



# Housekeeping amendments to the Kiama Local Environmental Plan 2011 November 2018



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## 1.0 Introduction

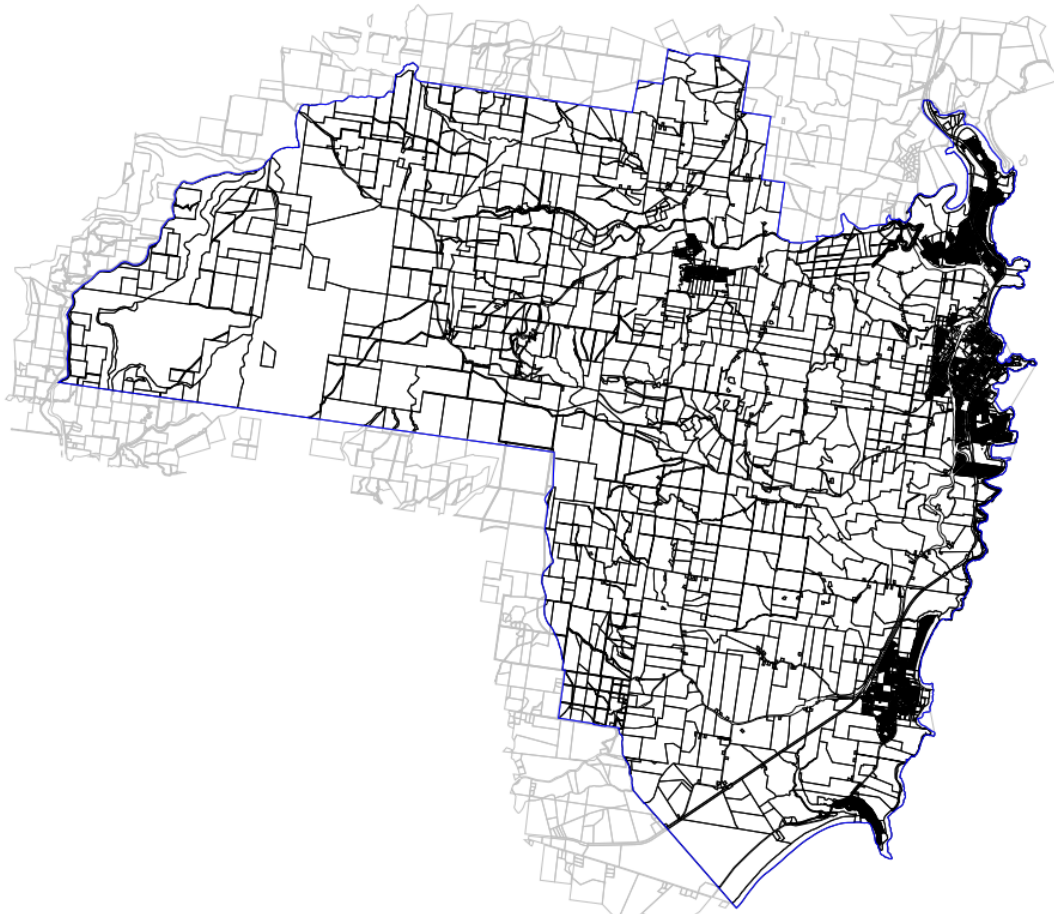
The 2018 Housekeeping amendment seeks to amend the Kiama LEP 2011 to improve the operation of the plan.

It is requested that Council be given plan making functions for this PP.

The PP has been prepared in accordance with 'A Guide to Preparing Planning Proposals' and 'A Guide to Preparing Local Environmental Plans'.

- To include in Schedule 2 Exempt Development minor activities that are conducted on public land such as surf schools, personal or group training, events, filming and markets and include appropriate controls to limit the scale of the activity.
- To amend the land use table in the IN2 Light Industrial zone by removing Industrial Training Facilities from the prohibited uses;
- Add an essential services clause to Part 6.

### 1.1 Subject Land



**Figure 1 – Subject Land**

## 2.0 Part 1 – Intended Outcome

The objectives of this Planning Proposal are:

- To help facilitate minor activities and events that are of generally temporary in nature;
- To rectify minor errors created in the original version of the LEP 2011; and
- To ensure that adequate services are provided to all developments.

## 3.0 Part 2 – Explanation of Provisions

It has become apparent through the application of the LEP that there are opportunities for certain minor activities or events to be removed from the development application process, especially where they are already regulated through other State Legislation. This can be achieved through utilising Schedule 2 Exempt Development in the LEP 2011, which currently has no prescribed uses.

There is also an error that needs to be rectified as the land use Industrial Training Facility is listed as being both permitted and prohibited within IN2 Light Industrial Zone. This appears to be a drafting error from the original gazettal of the Plan and needs to be rectified to give clarity to prospective applicants and consent authorities.

Kiama LEP 1996 had a clause that required the provision of essential services as a mandatory consideration in the assessment of a development application. This was not carried over into the new Standard Instrument LEP as it was not a standard clause, however it would be beneficial for it to be included in the LEP 2011 as it will add extra weight to the requirement for developments to have access to essential services. This is an approach taken by a number of other Councils who have an Essential Services clause in their LEPs.

### Minor Uses

It is proposed to add land uses of a minor nature that occur on public land to Schedule 2 as Exempt Development. It is intended to include uses such as surf schools, personal or group training, markets, filming and events. These uses are required to obtain a licence to operate under Section 68 of the Local Government Act 1993 and/or under various Sections of the Roads Act, so Council can still regulate these uses through the application of a Council endorsed Policy adopted under Part 3 of the Local Government Act. Development Standards can also applied to these uses in the LEP to regulate things such as the hours of operation, exclusion of certain zones or to limit the number total number of

days allowed. It is not proposed to allow these land uses as Exempt Development when undertaken on private land as the same Council regulation is not available.

Table of proposed exempt uses on public land:

<b>Land Use</b>	<b>Standards</b>
Swimming schools, surf schools and personal or group fitness training	<p>Must not permanently occupy the public land.</p> <p><b>Note.</b></p> <p>The proponent must have obtained any required lease, licence or other authorisation from the relevant public authority.</p>
Events	<ul style="list-style-type: none"> <li>• No permanent structures to be erected or physical changes to the land.</li> <li>• Must have a traffic management plan.</li> </ul> <p><b>Note.</b></p> <p>The proponent must have obtained any required lease, licence or other authorisation from the relevant public authority.</p>
Filming	<p>Maximum 90 days in succession, may be carried out on public land owned or managed by public authorities, with the written consent of the land owners.</p>
Markets	<ul style="list-style-type: none"> <li>• No permanent structures to be erected.</li> </ul>

	<ul style="list-style-type: none"> <li>• Must have a traffic management plan.</li> </ul> <p><b>Note.</b></p> <p>The proponent must have obtained any required lease, licence or other authorisation from the relevant public authority.</p>
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### Land Use Table Errors

It has been identified that the land use Industrial Training Facility is identified as both a permissible and prohibited use in the IN2 zone. This clearly is confusing for both applicants and Council staff needs to be rectified. The use is defined below: ***industrial training facility*** means:

*a building or place used in connection with vocational training in an activity (such as forklift or truck driving, welding or carpentry) that is associated with an industry, rural industry, extractive industry or mining, but does not include an educational establishment, business premises or retail premises.*

The use is consistent with the objectives of the zone which are:

- To provide a wide range of light industrial, warehouse and related land uses.
- To encourage employment opportunities and to support the viability of centres.
- To minimise any adverse effect of industry on other land uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To support and protect industrial land for industrial uses.

It is therefore proposed to remove the land use from the list of prohibited land uses in the IN2 Light Industrial zone.

## Essential Services

Under the previous Kiama LEP 1996, a clause existed which required the mandatory consideration for the provision of essential services to developments. This was not included as a mandatory or optional clause in the Standard Instrument Principal LEP, however it is a clause that is still used in many other Councils' Standard Instrument LEP's. The addition of a clause would likely be added to Part 6 of the Kiama LEP 2011 and would require the consent authority to be satisfied that essential services for a proposed development have been provided or satisfactory arrangements have been made for the provision of such services. The essential services clause would include:

- The supply of water;
- The supply of electricity;
- The disposal and management of sewage;
- Stormwater detention or on-site conservation; and
- Suitable vehicular access.

The adoption of an Essential Services clause in the LEP 2011 will give greater weight to the requirement to provide these services, which is considered to be in the broader public interest.



## 4.0 Part 3 - Justification

### Is the planning proposal a result of any strategic study or report?

The Planning Proposal is not a result of any specific study or report. The PP is a result of a Council resolution to endorse the subject amendments to the LEP 2011 on the basis that there are adequate provisions in other legislation for Council to be able to regulate these activities i.e. licencing provisions in the Local Government Act 1993.

Council endorsed the following at its Ordinary meeting of 26 June 2018:

#### **10.3 Housekeeping Amendments to the Kiama LEP 2011**

OC-18/202

*Committee recommendation that Council*

1. *Endorse the preparation of a Planning Proposal for minor housekeeping amendments to the Kiama LEP 2011 for:*
  - *The addition of minor activities and events on public land to be included in Schedule 2 Exempt Development;*
  - *Amendment of the land use table in the IN2 Light Industrial Zone by removing Industrial Training Facilities from the prohibited land uses;*
  - *The addition of an Essential Services clause to be added to Part 6 of the Kiama LEP 2011.*
2. *Forward the Planning Proposal to the Department of Planning and Environment for Gateway Determination.*
3. *Request plan-making delegations from the Department of Planning and Environment.*

*(Councillors Reilly and Way)*

*For: Councillors Brown, Honey, Reilly, Rice, Sloan, Steel, Watson, Way and Westhoff*

*Against: Nil*

### Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A Planning Proposal is the only mechanism available for amending the current provisions of the LEP.

### Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional or district plan or strategy?

#### **Illawarra-Shoalhaven Regional Plan 2015**

The Illawarra-Shoalhaven Regional Plan (ISRP) applies to the Kiama Local Government Area. The proposal, specifically the amendments to Schedule 2 Exempt Development, will remove an unnecessary legislative barrier to conducting a minor business related activity on public land. Although the Kiama LGA is not specifically mentioned in Goal 2, the PP is consistent with the section titled 'Tourism in the Illawarra' as it promotes activities that could support growth in the tourism sector.



The amendment to the land use table and the adoption of an essential services clause are considered to have no impact on the implementation of the ISRP.

**Is the Planning Proposal consistent with a council's local strategy or other local strategic document?**

The Planning Proposal is not identified in any local strategic study, instead it was a result of identified shortcomings and/or errors within the LEP 2011.

**Is the planning proposal consistent with applicable State Environmental Planning Policies?**

The planning policy is consistent with applicable State Environmental Planning Policies. The most relevant policies to the PP are:

**SEPP Coastal Management:**

The Coastal SEPP is applicable due to the Exempt uses that are proposed potentially occurring in the Coastal Use and Coastal Environment areas. The most relevant is the proposal to Exempt Surf Schools from requiring development consent. This is consistent with the aims of the SEPP, however when issuing permits/licences under other related legislation Council will need to consider the impact of the activity on the coastal environment.

**SEPP (Exempt and Complying Development) 2008**

The PP proposes to add Exempt land uses and activities that are not already contained within the Codes SEPP, therefore there is no anticipated inconsistency between the PP and the SEPP.

The PP is considered to be appropriate in the context of the Kiama LGA as these uses can be regulated through provisions within other State legislation.

**SEPP (Rural Lands) 2008**

The PP has been assessed against the Rural Planning Principles contained within clause 7 and is considered to be consistent the principles and overall aims of the SEPP.

**SEPP (Sydney Drinking Water Catchment) 2011**

The SEPP applies to the western edge of the LGA. Development, such as dwelling houses, that will require essential services to be available may occur within the catchment area and require the concurrence of Sydney Water under clause 11 of the SEPP.

Please see Appendix 2 – Checklist for all State Environmental Planning Policies.

**Is the planning proposal consistent with applicable Ministerial Directions (Section 9.1 directions)?**

A Section 9.1 Ministerial Directions - Compliance Checklist has been compiled by Kiama Council and is included in Appendix 1.

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

The proposed Exempt activities proposed to be added to Schedule 2 will be located solely on Council land and will be regulated by other legislation such as the Local Government Act 1993. The proposed activities are temporary in nature and will not be permitted to involve vegetation removal.

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

There are no anticipated environmental impacts as a result of the PP.

**Has the planning proposal adequately addressed any social and economic effects?**

The PP is likely to have positive social and economic effects through the streamlined approval process for conducting minor activities on public land.

**Is there adequate public infrastructure for the planning proposal?**

The PP does not create any additional demand on public infrastructure as the addition of the minor activities to the Exempt Schedule 2 can already be undertaken as Development permissible with consent.

The creation of an Essential Services clause will ensure that development either has existing access to these services or will be required to provide essential services, usually at the developers cost.

**What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

Council has not consulted with any State or Commonwealth agencies in relation to this PP. Council proposes to consult with both the RFS, NSW Department of Industry – Crown Lands and NSW Office of Environment and Heritage. Sydney Water may also be consulted with if required by NSW DPE.

## **5.0 Part 4 – Mapping**

N/A for this PP.

## **6.0 Part 5 – Community Consultation**

Council requests that the planning proposal be exhibited for a period of 28 days and include:

- Advertisement in Local Newspaper,
- Hard copies made available at the Council Administration Building and relevant libraries,
- Electronic copy on Council's website,

- Notification letters to relevant State agencies and other authorities/agencies nominated by the Department of Planning and Infrastructure.
- Other if required.

## 7.0 Part 6 – Timeframe

The timeframe for the Planning Proposal is that, from date of Gateway determination to date of submission to DPE, to finalise the LEP is a period of 12 months.

	<b>Timeframe</b>	<b>Possible dates assuming Gateway determination by end &lt;insert date&gt;</b>	<b>Responsibility</b>
Anticipated commencement date (dependant on Gateway determination)	January 2019	January 2019	DPE
Preparation of any outstanding studies (if required)	N/A.	N/A	Applicant
Consult with State/Commonwealth agencies	2 weeks after Gateway issued	February 2019	Agencies
Exhibition of PP and technical Studies (assuming no requirements to return to Gateway post additional studies)	Immediately following consultation with State/Commonwealth agencies.	February 2019	Council
Date of Public Hearing (if applicable)	N/A	N/A	Council
Review of Submissions and Preparation of report to Council	2 weeks	March 2019	Council
Report to Council following exhibition	First available round after completion of review of submissions (allow 8 weeks)	March 2019	Council
Final Maps and Planning proposal documents prepared	4 weeks from Council meeting	April 2018	Council

	<b>Timeframe</b>	<b>Possible dates assuming Gateway determination by end &lt;insert date&gt;</b>	<b>Responsibility</b>
Submission to DPE for finalisation of LEP	4 weeks from Council meeting	May 2019	Council
Anticipated date Council will forward final Planning Proposal to DPE for notification	3 months from Department finalisation notification	May 2019	Council
Anticipated date LEP will be notified.	Unknown	June 2019	Parliamentary Counsel and DPE

## 8.0 Appendix 1 - Section 9.1 Ministerial Directions – Compliance Checklist prepared by Kiama Municipal Council

<b>Ministerial Direction</b>	<b>Comment</b>
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	The PP is not considered to have an adverse impact on employment growth, employment lands or the viability of identified areas.
1.2 Rural Zones	The majority of public lands that could be used for the above-mentioned uses are located in Environmental, Public Recreation or Special Purpose zones and therefore will have negligible impact on rural lands.
1.3 Mining, Petroleum Production and Extractive Industries	This Direction does not apply as it will not have the effect of prohibiting or restricting the potential for extraction and development of these resources.
1.4 Oyster Aquaculture	N/A
1.5 Rural Lands	Due to the anticipated location and short-term, minor nature of these events this Direction is not considered applicable.
<b>2. Environment and Heritage</b>	
2.1 Environment Protection Zones	The proposed Exempt uses will only apply to Council owned/managed land and will still be subject to approval under the Local Government

Ministerial Direction	Comment
	Act 1993 to ensure that no environmental impacts arise from the land use.
2.2 Coastal Management	In preparing the PP, the Coastal Management Act 2016, Coastal Management Manual and associated toolkit, and the NSW Coastal Design Guidelines were taken into consideration. Due to the temporary nature of the proposed Exempt activities, it is considered that the PP is consistent with the Direction. The new requirement for essential services is considered to have nil effect on the Management of Coastal areas.
2.3 Heritage Conservation	<p>The Exempt activities will be minor and temporary in nature and are not considered to have the potential to impact areas of Aboriginal Heritage Significance.</p> <p>The Essential Services clause has the potential to unearth items of Aboriginal significance. This will be considered in the assessment of a development application that is subject to the clause and will be considered on a case by case basis.</p>
2.4 Recreation Vehicle Areas	N/A
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	N/A
<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	<p>The proposed Exempt uses are unlikely to occur in a residential zone.</p> <p>The addition of an essential services clause will ensure that all new residential development is adequately serviced.</p>
3.2 Caravan Parks and Manufactured Home Estates	N/A
3.3 Home Occupations	N/A
3.4 Integrating Land Use and Transport	This direction is relevant to the proposal, however the exempt uses will be subject to approval under the Local Government Act 1993 and as such and traffic management issues can be addressed through the provision of a traffic management plan where required.
3.5 Development Near Licensed Aerodromes	N/A
3.6 Shooting Ranges	N/A
<b>4. Hazard and Risk</b>	

<b>Ministerial Direction</b>	<b>Comment</b>
4.1 Acid Sulfate Soils	Applies but not relevant to this proposal.
4.2 Mine Subsidence and Unstable Land	N/A
4.3 Flood Prone Land	Applies. Evacuation plans can be required as part of the Local Government Act approval process. A Council Policy may be prepared to assist in enforcing this requirement.
4.4 Planning for Bushfire Protection	Applies. Evacuation plans can be required as part of the Local Government Act approval process. A Council Policy may be prepared to assist in enforcing this requirement.
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies	N/A
5.2 Sydney Drinking Water Catchments	Applies. Council will refer PP to Sydney Water is required by DPE for comment, however the likelihood of any impact on the drinking water catchment is extremely minimal due to the minor nature of the proposed changes and the small area of land that the SEPP applies to in the LGA.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	N/A
5.9 North West Rail Link Corridor Strategy	N/A
5.10 Implementation of Regional Plans	The proposal does not align with any of the specific actions in the ISRP, however streamlining the approval process for minor activities is consistent with the broader principle of: “support a strong, resilient and diversified economy that will enable the community to respond to environmental, economic and social challenges”.
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	N/A

<b>Ministerial Direction</b>	<b>Comment</b>
6.2 Reserving Land for Public Purposes	N/A
6.3 Site Specific Provisions	N/A
<b>7. Metropolitan Planning</b>	
7.1 Implementation of A Plan for Growing Sydney	N/A
7.2 Implementation of Greater Macarthur Land Release Investigation	N/A
7.3 Parramatta Road Corridor Urban Transformation Strategy	N/A
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	N/A
7.9 Implementation of Bayside West Precincts 2036 Plan	N/A
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	N/A



## 9.0 Appendix 2 - State Environmental Planning Policies

SEPP	Name	Applicable	Relevant	Not inconsistent
1	Development Standards	Y	N	N/A
19	Bushland in Urban Areas	N	N	N/A
21	Caravan Parks	Y	N	N/A
30	Intensive Agriculture	Y	N	N/A
33	Hazardous and Offensive Development	Y	N	N/A
36	Manufactured Home Estates	Y	N	N/A
44	Koala Habitat Protection	N	N	N/A
47	Moore Park Showground	N	N	N/A
50	Canal Estate Development	Y	N	N/A
52	Farm Dams and Other Works in Land and Water Management Plan Areas	N	N	N/A
55	Remediation of Land	Y	N	N/A
62	Sustainable Aquaculture	Y	N	N/A
64	Advertising and Signage	Y	N	N/A
65	Design Quality of Residential Apartment Development	Y	N	N/A
70	Affordable Housing (Revised Schemes)	N	N	N/A
-	Affordable Rental housing 2009	Y	N	N/A
-	Coastal Management 2018	Y	Y	Y
-	Educational Establishments and Childcare Facilities 2017	Y	N	N/A
-	Exempt and Complying Development Codes 2007	Y	Y	Y
-	Housing for Seniors or People with a Disability 2004	Y	N	N/A
-	Infrastructure 2007	Y	N	N/A
-	Integration and Repeals 2016	N	N	N/A
-	Kosciuszko National Park – Alpine Resorts 2007	N	N	N/A
-	Kurnell Peninsula 1989	N	N	N/A
-	Mining, Petroleum Production and Extractive Industries 2007	Y	N	N/A
-	Miscellaneous Consent Provisions 2007	Y	N	N/A
-	Penrith Lakes Scheme 1989	N	N	N/A
-	Rural Lands 2008	Y	Y	Y
-	State and Regional Development 2011	Y	N	N/A
-	State Significant Precincts 2005	Y	N	N/A
-	Sydney Drinking Water Catchment 2011	Y	Y	Y
-	Sydney Region Growth Centres 2006	N	N	N/A
-	Three Ports 2013	N	N	N/A
-	Urban Renewal 2010	N	N	N/A
-	Vegetation in Non-Rural Areas 2017	Y	Y	Y
-	Western Sydney Employment Area 2009	N	N	N/A
-	Western Sydney Parklands 2009	N	N	N/A

## 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:**

Kiama Municipal council

**Name of draft LEP:**

Housekeeping Amendments

**Address of Land (if applicable):**

The Planning Proposal applies to all land within the Kiama Local Government Area.

**Intent of draft LEP:**

To amend the Kiama LEP 2011 to include Exempt Development in Schedule 2, correct an error in the land use table and add an essential services clause into Part 6.

**Additional Supporting Points/Information:**

N/A

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 to 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?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?		N/A		
Does the planning proposal contain details relation to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?		N/A		
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
<b>Minor Mapping Error Amendments</b>	<b>Y/N</b>			
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?		N/A		
<b>Heritage LEPs</b>	<b>Y/N</b>			
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?		N/A		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		N/A		
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?		N/A		
<b>Reclassifications</b>	<b>Y/N</b>			
Is there an associated spot rezoning with the reclassification?		N/A		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		N/A		
Is the planning proposal proposed to rectify an anomaly in a classification?		N/A		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		N/A		
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?		N/A		
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?		N/A		
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> ?		N/A		

Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		N/A		
<b>Spot Rezonings</b>	<b>Y/N</b>			
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?		N/A		
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?		N/A		
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?		N/A		
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		N/A		
Does the planning proposal create an exception to a mapped development standard?		N/A		
<b>Section 73A matters</b>				
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 or a formatting error?;		N/A		
b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or		N/A		
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?		N/A		
(Note – the Minister (or Delegate) will need to form an Opinion under section 73A(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.