



**Kyogle LEP 2012 – Deferred Land and Rural Zone Consolidation (No additional houses or jobs)**

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**Land Release Data**

|                                    |                                |                                                      |     |
|------------------------------------|--------------------------------|------------------------------------------------------|-----|
| Growth Centre :                    | N/A                            | Release Area Name :                                  | N/A |
| Regional / Sub Regional Strategy : | North Coast Regional Plan 2036 | Consistent with Strategy :                           | Yes |
| MDP Number :                       |                                | Date of Release :                                    |     |
| Area of Release (Ha) :             | 0.00                           | Type of Release (eg Residential / Employment land) : | N/A |
| No. of Lots :                      | 0                              | No. of Dwellings (where relevant) :                  | 0   |
| Gross Floor Area :                 | 0                              | No of Jobs Created :                                 | 0   |

The NSW Government Lobbyists Code of Conduct has been complied with : Yes

If No, comment : The Department of Planning and Environment's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge.

Have there been meetings or communications with registered lobbyists? : No

If Yes, comment : The Northern Region office has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officers within the agency and lobbyists concerning this proposal.

**Supporting notes**

Internal Supporting Notes :

External Supporting Notes :

## **Adequacy Assessment**

### **Statement of the objectives - s55(2)(a)**

Is a statement of the objectives provided? Yes

Comment :

The Statement of objectives describes the intention of the planning proposal. The objectives of the planning proposal are to:

1. Integrate the deferred land into the Kyogle LEP 2012 and apply an RU1 zone and appropriate planning controls to provide for a single local planning instrument to affect land within the Kyogle Local Government Area;
2. Rationalise the rural land use zoning affecting the broader rural area across the local government area and reduce any confusion resulting from two similar zones;
3. Provide for greater rural economic certainty for the local government area through a more streamlined approach to rural land use zoning; and
4. Provide for greater performance based clarity for assessable development on rural zoned land through development control plan provisions and less emphasis on zone distinction.

The intended outcomes of the proposed amendment are:

1. Provide greater clarity and certainty for development within rural land across the Kyogle Local Government Area;
2. Give effect to the Planning Minister's Section 117 Direction affecting the Council local government area; and
3. Provide a more streamlined local land use planning framework to help attract investment to the region.

### **Explanation of provisions provided - s55(2)(b)**

Is an explanation of provisions provided? Yes

Comment :

The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The Explanation of Provisions lists the proposed changes to the LEP maps and the proposed drafting changes to the Kyogle LEP 2012 written instrument.

The changes to Clause 4.6 of the Kyogle LEP 2012 to remove the reference to zone RU2 is not permitted as the clause is a compulsory clause in the Standard Instrument LEP and cannot be changed.

The proposal will also require a consequent amendment to the Flood Planning Area Map to include the deferred land within the mapped flood planning area.

No change to the Significant Resource Map is necessary as none of the land mapped as being identified resource is part of the deferred land.

### **Justification - s55 (2)(c)**

a) Has Council's strategy been agreed to by the Director General? No

b) S.117 directions identified by RPA :

\* May need the Director General's agreement

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

6.3 Site Specific Provisions

5.10 Implementation of Regional Plans

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

**SEPP (Infrastructure) 2007**

**SEPP (Rural Lands) 2008**

**SEPP (Temporary Structures and Places of Public Entertainment) 2007**

e) List any other matters that need to be considered :

**Northern Councils E Zone Review Final Recommendations**

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

**See the assessment section of this report.**

#### **Mapping Provided - s55(2)(d)**

Is mapping provided? **Yes**

Comment :

The proposal includes a revised set of draft LEP maps which depict the changes proposed by the planning proposal. The proposed LEP maps that show the changes to the land use zone, minimum lot size, and other planning controls for the rural lands are adequate for exhibition purposes. However the changes to the zones and mapping controls for the land within the Kyogle town area should be depicted within the planning proposal by a set of maps at an appropriate scale that shows the existing deferred land and the proposed controls for that land. It is recommended that the Gateway determination contain a condition to this effect.

The integration of the deferred land into Kyogle LEP 2012 will require consequent changes to the Flood Planning Map.

The current LZN\_004C map on the NSW Legislation website shows a portion of land in the east of the Kyogle LGA being zoned E3 Environmental Management. The land is identified as deferred on the Land Application map and therefore the Kyogle LEP 2012 does not apply to this land. This mapping error was inadvertently introduced through Amendment No. 1 to Kyogle LEP 2012 which was finalised by Council under delegation. This mapping error will be corrected by the current planning proposal.

#### **Community consultation - s55(2)(e)**

Has community consultation been proposed? **Yes**

Comment :

**The planning proposal does not nominate a community consultation period.**

In accordance with "A Guide to Preparing Local Environmental Plans" (the 'Guide'), it is considered that the planning proposal is not a low impact planning proposal as the proposed changes to the Kyogle LEP 2012 are significant and affect a large area of land in the LGA which has been deferred from the Kyogle LEP 2012 for some time. It is therefore considered that a community consultation period of 28 days be required.

#### **Additional Director General's requirements**

Are there any additional Director General's requirements? **No**

If Yes, reasons :

### Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment :

#### Time Line

The planning proposal includes a project timeline which estimates the completion of the planning proposal in May 2017 (6 months). To ensure the RPA has adequate time to complete the exhibition, reporting, and consideration of submissions, it is recommended that a time frame of 9 months is appropriate and the Gateway determination include a condition requiring the time line be updated.

#### Delegation.

The RPA has not requested an Authorisation to exercise delegation for this proposal. Consistent with the Secretary's undertaking of 1 March 2016 it is recommended that an authorisation to exercise delegation is not issued to Kyogle Council in this instance. This is to ensure a consistent approach to the finalisation of zoning decisions consistent with the E Zone Review Final Recommendations Report.

#### Overall Adequacy

The planning proposal satisfies the adequacy criteria by;

1. Providing appropriate objectives and intended outcomes.
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.
3. Providing a justification for the proposal.
4. Outlining a proposed community consultation program.
5. Providing a project time line

### Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The Kyogle LEP 2012 is in force. This planning proposal seeks an amendment to the Kyogle LEP 2012.

### Assessment Criteria

Need for planning proposal :

The planning proposal has arisen from the finalisation of the Northern Councils E Zone Review. In September 2012 the then Minister for Planning announced a review of the application of E zones and environmental overlays on the Far North Coast. Until the review was completed, land that had been proposed for an E Zone was deferred from the Kyogle LEP 2012.

The Northern Councils E Zone Review Final Recommendations Report was released in October 2015. This planning proposal seeks to incorporate the land which was deferred from Kyogle LEP 2012 pending the finalisation of the E Zone Review.

The planning proposal is the best means of incorporating the deferred land into the Kyogle LEP 2012 and applying appropriate zones, development standards and other planning controls.

The consistency of the proposal with the Northern Councils E Zone Review Final Recommendations Report is addressed later in this report in the section 'Consistency with the Strategic Planning Framework'.

The planning proposal includes some consequent amendments to the Kyogle LEP 2012 which are related to the land being deferred from the Kyogle LEP 2012. These include:

1. Applying height of building, minimum lot size and heritage provisions to the land via mapped planning controls; and

2. Adjusting the Land Application Map, and making consequent changes to the Flood Planning Map to incorporate the subject land into the Kyogle LEP 2012.

#### **LAND APPLICATION MAP**

The Land Application map will be amended to indicate that the subject land will be covered by the provisions of the Kyogle LEP 2012 and will no longer be subject to the provisions of the Interim Development Orders (IDOs) which previously applied to land in the Kyogle LGA. This is appropriate and the use of the Land Application Map to identify land subject to the Kyogle LEP 2012 is consistent with the approach adopted by the Standard Instrument LEP Template.

#### **DEVELOPMENT STANDARDS AND OTHER PLANNING CONTROLS**

The planning proposal will apply height of building, minimum lot size and heritage provisions to the land via mapped planning controls. This is required to ensure the planning controls that apply to the subject land are consistent with the Standard Instrument LEP Template.

**Height of Building** – The proposal intends to apply a 9m maximum building height to the currently deferred land in the Kyogle town area. This 9m maximum building height is consistent with the maximum building height on surrounding land and land in the same zone. Consequently the proposed 9m maximum building height is considered to be appropriate.

**Minimum Lot Size (MLS)** – the proposal intends to apply MLSs to the deferred land being integrated into the Kyogle LEP 2012. The planning proposal indicates that the MLS for this land will be the same as for adjoining land which has a similar land use.

**Council's approach** will mean that the deferred land will generally have either a 40 hectare or 100 hectare MLS applied to it except the R1 Zone which will have a 500m<sup>2</sup> MLS. The proposed MLS will be the MLS that predominantly applies to the currently deferred land. This has ensured that a single lot size applies to an entire lot and that the lot sizes are consistent across localities. This approach is considered to be appropriate.

**Heritage items** – the proposal will amend the Heritage Map in the Kyogle LEP 2012 to include the entirety of the land on which two heritage items (items A164 and I057) are located. Only part of the land containing the heritage items was deferred from the Kyogle LEP 2012 and therefore the heritage items are already contained in Schedule 5 of the Kyogle LEP 2012. The integration of the deferred land means that the heritage maps need to be revised. The proposed amendments to the Heritage Map are considered to be appropriate.

**Flood Planning Map** – the Flood Planning Map includes land around the Kyogle urban area which also includes some deferred land. The Flood Planning Map will need to be amended to include the deferred land and indicate its flood liable status.

#### **REMOVAL OF RU2 ZONE**

The planning proposal also intends to remove the RU2 Rural Landscape zone from the Kyogle LEP 2012. The land which is currently zoned RU2 is proposed to be zoned RU1 Primary Production.

Council has proposed this change in order to simplify Council's planning framework and minimise multiple zoning over land that has substantially the same primary use, that being rural production.

Council considered the need for an RU2 zone in its preparation of the Kyogle LEP 2012. Submissions to the Draft Kyogle LEP objected to the use of the RU2 zone. In preparing the Kyogle LEP 2012 the RU2 zone was originally used for Agricultural Suitability Class 6 and 7

lands. The RU1 zone was used for classes 1-5 lands and the E3 zone was proposed for class 8 land. Council considered at the time applying an RU1 zone to all rural land but concluded that it was considered appropriate to differentiate between the primary production land so that it can be protected for the intended purpose while other land uses could be established on the balance of rural land without detracting or encroaching on the best agricultural land.

This approach was however eroded with a change to the land use table which effectively meant that all land uses permissible in the RU2 zone were also permissible in the RU1 zone.

Council subsequently also determined the extent of RU2 land was excessive and it was reduced by approximately 30% being replaced with the RU1 zone. The remaining RU2 zone was applied to land subject to hazards such as flooding or steep land. The final RU2 zone also included the majority (approximately 75%) of the proposed E3 zoned land and objectives were added to the RU2 zone land use table to address the protection of the natural environment.

#### PERMISSIBLE LAND USES

The current RU1 and RU2 zones have effectively identical permissible uses, the only differences being 'boat sheds' and 'open cut mining' are listed as permissible with consent in the RU1 but not in the RU2 zone while 'places of public worship' are listed as permissible with consent in the RU2 zone but not in the RU1 zone. Council intends to rectify this discrepancy by adding 'places of public worship' as a land use permitted with consent in the RU1 zone. This proposed amendment to the RU1 land use table is not inconsistent with the Standard Instrument LEP Template.

The planning proposal states that the rural zones were allocated on the basis of land capability rather than topographical or natural features or biodiversity value. The RU2 zone was therefore applied to land suitable for rural production but did not constitute prime agricultural land.

The planning proposal states that the use of a single rural zone is consistent with the Final Recommendations which requires that, as a general principle, the use of multiple zones on a property should be minimised. Council has identified that the primary use of the rural land in the LGA is substantially grazing or other rural production activities and therefore the use of a single rural zone is preferable.

The major differences between the existing RU1 and RU2 zones is in the objectives of the zones. Apart from the mandatory objectives specified in the Standard Instrument Principal LEP, the RU1 zone has the following objectives:

- To ensure that the productive capacity of agricultural land is appropriately recognised and managed.
- To enable a range of other uses to occur on rural land providing such uses do not conflict with existing or potential agriculture and do not detract from the scenic amenity and character of the rural environment.

While the RU2 zone includes the following objectives:

- To provide for agricultural processing and support facilities directly related to the use and development of resources in the zone.
- To encourage development that involves restoration or enhancement of the natural environment where consistent with the production and landscape character of the land.
- To enable development that does not adversely impact on the natural environment, including habitat and waterways.

The objectives of the RU1 zone support the productive agricultural capability of land while the objectives of the RU2 zone also require consideration of the impact on the natural

environment and enhancement of the natural environment.

As it is likely that the deferred areas and the current RU2 Zone do include some areas of important natural environment, the planning proposal should be amended to include a new objective in the RU1 zone to address impact of proposed developments on the natural environment.

It is noted that having a single rural zone is also consistent with the adjoining Richmond Valley LGA, and Lismore which has only applied a RU2 Rural Landscape zone to a small area on the edge of the Lismore urban area which has a high flood risk hazard.

## Kyogle LEP 2012 – Deferred Land and Rural Zone Consolidation (No additional houses or jobs)

Consistency with strategic planning framework :

### NORTHERN COUNCILS E ZONE REVIEW FINAL RECOMMENDATIONS (the 'Final Recommendations')

The consistency of the proposal with the Final Recommendations is as follows:

#### E Zones and Mapped Planning Controls.

The proposal does not propose the introduction of E zones or non-standard mapped planning controls into the Kyogle LEP 2012. Therefore it is not necessary to address the criteria for an E zone or the methodology for verification of the vegetative attributes of the land.

#### Primary Use of Land

The primary use of land test is not relevant to Kyogle Council in this instance as Final Recommendation 6 requires the application of a rural zone to all deferred land. Nevertheless, the planning proposal states that the primary use of the deferred land is substantially grazing or other rural production activities and therefore a rural zone. If through the community consultation process land is found to have a primary use other than agriculture, Council can initiate further investigations to identify whether an E zone or a mapped planning control would be appropriate over the land.

#### Recommendation 6

Recommendation 6 requires 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 proposal is consistent with this recommendation in that it seeks to apply an RU1 zone to the deferred rural land throughout the LGA. The RU1 zone is considered to be equivalent to the Non-urban "A" and "B" zones in the IDOs.

The proposal is inconsistent with this recommendation for deferred land in McDougal Street and the Summerland Way where the deferred land is being rezoned to R1 or RE1 and no equivalent zone existed in the IDO. While this approach is inconsistent with the recommendation it is considered to be appropriate as it is consistent with the land zones of the remainder of these properties.

Council has also interpreted the Final Recommendations to allow a level of discretion for Council to decide on the need for any necessary further investigations. Council has noted in the planning proposal that the extensive and detailed scientific procedures required for E zone investigation and the lack of any significant development activity impacting the natural areas in the Kyogle LEP, means that Council has not prioritised further investigations in the foreseeable future.

Therefore, while the recommendation intended that the application of a rural zone to the deferred land be an interim measure, the application of an RU1 zone and Council's intention to remove the RU2 zone from the Kyogle LEP will mean that the application of the RU1 zone to rural land in the LGA may be for a longer term.

Council in its supporting correspondence notes that the planning reform funding that was offered to other councils to implement the Final Recommendations and apply E zones was not offered to Kyogle Council and should Kyogle Council be required to undertake E zone investigations it has requested clarification on whether such funding would be made available.

#### Public and Private Land

The planning proposal does not seek to apply an E zone to either public or private land in a manner which is inconsistent with the Final Recommendations.

#### Voluntarily Revegetated Land

The planning proposal does not seek to apply an E zone or mapped planning control to voluntarily revegetated land in a manner which is inconsistent with the Final Recommendations.

Application of multiple zones to a single property.

In proposing to apply an RU1 zone to the deferred land and rezone RU2 zoned land to RU1 throughout the LGA the planning proposal is consistent with this recommendation to minimise the use of multiple zones over a single property.

#### **Mapped Planning Controls**

The planning proposal does not seek to introduce any new mapped planning controls relating to matters of public health, safety, risk and hazards to the Kyogle LEP 2012.

The proposal is otherwise consistent with the Final Recommendations as discussed in the assessment at Tab A.

#### **SECRETARY'S LETTER OF 1 MARCH 2016**

##### **Primary Use of Land**

As the proposal does not seek to apply an E2 or E3 zone to any land in the Kyogle LGA, and is applying a rural zone consistent with the Final Recommendations, it is not necessary for the planning proposal to include verification of the methodology for determining the primary use of land.

##### **Notification of Affected Landowners**

Since the proposal does not propose an E zone over any land, and given the large number of land owners involved in the proposal to rezone the RU2 zoned land to RU1, it is not considered to be necessary to require Council to write to all affected land owners.

##### **Independent Review Body**

Since the proposal does not propose the application of an E zone to any land it is not considered necessary that the NSW Chief Planner be available to undertake an independent review of the zonings applied by Council which may be disputed by the land owner.

##### **Plan Making Delegations**

To ensure a consistent approach to the finalisation of the implementation of the Final Recommendations it is recommended that plan making delegations be retained by the Department and an authorisation to use the Minister's plan making functions not be issued to Kyogle Council.

##### **FAR NORTH COAST REGIONAL STRATEGY (FNCRS).**

The planning proposal indicates that the intended changes to the Kyogle LEP 2012 are consistent with the actions and outcomes in the FNCRS.

The FNCRS has been superseded by the North Coast Regional Plan and this reference should be removed.

##### **NORTH COAST REGIONAL PLAN 2036**

The relevant actions in the North Coast Regional Plan 2036 are as follows:

##### **Action 2.1 states:**

2.1 Focus development to areas of least biodiversity sensitivity in the region and implement the 'avoid, minimise, offset' hierarchy to biodiversity, including areas of high environmental value.

The proposal is inconsistent with this action as the proposal to apply a single rural zone to all rural land does not reflect the varying biodiversity characteristics of rural land, allows a broad permissibility of land uses on rural land and does not apply more restrictive planning controls to protect areas of high environmental value. A single rural zone

prevents the LEP from limiting certain land uses on sensitive environmental land thereby achieving avoidance as required by the action.

This inconsistency arises from the Northern Councils E Zone Review Final Recommendations though it is intended that the application of a rural zone to all deferred land in the Kyogle LEP be an interim measure. This inconsistency is of minor significance as it can be addressed in the longer term if Council undertakes the investigations for the application of appropriate E zones and mapped planning controls as intended by the Final Recommendations

Action 12.1 states:

12.1 Promote the expansion of food and fibre production, agrichemicals, farm machinery, wholesale and distribution, freight and logistics, and processing through flexible planning provisions in local growth management strategies and local environmental plans.

The proposal is consistent with this action as it proposes a single rural zone for all rural land in the LGA thereby enabling a wide range of land uses related to agriculture and agribusiness. This enables flexibility across the rural lands in the LGA though doesn't provide the ability to tailor planning controls to rural land with different characteristics.

Action 12.4 states:

12.4 Facilitate investment in the agricultural supply chain by protecting assets, including freight and logistics facilities, from land use conflicts arising from the encroachment of incompatible land uses.

The overarching direction for this action in the NCRP comes from 'Direction 11: Protect and enhance productive agricultural lands' and 'Direction 12: Grow agribusiness across the region'. The proposal is not inconsistent with this direction for the following reasons:

1. The proposal does not enable inappropriate land uses on important farmland and maintains suitable controls on rural dwellings and minimum lot sizes for rural land in order to minimise the risk of land use conflict with agricultural land uses;
2. The proposal enables agritourism and boutique commercial activities on rural land to encourage diversity in the agricultural sector; and
3. The proposal enables agricultural processing and logistics land uses on rural land where they can achieve efficiency and viability and contribute to the agribusiness economy.

#### STANDARD INSTRUMENT

The proposal is not inconsistent with the Standard Instrument LEP. The proposed changes to the land uses in the RU1 zone and the subsequent changes to the other LEP provisions are consistent with the mandatory requirements of the Standard Instrument.

#### LEP PRACTICE NOTE PN 11-002

The LEP Practice Notes provided guidance to councils on the application of zones in Standard Instrument LEPs. Practice Note PN11\_002 provides guidance on the general purpose of each zone. Notably, it states that the RU1 Primary Production zone "...is not a default zone for non-urban land. The zone is allocated to land where the principal function is primary production."

Similarly, the Practice Note states the RU2 zone is intended for "rural land used for commercial primary production that is compatible with ecological or scenic landscape qualities that have been conserved (often due to topography)." It is expected that some of the land in the rural areas of Kyogle LGA will have topography and vegetation constraints that may not make them suitable for commercial primary production and therefore an RU2 zone would be most appropriate.

The planning proposal notes that the RU2 zone in the Kyogle LEP 2012 was not based on an assessment of natural environmental qualities but rather on the basis of land capability. The RU2 zone was applied to land suitable for rural production but not necessarily prime agricultural land.

Council states that the ecological and natural qualities of the land would be protected through the State's biodiversity and environmental protection legislation and there is no purpose in having the RU2 zone in the Kyogle LEP for the sole purpose of addressing natural characteristics of the land. Council also states that the objective of the RU1 zone relating to the scenic amenity and character of the rural environment is adequate to ensure proposed developments do not have an adverse impact.

It is considered that scenic amenity and rural character are different considerations to biodiversity or natural topography and the need for an additional objective in the RU1 zone as discussed previously is necessary if the planning proposal proceeds to remove the RU2 zone from the Kyogle LEP 2012 and rezone the RU2 land to RU1.

#### CONSISTENCY WITH COUNCIL'S LOCAL STRATEGIES.

Kyogle Community Strategic Plan 2012-2025 (the 'CSP')

The proposal is consistent with Council's CSP. The CSP has a number of actions to review the rural zones in the Kyogle LEP 2012 and remove any duplication of approval requirements affecting rural land. There is no local growth management strategy for Kyogle LGA which is relevant to the proposed amendments to the LEP.

#### SEPPs

The proposal lists the State environmental planning policies (SEPPs) applicable to the land. Many SEPPs apply to the subject land and the proposal is not inconsistent with these SEPPs.

#### SEPP (Rural Lands) 2008

SEPP Rural Lands (the RLSEPP) contains Rural Planning Principles to guide development on rural land. The proposal is considered to be consistent with some of the rural planning principles for the following reasons:

1. The proposal recognises the importance of rural land and agricultural uses in the region and will contribute to the promotion and protection of sustainable economic activities in rural areas; and
2. The proposal provides for rural lifestyle opportunities that contribute to the social and economic welfare of rural communities;

However, the application of an RU1 zone across all deferred land and the rezoning of land zoned RU2 to RU1 is inconsistent with the planning principles for the following reasons:

1. It does not have regard to the maintenance of biodiversity, the protection of native vegetation, the importance of water resources and constrained land; and
2. It does not give a balanced approach to planning the environmental interests of the community.

In accordance with the Final Recommendations, these inconsistencies should be of a temporary nature if Council undertakes the necessary investigations to identify appropriate E zones and overlays for land in the Kyogle LGA. It is considered that the inconsistency of the proposal with the Rural Planning Principles is of minor significance.

The proposal is otherwise consistent with State environmental planning policies.

#### S117 Directions.

The following S117 directions are applicable to the proposal, 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.4 Recreational Vehicle Areas, 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 4.3 Flood Prone Land 4.4 Planning for Bushfire Protection, 5.3 Farmland of State and Regional Significance on the NSW Far North Coast, 5.10 Implementation of Regional Plans, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, and 6.3 Site Specific Provisions.

Of the above s117 Directions the proposal is considered to be inconsistent with Direction 1.5, 2.1, 2.3, 4.3, 4.4, 5.10, and 6.2.

Direction 1.5 Rural Land is relevant to the planning proposal. The direction provides that a planning proposal that affects rural land must be consistent with the Rural Planning Principles in the SEPP (Rural Lands) 2008. An assessment of the proposal with the rural planning principles is discussed previously in this report. The proposal is inconsistent with some of the principles since it does not have regard to the maintenance of biodiversity, the protection of native vegetation, the importance of water resources and constrained land nor provide a balanced approach to planning the environmental interests of the community.

The inconsistency is considered to be of minor significance since it is intended to be for an interim period while investigations to identify appropriate E zones and mapped planning controls are undertaken and the proposed single rural zone reflects the existing planning regime for the deferred land. The inconsistency of the proposal with the direction is therefore considered to be justified in accordance with the terms of the direction.

Direction 2.1 Environmental Protection Zones is relevant to the planning proposal. The direction provides that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. The proposal seeks to apply an RU1 zone to all deferred land in the Kyogle LGA. While this approach is consistent with the Final Recommendations it does not apply appropriate protection to environmentally sensitive areas and is considered to be inconsistent with the direction. It is considered that this inconsistency cannot be justified and therefore remains unresolved.

This inconsistency does not need to be resolved in this instance and is acceptable as the planning proposal is implementing the Northern Councils E Zone Review Final Recommendations.

Direction 2.3 Heritage Conservation is relevant to the planning proposal. The direction provides that a planning proposal must contain provisions which facilitate the conservation of items and places of heritage significance.

The proposal will update the heritage maps of the Kyogle LEP 2012 to include the currently deferred land which contains items of heritage significance.

The proposal will also integrate existing deferred land into the Kyogle LEP 2012. It is not known whether this land contains items of heritage significance, however given the extent of the deferred land throughout the LGA it is appropriate that the conservation of potential heritage significance on this land is addressed at development application stage. It is therefore considered that the inconsistency of the proposal with this direction is of minor significance and is therefore justified in accordance with the terms of the direction.

Direction 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs is relevant to the planning proposal. The direction provides that where a planning proposal proposes an E2 or E3 zone or an overlay and associated clause the proposal must be consistent with the Northern Council E Zone Review Final Recommendations. As discussed previously in this report the planning proposal does not intend to apply an E zone or overlay to any land in the Kyogle LGA and therefore the direction does not apply.

Discussion on the consistency of the proposal with the Northern Councils E Zone Review Final Recommendations is discussed previously in this report.

Direction 4.3 Flood Prone land is relevant to the proposal. The direction provides that a planning proposal shall not permit a significant increase in the development of flood prone land. The proposal is consistent with this direction for the land being rezoned from RU2 to RU1 as it will not have a significant increase in development potential. Similarly the majority of the deferred land being integrated into the Kyogle LEP 2012 will change

from a non-urban zone to a rural zone which will not result in a significant increase in development potential.

Some of the deferred land is proposed to be zoned R1 General Residential. This land is currently zoned village in the IDO. This land is located within the flood planning area though the planning proposal does not nominate changes to the flood map as being necessary. The deferred land to be zoned R1 constitutes only a small part of existing lots which are already zoned R1 therefore the application of an R1 zone to the deferred land will only result in a small increase in the development potential for the properties (as the remainder of the land is already zoned R1).

The deferred land in the showground and the playing fields will be rezoned from non-urban to RE1 Public Recreation. This is likely to result in an small increase in development potential for the land however as with the residential land the deferred land constitutes only a small part of the existing showground and playing fields sites and therefore its rezoning will only result in a minor increase in development potential for the properties. It is considered these inconsistencies are of minor significance as Kyogle LEP contains controls for development on flood prone land which must be addressed at development application stage. The inconsistency is therefore considered to be justified in accordance with the terms of the direction.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. Areas of the LGA that will be integrated into the Kyogle LEP 2012 and rezoned to RU1 are identified as being bush fire prone. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service, and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 5.10 Implementation of Regional Plans is relevant to the proposal. The direction provides that a planning proposal must be consistent with the North Coast Regional Plan 2036 (NCRP). As discussed previously in this report the proposal is considered to be inconsistent with certain aspects of the North Coast Regional Plan. These inconsistencies are considered to be of minor significance as the proposal achieves the intent of the Northern Councils E Zone Review Final Recommendations and the overall intent of the directions in the NCRP. It is envisaged that the inconsistencies can be addressed in the longer term if Council undertakes further strategic investigations and actions for the Kyogle LGA. The inconsistency is therefore considered to be justified in accordance with the terms of the direction.

Direction 6.2 Reserving Land for Public Purposes is relevant to the planning proposal. The direction provides that a planning proposal must not create, alter or reduce zonings of land for public purposes without the approval of the Secretary or the public authority. The planning proposal seeks to apply an RE1 Public Recreation zone to some of the deferred land in the showground and sports field sites of the Kyogle urban area. Both the showground and the sports ground on the eastern side of Summerland Way are Crown Reserves. The showground is managed and administered by the Kyogle Showground Trust, the sports ground is administered by Council. The agreement of the Council to the rezoning of the land to RE1 is implicit in the endorsement of the planning proposal. The agreement of Crown Lands has not been provided and the proposal is inconsistent with this direction. This consultation will occur after the Gateway determination is issued and the proposed RE1 zone is consistent with the zone applying to the remainder of the land. It is considered that the inconsistency is therefore of minor significance and justified in accordance with the terms of the direction.

The proposal is otherwise consistent with S117 Directions.

Environmental social  
economic impacts :

The proposal states that it will be unlikely that it will have any potential adverse impact on critical habitat or threatened species or their habitats. The proposal states that the existing environmental assessment provisions under the Environmental Planning and Assessment Act 1979 and other legislation will ensure proposed developments have adequate regard

**Kyogle LEP 2012 – Deferred Land and Rural Zone Consolidation (No additional houses or jobs)**

to impact on native vegetation. The proposal does not enable any additional land uses without consent and therefore any application for development on land with ecological significance will need to address the potential impacts at development application stage.

The proposal to rezone RU2 zoned land to RU1 does not result in a significant change to the development potential of the land as the land use tables for the two zones are practically identical.

The potential impact of applying a rural zone and its associated land uses to deferred land which may contain vegetation of ecological significance may have the potential to permit inappropriate land uses on unsuitable land. This however can be addressed through the development application process and it is also expected to be resolved in the longer term when investigations to identify appropriate E zones and mapped planning controls are completed and the Kyogle LEP amended accordingly.

It is anticipated that the proposal will have a positive economic and social impacts by applying modern Standard Instrument planning provisions to the deferred land which is currently subject to the provisions of an Interim Development Order. This approach will also provide clarity and certainty for land holders by having a single environmental planning instrument applying to their land.

**Agency Consultation.**

It is considered that the RPA should consult with the following State agencies:

1. Rural Fire Service;
2. Department of Primary Industries - Agriculture;
3. Department of Primary Industries - Lands
4. Office of Environment and Heritage;
5. The NSW Local Aboriginal Land Council; and
6. Relevant Native Title Claimants.

**Assessment Process**

|                 |         |                                 |         |
|-----------------|---------|---------------------------------|---------|
| Proposal type : | Routine | Community Consultation Period : | 28 Days |
|-----------------|---------|---------------------------------|---------|

|                         |          |              |     |
|-------------------------|----------|--------------|-----|
| Timeframe to make LEP : | 9 months | Delegation : | DDG |
|-------------------------|----------|--------------|-----|

|                                            |                                                                                                                    |
|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| Public Authority Consultation - 56(2)(d) : | Office of Environment and Heritage<br>NSW Department of Primary Industries - Agriculture<br>NSW Rural Fire Service |
|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------|

|                                        |    |
|----------------------------------------|----|
| Is Public Hearing by the PAC required? | No |
|----------------------------------------|----|

|                                    |     |
|------------------------------------|-----|
| (2)(a) Should the matter proceed ? | Yes |
|------------------------------------|-----|

If no, provide reasons :

Resubmission - s56(2)(b) : No

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

## Kyogle LEP 2012 – Deferred Land and Rural Zone Consolidation (No additional houses or jobs)

Identify any internal consultations, if required :

**No internal consultation required**

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

### Documents

| Document File Name                                                                                                 | DocumentType Name        | Is Public |
|--------------------------------------------------------------------------------------------------------------------|--------------------------|-----------|
| Covering Letter Kyogle Council Kyogle LEP 2012 Amendment No. 10 Removal of RU2 Zone and Deferred Matter areas_.pdf | Proposal Covering Letter | Yes       |
| Planning Proposal - Kyogle LEP Amendment no. 10_Deferred Matters and RU1 RU2_REVISED_May 2017.pdf                  | Proposal                 | Yes       |
| Height of Building Map - proposed amendments.pdf                                                                   | Map                      | Yes       |
| Heritage maps combined - proposed amendments.pdf                                                                   | Map                      | Yes       |
| Land Application Map - proposed amendments.pdf                                                                     | Map                      | Yes       |
| Land Zoning Maps combined - proposed amendments.pdf                                                                | Map                      | Yes       |
| Lot Size Map combined - proposed amendments.pdf                                                                    | Map                      | Yes       |

### Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 6.3 Site Specific Provisions
- 5.10 Implementation of Regional Plans

Additional Information :

It is recommended that the planning proposal should proceed subject to the following;

1. Prior to community consultation the planning proposal is to be amended as follows:
  - a. 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 to include deferred land which lies within the flood planning area;
    - ii. delete the proposed amendments to clause 4.6 as this clause is a compulsory clause in the Standard Instrument Principal LEP and cannot be changed; and
    - iii. include an amendment to clause 1 of Schedule 1 Additional Permitted Uses to remove the reference to the RU2 zone as it relates to temporary workers' accommodation.
  - b. Discussion on Section 117 Direction 5.10 Implementation of Regional Plans is to be included in Table 3 of the planning proposal. The discussion on Direction 5.1 Implementation of Regional Strategies is to be omitted since the Far North Coast Regional Strategy no longer applies;

**Kyogle LEP 2012 – Deferred Land and Rural Zone Consolidation (No additional houses or jobs)**

- c. The Project Timeline in Part 6 of the Planning Proposal is to be updated;
- d. Part 4 of the planning proposal is to be amended to include maps that show an extract of map tile 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;
- e. The proposed RU1 zone land use table is to be included as an appendix to the planning proposal; and
- f. The proposed RU1 land use table is to include a new objective or objectives to address the potential impact of proposed developments on the natural environment.

2. Once amended in accordance with condition 1, the planning proposal is to be forwarded to the Department for approval under section 57(2) of the Environmental Planning and Assessment Act 1979, prior to community consultation.

3. The planning proposal proceed as a 'routine' planning proposal.

4. A community consultation period of 28 days is necessary.

5. The planning proposal is to be completed within 9 months.

6. The RPA is to consult with the following State agencies and organisations;

- a. Rural Fire Service;
- b. Department of Primary Industries - Agriculture;
- c. Department of Primary Industries - Lands
- d. The NSW Local Aboriginal Land Council;
- e. Office of Environment and Heritage; and
- f. Relevant Native Title Claimants.

7. A written authorisation to exercise delegation not be issued to Kyogle Council.

8. A delegate of the Secretary agree that the inconsistencies of the proposal with S117 Directions 1.5, 2.3, 2.5, 4.3, 5.10, and 6.2 are justified in accordance with the terms of the direction.

9. A delegate of the Secretary note that the inconsistencies of the proposal with S117 Directions 2.1 and 4.4 remain unresolved.

Supporting Reasons :

The reasons for the recommendation are as follows;

- 1. The proposal will integrate all of the deferred land into the Kyogle LEP 2012 and in doing so will implement the Final Recommendations of the Northern Council's E Zone Review.
- 2. The proposal is consistent with the strategic planning framework and the Northern Councils E Zone Review Final Recommendations.

Signature:

T Rertice

Printed Name:

Tamara Rertice

Date:

26/5/2017

