Department’s assessment.....	5
5	Post-assessment consultation	7
6	Conclusion	8
7	Recommendation.....	8
	Attachments	9

1 Introduction

1.1 Overview

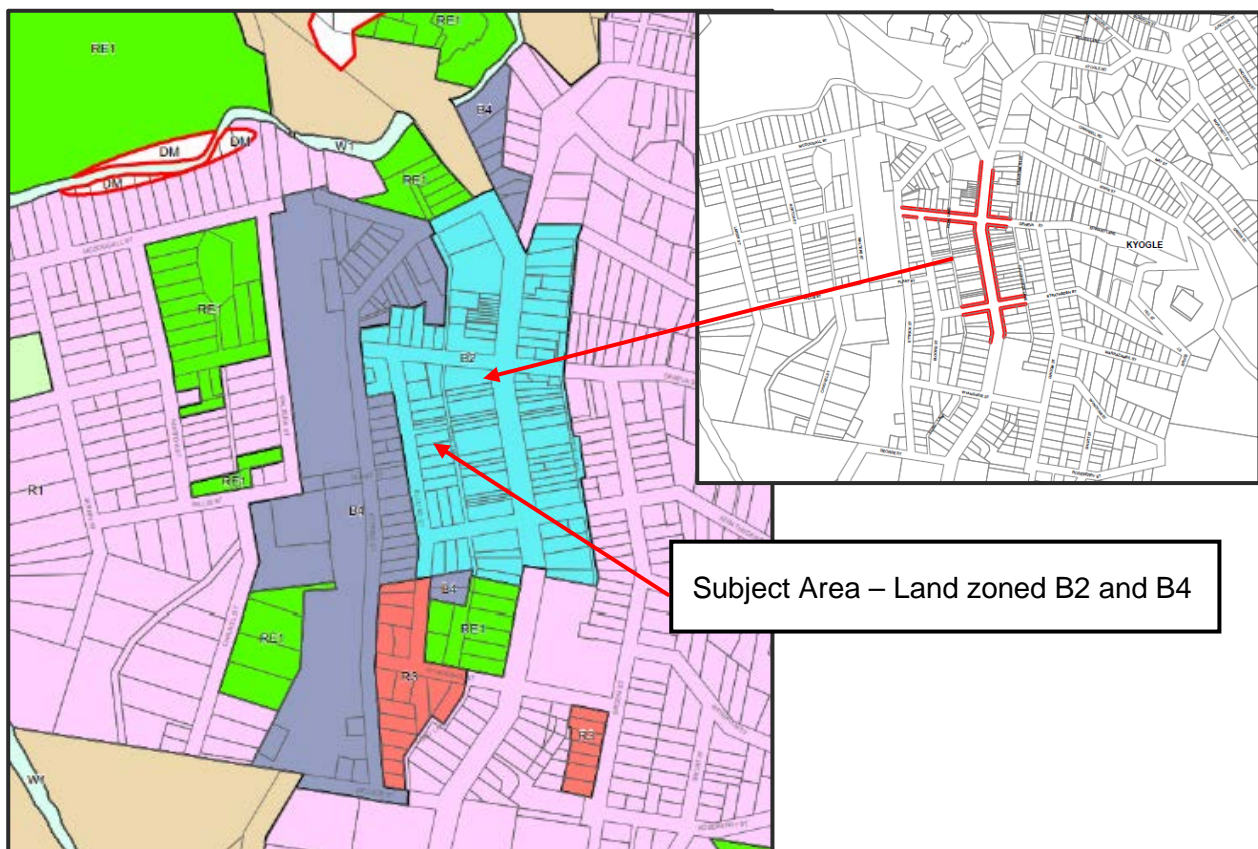
1.1.1 Name of draft LEP

Kyogle Local Environmental Plan 2012 (Amendment No. 14).

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land zoned B2 and B4 in Kyogle and seeks to activate the Kyogle central business district by facilitating the redevelopment of commercial premises, permitting certain residential uses in the Kyogle CBD, requiring active street frontages in the B2 Zone and allowing certain temporary uses as exempt development.
Type	Site
Council / LGA	Kyogle Council
LGA	Kyogle



Subject Area – Land zoned B2 and B4

Figure 1 Subject site – Land mapped as B2 and B4 under Kyogle LEP 2012

1.1.3 Purpose of plan

The planning proposal seeks to introduce new permissible uses within the B2 and B4 zones and introduce local provisions to control development within the zones.

The proposed changes include:

- Amend the Land Use Table to include Attached dwellings, Multi dwelling housing, Light industry, Residential flat buildings as development that is permitted with consent in Zone B2;
- Amend the Land Use Table to include Attached dwellings and Multi dwelling housing as development that is permitted with consent in Zone B4;
- Amend Part 6 to require retention of the existing quantity of commercial floor area where redevelopment occurs in Zone B2 except for shop top housing, and to require that new residential development does not adversely affect existing commercial uses;
- Amend Part 6 to require active frontages to be provided where sites are developed or redeveloped in Zone B2. This will be accompanied by a new map; and
- Amend Schedule 2 to allow certain short term, temporary uses to occur as exempt development.

1.1.4 State electorate and local member

The site falls within the Lismore state electorate. Ms Janelle Saffin MP is the State Member.

The site falls within the Page federal electorate. The Hon Kevin Hogan MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 17/11/2020 (**Attachment B**) determined that the proposal should proceed subject to conditions. The Gateway determination Report (**Attachment C**) and letter to Council (**Attachment D**) advised that Council would still need to obtain the agreement of the Secretary to comply with the requirements of relevant section 9.1 Directions 2.6 Remediation of Contaminated Land and 4.3 Flood prone land. These requirements have now been met and the Secretary's agreement to the inconsistency is considered later in this report.

In accordance with the original Gateway determination the proposal was due to be finalised on 17/05/2021. Council however on 28/04/2021 wrote to the Department advising that it no longer wished to use its delegations to make the plan due to a lack of internal resources (**Attachment E**). For this reason, no extension of time has been sought.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 9/12/2020 to 5/02/2021.

3.1 Submissions during exhibition

3.1.1 Submissions objecting to and/or raising issues about the proposal

A total of two community submissions were received. Neither of these submissions objected to the proposal but rather requested clarification on the intent and effects of the proposed changes (see below):

Table 2 Summary of Key Issues

Submission	Council comment
Comment to the effect that the proposed intent of the provision to consider <i>“temporary use of buildings for retailing or exhibition of agricultural produce, locally produced (packaged) food and drink products, art, craft products and events, community and tourism services and promotion”</i> as Exempt Development is compromised by the proposed operating hours.	The hours specified in the Schedule (ie that “the use may only occur between the hours of 8am and 6pm Monday to Friday, 8am and 4pm Saturday and 9am and 1pm Sunday”) are consistent with normal retailing hours in the Kyogle CBD, and are required to protect the amenity of residential properties in the vicinity. It should be noted that the proposed hours are those which must be observed for the development to be considered as “exempt” – the provision exists for operators to apply for extended operating hours, where any amenity concerns can be adequately addressed.
Query regarding the intent of the proposed provision <i>“to introduce requirements for active building frontages”</i> .	A response was provided clarifying that this provision would not apply to existing uses – it will be a mechanism to ensure active frontages on key streets are not lost when changes of use are sought in the future.

The Department considers Council has adequately addressed matters raised in submissions from the community.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with the Biodiversity and Conservation Division (BCD) of the Department.

BCD initially objected to the proposed amendment on the basis that the amendment appeared to relax planning controls that relate to development in areas categorised as either High Hazard Floodway or Extreme Hazard. Subsequently, and following further consultation, this objection has been withdrawn in recognition of the fact that the planning and development controls that relate to development in the High Hazard Floodway and Extreme Hazard floodway are not altered or compromised in any way by the proposed amendment (**Attachment F**).

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

3.3 Post-exhibition changes

There were no post exhibition changes made.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal.

The Gateway determination report advised that the planning proposal was inconsistent with the following:

Table 3 s9.1 Direction Assessment

Relevant Direction	Consistency	Justification
2.6 Remediation of Contaminated Land	Justified	<p>The Gateway determination report noted that the proposal was potentially inconsistent with this Direction as it would be increasing residential development within the subject areas and Council had not addressed the Direction in its assessment.</p> <p>Due to the extent of the area affected by this proposal, there is likely to be areas of contaminated land due to the existing or former land uses and Council will need to consider and satisfy itself that the land is suitable in its contaminated state (or will be suitable after remediation) for all the purposes for which land in the zone concerned is permitted to be used.</p> <p>On 1 March 2022 Council provided written advice confirming that they were unaware of any potential contamination that would prevent the proposal from proceeding and that any other related issues could be appropriately addressed at the development application stage (Attachment G).</p> <p>It is considered that any potential inconsistency with this Direction has now been resolved.</p>
4.3 Flood Prone Land	Inconsistent/Justified	<p>The Gateway determination report noted that proposal was inconsistent with this Direction as it would increase the development potential of some areas by permitting residential uses onto flood prone land. Until consultation with the Biodiversity and Conservation Division</p>

Relevant Direction	Consistency	Justification
		<p>had been completed, the Direction remained unresolved.</p> <p>Council consulted with BCD who initially objected to the proposal on the basis that the amendment appeared to relax planning controls that relate to development in areas categorised as either High Hazard Floodway or Extreme Hazard.</p> <p>Following further consultation with BCD however, this objection was subsequently withdrawn on the basis that the development controls that relate to development in the High Hazard Floodway and Extreme Hazard floodway are not altered or compromised in any way by the proposed amendment and can be appropriately considered and applied at the development application stage (Attachment F).</p> <p>It is considered that consistency with this Direction has now been resolved.</p>

The Planning proposal submitted to the Department for finalisation is now considered to be consistent with section 9.1 Direction 2.6 Remediation of Contaminated Land and justifiably inconsistent with 4.3 Flood Prone Land.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage.

Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Table 5 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 6 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	A single map has been prepared by the Department's ePlanning team and meets the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council endorsed and resolved on 12 April 2021 to finalise the LEP (Attachment H).</p> <p>On 07/05/2021, Council requested via email for the Department to finalise the planning proposal, electing to not utilise their delegations (Attachment E).</p> <p>On 29/06/2021 the Department made a request for drafting of the LEP.</p> <p>On 04/02/2022 Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment I).</p> <p>Council confirmed on 25/02/2022 that it approved the draft and that the plan should be made (Attachment J).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 4/03/2022, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at (Attachment PC).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Conclusion

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with Kyogle Local Environmental Plan 2012;
- It is consistent with the North Coast Regional Plan;
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal;
- The above report confirms that the planning proposal is consistent with the Gateway determination and all conditions under the Gateway determination have been adequately addressed;
- Under section 3.36(1) of the Act, Council was consulted on the terms of the draft instrument (**Attachment I**); and
- Council's response to the draft LEP was received on 25/02/2022 supporting the LEP be made (**Attachment J**).

7 Recommendation

It is recommended that the Director, as delegate of the Secretary:

1. **agree** that the draft LEP's inconsistency with section 9.1 Direction 4.3 Flood Prone Land are justified in accordance with the terms of the Direction.

It is recommended that the Director, as delegate of the Minister:

1. **note** the planning proposal (**Attachment A**), the Gateway determination (**Attachment B**), and the Gateway determination Assessment Report (**Attachment C**);
2. **note** the email from Council (**Attachment E**) requesting the Department to finalise the draft LEP;
3. **note** Parliamentary Counsel's Opinion that the draft LEP can legally be made and no changes have been made to the draft LEP since obtaining this Opinion (**Attachment PC**);
4. **note** the LEP map (**Attachment MAP**), which has been approved by the Department's ePlanning Team and provided to Parliamentary Counsel;
5. **make** the draft LEP under section 3.36(2)(a) of the *Environmental Planning and Assessment Act 1979* by **signing** the instrument (**Attachment LEP**) and supporting map cover sheet (**Attachment MCS**); and
6. **sign** the letter to Kyogle Shire Council (**Attachment Council**) advising of this decision.



7/3/22

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Attachments

Attachment	Document
A	Planning Proposal PP-2021-1397
B	Gateway determination
C	Gateway determination Assessment Report
D	Gateway determination letter to Council
E	Council request for DPE to finalise plan
F	BCD comments
G	Council comments re s9.1 – 2.6 Remediation of Contaminated Land
H	Council resolution to finalise plan
I	Section 3.36(1) consultation with Council
J	Comments from Council on draft LEP
PC	Parliamentary Counsel's Opinion
LEP	Draft LEP
MAP	Draft LEP Map
MCS	Map Cover Sheet
Council	Letter to Council advising of the decision