

Boundary Adjustments and split zones

Proposal Title : **Boundary Adjustments and split zones**

Proposal Summary : **The planning proposal seeks to enable boundary adjustments where the resulting lots are smaller than the minimum lot size, and provide for the subdivision of land with a split zone.**

PP Number : **PP_2015_BEGAV_007_00**

Dop File No : **15/12809**

Proposal Details

Date Planning
Proposal Received : **16-Sep-2015**

LGA covered : **Bega Valley**

Region : **Southern**

RPA : **Bega Valley Shire Council**

State Electorate : **BEGA**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **LGA wide**

DoP Planning Officer Contact Details

Contact Name : **Ann Martin**

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name : **Graham Towers**

Contact Number : **0242249467**

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Land Release Data

Growth Centre : **N/A**

Release Area Name : **N/A**

Regional / Sub
Regional Strategy : **South Coast Regional
Strategy**

Consistent with Strategy : **Yes**

Boundary Adjustments and split zones

MDP Number :

Date of Release :

Area of Release
(Ha) :

Type of Release (eg
Residential /
Employment land) :

N/A

No. of Lots : 0

No. of Dwellings
(where relevant) : 5

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Lobbyists Code of
Conduct has been
complied with : **Yes**

If No, comment :

Have there been meetings or
communications with
registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting
Notes :

External Supporting
Notes :

The State ~~and~~ Environmental Planning Policy (Exempt and Complying Development Codes) 2008 enables boundary adjustments to be undertaken as exempt development but these cannot result in any lots being created that are smaller than the applicable minimum lot size. The planning proposal seeks to provide Council flexibility in considering applications for boundary adjustments where a lot is created that is below the minimum lot size for the zone. The proposed boundary adjustments clause is based on clauses that have been made in other council LEPs.

Under the current provisions of the Bega Valley LEP 2013, Council is unable to approve the subdivision of land unless each lot meets the minimum lot size requirements for that zone. In some areas there are lots partly zoned rural/environmental and partly urban. Currently the minimum lot size for rural land is 120 hectares. The planning proposal seeks to enable subdivision on land having split zones where one of the zones does not meet the minimum lot size required for subdivision.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives is to:**

1. Enable boundary adjustments where the resulting lots are smaller than the minimum lot size to provide greater opportunity to achieve the objectives of the zone.
2. Provide for the subdivision of land with a split zone that promotes suitable land uses and development.

It is considered that the statement of the objectives is adequate.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment : The explanation of provisions are as follows:

This planning proposal will amend BVLEP 2013 in the following manner:

Insert the following new provisions;

4.2E Exceptions to minimum subdivision lot size for boundary adjustments

(1) The objective of this clause is to permit the boundary between 2 or more lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.

(2) This clause applies to all land within the Bega Valley Local Government Area.

(3) Despite clause 4.1(3), development consent may be granted to the subdivision of 2 or more adjoining lots, being land to which this clause applies, if the consent authority is satisfied that the subdivision:

a) will not result in an increase in the number of lots, and

b) will not result in an increase in the number of dwellings that may be erected on any of the lots, and

c) will not result in lots that are inconsistent with the uses for which the existing allotments were originally created.

(4) In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:

a) whether or not the subdivision will maintain or improve the environmental values and agricultural viability of the land,

b) potential impact on the natural and physical constraints affecting the land, taking into account the long-term maintenance, management and protection of any lots,

c) compatibility with existing or potential land uses and measures that are deemed necessary to avoid or minimise any potential impact.

(5) This clause does not apply in relation to a subdivision under the Community Land Development Act 1989, the Strata Schemes (Freehold Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986.

4.2F Exceptions to minimum subdivision lot sizes for resulting lots

(1) The objectives of this clause are as follows:

(a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,

(b) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.

(2) This clause applies to each lot (an "original lot") that may contain land within any zone.

(3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the "resulting lots") if:

(a) one of the resulting lots will contain all of the land within a rural or environmental zone, and:

(i) an existing dwelling, or

(ii) Land within any other zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and

(b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land

Council has advised that it has adapted the proposed clauses from a number of similar clauses from other notified comprehensive LEPs. A final clause will need to be drafted by Parliamentary Counsel.

It is considered that the explanation of provisions provided is adequate. However, it is considered that Council should be required to include in its proposed clause 4.2F matters to be considered when determining subdivisions under the clause to prevent it being misused and to assist in achieving the objectives of the clause.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.1 Business and Industrial Zones

1.2 Rural Zones

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 4—Development Without Consent and Miscellaneous Exempt and Complying Development
SEPP No 14—Coastal Wetlands
SEPP No 44—Koala Habitat Protection
SEPP No 55—Remediation of Land
SEPP No 71—Coastal Protection
SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

Council has requested delegation to make the Local Environmental Plan.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

SECTION 117 Directions

1.1 BUSINESS AND INDUSTRIAL ZONES: This Direction applies to the planning proposal as it will affect land within an existing or proposed business or industrial zone.

The proposal is considered to be CONSISTENT with this direction.

1.2 RURAL ZONES: This Direction applies to the planning proposal as it will affect land within an existing or proposed rural zone.

The proposal is considered to be INCONSISTENT with this direction as it

may increase the potential for development of rural land by enabling the subdivision of land with a split zone involving land zoned RU1 Primary Production or RU2 Rural Landscape and through allowing boundary adjustments below the minimum lot size.

RECOMMENDATION: The Secretary can be satisfied that the inconsistency is of minor significance and justifiable on the basis that it provides for the subdivision of land on a limited number of sites and that any subdivision must be in accordance with the objectives of the zone and the requirements of the clauses. The clauses are aimed at achieving better rural outcomes, however Council should clarify matters to be considered when determining applications under the clause to prevent it being misused, as included in other similar clauses in other LEP's.

1.5 RURAL LANDS: This Direction applies to the planning proposal as it will affect land within an existing or proposed rural or environmental protection zone and affect the minimum lot size.

The proposal is considered to be **CONSISTENT** with this direction as it is generally consistent with the Rural Planning and Rural Subdivision Principles in the SEPP (Rural Lands) 2008.

2.1 ENVIRONMENT PROTECTION ZONES: This Direction applies to the planning proposal as it will affect land within an environment protection zone or land otherwise identified for environment protection purposes.

The proposal is considered to be **INCONSISTENT** with this direction as it may increase the density of development on land that is currently zoned E3 Environmental Management through allowing greater subdivision potential. However, this additional flexibility in subdivision is aimed at achieving better land management outcomes. The inconsistency is considered to be minor, however Council should clarify matters to be considered when determining applications under the clause to prevent it being misused.

2.2 COASTAL PROTECTION: This Direction applies to the planning proposal as the subject land is within the coastal zone.

The proposal is considered to be **INCONSISTENT** with this direction as it may increase the density of development on land that is within the Coastal Zone. However, this inconsistency is of minor significance and justifiable on the basis the provisions of the planning proposal will not contradict or hinder the application of the coastal planning provisions contained in the NSW Coastal Policy.

4.1 ACID SULPHATE SOILS: This Direction applies to the planning proposal as it will affect land having a probability of containing acid sulphate soils, as shown on the Acid Sulphate Soils Planning Maps held by the Department of Planning.

The proposal is considered to be **CONSISTENT** with this direction.

4.3 FLOOD PRONE LAND: This Direction applies to the planning proposal as it will create a provision that affects flood prone land. The planning proposal states that the BVLEP 2013 contains a provision that specifically deals with flood planning issues. It is noted that the planning proposal does not affect the application of this provision or zones/permissibility.

The proposal is considered to be **CONSISTENT** with this direction.

4.4 PLANNING FOR BUSHFIRE PROTECTION: This Direction applies to the planning proposal as it will affect/is in close proximity to land mapped as bushfire prone land. At this stage of the Planning Proposal, it is neither consistent nor inconsistent with the Direction, as the Direction requires consultation with the Rural Fire Service post Gateway determination and prior to exhibition.

Boundary Adjustments and split zones

RECOMMENDATION: The Secretary will need to be satisfied that the requirements of the Direction have been met. A condition should be included in the Gateway determination that consultation should be undertaken with the Rural Fire Service in accordance with the Direction.

5.1 IMPLEMENTATION OF REGIONAL STRATEGIES: This Direction applies to the planning proposal as the South Coast Regional Strategy applies to the land.

The proposal is considered to be **CONSISTENT** with this direction.

6.1 APPROVAL AND REFERRAL REQUIREMENTS: This Direction applies to the planning proposal.

This planning proposal is **CONSISTENT** with this Direction as it does not introduce concurrence, consultation or referral requirements or identify development as designated development.

State Environmental Planning Policies:

The planning proposal states that it is consistent with all applicable SEPPs. In particular the following SEPPs are considered to be particularly relevant to the planning proposal.

- SEPP (Exempt and Complying Development Codes) 2008 - the proposal states that it does not contradict or hinder the application of the provisions contained within the SEPP relating to certain boundary adjustments that are allowed as exempt development as long as this does not result in any lots being created below the applicable minimum lot size. It is noted that the proposal is more permissive than the boundary adjustments allowed under the SEPP.

- SEPP (Rural Lands) 2008 - the proposal states that it is consistent with the principles of the SEPP and will directly assist in the facilitation of the orderly and economic use of rural lands for rural and related purposes.

The views expressed in the planning proposal concerning consistency with the applicable SEPPs are supported for the reasons provided.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **Maps are not required.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The planning proposal is proposed to be exhibited for 14 days, as the planning proposal is defined as a low impact matter.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **The planning proposal addresses all 6 parts of a planning proposal required under the Department's guide to preparing planning proposals.**

Proposal Assessment**Principal LEP:**Due Date : **August 2013**Comments in
relation to Principal
LEP :

The planning proposal seeks to insert two new provisions in the BVLEP 2013 similar to provisions currently included in a number of other council comprehensive standard instrument LEPs.

Assessment CriteriaNeed for planning
proposal :

The planning proposal is needed to facilitate amendment of the BVLEP 2013 to provide flexibility to applicants seeking a boundary adjustment where the resulting lots are smaller than the specified minimum lot size. This will complement provisions relating to boundary adjustments permitted as exempt development currently available under the SEPP (Exempt and complying Development Codes) 2008.

The proposed split zone clause is needed to allow subdivision and development of urban zoned land having a split zoning (with rural/environmental) which is not currently possible under the existing BVLEP 2013. This will potentially facilitate the development of land and allow better development outcomes including the improved management of environmental land.

Consistency with
strategic planning
framework :

The planning proposal is consistent with the objectives and actions of the South Coast Regional Strategy as it provides for more flexibility to provide for housing and settlement strategies in areas where there are split zones, and in making boundary adjustments where the residual lot is below the minimum lot size. The proposal is also consistent with Council's community strategic plan, applicable SEPPs and s117 Directions, or any inconsistency is considered to be of minor significance.

Environmental social
economic impacts :

The planning proposal states that it is not expected to result in any adverse effect on threatened species, populations or ecological communities or their habitats. It states that the proposal will have positive social and economic affects by providing for greater flexibility in the subdivision of rural land and creating opportunities for the more efficient use of land. It is considered that the proposal will provide positive environmental outcome by enabling greater flexibility for boundary adjustments and subdivision design, and will allow for the adjustment of lots to facilitate rural production.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	14 Days
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Timeframe to make LEP :	18 months	Delegation :	RPA
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Public Authority Consultation - 56(2) (d) :	NSW Rural Fire Service
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Is Public Hearing by the PAC required?	No
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(2)(a) Should the matter proceed ?	Yes
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If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Boundary Adjustments and split zones

Identify any additional studies, if required. :

If Other, provide reasons :

No studies are required.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Evaluation criteria for delegation of plan making functions.pdf	Proposal	No
Signed Cover Letter.pdf	Proposal Covering Letter	Yes
Planning Proposal Boundary Adjustments and Split Zones_Sep.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**

Additional Information : It is **RECOMMENDED** that the General Manager, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the Bega Valley Local Environmental Plan 2013 to enable boundary adjustments where the resulting lots are smaller than the minimum lot size, and to provide for the subdivision of land with a split zone should proceed subject to the following conditions:

1. To ensure that the objectives of the clause are achieved, Council is to include within proposed clause 4.2F Exceptions to minimum subdivision lot sizes for resulting lots those matters to be considered by the consent authority in determining whether to grant development consent for the subdivision of land under that clause.

2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

(a) the planning proposal must be made publicly available for 14 days; and
(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of 'A guide to preparing local environmental plans (Planning and Infrastructure, 2013)'.

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

* **NSW Rural Fire Service (In accordance with s117 Direction 4.4 prior to exhibition)**

Boundary Adjustments and split zones

The NSW Rural Fire Service (RFS) is to be provided with a copy of the planning proposal and any relevant supporting material. The RFS is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. The RFS may request additional information or additional matters to be addressed in the planning proposal.

4. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).

5. The timeframe for completing the LEP is to be 18 months from the week following the date of the Gateway determination.

6. Council be authorised to use the Minister's plan making functions under sections 59(2),(3)&(4) of the Environmental Planning and Assessment Act 1979.

7. SECTION 117 DIRECTIONS - It is recommended that:

(a) The Secretary's delegate can be satisfied that the planning proposal is consistent with s117 Directions 1.1 Business and Industrial Zones, 1.5 Rural Lands, 4.3 Flood Prone Land, 5.1 Implementation of Regional Strategies and 6.1 Approval and Referral Requirements;

(b) The Secretary's delegate can be satisfied that the planning proposal will be consistent with s117 Direction 4.4 Planning for Bushfire Protection, when Council has consulted with the Rural Fire Service prior to undertaking community consultation;

(c) The Secretary's delegate can be satisfied that the inconsistency of the planning proposal with s117 Directions 1.2 Rural Zones, 2.1 Environment Protection Zones, 2.2 Coastal Protection, and 4.1 Acid Sulphate Soils, are of minor significance.

(d) The Secretary's delegate can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or any inconsistency is of minor significance; and

(e) No further consultation or referral is required in relation to s117 Directions while the planning proposal remains in its current form.

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

Supporting Reasons :

The planning proposal will provide greater flexibility for Council is responding to requests for boundary adjustment and subdivision in areas with split zones.

Signature:



Printed Name:

Graham Towers

Date:

22/9/15

ENDORSED

Brett Whitworth
General Manager
SOUTHERN REGION

22/9/15