

Kyogle LEP 2012 – Amendment #8 Temporary Workers' Accommodation and Roadside Stalls.

Proposal Title : **Kyogle LEP 2012 – Amendment #8 Temporary Workers' Accommodation and Roadside Stalls.**

Proposal Summary : **The planning proposal seeks to amend Kyogle LEP 2012 by;**

- Listing roadside stalls which are less than 8m² in size as exempt development in the RU1 Primary Production and RU2 Rural Landscape zones, subject to certain standards; and
- Making temporary workers' accommodation permissible with consent in the RU1, RU2, and RE2 Private Recreation zones by listing temporary workers' accommodation as an additional permitted use in Schedule 1 of the LEP and the inclusion of a local heads of consideration clause for this matter.

PP Number : **PP_2016_KYOGL_001_00**

Dop File No : **16/04507**

Proposal Details

Date Planning
Proposal Received : **24-May-2016**

LGA covered : **Kyogle**

Region : **Northern**

RPA : **Kyogle Council**

State Electorate : **LISMORE**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **The proposal applies to various land parcels in the Kyogle local government area.**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

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Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :	Far North Coast Regional Strategy	Consistent with Strategy :	No
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	Residential
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 proposal intends to:**

- 1. increase opportunities for agricultural producers to sell produce from their land;**
- 2. support agricultural enterprises by improving opportunities for accommodation for temporary or seasonal agricultural workers; and**
- 3. enhance the economic growth opportunities in Kyogle LGA through a strengthened rural sector.**

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 proposal intends to:**

- 1. amend the LEP to list roadside stalls which are less than 8m2 in size as exempt development in the RU1 Primary Production and RU2 Rural Landscape zones, subject to**

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certain standards;

2. amend the LEP to make temporary workers accommodation permissible with consent in the RU1, RU2 and RE2 Private Recreation zones by listing temporary workers dwelling as an additional permitted use in Schedule 1 of the LEP.

Prior to community consultation Part 2 Explanation of Provisions of the planning proposal is to be amended to better clarify that 'temporary workers' accommodation' is a type of 'residential accommodation'. This clarification should be included in the proposed local provision to be added to Part 6 of the Kyogle LEP 2012 and the entry to Schedule 1.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

2.3 Heritage Conservation

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

6.3 Site Specific Provisions

3.6 Shooting Ranges

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

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

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP (Exempt and Complying Development Codes) 2008

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 :

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

If No, explain : **See the assessment section of his report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **The proposed amendment to the Kyogle LEP 2012 will affect the written instrument only and no maps are required.**

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 it proposes changes that affect large areas of the LGA and have not previously been identified in a Local Growth Management Strategy that has been reviewed by the wider community. The Guide suggests written notification to the affected and adjoining land

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owners however this is impractical for a wide ranging proposal. It is therefore considered that a community consultation period of 28 days is appropriate.

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 July 2016. To ensure the RPA has adequate time to complete exhibition, reporting, and legal drafting, it is recommended that a time frame of 12 months is appropriate.

Delegation.

The RPA has requested an Authorisation to exercise delegation for this proposal. An Evaluation Criteria For the Delegation of Plan Making Functions has been provided. The proposal is considered to be of local planning significance. It is recommended that an Authorisation for the execution of delegation be issued to the RPA in this instance.

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 an adequate justification for the proposal.
4. Outlining a proposed community consultation program.
5. Providing a project time line
6. Completing the evaluation criteria for the delegation of plan making functions.

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 is not the result of a specific strategy or study. Council has recognised that there is a need to support the agricultural sector in the local government area (LGA) by providing additional and more streamlined opportunities for development that directly supports agriculture.

Roadside Stalls

Roadside stalls are presently permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones in Kyogle LEP 2012. Clause 5.4 of Kyogle LEP limits the size of roadside stalls to 8m2. Council considers the need for development consent unreasonable for such small developments. Council proposes to make roadside stalls which are less than 8m2 in size exempt development.

In addition to the maximum size limit of 8m2, roadside stall will only be exempt development when;

1. They are proposed to be located within the RU1 and RU2 zone or on a road reserve

directly fronting a property within these zones;

2. They are located on a private property or the consent of the road authority has been given to locate them in a road reserve;
3. They are no less than 100m from an intersection of two roads;
4. They must be for the sale of agricultural produce farmed or processed on the subject property;
5. There is adequate vehicle parking and sight lines; and,
6. They are not to be operated at night.

These development controls are considered to be suitable for roadside stalls as exempt development subject to consultation with the RMS. Should a proponent wish to construct a roadside stall which does not comply with these standards, the development application pathway is available to consider the proposal.

Temporary Workers' Accommodation

Council has recognised that the development of large scale horticultural enterprises in the region has required a substantial number of seasonal workers to travel to the region. Appropriate accommodation for these seasonal workers has not been available resulting in them often camping illegally creating issues for Council and the community.

Council is therefore seeking to introduce provisions in its LEP to allow and control development for temporary workers' accommodation so as to regularise this land use while ensuring that the agricultural industries which rely on seasonal workers have access to this resource.

Council has also identified that a similar need for temporary workers may arise with large infrastructure projects in the region and intends to make temporary workers' accommodation available for these workers as well.

It is considered that the proposed amendments to the LEP are the most appropriate means of facilitating the intention of the planning proposal.

Council has identified a net community benefit for roadside stalls as exempt development and for permitting temporary workers' accommodation with consent.

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Consistency with strategic planning framework :

Far North Coast Regional Strategy (FNCRS).

The proposal is not inconsistent with the actions and outcomes in the FNCRS.

The proposal to make small roadside stalls exempt development is not inconsistent with the provisions of the FNCRS. The FNCRS does not contain any actions or outcomes specific to the development of roadside stalls however this proposal will enable increased opportunities for rural landholders to improve the resilience of the rural economy. This is consistent with the vision of the FNCRS for a sustainable future, healthy, prosperous and diverse communities.

Temporary workers' accommodation is a land use that has not been considered by the FNCRS. Council has sought to define temporary workers accommodation as:

"... any habitable buildings and associated amenities erected on a temporary basis for the purpose of providing a place of temporary or short term accommodation for persons employed on projects for or to support agricultural production, including associated infrastructure projects."

Additionally Council has defined short term accommodation as:

"...accommodation that may be seasonal or for the duration of the completion of a development for or to support agricultural production in the area."

Temporary workers' accommodation (TWA) is therefore best described as an innominate form of residential accommodation. Council intends to permit TWA with consent in the RU1 and RU2 zones. In this regard the proposal is inconsistent with the FNCRS as it will potentially enable additional residential accommodation outside of the town and village growth boundaries in rural areas unsupported by a local growth management strategy.

The FNCRS states that rural residential development will be located close to centres with an adequate level of services. The proposal does not include similar requirements for TWA and therefore TWA development may potentially be located in isolated locations with limited access to infrastructure and services.

To address potential impacts of TWA developments Council has prepared a draft development control plan. The Draft DCP provisions included in the planning proposal include provisions which address:

1. Protection of agricultural land;
2. Land use conflict;
3. Design and siting of buildings and structures;
4. Visual impact;
5. Environmental impact;
6. Protection of amenity of surrounding properties;
7. Effluent and stormwater management;
8. Transport and access;
9. Natural hazards; and,
10. Heritage

The take up rate for TWA developments is expected to be relatively low. Additionally camping grounds, dual occupancies, rural workers dwellings and secondary dwellings, which are developments with similar potential impacts, are all currently permissible in these rural zones.

As a result of the permissibility of similar developments, the proposed DCP controls, the expected low take up for TWA developments and the temporary nature of TWA developments, the inconsistency of the proposal with the FNCRS is considered to be of minor significance as the proposal achieves the overall intent of the strategy which, as detailed in the planning proposal, seeks to develop healthy, prosperous and diverse communities and a sustainable future. It is considered that regulating temporary workers accommodation in the shire and supporting the agricultural sector will contribute positively to the rural community and the sustainable future of Kyogle LGA.

Draft North Coast Regional Plan

The proposal is not inconsistent with the Draft North Coast Regional Plan (the 'Draft RP'). Like the FNCRS, the Draft RP has not given consideration to the issue of temporary workers accommodation in rural zones.

The draft plan has similar requirements to the FNCRS in relation to only permitting new rural residential developments in accordance with approved strategies and consistent with the Settlement Panning Guidelines. In this regard the proposal is considered to be inconsistent with the Draft Regional Plan in the same manner as it is considered to be inconsistent with the FNCRS. Equally the inconsistency is considered to be of minor significance given the Draft DCP provisions which will guide the location of these proposed temporary workers accommodation.

The draft plan states that councils will need to limit dwellings in rural zones not associated with agriculture, or outside of rural residential areas, to avoid potential land use conflict with agricultural activities. The proposal includes draft DCP requirements which raise this issue as a matter to be addressed by the development application.

The draft plan does however support complimentary activities in rural zones and to this end the Action 1.2.1 of the draft plan states that the NSW Government will investigate appropriate complimentary activities in rural zones that promote the development of a stronger agricultural sector and will not adversely affect agricultural activities. In this regard the proposal is considered to be consistent with the draft plan.

Consistency with Council's Local Strategies.

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

The proposal is consistent with Council's CSP. Both components of the proposal will contribute to supporting the agricultural industry, and reversing the decline of services in rural areas. 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 (Exempt and Complying Development Codes) 2008 (the 'Codes SEPP')

The proposal is not inconsistent with the SEPP. The Codes SEPP does not list roadside stalls as exempt development and therefore the proposal to include roadside stalls as exempt development in Kyogle LEP 2012 is not inconsistent with the Codes SEPP.

SEPP 44 Koala Habitat Protection

The proposal to permit TWA with consent is not inconsistent with the SEPP as the provisions of the SEPP will continue to apply to development applications for TWA that result from the proposed amendments to the LEP.

SEPP 55 Remediation of Land

The proposal to permit TWA with consent is not inconsistent with the SEPP. The proposal does not rezone specific land and only enables the consideration of a development application for TWA. Due to the fact the proposal will permit TWA with consent in a range of zones (RU1, RU2 and RE2) and therefore over a wide area of land it is not possible to conduct preliminary site contamination assessments until development applications are lodged with the consent authority.

SEPP (Rural Lands) 2008

SEPP Rural Lands (the RLSEPP) contains Rural Planning Principles to guide development on rural land. The proposal provides an assessment against these principles. The proposal to permit roadside stalls as exempt development and permit TWA with consent is considered to be consistent with 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;
2. The proposal recognises the changing nature and trends of agriculture in the region and aims to provide small scale retail outlets and accommodation for temporary works to compliment the changing agriculture industry; and,
3. The proposal considers the social and economic interests of the community by providing an outlet for the sale of agricultural produce and enabling a mechanism for regulating the accommodation of temporary workers to minimise the impact on the community.

The proposal to enable TWA with consent in the RU1 and RU2 zones is inconsistent with the principles as it does not utilise a strategic approach to the location of what is in effect residential accommodation in rural areas. Permitting TWA with consent in rural zones has not taken into account the potential impacts on natural resources, State or regionally significant farmland, and constrained land, the potential impacts on other forms of rural lifestyle, settlement and housing, and the consideration of impacts on services and infrastructure for residential accommodation in potentially isolated localities.

The planning proposal indicates that the Kyogle DCP will be amended to include guidelines that will protect the potential and viability of good quality agricultural land, avoid the potential for land use conflict and ensure development for TWA responds appropriately to ecological values and natural hazards. A copy of the draft chapter of the DCP is included as an attachment to the planning proposal. While these matters can be addressed to some degree through the development application process, it would be beneficial for the planning for TWA if Council developed a more comprehensive heads of consideration clause for the location of TWA to include in the LEP.

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, 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, 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 and 5.1.

Direction 1.2 Rural Zones is relevant to the proposal. The direction provides that a planning proposal must not rezone land from a rural to a residential zone. The planning proposal does not seek to rezone rural land, instead it proposes to permit with consent, temporary workers accommodation in certain zones. The proposal is not considered to be inconsistent with this direction.

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 utilise a strategic approach to the location of what is in effect residential accommodation in rural areas. Permitting TWA with consent in rural zones has not taken into account the potential impacts on natural resources, State or regionally significant farmland, and constrained land, the potential impacts on other forms

of rural lifestyle, settlement and housing, and the consideration of impacts on services and infrastructure for residential accommodation in potentially isolated localities.

The inconsistency is considered to be of minor significance since the potential for TWA to be developed is considered to be low and the impacts on the environment and the suitability of subject sites can be addressed through Council's proposed DCP provisions and at development application stage. 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 permit TWA on land in rural areas that may contain environmentally sensitive areas. The proposal includes a draft heads of consideration clause however this draft clause does not require consideration of the potential impacts of TWA on environmentally sensitive areas. The proposal also includes a draft chapter for Kyogle DCP which will include guidelines to ensure ecological values are protected from inappropriate TWA. The potential environmental impact of a proposed development, in this case TWA, is required to be considered by a consent authority under section 79C of the Act and therefore the inconsistency of the proposal with the direction is considered to be of minor significance and justified in accordance with the terms of the direction.

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 permit TWA with consent on land that may have Aboriginal or European heritage significance. Given the range of land zones on which TWA will be permitted and the resulting wide area of potential subject land 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 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 inconsistent with this direction as in some cases it is envisaged that TWA may be proposed on flood prone land. It is considered this inconsistency is 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 subject to the proposal to permit temporary workers accommodation 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 5.1 Implementation of Regional Strategies is relevant to the proposal. The direction provides that a planning proposal must be consistent with the regional strategy. As discussed previously in this report the proposal is considered to be inconsistent with the Far North Coast Regional Strategy. This inconsistency is considered to be of minor significance as the proposal achieves the overall intent of the strategy. The inconsistency is therefore considered to be justified in accordance with the terms of the direction.

The proposal is otherwise consistent with S117 Directions.

Environmental social
economic impacts :

The proposal will permit temporary workers accommodation with consent on a wide range of land in various zones. The potential impact of these developments on critical habitat or threatened species will be assessed at development application stage and this is appropriate as it is not possible to predict where these development are likely to be

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proposed and therefore determine whether the land is of ecological significance.

The other expected environmental impacts from temporary workers accommodation have been addressed by Council in its draft DCP provisions. As previously discussed these provisions cover a wide range of expected impacts and land constraints which will need to be addressed at development application stage.

It is anticipated that the proposal will have a positive economic and social impacts by providing support for labour resources for the agricultural sector and regulating the location of temporary workers accommodation to ensure it does not have an adverse impact on rural communities.

Agency Consultation.

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

1. Roads and Maritime Services;
2. Rural Fire Service;
3. Department of Primary Industries - Agriculture; and
4. Office of Environment and Heritage.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Office of Environment and Heritage
NSW Department of Primary Industries - Agriculture
NSW Rural Fire Service
Transport for NSW - Roads and Maritime Services**

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 :

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
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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
 2.3 Heritage Conservation
 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
 6.3 Site Specific Provisions
 3.6 Shooting Ranges

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

1. The planning proposal proceed as a 'routine' planning proposal.
2. A community consultation period of 28 days is necessary.
3. The planning proposal is to be completed within 12 months.
4. The RPA is to consult with the following State agencies and organisations;
 - a. Roads and Maritime Services;
 - b. Rural Fire Service;
 - c. Department of Primary Industries - Agriculture;
 - d. Office of Environment and Heritage; and
5. A written authorisation to exercise delegation be issued to Kyogle Council.
6. The Secretary's delegate agree that the inconsistency of the proposal with S117 Directions 1.5, 2.1, 2.3, 4.3 and 5.1 are justified in accordance with the terms of the direction.
7. The Secretary's delegate note that the potential inconsistency with S117 Direction Planning for Bushfire Protection remains unresolved until after consultation with the NSW RFS.
8. Prior to community consultation Part 2 Explanation of Provisions of the planning proposal is to be amended to better clarify that 'temporary workers' accommodation' is a type of 'residential accommodation'. This clarification should be included in the proposed local provision to be added to Part 6 of the Kyogle LEP 2012 and the entry to Schedule 1.

Supporting Reasons : The reasons for the recommendation are as follows;

1. The proposal recognises the importance of the agricultural industry in the region and will contribute to the promotion and protection of sustainable economic activities in rural areas;
2. The proposal recognises the changing nature and trends of agriculture in the region and aims to provide small scale retail outlets and accommodation for temporary works to compliment the changing agriculture industry;
3. The potential impacts of permitting temporary workers accommodation with consent can be adequately addressed through DCP provisions and the development application process; and,
4. The proposal's inconsistencies with the strategic planning framework are considered to be of minor significance.

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Signature:



Printed Name:

Craig Doss

Date:

3/6/16