



IRF21/1796

## Gateway determination report – PP 2021-3342

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Apply a RU1 Primary Production Zone to deferred matter areas and land zoned RU2 Rural Landscape, undertake associated housekeeping amendments and changes to development standards and the introduction of a biodiversity clause and overlay into Kyogle LEP 2012 (0 homes, 0 jobs)

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**Table 1 Reports and plans supporting the proposal**

## Relevant reports and plans

Planning Proposal 21 April 2021

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

|                                 |  |
|---------------------------------|--|
| <b>LGA</b>                      | <b>Kyogle</b>  |
| <b>PPA</b>                      | <b>Kyogle Shire Council</b>  |
| <b>NAME</b>                     | <b>Apply a RU1 Primary Production Zone to deferred matter areas and land zoned RU2 Rural Landscape, undertake associated housekeeping amendments and changes to development standards and the introduction of a biodiversity clause and overlay into Kyogle LEP 2012 (0 homes, 0 jobs)</b> |
| <b>NUMBER</b>                   | <b>PP-2021-3342</b>  |
| <b>LEP TO BE AMENDED</b>        | <b>Kyogle LEP 2012</b>   |
| <b>ADDRESS</b>                  | <b>Kyogle LGA</b>  |
| <b>DESCRIPTION</b>              | <b>Kyogle LGA</b>  |
| <b>RECEIVED</b>                 | <b>3/05/2021</b>   |
| <b>FILE NO.</b>                 | <b>IRF21/1796</b>  |
| <b>POLITICAL DONATIONS</b>      | <b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>   |
| <b>LOBBYIST CODE OF CONDUCT</b> | <b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>   |

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to implement the Northern Councils E Zone Review Final Recommendations by:

- applying a single rural zone across the Kyogle LGA;
- undertaking associated housekeeping amendments and changes to development standards; and
- the introduction of a biodiversity clause and overlay into Kyogle LEP 2012.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Kyogle LEP 2012 per the changes below:

**Table 3 Current and proposed controls**

| Control                        | Current  | Proposed  |
|--------------------------------|--|---|
| Zone                           | Deferred Matter Land<br>RU2 Landscape<br>Village (McDougall St, Kyogle)<br>Deferred Matter Land (Kyogle showground and sports field) | RU1 Primary Production<br>RU1 Primary Production<br>R1 General Residential<br>RE1 Public Recreation |
| Maximum height of the building | 0m   | 9m (land to be zoned R1 at McDougall St)  |
| Minimum lot size               | Nil (Deferred Matter Village)<br>40ha (Deferred Matter Non-Urban)  | 550m <sup>2</sup><br>40ha or 100ha consistent with adjoining land                                   |
| Number of dwellings            | N/A  | 0   |
| Number of jobs                 | N/A  | 0   |

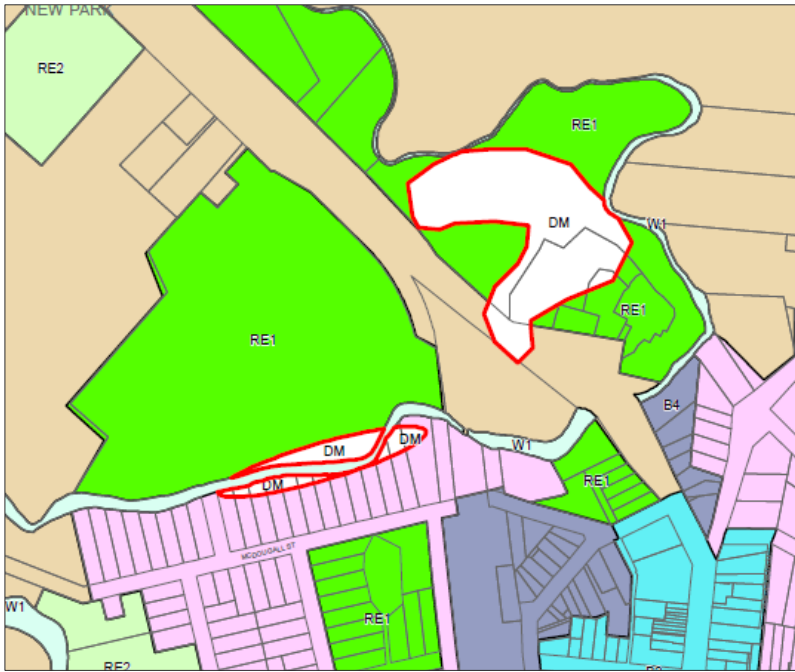
Other matters being undertaken by the proposal include:

- introduction of a biodiversity overlay map and associated clause;
- adding an additional objective to the RU1 Primary Production land use table to address the potential impact of proposed developments on the natural environment;
- removing the RU2 Rural Landscape zone land use table and references to the RU2 Rural Landscape zone in clauses 4.1AA, 4.1A, 4.1B, 4.2A, 4.2B, 4.2C and item 1 of Schedule 1;
- adding 'places of public worship' as permitted with consent in the RU1 Primary Production zone;
- updating the mapping of two heritage items that are located partly within deferred areas;
- correcting a mapping error on the land zoning map that shows an existing small area as E3 Environmental Management;
- updating the flood planning map to include two deferred areas at Kyogle within the flood planning area;
- updating the land application map to remove the deferred matters;
- correcting minor mapping issues to better align planning controls with the cadastre;
- repealing Interim Development Order No.1 - Shire of Kyogle and Interim Development Order No.1 – Shire of Terania; and
- updating clause 1.3(1A) land to which this plan applies.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The planning proposal applies across the LGA to the rural lands as show in the maps accompanying the proposal along with the following deferred matter sites within the Kyogle township (Figure 1).



**Figure 1 Deferred matter sites within the Kyogle township (source: planning proposal)**

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Kyogle LEP 2012 which are suitable for community consultation.

## 1.6 Background

During the preparation of Kyogle LEP 2012 the former Minister of Planning announced a review into the application of environmental zones by Far North Coast Councils. All proposed environmental zones were deferred from Kyogle LEP 2012 as a result.

The Northern Councils E Zone Review Final Recommendations report was released in 2015. The review determined that Kyogle should apply a rural zone to the deferred lands, equivalent to the zone in the current Interim Development Order, until investigations are completed to identify appropriate environmental zones or additional mapped planning controls.

Council commenced planning proposal PP\_2017\_KYOGL\_004\_00 to rezone the deferred matter lands to a rural zone consistent with the review. The Gateway determination for this proposal required the application of both RU1 Primary Production and RU2 Rural Landscape zones across the LGA. This proposal was not however completed and has since been superseded by Council's Local Strategic Planning Statement (LSPS) which identifies the application of a single RU1 Primary Production zone across the non-urban areas of the LGA along with the introduction of a biodiversity overlay (Action A1.3). Council has requested the termination of PP\_2017\_KYOLG\_004\_00 and a Gateway determination for the new proposal which is consistent with their LSPS. This is considered appropriate.

## 2 Need for the planning proposal

The proposal is the direct outcome of Council's implementation of the Northern Councils E Zone Review Final Recommendations report and their LSPS.

The proposal is needed to deliver the strategic intent of these documents and to provide a single modern local environmental planning instrument for the Kyogle LGA.

In addition to the major changes identified in Table 3 above, the proposal will also include the application of a number of associated housekeeping alterations to provide a consistent and co-ordinated approach to land use planning under a single environmental planning instrument for the Kyogle LGA. These housekeeping amendments include finalising the mapping of heritage items and the flood planning area, adding an objective to the RU1 zone to reflect the natural values that are present in parts of the zone, removing miscellaneous references to the RU2 Zone in the written instrument, better aligning planning controls with the cadastre and making places of public worship permissible in the RU1 Zone. All the changes proposed are considered necessary and appropriate and are supported.

## 3 Strategic assessment

### 3.1 Regional Plan

#### *North Coast Regional Plan 2036*

The proposal is considered to be consistent with the relevant aspects of the North Coast Regional Plan 2036, particularly in regard to the directions relating to supporting agriculture and the protection of the environment.

#### *Northern Councils E Zone Review Final Recommendations report*

The proposal is considered to be generally consistent with the recommendations by applying a RU1 Primary Production zone to the deferred lands which is consistent with the equivalent zone in the current Interim Development Order (the exception is the application of a R1 General Residential zone and RE1 Public Recreation zone to small areas within and adjoining the Kyogle township to reflect their existing residential or recreation land use which is considered appropriate).

The proposal is also consistent with the requirements for a mapped planning control under the review as the proposed biodiversity mapping that has been prepared by Council and the NSW Biodiversity and Conservation Division is limited to identified areas of biodiversity value that would meet the criteria for a E2 Environmental Conservation or E3 Environmental Management zone.

### 3.2 Local

The proposal confirms that it is consistent with the following local plans.

#### *Kyogle Local Strategic Planning Statement 2020*

The proposal is consistent with the Kyogle Local Strategic Planning Statement (LSPS) 2020 which identifies the importance of amending the Kyogle LEP 2012 to introduce a single rural zone (RU1) and biodiversity overlay to support the growth and diversification of the agricultural sector while applying appropriate protections to environmental assets.

#### *Kyogle Community Strategic Plan 2016-2026*

The proposal is consistent with the Kyogle Community Strategic Plan 2016-2026 which identifies the need to review and amend the Kyogle LEP 2012 to streamline the planning process while ensuring sustainable environmental outcomes.

### 3.3 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all applicable section 9.1 Directions except in relation to the matters discussed below.



**Table 4 9.1 Ministerial Direction assessment**

| Directions                             | Consistent | Reasons for Consistency or Inconsistency   |
|--|------------|--|
| 4.4 Planning for Bushfire Protection   | No         | The proposal affects bushfire prone and consultation with the NSW Rural Fire Service is required post Gateway determination. Until consultation with the NSW Rural Fire Service has been completed the consistency of the proposal with the direction is unable to be determined.  |
| 6.2 Reserving Land for Public Purposes | No         | The proposal is inconsistent with this direction as it seeks to create zonings for public recreation purposes over the showground and the sportsground at Kyogle without the approval of the Secretary or the relevant public authority (Crown Lands). This inconsistency is considered to be of minor significance due to the existing nature and use of the land and as it is recommended that DPIE – Crown Lands be consulted as part of the agency consultation on the proposal. |

### 3.4 State environmental planning policies (SEPPs)

The planning proposal is considered to be consistent with all applicable SEPPs.

## 4 Site-specific assessment

### 4.1 Environmental

The application of a rural zone to existing rural areas, in association with a biodiversity overlay map and heads of consideration clause for new development requiring consent, will apply an appropriate level of environmental protection to identified biodiversity areas.

While the proposal does seek to amend the LEP map for a small area east of Kyogle from E3 Environmental Management to RU1 Primary Production, this is only correcting an existing mapping error as the E3 Environmental Management Zone is not currently included within the Kyogle LEP written instrument. The map correction therefore does not reduce the environmental protections applying to the land.

While the proposal does effect land that is bushfire prone, flood prone or potentially contaminated, no adverse impact is anticipated as the proposal seeks primarily to rezone the land 'like for like' into the Standard Instrument LEP and there is no significant increase in development potential.

No adverse environmental impact associated with the proposal has been identified.

### 4.2 Social and economic

No adverse social or economic impact resulting from the proposal has been identified.

### 4.3 Infrastructure

As the proposal seeks primarily to rezone rural land 'like for like' into the Standard Instrument LEP, and there is no significant increase in development potential for the land, no additional infrastructure requirements are anticipated.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days. The exhibition period proposed is considered appropriate.

### 5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 28 days to comment:

- NSW Rural Fire Service
- Department of Planning, Industry and Environment – Crown Lands

## 6 Timeframe

Council proposes a 6 month time frame to complete the LEP. This is considered to be satisfactory and consistent with the Department's commitment to reduce processing times.

## 7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority.

As the planning proposal is implementing the recommendations of the Northern Councils E Zone Review, the Department recommends that Council not be authorised to be the local plan-making authority for this proposal.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- the proposal is the direct outcome of Council's implementation of the Northern Councils E Zone Review Final Recommendations report and their Local Strategic Planning Statement; and
- The proposal is needed to deliver the strategic intent of these documents and to provide a single modern local environmental planning instrument for the Kyogle LGA.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Direction 6.2 Reserving Land for Public Purposes is minor; and
- Note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Consultation is required with the following public authorities:
  - NSW Rural Fire Service
  - Department of Planning, Industry and Environment – Crown Lands

2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
4. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.

It is recommended the delegate of the Minister determine that the planning proposal PP\_2017\_KYOLG\_004\_00 should proceed be terminated in accordance with Council's request as it has been superseded by the current proposal:



6/5/2021

\_\_\_\_\_  
(Date)

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