



Section 73A EP&A Act submission

Part A. Council to complete

Subject:

.....**BROKEN HILL LOCAL ENVIRONMENTAL PLAN 2013 (AMENDMENT 1)**...
Report requesting the making of amending local environmental plan under section 70 and section 73A.

Background:

BROKEN HILL CITY COUNCIL resolved on ...25th June 2014, to amend Broken Hill Local Environmental Plan 2013 and to request that the Minister for Planning make the plan under section 70 and section 73A of the *Environmental Planning and Assessment Act 1979*. The draft amending plan is attached. (*Attach copy of resolution.*)

The land to which this amendment applies is... Located on Holten Drive, Broken Hill. The subject land is shown in attached map titled "Draft Broken Hill Local Environmental Plan 2013 (Amendment 1)".

Why there is a need for the amendment:

The existing land use of the site is for extractive industries (blue metal quarry). The current zoning of SP1 Mining allows for that purpose. The definition of mining specifically does not include extractive industries. Legal opinion obtained by Council confirms that the current zoning does not allow for the possibility of expansion or intensification of extractive industries. (Further details are included in Council report attached). It is important to note that the SP 1 Mining zone was intended as a "transition" from previous LEP (Broken Hill Local Environmental Plan 1996) zoning of 1(m). The 1(m) zoning allowed for mining and extractive industries and the intention was always for that to continue when transition was made to the current Standard Instrument LEP.

What the amendment does:

It is considered that the amendment would result in a more accurate description for the land and provide the most appropriate zoning provisions.

Why the amending plan is suitable to be made in accordance with section 73A:

It is considered that the amendment would be able to be considered under Section 73a as it will correct a misdescription and more accurately zone the land. The amendment would not result in any adverse effect on the surrounding area.

The council requests that the Minister agree to make draft Broken Hill Local Environmental Plan 2013

(Amendment 1) Signed: Date: 9.7.14

Name: Therese Manns Position: General Manager

On behalf of: Broken Hill City Council



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Part B. Department of Planning use only

Date of referral to LEP Review Panel: (Insert date)

Department position:

The draft LEP amendment has been considered by the Department and it is satisfied that the amendment can be considered as a minor amendment under section 73A (see advice tagged 'A').

Parliamentary Counsel opinion:

The Parliamentary Counsel has provided an opinion indicating that the plan may legally be made (tagged 'B').

Recommendation:

It is recommended that the Minister:

- (a) under sections 70(1)(a) and (8) and section 73A of the *Environmental Planning and Assessment Act 1979* make tagged 'B')
(Name of LEP)
- (b) authorise the Department to advise council of the Minister's decision.

Date:

Signed: Name:

Position:
for Director-General

Attachment 4 - Evaluation criteria for the delegation of plan making functions

Checklist for the review of a request for delegation of plan making functions to councils

Local Government Area:

BROKEN HILL CITY COUNCIL

Name of draft LEP:

Broken Hill Local Environmental Plan 2013 (Amendment 1)

Address of Land (if applicable):

Land adjoining Holten Drive, Broken Hill

Intent of draft LEP:

Alter zoning of a portion of land from SP 1 Mining to SP 1 Mining and Extractive Industries

Additional Supporting Points/Information:

It is considered the amendment would result in a more accurate description of the land. It will correct a misdescription that has arisen during the transition from Council's previous LEP to the current Standard Instrument LEP.



Evaluation criteria for the issuing of an Authorisation				
(NOTE – where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	YES			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	YES			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	YES			
Does the planning proposal contain details related to proposed consultation?		✓		
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?		✓		
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?		✓		
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	YES			
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		✓		
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		✓		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		✓		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		✓		
Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?		✓		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		✓		
Is the planning proposal proposed to rectify an anomaly in a classification?		✓		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		✓		
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?		✓		

If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i>?	✓	
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?	✓	
Spot Rezoning	Y/N	
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	✓	
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	YES	
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	✓	
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		
Does the planning proposal create an exception to a mapped development standard?	✓	
Section 73A matters		
Does the proposed instrument		
a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;	YES	
b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or	YES	
c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?	YES	
(NOTE - the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).		
NOTES - Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance. - Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.		