

Planning Proposal

Amendments to ELEP 2012 to reclassify and rezone land at Batemans Bay and Malua Bay

Amendment No. 17

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INTRODUCTION

Background

The purpose of this planning proposal is to reclassify and rezone land that was originally undertaken as part of the Rural Lands Planning Proposal (Amendment 11). As the reclassification and rezoning of land was not directly related to the original planning proposal, it was redacted from the proposal to simplify the planning process.

Having been part of the Rural Lands Planning Proposal, the reclassification and rezoning of land at Batemans Bay and Malua Bay was publicly exhibited the proposal from 9 May 2018 to 22 June 2018. There were no submissions received over the reclassification and rezoning of land. Moreover, a public hearing was held Wednesday, 17 October 2018 and no-one attended the public hearing.

Delegation of Plan Making Function to Council

It is Council's intention to request an authorisation to exercise delegation to all matters addressed in this Planning Proposal (as attached in Attachment A: Evaluating Criteria for the issuing of Authorisation).

PART 1: OBJECTIVES or INTENDED OUTCOMES

To amend the Eurobodalla Local Environmental Plan 2012 to rezone and reclassify land to enable the sale of the subject land at Malua Bay and Batemans Bay.

PART 2: EXPLANATION of PROVISIONS

The proposed outcome will be achieved by:

- Amending the Eurobodalla Local Environmental Plan 2012 Land Zoning, Minimum Lot Size and Building Height Maps.
- Amending Schedule 4 of the Eurobodalla Local Environmental Plan 2012 in relation to the lots in the following table.

Lot 21 DP 547034 (Batemans Bay)

The site is a pedestrian laneway at 4 North Street, Batemans Bay and located in the mixed use area of Batemans Bay town centre. The subject land is 69.6m² and provides pedestrian connection to the Bay Village Centre from North Street. The land is surrounded by mixed use development, including shop-top, retail and commercial developments.

The site is zoned B4 – Mixed Use and has no building height limitation. The intention of the proposal is to retain the existing B4 zoning and apply an 18m building height consistent with the maximum building height to the adjoining property.

Lot and DP	Address	Area	Current Zone	Proposed Zone	Interests Changed	Intention
Lot 21 DP 547034	4 North Street, Batemans Bay	69.6m ²	B4	B4	No	To enable the sale of the land to an

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						adjoining owner.
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Lot 574 DP 32008 (Malua Bay)

The property is a large vegetated area of land along George Bass Drive, Malua Bay. The subject land is only a small portion of the site, situated towards the northern portion of the property. The site is wedged at the rear of two residential properties and is cleared on vegetation.

The site is currently zoned E2 - Environmental Conservation, has a minimum lot size of 1000 hectares and no maximum building height. As the intention of the proposal is to rezone a small portion of the land to R2 – Low Density Residential, it is also appropriate to apply a minimum lot size of 550m² and a maximum building height of 8.5m consistent with the surrounding residential zone provisions.

Lot and DP	Address	Area	Current Zone	Proposed Zone	Interests Changed	Intention
Part of Lot 574 DP 32008	George Bass Drive, Malua Bay	127m ²	E2	R2	Yes (removal of public reserve status from part of the land)	To enable the sale of the land to an adjoining owner.

PART 3: JUSTIFICATION

Section A – NEED for the PLANNING PROPOSAL

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

The planning proposal is not the direct result of any strategic study or report.

Lot 21 DP 547034 (Batemans Bay)

Lot 21 DP 547034 (Batemans Bay) is community land and categorized as 'General Community Use under Council's Developed Reserves & Facilities Plan of Management.

The proposal is in response to development consent that provides for alternative pedestrian access to the subject laneway (see Figures 1.1 and 1.2). The site specific merit of the reclassification is that it will lead to the better management of land consistent with the development consent conditions.

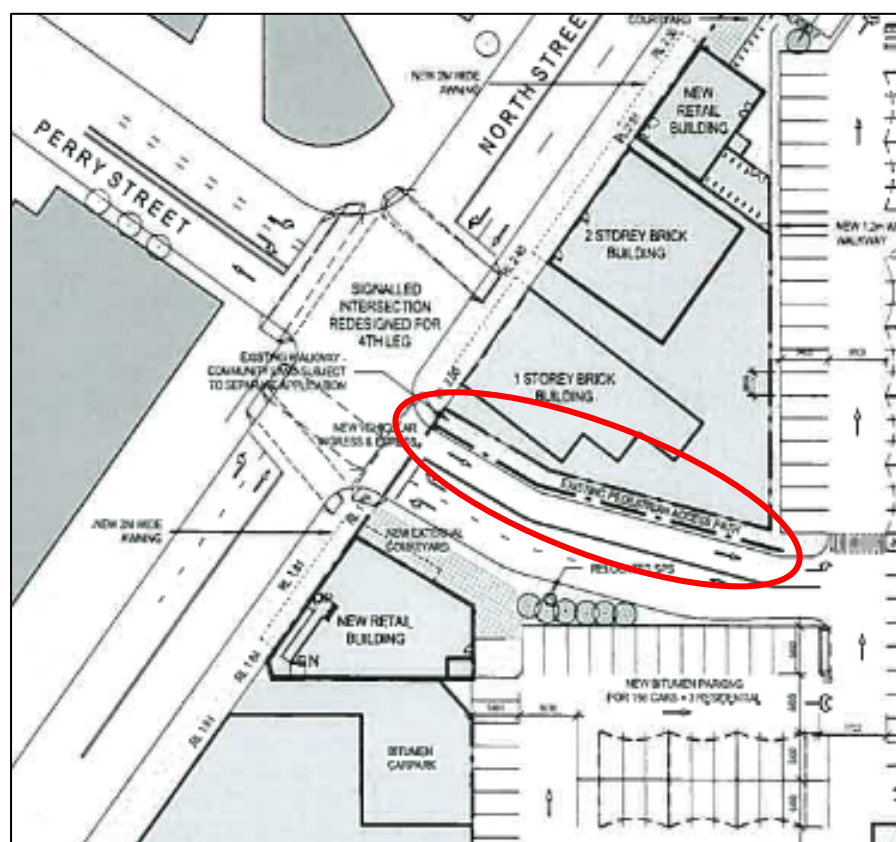
There are not trusts or dedications upon the land.

The intention of the reclassification and rezoning is to sell the land to the property owner(s) of the Bridge Plaza in accordance with current development conditions.

Figure 1.1: Subject Land



Figure 1.2: Development Plan - Approved Alternative Access Arrangements



Lot 574 DP 32008 (Malua Bay)

Lot 574 DP 32008 (Malua Bay) is community land and categorized as 'Natural Area - Bushland' under Council's Natural Areas & Undeveloped Reserves Plan of Management. While the land is categorized as Natural Bushland, the portion of land relating to this proposal has long been cleared of vegetation.

The subject land is in direct response to a request from an adjoining land owner. The intent of the adjoining land owner is to purchase the portion of land to be reclassified. The site specific merits of the reclassification are that the site is already cleared of vegetation and the reclassification and potential sale of land will provide more appropriate land management over the site.

The effect of the reclassification is that a small portion of the subject land ceases to be a public reserve.

The intention of the reclassification and rezoning is to sell the land to an adjoining land owner and the land be an extension of a residential property.

Figure 2.1: Subject Land



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

There is no alternative means to achieve the objective of the planning proposal to reclassify the land to operational. In rezoning a portion of Lot 574 DP 32008 (Malua Bay) from E2 Environmental Conservation to R2 Low Density Residential ensures the better management the portion of land wedged at the rear of the two adjoining residential properties and allows the site to be an extension of the residential area.

Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK

3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

The planning proposal is consistent with objectives and actions of the South East and Tablelands Regional Plan.

4. Is the planning proposal consistent with the Council's local strategy or other local strategic plan?

The planning proposal is consistent with Eurobodalla's Community Strategic Plan, One Community by ensuring planning is responsive to the environment and community needs.

5. Is the planning proposal consistent with applicable state environmental planning policies?

An assessment of applicable State Environmental Planning Policies against the planning proposal is provided below:

State Environmental Planning Policies and Aims/Objectives	Consistency of Planning Proposal
SEPP Coastal Management To promote an integrated and coordinated approach to land use planning in the coastal zone.	Consistent See below.

State Environmental Planning Policies	Relevance to Planning Proposal	Consistency of Planning Proposal
SEPP No.	SEPP (Coastal Management) 2018 replaces the provisions of SEPP 14 Coastal Wetlands and SEPP 71 Coastal Protection. There are four coastal mapping areas under the SEPP, including: <ul style="list-style-type: none"> Coastal Wetlands & Littoral Rainforests Area Coastal Environment Area Coastal Use Area Coastal Vulnerability Area 	Consistent – See below.

The sites are both identified in the Coastal Management SEPP as a Coastal Environment Area and Coastal Use Area. The objectives of the coastal areas relevant to the site include:

- To protect and enhance the coastal values and natural process of coastal environments
- To maintain and improve water quality and estuary health
- To reduce threats to and improve the resilience of the coastal environment
- To protect and enhance scenic, social and cultural values of the coast.

Consistent: While the sites in Batemans Bay and Malua Bay are within the coastal zone, they are not in sensitive coastal locations. The proposed amendments will have no impact on coastal processes or the water quality of the coastal area. In addition, the proposal will continue to maintain the scenic, social and cultural values of the coast.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Lot 21 DP 547034 (Batemans Bay)

Applicable Ministerial Direction		Relevance to Planning Proposal	Consistency of Planning Proposal
1.1	Business and Industrial Zones	The site is zoned B4 – Mixed Use and is located within the town centre of Batemans Bay.	Consistent - The planning proposal retains the existing business zoning and does not reduce the potential floor space for employment and related uses Improved access arrangements have been provided for through the issue of development consent for redesign of car parking and vehicular and pedestrian access.
2.3	Coastal Management	The site is located in the coastal zone.	Consistent - The subject land is not located in a coastally sensitive area and the proposal will have no impact on the coastal environment.
3.4	Integrating Land Use and Transport	The site is a pedestrian laneway and is associated with ensuring integrated land use and transportation in the Batemans Bay town centre.	Consistent - The proposal retains existing business zoning. Improved access arrangements have been provided for through the issue of development consent for redesign of car parking and vehicular and pedestrian access.
5.10	Implementation of Regional Strategies	The South East and Tablelands Regional Plan applies to all planning proposals.	Consistent – As mentioned previously, the planning proposal is consistent with the South East and Tablelands Regional Plan.

Lot 574 DP 32008 (Malua Bay)

Applicable Ministerial Direction		Relevance to Planning Proposal	Consistency of Planning Proposal
2.2	Environment Protection Zones	The site is zoned E2 Environmental.	Inconsistent, but of minor significance – While this planning proposal proposes the rezoning of a small corner of a public reserve currently zoned E2 Environmental Conservation to the R2 Low Density Residential zone, the subject area contains no native vegetation (see Figure 26-1).

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			Rezoning the land will have no detrimental impacts on the natural environment and the inconsistency with the Ministerial Direction is considered justified on the grounds that it is minor in nature.
2.3	Coastal Management	The site is located in a coastal zone.	Consistent - The subject land is not located in a coastally sensitive area and the proposal will have no impact on the coastal environment.
3.3	Residential Zones	The planning proposal relates to land that is proposed to be zoned R2 Low Density Residential.	Consistent. The proposal will have no detrimental impacts of housing choice, infrastructure and services or the environment.
3.4	Integrating Land Use and Transport	The planning proposal relates to land that affects the integration of land use and transport.	Consistent – The proposal will rezone a small portion land immediately to the rear of residential properties and a logical, but minor, extension of the R2 zone area. The proposal will have no detrimental impacts of transport choice or accessibility.
5.10	Implementation of Regional Strategies	The South East and Tablelands Regional Plan applies to all planning proposals.	Consistent – The planning proposal is consistent with the South East and Tablelands Regional Plan.

Section C – ENVIRONMENTAL, SOCIAL and ECONOMIC IMPACT

7. 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?

There is will be no adverse effect on any critical habitat or threatened species, populations or ecological communities, or their habitats, as a result of this planning proposal.

Lot 574 DP 32008 (Malua Bay)

The Biodiversity Values Map indicates that a small segment of the site is mapped as having biodiverse value, however it is believed that this is a mapping error and an application has been sent to the Office of Environment & Heritage to review and amend the mapping to reflect cleared vegetation over the site.

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

There are no other likely environmental effects as a result of this planning proposal.

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

Due to the small scale of the proposal, there will be minimal social and economic effect in either locality as a result of the planning proposal.

Lot 21 DP 547034 (Batemans Bay)

The proposal will have positive social and economic effect through the closure of a narrow and sight-restricted laneway at Lot 21 DP 547034 and its replacement with safer and more convenient pedestrian access arrangement.

Section D – STATE and COMMONWEALTH INTERESTS

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

The planning proposal will have no impact on public infrastructure and in the case of the closure of the laneway, the proposal will create safe and more convenient pedestrian access.

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

During public exhibition of the Rural Lands planning proposal, Council received submissions from the following NSW Government agencies:

- Office of Environment & Heritage
- Rural Lands Services
- South East Local Land Services
- Department of Primary Industries - Water
- Department of Primary Industries – Fisheries
- Department of Industry – Mineral Resources.

None of the government agency submissions were concerned with the reclassification of land on Lot 21 DP 547034, Batemans Bay or the reclassification and rezoning of a portion of Lot 574 DP 32008, Malua Bay.

PART 4: MAPPING

Lot 21 DP 547034 (Batemans Bay)

Mapping of Lot 21 DP 547034 includes the following:

- Existing Zoning Map (Figure 1.3)
- Existing Maximum Height of Building Map (Figure 1.4)
- Proposed Change to Maximum Height of Building Map (Figure 1.5)

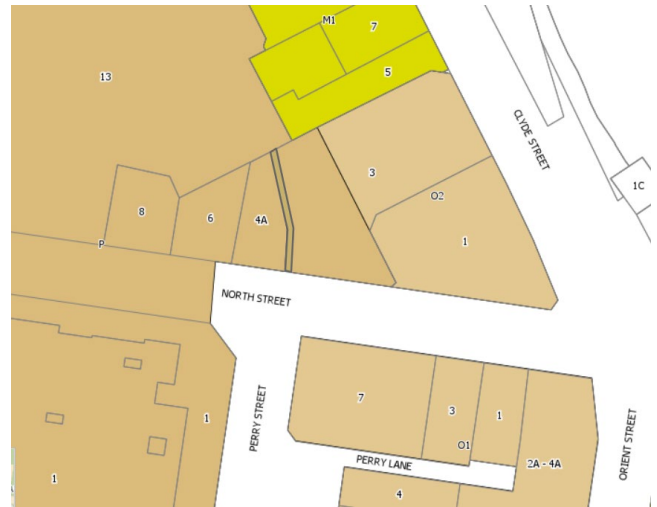
Figure 1.3: Existing Zoning Map



Figure 1.4: Existing Maximum Height of Building Map



Figure 1.5: Proposed Change to Maximum Height of Building Map



Lot 574 DP 32008 (Malua Bay)

Mapping to a portion of Lot 574 DP 547034 includes the following:

- Existing Zoning Map (Figure 2.2)
- Proposed Change to Zoning Map (Figure 2.3)
- Existing Minimum Lot Size Map (Figure 2.4)
- Proposed Changes to Minimum Lot Size Map (Figure 2.5)
- Existing Maximum Height of Building Map (Figure 2.6)
- Proposed Maximum Height of Building Map (Figure 2.7)

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Figure 2.2: Existing Zoning Map

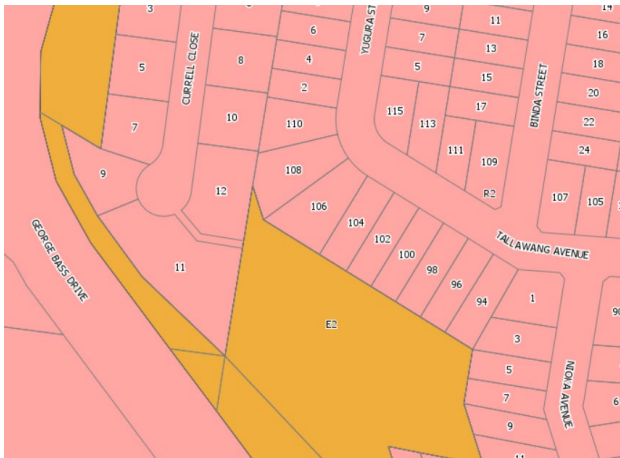


Figure 2.3: Proposed Change to Zoning Map

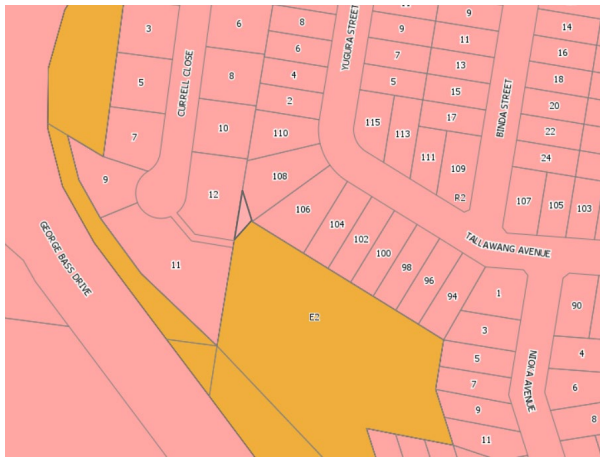


Figure 2.4: Existing Minimum Lot Size Map

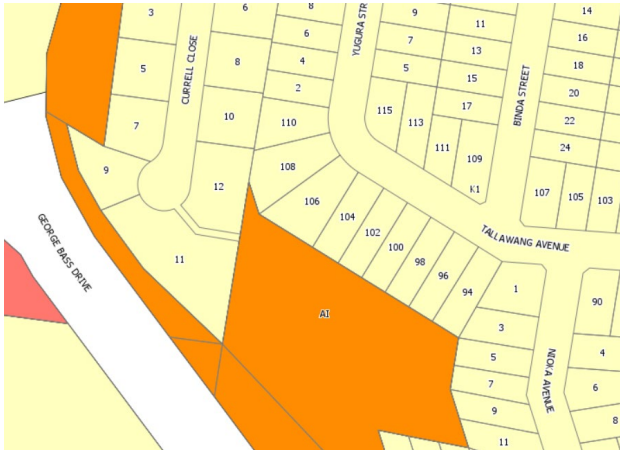


Figure 2.5: Proposed Change to Lot Size Map

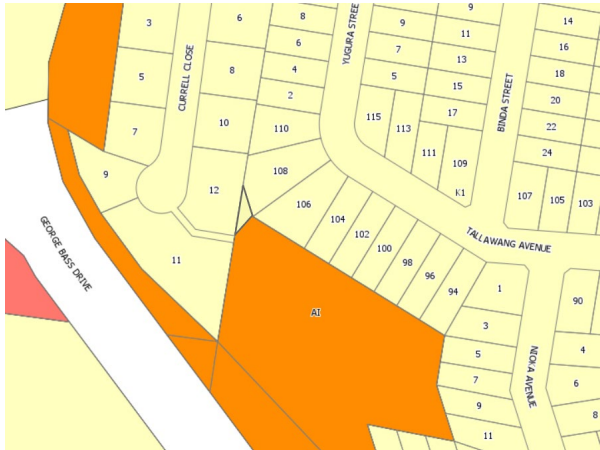


Figure 2.6: Existing Maximum Height of Building Map

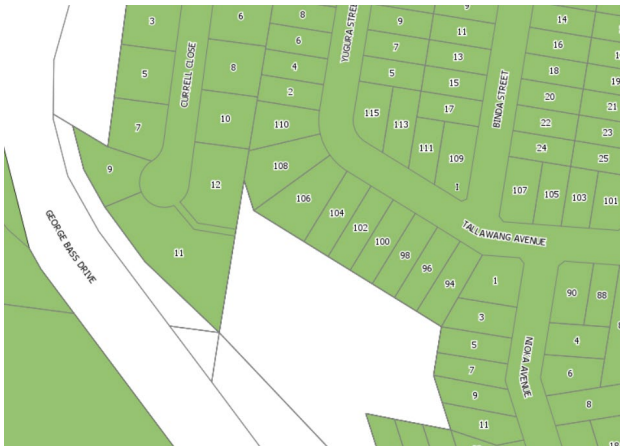


Figure 2.7: Proposed Change to Maximum Height of Building Map



PART 5: COMMUNITY CONSULTATION

Consultation for the reclassification of land occurred as part of the Rural Lands planning proposal. The public exhibition period occurred from 9 May to 22 June 2018. Several land owners affected by the reclassification of land were notified prior and after the consultation process and no submissions were received over the reclassification and rezoning of land.

Moreover, Council held a public hearing in relation to the subsequent reclassification of land on 17 October 2018. No one attended the hearing and the independent report prepared by urPlan Pty Ltd recommended Council continue with the reclassification.

PART 6: TIMEFRAME

The following project timeline is proposed, noting that the period from the issue of a gateway determination to the date of notification is subject to any matters raised and the subsequent decisions of Council regarding the content of the planning proposal.

Anticipated commencement date (date of Gateway determination)	December 2018
Anticipated timeframe for the completion of required technical information	N/A – already achieved
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	N/A – already achieved
Commencement and completion dates for public exhibition period	N/A – already achieved
Dates for public hearing (if required)	N/A – already achieved
Timeframe for consideration of submissions	N/A – no submissions received
Timeframe for the consideration of a proposal post exhibition	N/A – already considered
Date of submission to the department to finalise the LEP	December 2018
Anticipated date RPA will make the plan (if delegated)	February 2019
Anticipated date RPA will forward to the department for notification	March 2019

ATTACHMENT A – Evaluation Criteria for Delegation

Local Government Area: Eurobodalla Shire Council

Name of draft LEP: Eurobodalla Local Environmental Plan 2012 Amendment No. 17

Address of Land (if applicable): Lot 21 DP 547034, Batemans Bay and a portion of Lot 574 DP 32008, Malua Bay

Intent of draft LEP: To amend *Eurobodalla Local Environmental Plan 2012*, including:

- Schedule 4 – Classification and reclassification of public land (Parts 1 & 2)
- Amend Land Zoning Map – Sheet LZN 011D to include a portion of Lot 574 DP 32008, Malua Bay from E2 Environmental Conservation to R2 Low Density Residential.
- Amend Lot Size Map – Sheet LSZ 011D to include a portion of Lot 574 DP 32008, Malua Bay to a minimum lot size of 550m².
- Amend Building Height Map – Sheet HOB 11D to include a portion of Lot 574 DP 32008, Malua Bay to a maximum building height of 8.5m and amend Building Height Map – Sheet HOB 11A Lot 21 DP 547034, Batemans Bay to a maximum height of 18m.

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(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?	Y			
Does the planning proposal contain details related 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?	Y			
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			
Minor Mapping Error Amendments	Y/N			
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		
Heritage LEs	Y/N			
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		
Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?		N/A		

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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 Local Government Act, 1993?		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) Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?		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		
Spot Rezoning	Y/N			
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			
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			
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			
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			
Section 73A matters				
Does the proposed instrument correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-		N/A		

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<p>reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;</p> <p>address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or</p> <p>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?</p> <p>(NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A(1)) of the Act in order for a matter in this category to proceed).</p>				
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