

Planning Services

IRF18/6243

Gateway determination report

LGA	Eurbodalla
PPA	Eurobodalla Shire Council
NAME	Tallawang Avenue Malua Bay – rezone land from E2 to R2 (0 homes, 0 jobs)
NUMBER	PP 2018 EURO 002 00
LEP TO BE AMENDED	Eurobodalla LEP 2012
ADDRESS	55 Tallawang Avenue, Malua Bay
DESCRIPTION	Part Lot 1 DP 1167201
RECEIVED	5 th November 2018
FILE NO.	IRF18/6243 – EF18/45646
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The proposal amends the land zoning, maximum building height and minimum lot size that applies to certain land at Malua Bay to correct an unintended zoning/mapping error in the Eurobodalla LEP 2012.

The subject land was zoned residential under the Eurobodalla Urban LEP 1999, however, the land was incorrectly mapped as E2 Environmental Conservation when it was transferred into the Eurobodalla LEP 2012.

This proposal will revert the land back to its original intended zoning of R2 Low Density Residential.

Site description

The subject land is 383.9m² zoned E2 that forms part of a 940m² lot. The remainder of the lot is zoned R2 Low Density Residential.

The land has been partially cleared with minimal vegetation remaining and is currently being used as a residential backyard.

The subject land is located within a residential area that is separated from the coastline by publicly accessible land. The neighbouring properties are zoned R2 Low density residential, with a combination of one and two storey dwellings to the north, west and south.

Summary of recommendation

It is recommended that the planning proposal proceed as submitted.

PROPOSAL

Objectives or intended outcomes

The objective of the planning proposal is to amend the zoning, height and lot size controls for land at 55 Tallawang Avenue, Malua Bay to correct an unintended mapping error that occurred in the drafting of Eurobodalla Local Environmental Plan 2012. The proposal will restore the land to its previous residential zone.

This will allow the land owner to use the site in accordance with the conditions under which he was sold the land in 2011.

Explanation of provisions

The proposal will amend the Eurobodalla LEP 2012 as follows:

- Amend the land zoning map to rezone the subject site from E2 Environmental Conservation to R2 Low Density Residential;
- Amend the minimum lot size map to introduce a 550sqm minimum lot size for the site; and
- Amend the height of building map to apply a maximum building height of 8.5 metres.

There are no changes to the written instrument arising from the proposal.

Mapping

The proposal will require the amendments of 3 LEP maps, the zoning map, the minimum lot size map and the height of building map.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is needed to amend a zoning error in the Eurobodalla Local Environmental Plan 2012, This will rezone the land from E2 Environmental Conservation to R2 Low Density Residential and will enable the owner to use the land in accordance with the conditions under which it was sold by Council in 2011.

A planning proposal is the only way to achieve the desired outcome.

STRATEGIC ASSESSMENT

Regional Plan

South East and Tablelands Regional Plan 2036

The South East and Tablelands Regional Plan 2036 was released by the Department of Planning in July 2017.

The Proposal is of minor significance and is not inconsistent with this Plan. The proposal does not impact on housing supply, infrastructure or the environment as the land has been utilised as a residential yard since 2011.

Local

Council has stated that the planning proposal is consistent with the Eurobodalla Community Strategic Plan, the One Community Plan and the Eurobodalla Settlement Strategy.

Section 9.1 Ministerial Directions

Council has identified applicable section 9.1 Directions and does not consider that the proposal is inconsistent with the relevant directions.

Directions of relevance are discussed below:

2.1 Environmental Protection Zones

The Direction states that the proposal must not reduce environmental protections standards for land within an Environmental Zone.

Council has stated the proposal is consistent with this direction. A Vegetation and Habitat assessment has found that the site is not an environmentally sensitive area.

The proposal is considered to be inconsistent with this Direction as it does rezone land that is currently zoned for environmental protection. However, the proposal applies to a 383.9m² parcel of land which adjoins residential zoned land and has been managed as a residential backyard.

The Secretary's delegate can be satisfied that any inconsistency with this direction is of minor significance.

2.2 Coastal Protection

The direction states that the proposal must implement the principles of the NSW Coastal Policy.

Council has stated that the proposal is consistent with this direction as it will not affect public access to the foreshore of the river and wetlands.

There are not likely to be any adverse effects on the scenic qualities of that waterway or wetland, activities associated with any waterway, coastal hazards or processes, or on the natural environment.

The proposal does not affect items of Indigenous or non-Indigenous heritage, archaeological or historical significance and is not likely to cause conflict between land based and aquatic activities.

The Secretary's delegate can be satisfied that the proposal is consistent with this direction.

4.4 Planning for Bushfire Protection

The direction requires consultation with the commissioner of the NSW Rural Fire Service (RFS) for proposals that affect bushfire prone land.

The subject site is mapped as bushfire prone land.

Council has stated that the proposal is consistent with this direction as the land has been largely cleared and well managed by the landowner and that any future development can satisfy the requirements this direction.

While this is a minor proposal, the Direction requires consultation with RFS for any proposal on bushfire prone land.

The Secretary's delegate may be satisfied that the Gateway determination requirement for consultation with RFS will ensure consistency with this Direction.

State Environmental Planning Policies

The subject site is mapped as being within the coastal use area.

State Environmental Planning Policy (Coastal Management) 2018 therefore applies and identifies controls that apply to the land within the coastal mapping area. The proposed amendments will impose a maximum building height on the land that will protect the aesthetic appearance of the coastal area.

The proposal is not inconsistent with the intent of the Coastal Management SEPP.

The proposal is consistent with other relevant State Environmental Planning Policies

SITE-SPECIFIC ASSESSMENT

Social/Economic

The planning proposal will have no adverse social or economic effects and will allow the landowner to use the land as intended when purchased from Council in 2011.

Environmental

The proposal is not likely to have any adverse effects on critical habitat, threatened species or their population.

There are no endangered ecological communities on the subject land.

No heritage items have been listed in Schedule 5 LEP 2012 on the site or in the vicinity.

Infrastructure

The subject site is part of a residential property which has adequate infrastructure access, no additional infrastructure will be required.

CONSULTATION

Community

The land was exhibited as part of the draft Eurobodalla Local Environmental Plan 2009 as proposed R2 Low density residential as a 'like-for-like' conversion from the 2g –Residential zone that had applied since 7 March 2008. The drafting error that saw the land zoned E2 Environmental Conservation occurred following exhibition of the plan.

Community consultation is not considered necessary as the land forms part of an existing residential block and was, until the error was recently discovered, considered by Council, the landowner and the community to have a residential zoning. As such, there is no reason to require public consultation.

Agencies

Council does not consider agency consultation to be necessary. However, consultation with RFS will be required to satisfy Section 9.1 Ministerial Direction 4.4.

TIME FRAME

Council has indicated a 4-month timeframe for finalisation. It is considered that a 6-month timeframe should be provided to allow adequate time for consultation with RFS and the drafting and making of the plan.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan making authority. This is considered reasonable due to the minor nature of the proposal.

CONCLUSION

This proposal will correct a drafting/mapping error and revert the subject site back to its previous zoning of R2 Low Density Residential. The land does not have significant ecological value and is part of an existing residential backyard.

It is recommended that the proposal be supported.


RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree that any inconsistency with section 9.1 Direction 2.1 Environmental Protection Zones is of minor significance; and that the proposal's consistency with Direction 4.4 Planning for Bushfire Protection requires consultation with the Rural Fire Service.

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

1. There is no requirement for community consultation.
2. Consultation is required with the following public authorities to ensure consistency with Direction 4.4 Planning for Bushfire Protection:
 - Rural Fire Service.
3. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.



15/11/18

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19/11/2018

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