12.1

**Responsible Officer:** **Andrew Brown, Executive Manager Corporate Planning & Workforce**

**Author: Cara Stoltenberg, Strategic & Major Projects Planner**

**Attachments:** **1. PP1-2021**

Delivery Program Alignment

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| **2 Environment** | |
| Objective | 2.2 We will protect our environment through sustainable planning and well-resourced emergency services |
| Strategy | 2.2.1 Community emergency service providers are well resourced to adequately prepare and respond to natural disasters and emergencies |

Executive Summary

The objectives and intended outcomes of this Planning Proposal (**PP**) are:

1. To enable certain Temporary Events and development associated with Temporary Events on land zoned RE1 Public Recreation and/or any public roads to be undertaken as exempt development; and
2. To remove duplication of the approvals process under the *Local Government Act 1993, the Roads Act 1993* and the *Environmental Planning and Assessment Act 1979* as it relates to temporary events and development associated with Temporary Events by not requiring development approval to be granted under the *Environmental Planning and Assessment Act 1979*.

To achieve this intent, a PP is required to be submitted to the Department of Planning Industry and Environment (DPIE) to seek a Gateway Determination. This PP will amend the Narrabri Local Environmental Planning 2012 (“LEP”).

*Do not delete this line*

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| Recommendation   1. **That Council endorse the Planning Proposal to amend the provisions of the Narrabri Local Environmental Plan 2012 to enable Temporary Events and development associated with Temporary Events on land zoned RE1 Public Recreation and/or any public roads within the Shire to be undertaken as exempt development and forward to the Department of Planning, Industry and Environment requesting a Gateway Determination.** 2. **That Council seek authorisation from the Department of Planning Industry and Environment to be the local plan-making authority.** |

*Do not delete this line*

Background

The preparation of a PP is the first step in the DPIE Gateway Process, the process for making or amending local environmental plans.

The attached PP recommends an amendment to the LEP to enable Temporary Events and development associated with Temporary Events on land zoned RE1 Public Recreation and/or any public roads within the Shire to be undertaken as exempt development. The planning proposal also removes duplication of the approvals process under the *Local Government Act 1993, the Roads Act 1993* and the *Environmental Planning and Assessment Act 1979.*

The existing approval pathway for anyone wanting to hold an event on land within the Shire such as community fundraising events, bake sales, and the like, involves multiple applications and fees including the lodgment of a development application, as well as a local approval, and in some instances a section 138 Roads Act approval. It is considered that numerous different applications are unnecessary and an amendment to the LEP is the only method to reduce the requirement for multiple applications and the most effective means of permitting Temporary Events within public reserves and roads without multiple approvals.

The requirement for approval to be obtained under the *Local Government Act 1993* and the *Roads Act 1993* will remain.

The PP is attached for Council’s consideration.

If Council adopts the attached PP, then it would be sent to the DPIE who would indicate if it considers the PP suitable for exhibition. The DPIE may also place conditions on any approval for exhibition, stipulate the timeframe and terms of that exhibition and require consultation with any public authorities that it deems necessary.

The estimated time frame for the LEP amendment process is outlined in the PP attached to this report.

Current Situation

The PP attached to this report is an amendment to an earlier PP (“**the original PP**”) that proposed to amend the provisions of the LEP to enable Temporary Events and development associated Temporary Events on land zoned RE1 Public Recreation and/or any public roads within the Shire to be undertaken without Development Consent. Council at its October 2018 ordinary Council Meeting resolved the following;

* That Council:

1. *Endorse the Planning Proposal to amend the provisions of the Narrabri Local Environmental Plan 2012 to enable Temporary Events and development associated Temporary Events on land zoned RE1 Public Recreation and/or any public roads within the Shire to be undertaken without Development Consent and forward the Planning Proposal to the Department of Planning and Environment with a request for a Gateway Determination.*
2. *Notify the Department of Planning and Environment of its intention to use the plan making power delegated to Council by the Department to make the proposed amendment to Narrabri Local Environmental Plan 2012.*
3. *Delegate to the General Manager any necessary amendments required to the Planning Proposal as a result of considerations by the Department of Planning and Environment or as a result of the Gateway Determination.*

A Gateway Determination was requested for the original PP on 7 November 2018 and a Gateway Determination was received by Council on 4 December 2018. The original PP was placed on public exhibition between 13 December 2018 and 18 January 2019. During this time no submissions were received. Council requested comments from Roads and Maritime, now called Transport for NSW (TfNSW), and the NSW Rural Fire Service (RFS) on 6 December 2018. RFS advised on 24 January 2019 that they had no comments. TfNSW advised the following on 10 January 2019:

*“Roads and Maritime, at this time, withholds making comment and requests an opportunity to discuss the proposed amendments with Council. Specifically, Roads and Maritime seeks further information to understand the implications of allowing traffic generating land uses in the RU1 zone without* *compromising road safety and traffic efficiency on high speed rural classified roads”.*

While the above comment was in reference to another PP Council had requested comments for at the same time which sought to amend the permitted uses in the RU1 Primary Production Zone, it was also given as a response to the original PP. On-going communication and correspondence between Council and TfNSW since that time concluded with TfNSW advising Council they would support a clause similar to that used by Ryde Council, and if the following “Note 2” was included;

* *Note 2—Exempt development may be carried out without the need for development consent under the Act. Such development is not exempt from any approval, licence, permit or authority that is required under any other Act and adjoining owners’ property rights and the common law still apply.*

The PP proposes to amend the following components of the LEP in relation to Temporary Events:

* *Insert Temporary Events and development associated Temporary Events on land zoned RE1 Public Recreation and/or any public roads within the Shire into* ***Schedule 2 Exempt development.***

It has been agreed with TfNSW that the new exempt development provision is proposed to read as follows;

1. *Development for the purposes of temporary uses including community events (such as ceremonies, cultural celebrations, exhibitions, fetes, fairs, gatherings, markets or sporting events).*
2. *Must be on land zoned RE1 Public Recreation and/or any public roads within the Shire.*
3. *Maximum number of patrons on any one site —300.*
4. *Must not be conducted for more than 12 days (up to a maximum of 3 consecutive days) in any period of 12 months.*
5. *May only operate between 7.00 am and 9.00 pm.*
6. *Must provide sufficient toilet facilities and access to water for patrons and staff.*
7. *The noise level of any open air entertainment must not exceed the background noise level by more than 5dB(A) when measured at the nearest residential boundary.*
8. *Must provide adequate artificial lighting, if necessary, to permit safe movement of patrons.*
9. *Operator must have arrangements for the collection, by an authorised trade waste contractor, of waste and recyclable materials that are generated by the event or use.*
10. *Must not include permanent physical change to the fabric of the location where the use occurs.*
11. *Must maintain emergency vehicle access to and around the premises.*
12. *Must not restrict pedestrian access to public facilities unless alternative access is provided.*
13. *Must not prevent pedestrian access to existing footpaths unless alternative pedestrian pathways are provided (alternative pedestrian pathways are to have physical barriers erected between the pathway and any adjoining road).*
14. *Must not restrict any car parking required to be provided by a condition of a development consent or plan of management applying to the land or any vehicular or pedestrian access to or from the land.*
15. *Must not redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property.*
16. *Must be covered by a policy of insurance taken out by the person carrying out the development that adequately covers the public liability of the person in respect of the carrying out of the development for an amount approved by the owner of the land on which the development is carried out.*
17. *If it is the erection of a temporary structure—be erected on a surface that is sufficiently firm and level to sustain the structure while in use.*
18. *If it is the erection of a temporary structure—be able to resist loads determined in accordance with the following Australian and New Zealand Standards—*

*(i)  AS/NZS 1170.0:2002, Structural design actions, Part 0: General principles,*

*(ii)  AS/NZS 1170.1:2002, Structural design actions, Part 1: Permanent, imposed and other actions,*

*(iii)  AS/NZS 1170.2:2011, Structural design actions, Part 2: Wind actions.*

***Note 1—***[*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*](https://clicktime.symantec.com/3He6yPby2qwNeD2KZuMfgiq7Vc?u=https%3A%2F%2Fwww.legislation.nsw.gov.au%2Fview%2Fhtml%2Finforce%2Fcurrent%2Fepi-2008-0572)*specifies exempt development under that Policy. The Policy has State-wide application. This Schedule contains additional exempt development not specified in that Policy.*

***Note 2—****Exempt development may be carried out without the need for development consent under the Act. Such development is not exempt from any approval, licence, permit or authority that is required under any other Act and adjoining owners’ property rights and the common law still apply.*

***Note 3—****This clause only permits one temporary event to occur at any given time.*

***Note 4—****This clause is applicable to class 2, 3 and 4 events as defined by the Guide to Traffic and Transport Management for Special Events.*

Note 1 and 2 are currently included in the LEP, TfNSW propose the inclusion of Note 3 and 4. However, the final drafting of the amendment will be at the discretion of the NSW Parliamentary Counsel.

Council have recently received advice from DPIE that outlines the following two (2) options to finalise the original PP:

1. Continue as is with the new clause whereby Parliamentary Counsel will draft the legal wording and determine whether it is possible to include notes to satisfy TfNSW. However, all events will still require an assessment under Part 5 of the EP & A Act, and TfNSW have not advised they are agreeable to this option; or
2. Amend the original PP to deal with the matter as ‘exempt’ development similar to that used by Ryde Council thereby resolving the Part 5 issue. This approach would however require Council to amend the PP and obtain a Gateway alteration from DPIE.

As the previous Council resolution referred specifically to “development without consent”, an amendment to the original PP is required to be reported to Council before requesting a new Gateway Determination.

The PP is attached for Council’s consideration.

If Council resolves to adopt the attached PP, the next step is to forward lodge the PP to DPIE via the NSW Planning Portal requesting a Gateway Determination. DPIE may then place conditions on any approval for exhibition, stipulate the timeframe and terms of that exhibition and require consultation with any public authorities that it deems necessary.

The estimated time frame for the LEP amendment process is outlined in the attached PP.

**Financial Implications**

Council’s adoption of the recommendation has no financial implications.

**Statutory and Policy Implications**

This matter may result in the amendment of the LEP. The PP is an environmental planning instrument, a statutory legal document affecting land use within the Narrabri Shire Local Government Area.

**Consultation**

The original PP was placed on public exhibition between 13 December 2018 and 18 January 2019. During this time no submissions were received.

The terms of any consultation required to complete this LEP amendment will be stipulated by the DPIE when it issues a new Gateway Determination in relation to the PP.

No formal public consultation has been carried out in relation to the amended PP.

**External Consultation**

* NSW Department of Planning, Industry and Environment.
* Transport for NSW.
* NSW Rural Fire Service.

**Internal Consultation**

* Design Services Manager.
* Community Facilities Manager.