

BEGA VALLEY SHIRE COUNCIL

Bega Valley Local Environmental Plan 2013 Planning Proposal: Rural Residential Lot Sizes

Acid Sulfate Soils Study

February 2013

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Introduction

The Department of Planning Gateway Determination (Ref: PP_2013_BEGAV_002_00) for the Rural Residential Lot Sizes Planning Proposal included the requirement that “prior to undertaking public exhibition, Council is to ensure the planning proposal includes sufficient additional information on Acid Sulphate Soils and if required, Council is to prepare an acid sulfate soils study to adequately demonstrate consistency or justify an inconsistency with S117 Direction 4.1 Acid Sulfate Soils. A copy of the acid sulfate soils study is to be forwarded to the regional office of the department, prior to Council undertaking public exhibition.”

This review satisfies the Gateway Determination requirement by providing details of the existence, location and extent of acid sulfate soils for properties within the Planning Proposal, and considering consistency with Section 117 Direction 4.1.

Section 117 Direction

Section 117 Direction 4.1 Acid Sulfate Soils is detailed in Attachment 1 of this report. The objective of the direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

In accordance with Section 117 Direction 4.1, this report considers the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning and determines whether the planning proposal will lead to an intensification of land uses on land identified as having a probability of containing acid sulfate soils that is likely to pose an unacceptable risk to the environment.

BVLEP 2013

Each allotment identified in this report has been deferred from Bega Valley Shire Council Local Environmental Plan 2013 (BVLEP 2013) and consequently Bega Valley LEP 2002 applies. Rezoning the subject land in accordance with the Planning Proposal will result in BVLEP 2013 which contains Local Clause 6.1 Acid Sulfate Soils applying to the subject land.

Local Clause 6.1 has been adopted by Council to ensure that existing and future development which is likely to affect acid sulphate soils is undertaken in a suitable manner by requiring development consent for certain works and an assessment of these works because of the risks associated with the disturbance of acid sulphate soils. Details of BVLEP Clause 6.1 are contained in Attachment 2 of this report.

Affected properties

There are three sites contained in the Planning Proposal that are identified on the Bega Valley Local Environmental Plan 2013 (BVLEP 2013) Acid Sulfate Soils Maps as having a probability of acid sulfate soils being present. Each identified site is discussed in turn.

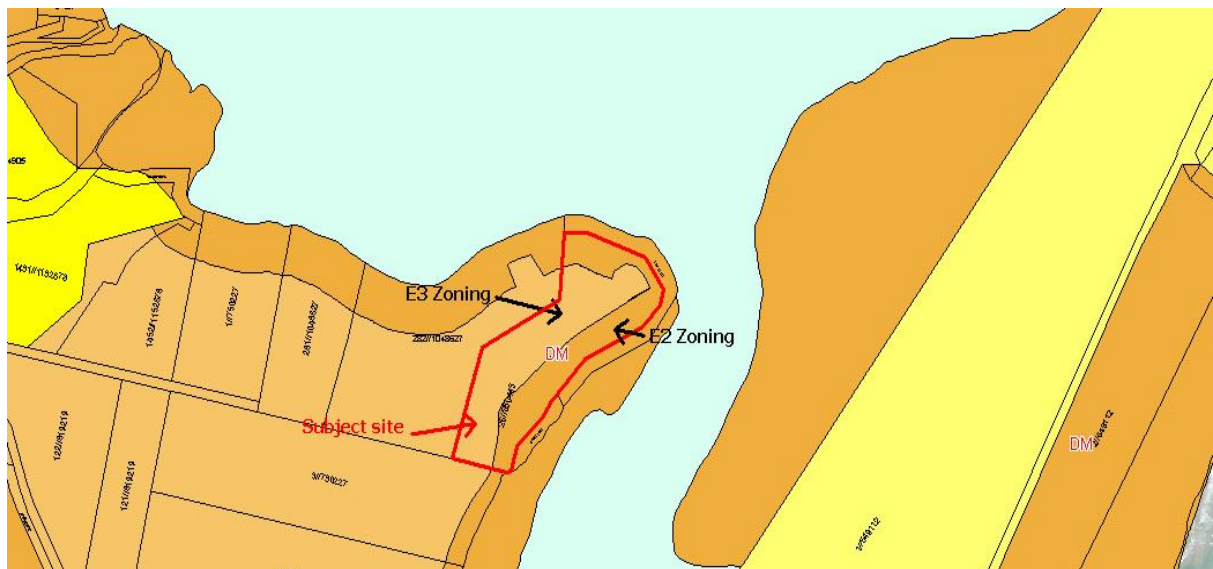
The Planning Proposal aims to apply either the E2 Environmental Conservation or E3 Environmental Management to all of the land identified as likely to contain acid sulphate soils. The objectives and land use tables for these two zones are detailed in Appendix 3.

1. Lot 26 DP850443 – Green Point Road, Millingandi

The subject land is located at the end of Green Point Road, Millingandi. This Planning Proposal seeks to rezone the land part E3 Environmental Management and part E2 Environmental Conservation (see Map 1).

The extent of Class 1 and 2 acid sulfate soils affecting this lot mapped on the BVLEP 2013 Acid Sulfate Soils Map detailed in Map 2. The map shows that the area of the allotment affected by acid sulfate soils is predominantly located within land proposed to be zoned E2 Environmental Conservation.

The objective of the E2 zone is to prevent development that could adversely affect the environmental values of the land. As the identified acid sulfate soils would be predominantly located within the E2 zone, it is considered that the limited permitted land uses of the E2 zone complements the objective of the Section 117 direction to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.



Map 1 – Proposed zoning of Lot 26 DP850443 Green Point Road, Millingandi



Map 2 – Area of Lot 26 DP850443 Green Point Road, Millingandi affected by acid sulfate soils (shown in pink & purple)

There is a small area of acid sulfate soils mapped within the proposed E3 Environmental Management zone, however, it is considered that there would be no adverse impact on this small area as a result of the rezoning as Council has previously assessed the impact of acid sulfate soils on this part of property through development applications for a dwelling and pool which have been constructed with no acid sulfate soils was identified during construction (see Map 3 for location of dwelling and pool).

As the small area of E3 zoned land mapped as being affected by acid sulfate soils has been developed by the above approved works, no additional land uses are likely to be developed in this vicinity



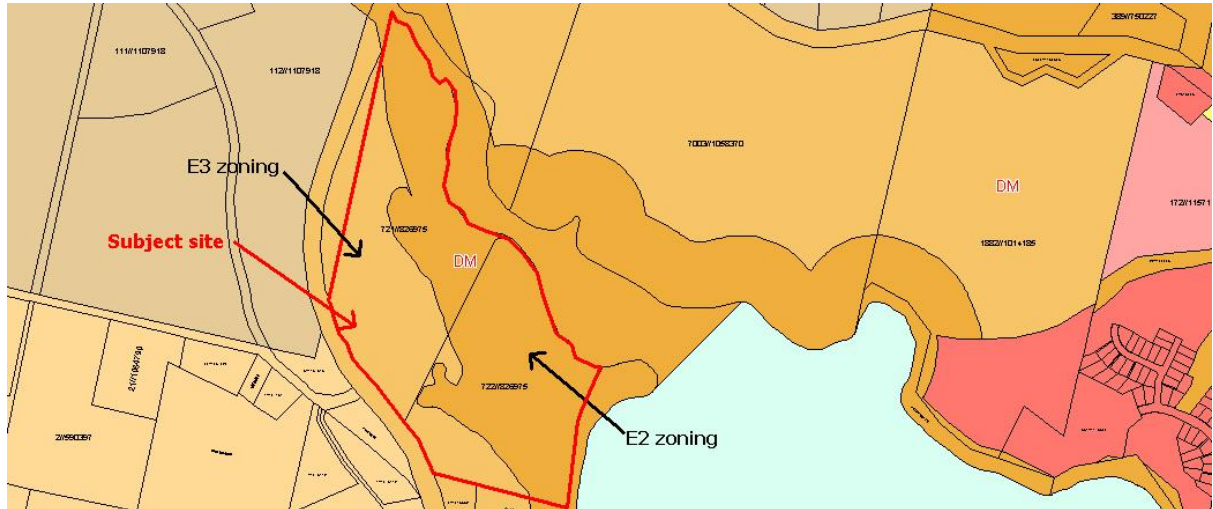
Map 3 - Location of dwelling and pool on Lot 26 DP850443 Green Point Road, Millingandi.

The Planning Proposal also proposes to apply a minimum allotment size for the site of 3 hectares which would potentially enable the subdivision of the subject land into three lots. Any proposed building sites on these new lots must be located within the E3 zone and would be well clear of mapped acid sulfate soils, effectively avoiding any significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

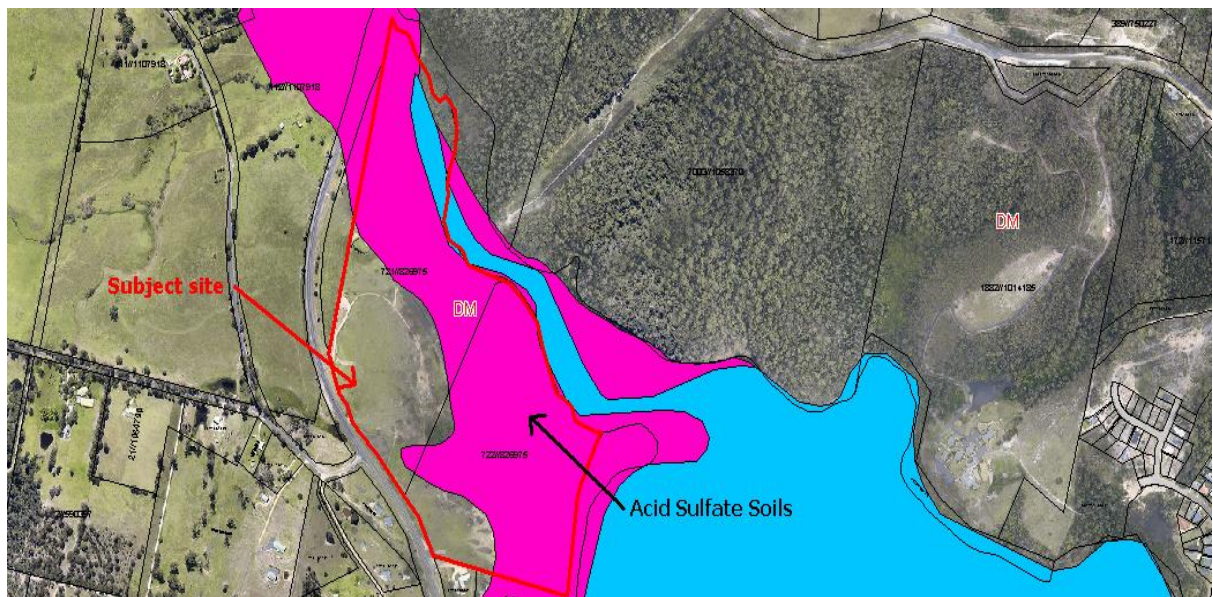
In summary, in relation to the subject land Lot 26 DP850443, this planning proposal will not result in a significant intensification of land uses on land identified as having a probability of containing acid sulfate soils. The proposed change of land use is appropriate as it is highly unlikely to result in the disturbance of acid sulphate soils and any future development will be subject to assessment under BVLEP Clause 6.1 Acid Sulfate Soils.

2. Lots 721 & 722 DP826975 – Princes Highway, Millingandi

The subject land contains two allotments and is located adjacent to the Princes Highway, Millingandi. The Planning Proposal seeks to zone the land as E3 Environmental Management and E2 Environmental Conservation (see Map 4). Approximately 70% of the subject land is mapped as being affected by Class 1 and 1 acid sulfate soils under BVLEP 2013 Acid Sulfate Soils Maps (see Map 5).



Map 4 – Proposed zoning of Lots 721 & 722 DP826975 Princes Highway, Millingandi



Map 5 - Lots 721 & 722 DP826975 Princes Highway, Millingandi affected by acid sulfate soils (shown in pink)

Maps 4 and 5 show that the area of the allotment affected by acid sulfate soils is predominantly within the land proposed to be zoned E2 Environmental Conservation. The objective of the E2 zone is to prevent development that could adversely affect the environmental values of the land. As the identified acid sulfate soils would be located

There is a small area of acid sulfate soils located within the proposed E3 Environmental Management zone, however, it is considered that there would be no adverse impact on this small area as Council has previously assessed the impact of acid sulfate soils on this part of property through development applications for a dwelling and a recreational vehicle park. Map 6 details the location of the existing dwelling and recreational vehicle park.

No occurrence of acid sulfate soils was identified during construction for either of these developments. Given the small areas of E3 zoned land located within the acid sulfate soils mapped area it is considered that there are no additional land uses that are likely to be generated within the areas mapped as containing acid sulfate soils as a result of the rezoning.



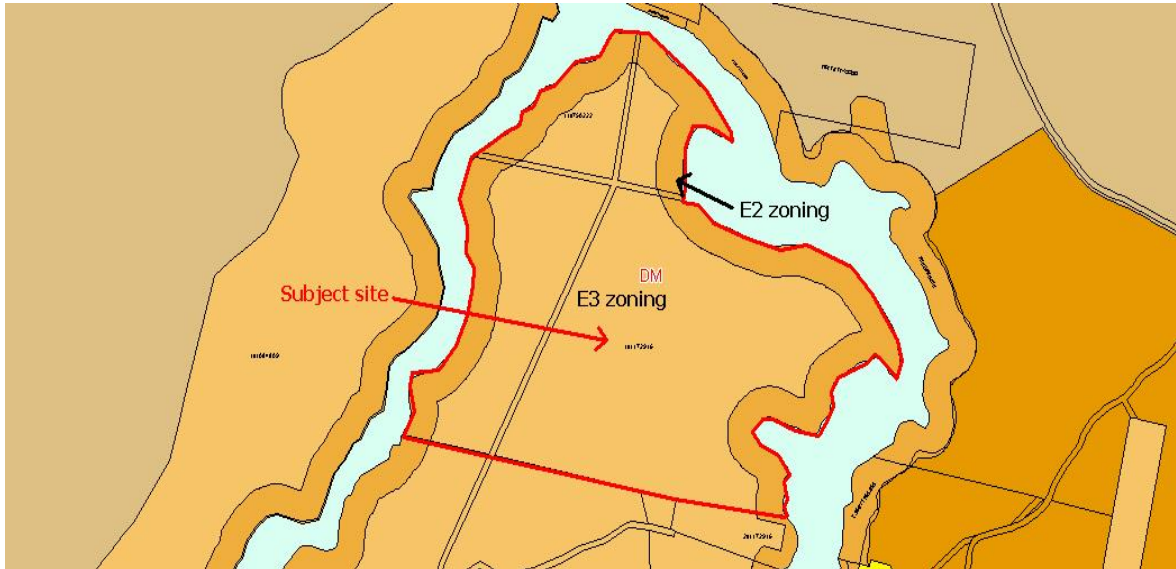
Map 6 - Plan showing location of existing dwelling and Recreational Vehicle Park

The Planning Proposal also proposes to apply a minimum allotment size for the site of 5 hectares which would potentially enable the subdivision of each lot identified in the subject area into 3 rural residential lots (one lot would retain the existing dwelling). Any proposed subdivision would require building sites to be located within the E3 zoned land which will be well clear of mapped acid sulfate soils under BVLEP 2013.

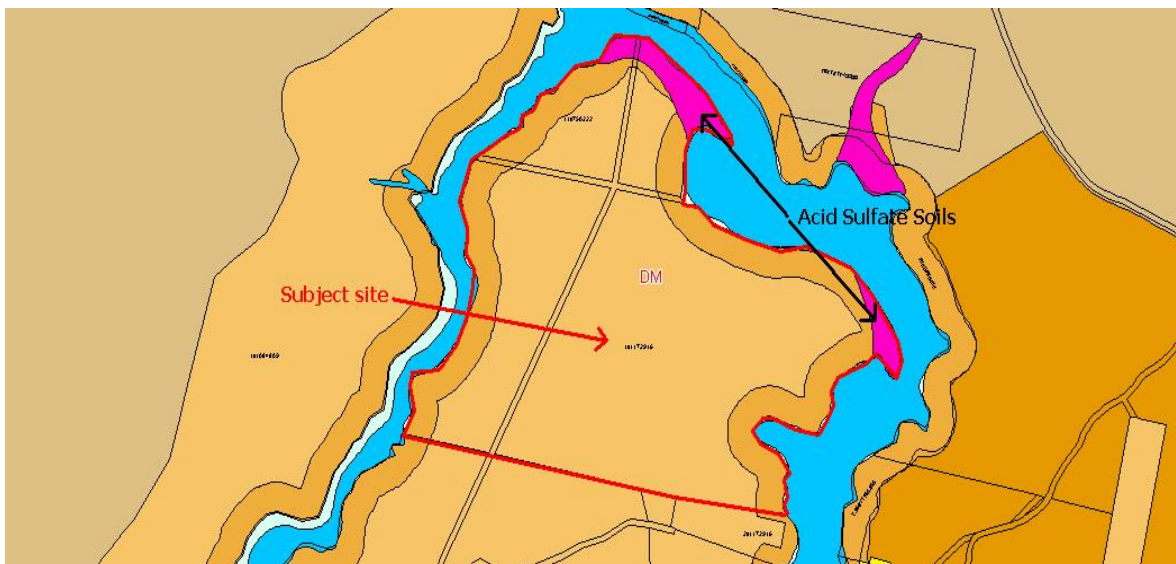
In summary, in relation to the subject land Lots 721 & 722 DP826975, this planning proposal will not result in a significant intensification of land uses on land identified as having a probability of containing acid sulfate soils. The proposed change of land use is appropriate as it is highly unlikely to result in the disturbance of acid sulphate soils and any future development will be subject to assessment under BVLEP Clause 6.1 Acid Sulfate Soils.

3. Lot 11 DP750222 & Lot 1 DP1172916 – Ivor Jones Drive, Wonboyn

The subject land contains two allotments, is located at the end of Ivor Jones Drive, Wonboyn and is currently undeveloped. This Planning Proposal seeks to zone the land as E3 Environmental Management and E2 Environmental Conservation (See Map 7). The extent of acid sulfate soils mapped under BVELP 2013 Acid Sulfate Soils Maps for the allotment with two small areas affected is detailed in Map 8 below.



Map 7 - Proposed zoning of Lot 11 DP750222 & Lot 1 DP1172916 Ivor Jones Drive, Wonboyn



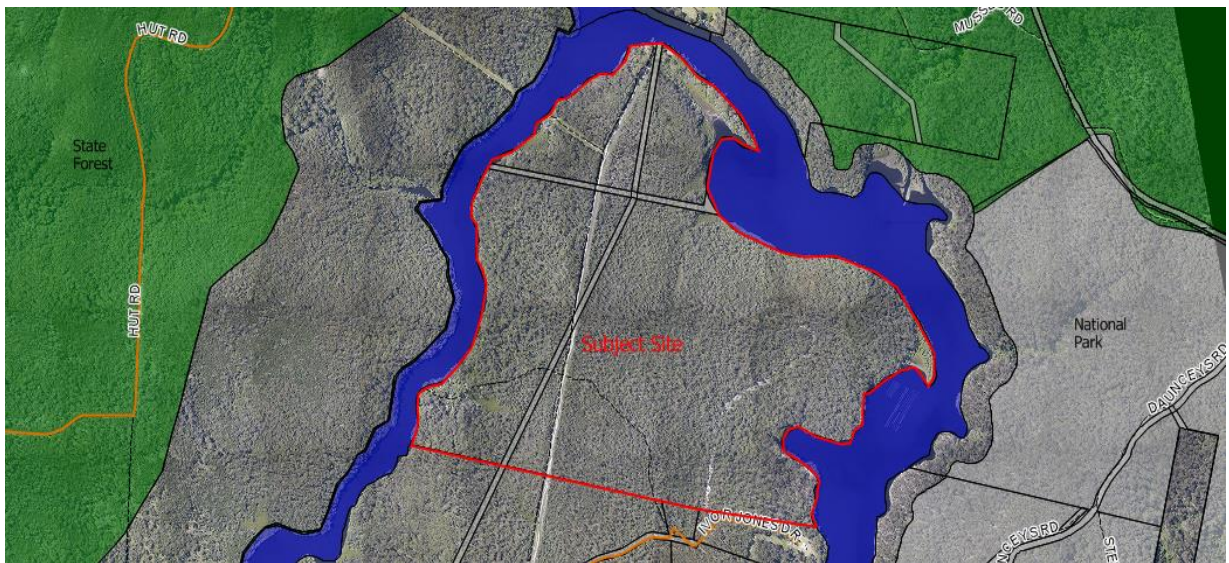
Map 8 - Lot 11 DP750222 & Lot 1 DP1172916 Ivor Jones Drive, Wonboyn affected by acid sulfate soils

The maps show that the area of the allotment affected by acid sulfate soils is predominantly within land proposed to be zoned E2 Environmental Conservation. A small area of approximately 100 sqm of Class 2 acid sulfate soils located within the proposed E3 Environmental Management zone, however with a total area of approximately 114ha of

the property proposed to be zoned E3, there is no need for the area potentially affected by acid sulfate soils to be developed for a residential dwelling purpose.

As the identified acid sulfate soils would be located predominantly within the E2 zone, it is considered that the limited permitted land uses of the E2 zone complements the objective of the Section 117 direction to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

The Planning Proposal also proposes to apply a minimum allotment size for the site of 40 hectares which would potentially enable the subdivision of the land into 4 rural residential lots. Any proposed building sites would be required to be located within the E3 zoned land outside of the area mapped as potentially containing acid sulfate soils under BVLEP 2013. Map 9 details the extent of the site in regards to vegetation over the site.



Map 9- Lot 11 DP750222 & Lot 1 DP1172916 Ivor Jones Drive, Wonboyn affected by acid sulfate soils

In summary, in relation to the subject land Lot 11 DP750222 & Lot 1 DP1172916, this planning proposal will not result in a significant intensification of land uses on land identified as having a probability of containing acid sulfate soils. The proposed change of land use is appropriate as it is highly unlikely to result in the disturbance of acid sulphate soils and any future development will be subject to assessment under BVLEP Clause 6.1 Acid Sulfate Soils.

Conclusion

Direction 4.1 Acid Sulfate Soils applies when a relevant planning authority prepares a Planning Proposal that will apply to land having a probability of containing acid sulphate soils as shown on the Acid Sulphate Soils Planning Maps. The objective of the Direction is to avoid significant adverse environmental impacts from the use of land that has the probability of containing Acid Sulphate Soils.

This Planning Proposal is not consistent with this Direction as it applies to land that has a probability of containing acid sulphate soils. Lot 26 DP 850443 Green Point Road, Pambula; Lots 721 and 722 DP 826975 Princes Highway, Millingandi; and Lot 11 DP 750222 and Lot 1 DP 1172916 Ivor Jones Drive Wonboyn are identified on the BVLEP 2013 Acid Sulphate Soils Map as containing Class 1 and/or Class 2 Acid Sulphate Soils.

The inconsistency with this Direction is justified given the minor scale of development likely to result and because this issue is routinely addressed by Council in the development assessment process. Under Clause 6.1 of BVLEP 2013 studies are required for land that is within an area identified as having a probability of containing acid sulphate soils. Soil samples are assessed for content of acid sulphate material by a suitably qualified person and the results lodged with Council. If acid sulphate soils are identified, no excavation can take place until an Acid Sulphate Soil Management Plan has been lodged with Council and approved and any required measures to minimise adverse environmental impacts have been implemented.

This acid sulphate soils review demonstrated that this planning proposal does not propose an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the BVSC Acid Sulfate Soils Planning Maps. The zoning of the majority of the land mapped as containing acid sulphate soils as E2 Environmental Conservation will reduce the risk to the surrounding ecosystems from acid leaching into the environment from the disturbance of the soil or groundwater and limit development proposals with the potential for ecologically unsustainable cumulative impacts on water systems and biodiversity.

Attachment 1: Direction 4.1 Acid Sulfate Soils

Objective

(1) The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

Where this direction applies

(2) This direction applies to all relevant planning authorities that are responsible for land having a probability of containing acid sulfate soils, as shown on Acid Sulfate Soils Planning Maps held by the Department of Planning.

When this direction applies

(3) This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.

What a relevant planning authority must do if this direction applies

(4) The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.

(5) When a relevant planning authority is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions must be consistent with:

(a) the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Director-General, or

(b) such other provisions provided by the Director-General of the Department of Planning that are consistent with the Acid Sulfate Soils Planning Guidelines.

(6) A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director-General prior to undertaking community consultation in satisfaction of section 57 of the Act.

(7) Where provisions referred to under paragraph (5) of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the planning proposal must contain provisions consistent with paragraph (5).

Consistency

(8) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

(a) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or

(b) of minor significance.

Attachment 2: BVLEP 2013 Part 6 Additional Local Provisions

6.1 Acid sulfate soils

(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

Class of land	Works
1	Any works.
2	Works below the natural ground surface. Works by which the watertable is likely to be lowered.
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
4	Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

(4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if:

(a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and

(b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.

(5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power):

(a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,

(b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),

(c) minor work, being work that costs less than \$20,000 (other than drainage work).

(6) Despite subclause (2), development consent is not required under this clause to carry out any works if:

(a) the works involve the disturbance of less than 1 tonne of soil, and

(b) the works are not likely to lower the watertable.

Attachment 3: BVLEP 2013 E2 and E3 zones

Zone E2 Environmental Conservation

1 Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Boat launching ramps; Boat sheds; Building identification signs; Community facilities; Environmental facilities; Jetties; Roads; Water recreation structures

4 Prohibited

Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Zone E3 Environmental Management

1 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To provide for low density development and land use activities relating to settlement in natural surroundings, for sustainable agriculture and for other types of land uses compatible with the primary environmental values of the zone.
- To limit residential development in environmentally sensitive areas.

2 Permitted without consent

Environmental protection works; Extensive agriculture; Home businesses; Home industries; Home occupations

3 Permitted with consent

Aquaculture; Bed and breakfast accommodation; Bee keeping; Boat launching ramps; Building identification signs; Camping grounds; Cellar door premises; Community facilities; Dwelling houses; Eco-tourist facilities; Environmental facilities; Farm buildings; Farm stay accommodation; Function centres; Home-based child care; Information and education facilities; Jetties; Places of public worship; Recreation areas; Roads; Roadside stalls; Secondary dwellings; Viticulture; Water recreation structures; Water storage facilities

4 Prohibited

Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3