

BEGA VALLEY SHIRE COUNCIL

Bega Valley Local Environmental Plan 2013

Draft Planning Proposal: Mapping Amendments 2

December 2014

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Part 1 – Objectives or Intended Outcomes

The objectives of this Planning Proposal are to permit minor amendments to Bega Valley Local Environmental Plan 2013 and associated maps to resolve anomalies to permit existing lawful uses occurring on certain land and amend the zoning of Barragoot Swamp to reflect existing environmental values.

Part 2 – Explanation of the Provisions

To achieve the objectives outlined in Part 1, this Planning Proposal seeks to amend Bega Valley Local Environmental Plan (BVLEP) 2013 in the following manner:

1. Part Lot 881 DP 1063701 & Part Lot 411 DP 1073628 Tathra-Bermagui Road, Bermagui
 - Amend map sheet LAP_001 applying to Part Lot 881 DP 1063701 by deleting Deferred Matter
 - Amend map sheets LZN_017C and LZN_018 by applying E2 Environmental Conservation Zone and E3 Environmental Management to Part Lot 881 DP 1063701 and Part Lot 411 DP 1073628
 - Amend map sheets WCL_017 and WCL_018 by applying the notation “ Barragoot Swamp”
2. Lot 292 DP 853663 Sapphire Coast Drive, Bournda
 - Amend map sheet CL1_020C by applying ‘Additional Permitted Uses’ to Lot 292 DP 853663
 - Amend Bega Valley Local Environmental Plan 2013 Schedule 1 Additional Permitted Uses to include development for the purposes of Neighbourhood Shop and Service Station listed as permitted with development consent.
3. Lot 20 DP 1042188 Sapphire Coast Drive, Wallagoot
 - Amend map sheet LSZ_019 by applying AB1 10 hectares to Lot 20 DP 1042188
4. Lot 344 DP 750227 Arthur Kaine Drive, Pambula
 - Amend map sheet LZN_020A by applying E4 Environmental Living Zone to Lot 344 DP 750227
 - Amend map sheet LSZ_020A by applying V 2000sqm to Lot 344 DP 750227

Part 3 – Justification

1. Part Lot 881 DP 1063701 & Part Lot 411 DP 1073628 Tathra-Bermagui Road, Bermagui



Figure 1: Tathra-Bermagui Road, Bermagui - Aerial Photograph

The subject properties are located within a rural residential area approximately 3 kilometres south of the Bermagui Township. Barragoot Lake is located to the west and south of the subject properties (see Figure 1).

Lot 881 DP 1063701 comprises a site area of approximately 10 hectares and is predominantly cleared with a dwelling house and associated outbuildings located near the south-eastern boundary. A farm dam is located west of the existing residence.

Lot 411 DP 1073628 adjoins the southern and western boundaries of Lot 881 DP 1063701 and comprises a site area of approximately 23 hectares. The property is heavily vegetated and contains a dwelling house and associated outbuildings located close to Barragoot Lake.

The subject properties are divided north-south by an unnamed creek that flows to Barragoot Lake. Along this creek is the general location of Barragoot Swamp which covers parts of

both the subject lots. The aim of this planning proposal is to protect the environmental values of the swamp by amending the zoning of that part of the land covered by Barragoot Swamp.

Lot 881 DP 1063701 is currently deferred from BVLEP 2013 and was proposed to be zoned part E2 Environmental Conservation Zone (1,865m²), E3 Environmental Management Zone (8.3ha) and E4 Environmental Living Zone (1.8ha) in Draft BVLEP 2010 (see Figure 2).

Lot 881 DP 1063701 is currently zoned part 1(c) Rural Small Holdings Zone and part 7(b) Environment Protection (Foreshore) Zone under BVLEP 2002. Lot 411 DP 1073628 is currently zoned E3 Environmental Management Zone (12.5 hectares) and E2 Environmental Conservation Zone (10.6 hectares) under BVLEP 2013 (see Figure 2).

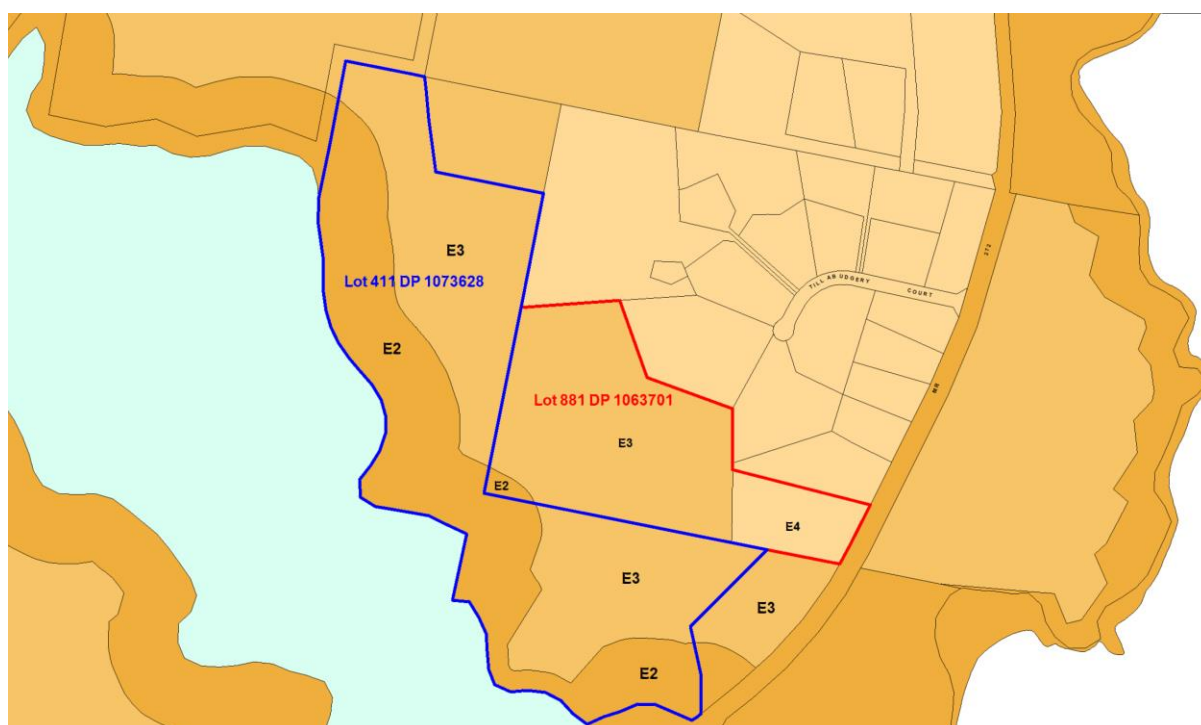


Figure 2: Tathra-Bermagui Road, Bermagui: Land Use Zones as exhibited in Draft BVLEP 2010

In response to a submission during the public exhibition of Draft BVLEP 2010, the proposed zoning of Lot 881 DP 1063701 was reviewed with regard to the protection of Barragoot Swamp. Following this review Council resolved to: “Amend zone of swamp to E2 and amend Waterway overlay to better reflect the waterbody.”

Following further investigations of the extent of Barragoot Swamp, on 6 November 2013, Council determined that the entire area comprising Barragoot Swamp should be zoned E2 Environmental Conservation including part of Lot 411 DP 1073628 (approximately 5.4 hectares) to ensure the future protection of the swamp.

The proposed zones for Lot 881 DP 1063701 and the adjacent Lot 411 DP 1073628 are illustrated in Figure 3. The proposed amendment to the waterway overlay is illustrated in Figure 4.

The Swamp is an arm of the Barragoot Lake Estuary and has important environmental values, which include containing Endangered Ecological Communities and important bird breeding habitat. Barragoot Lake is closed to the sea for the majority of the time, during which Barragoot Swamp is inundated.

Barragoot Swamp was originally excluded from the E2 Environmental Conservation Zone in draft BVLEP 2010 due to an error in the mapping of the estuarine foreshore in this area. Unlike other estuarine areas, Barragoot Swamp is not shown on the Cadastral Layer and as such was overlooked during the preparation of the Draft BVLEP 2010 maps. Amending the zoning of parts of the subject properties to E2 Environmental Conservation will not affect the development potential of the land as neither lot has any subdivision potential under BVLEP 2013 and both lots will retain significant areas zoned E3 Environmental Management on which suitable development can occur.

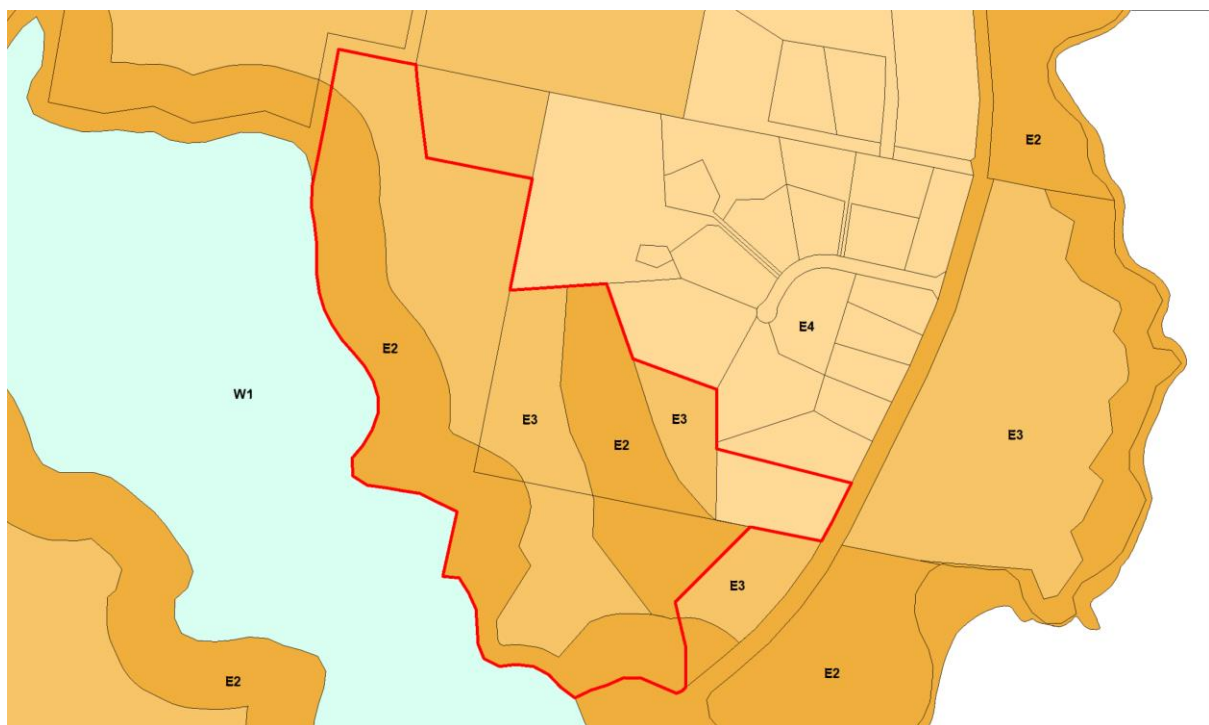


Figure 3: Tathra-Bermagui Road, Bermagui: Proposed Land Use Zones

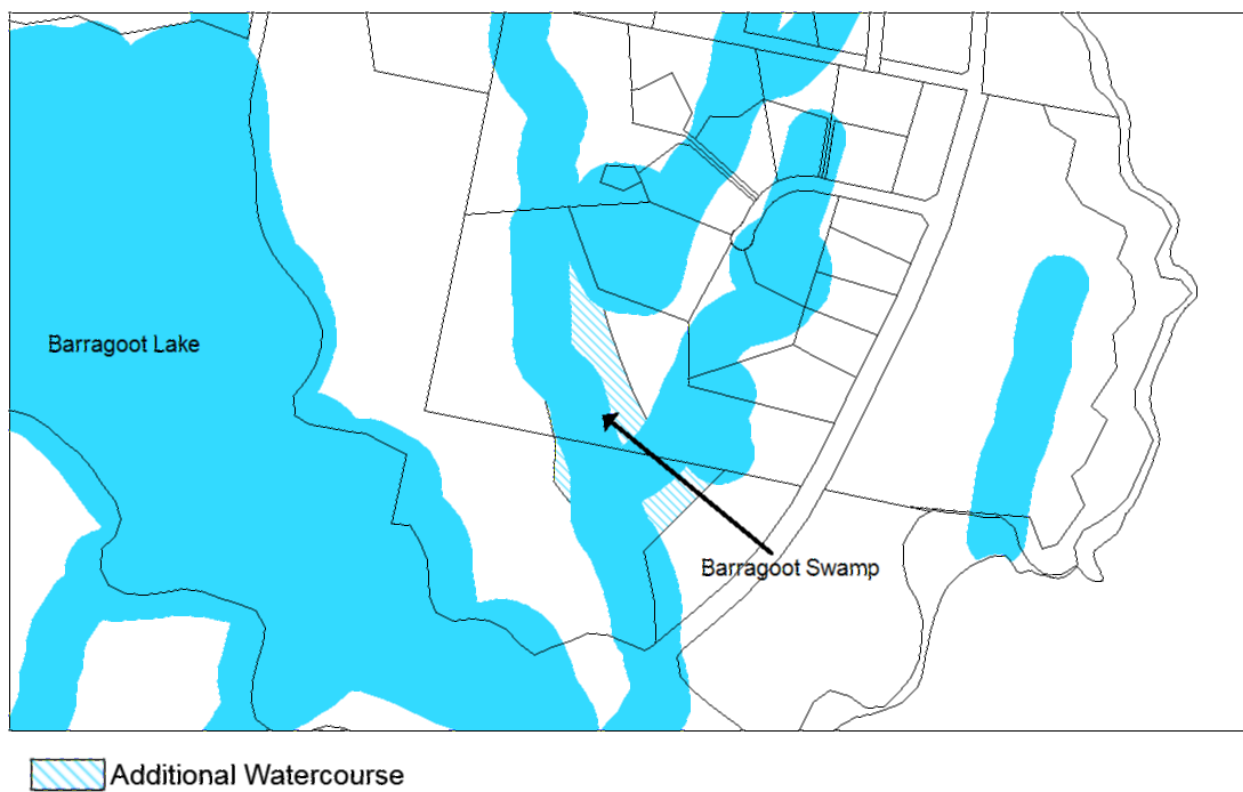


Figure 4: Tathra-Bermagui Road, Bermagui: Proposed amendment to Riparian Lands and Watercourse Map

2. Lot 292 DP 853663 Sapphire Coast Drive, Bournda

The property at Lot 282 DP 853663 Sapphire Coast Drive, Bournda is known as the Stone House Cafe, and is currently zoned R5 Large Lot Residential under BVLEP 2013 with no subdivision potential (see Figure 6). It contains a general store and disused service station and although these uses are legally approved, they are prohibited under the current zone (see Figure 5).

The general store currently operates under existing use rights. To facilitate the continued use of the property as a general store and as a long term solution to the zoning/land use issue, it is proposed to include the property in BVLEP 2013 Schedule 1 Additional Permitted Uses with Neighbourhood Shop and Service Station listed as permitted uses (see Figure 7).



Figure 5: Lot 292 DP 853663 Sapphire Coast Drive, Bournda - Aerial Photograph

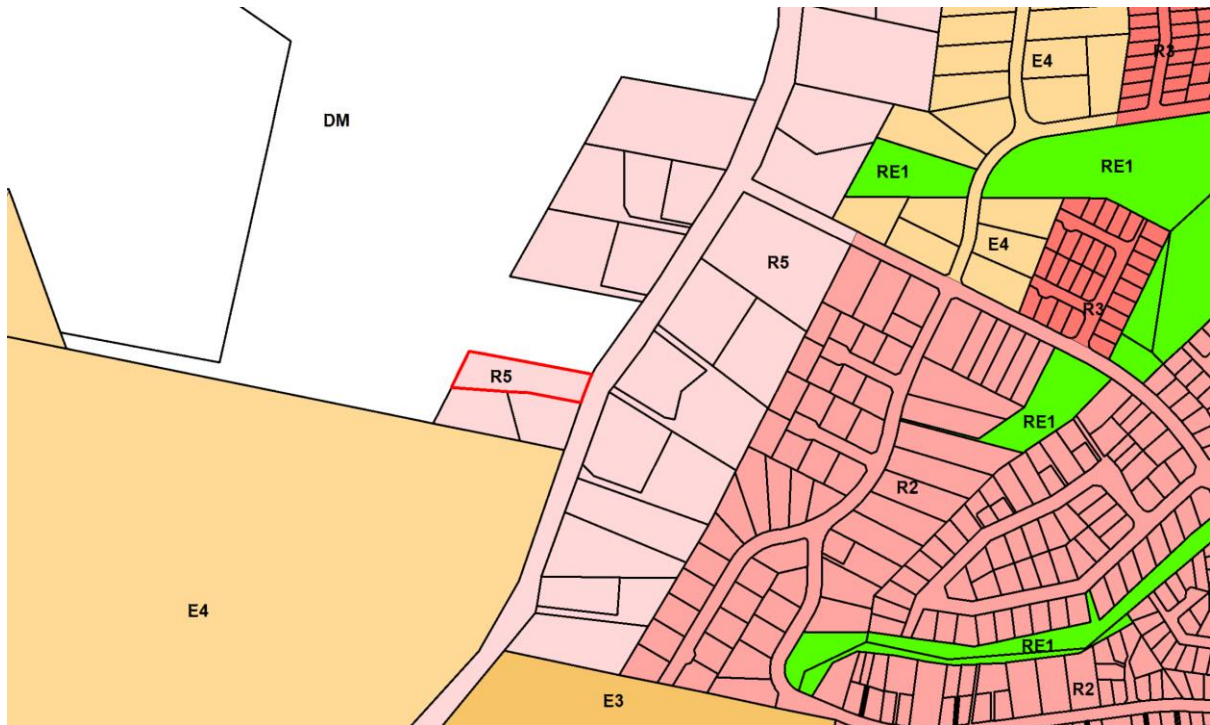


Figure 6: Lot 292 DP 853663 Sapphire Coast Drive, Bournda – Current zones

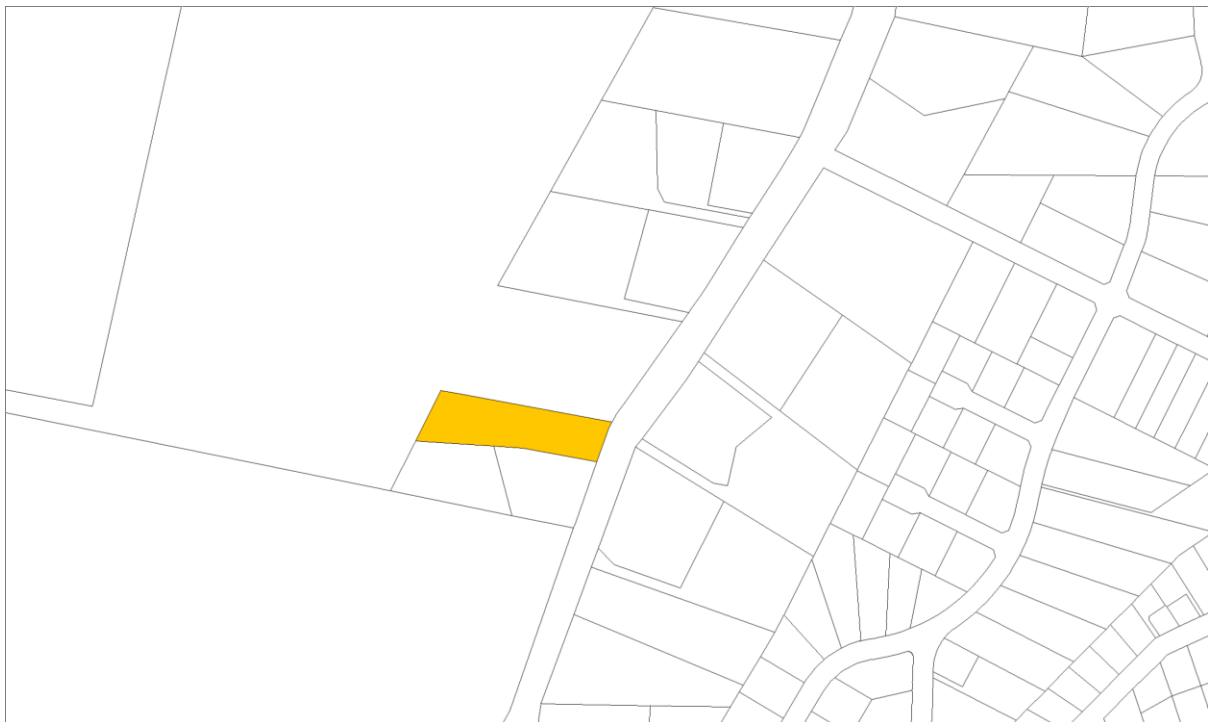


Figure 7: Lot 292 DP 853663 Sapphire Coast Drive, Bournda - proposed amendment to Additional Permitted Uses Map

3. Lot 20 DP 1042188 Sapphire Coast Drive, Wallagoot

Lot 20 DP 1042188 is located between Sapphire Coast Drive and Wallagoot Lake (see Figure 8). The property is approximately 10.5 hectares has been substantially cleared and used for agricultural purposes and contains a large bulk storage structure with attached ancillary dwelling.

Under BVLEP 2013 the property is currently zoned E3 Environmental Management with a minimum lot size of 120ha (see Figure 9).



Figure 8: Lot 20 DP 1024188 Sapphire Coast Drive, Wallagoot - Aerial Photograph

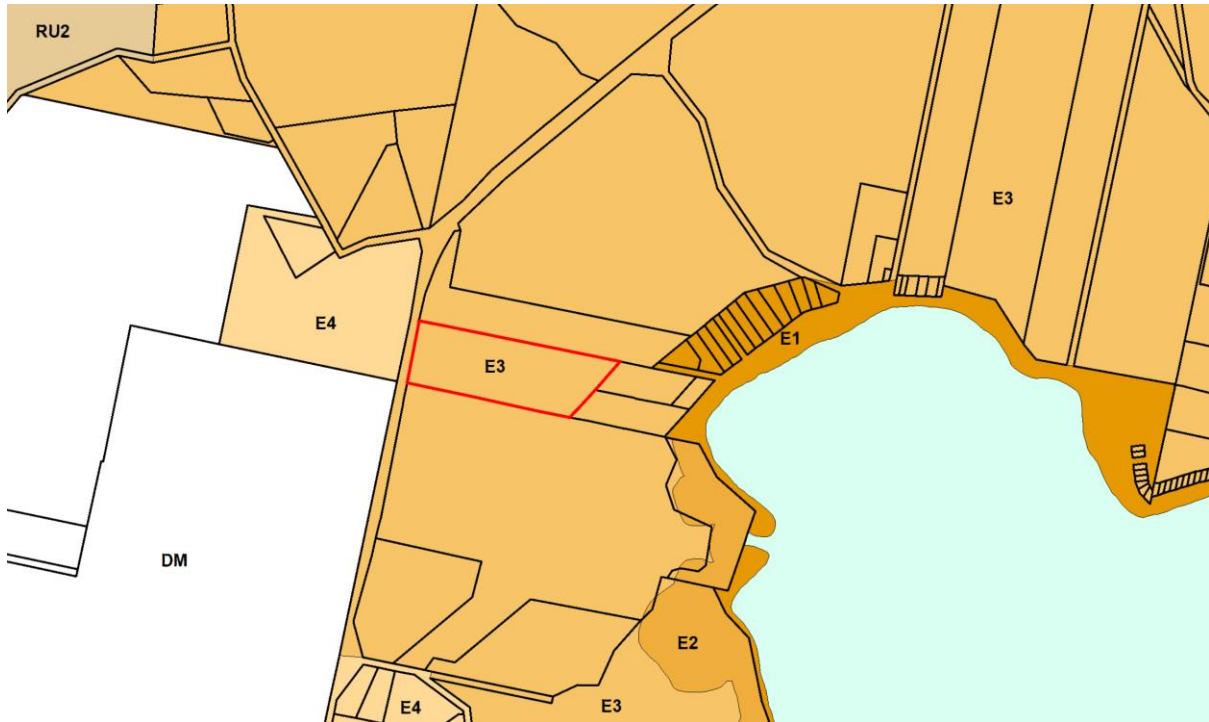


Figure 9: Lot 20 DP 1024188 Sapphire Coast Drive, Wallagoot – Current Zones

In 1993 development consent was issued for the erection of a shed and dwelling on Lot 2 DP 794421 Sapphire Coast Drive. The following year consent was issued for the use of the shed as a bulk store for storage and distribution of goods. In 2000 development consent was issued for the subdivision of Lot 2 DP 794421 into three lots creating Lots 20, 21 and 22 DP 1042188. Lot 21 contains a dwelling and Lot 22, which adjoins Wallagoot Lake, was dedicated as a public reserve.

While consent was issued for the creation of Lot 20, there was no dwelling entitlement under BVLEP 1987 and the only way a dwelling-house could be approved on the land was as ancillary to another approved use, in this case a commercial use (bulk store). Consequently the subdivision was approved subject to an 88B restriction being placed on the title of Lot 20 identifying that:

The land burdened is restricted from having a dwelling erected upon it except where the dwelling is ancillary to the main commercial purpose of the said land with that purpose being the use of an existing bulk store or other purpose approved by Bega Valley Shire Council. Should the principal commercial purpose of the land burdened cease then the use of any building as a dwelling on the land shall also cease. The sole authority to release vary or modify this covenant is the Bega Valley Shire Council.

Council received a request on behalf of the current owners of the property to remove the restriction on the use of the Lot 20 DP 1042188 and that the BVLEP 2013 Lot Size Map be amended to permit a dwelling with development consent.

In support of the request, the applicant has submitted that the restriction on the use of the property is no longer valid and can be modified or removed; that the current ancillary dwelling provides all elements for domestic habitation and is properly serviced by an onsite effluent disposal system; and that amending the lot size will simply reflect the true and ongoing circumstances of the land and not confer any subdivision potential.

BVLEP 2013 recognised the environmental characteristics of this area, zoning the subject land and surrounding area as E3 Environmental Management and limiting further subdivision for dwelling purposes. Storage premises are not permitted within the E3 zone, and while the subject property is no longer operating as a storage and distribution facility, the structure and ancillary dwelling remains.

As dwellings are permitted subject to development consent within the E3 zone, conversion of the existing structure solely for use as a dwelling is considered to be more in keeping with the objectives of the zone than the current approved commercial use. Consequently Council resolved to remove the 88B restriction on the use of the land and amend the minimum lot size map to permit a dwelling on Lot 20 DP 1042188 (see Figure 10).

The amended minimum lot size for the subject land will enable regularisation of the use of the land for a dwelling and would not permit any additional residential subdivision or enable future development of the land for unsuitable purposes.

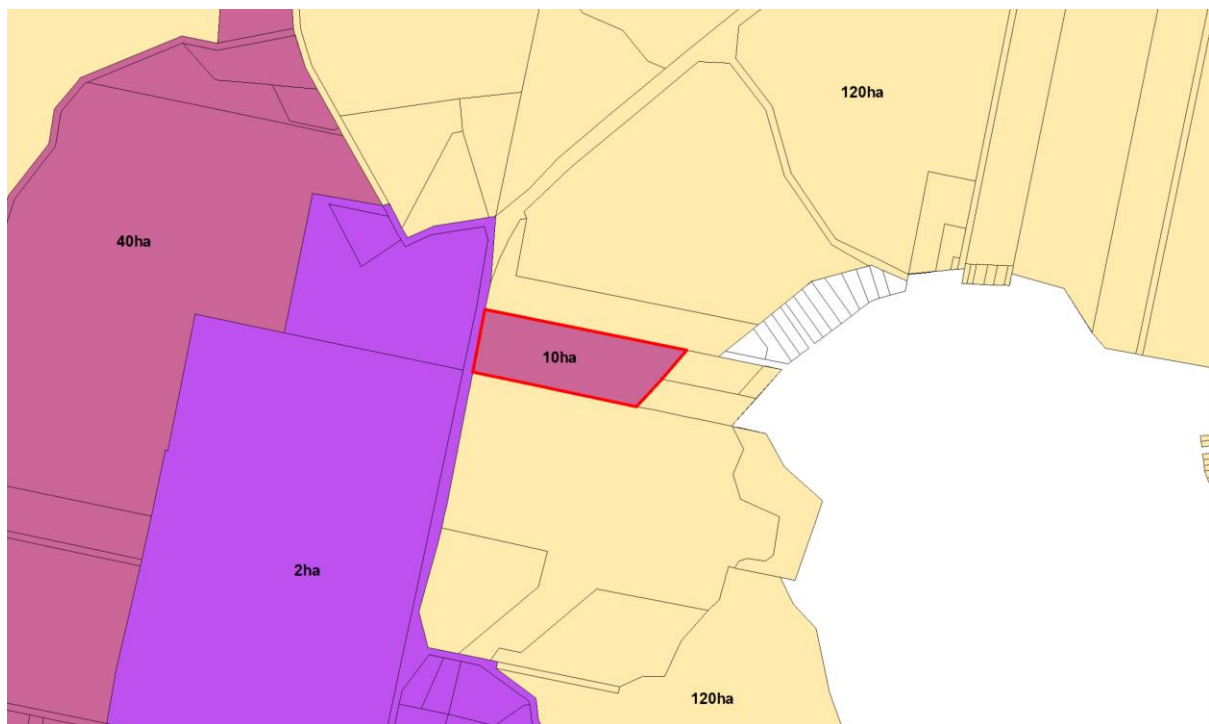


Figure 10: Lot 20 DP 1024188 Sapphire Coast Drive, Wallagoot – Proposed Minimum Lot Size

4. Lot 344 DP 750227 Arthur Kaine Drive, Pambula

Lot 344 DP 750227 is located behind the Fairway Motel on Arthur Kaine Drive, Pambula (see Figure 11). It was zoned 1(a) General Rural under BVLEP 2002 and was incorrectly zoned E2 Environmental Conservation in BVLEP 2013 (see Figure 12).

The subject land is just over 2,000sqm and contains a dwelling. It is proposed to rezone the land E4 Environmental Living with a 2,000sqm lot size in keeping with the general zoning strategy for such land (see Figures 13 and 14). This will permit the further development of the land for residential purposes without having to rely on existing use rights provisions.



Figure 11: Lot 344 DP 750227 Arthur Kaine Drive, Pambula - Arial Photograph

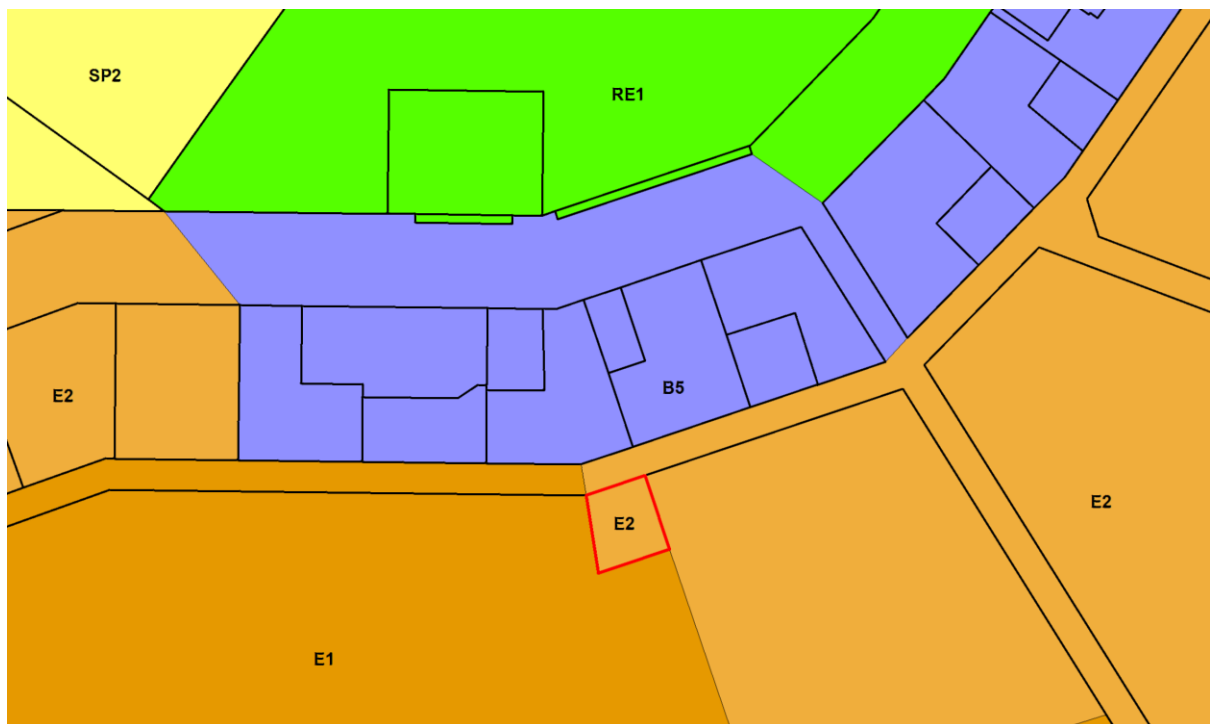


Figure 12: Lot 344 DP 750227 Arthur Kaine Drive, Pambula - Current Land Use Zone

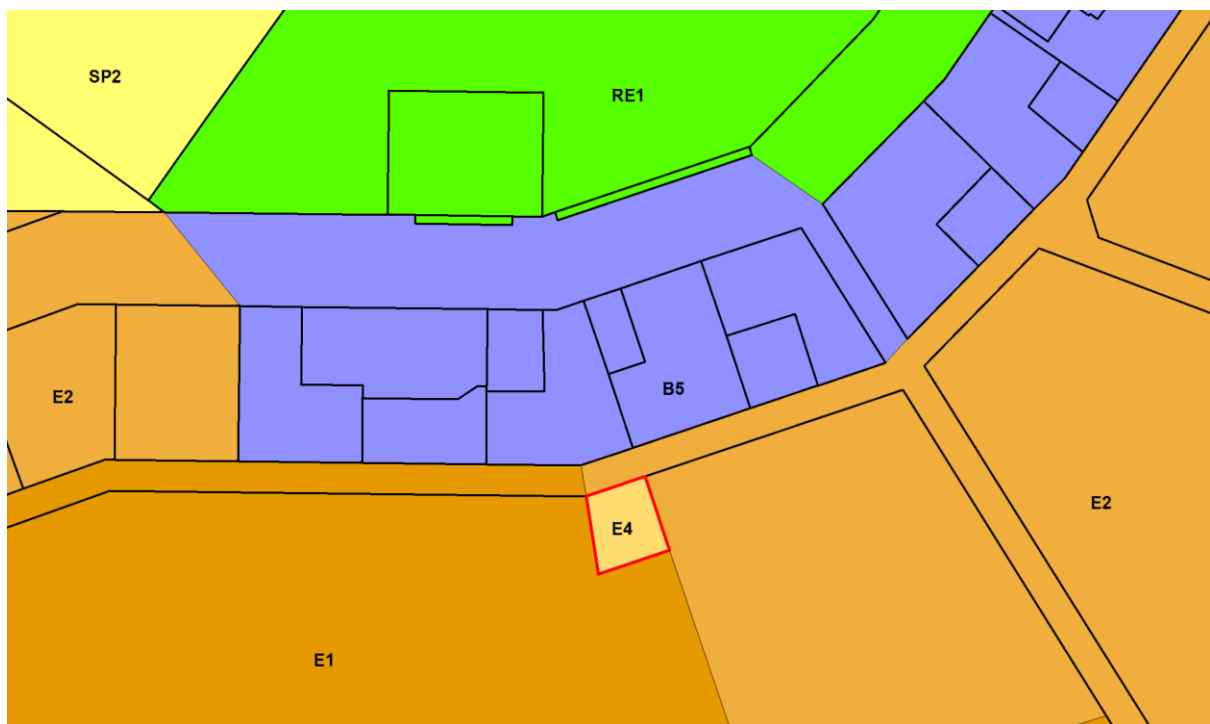


Figure 13: Lot 344 DP 750227 Arthur Kaine Drive, Pambula - Proposed Land Use Zone

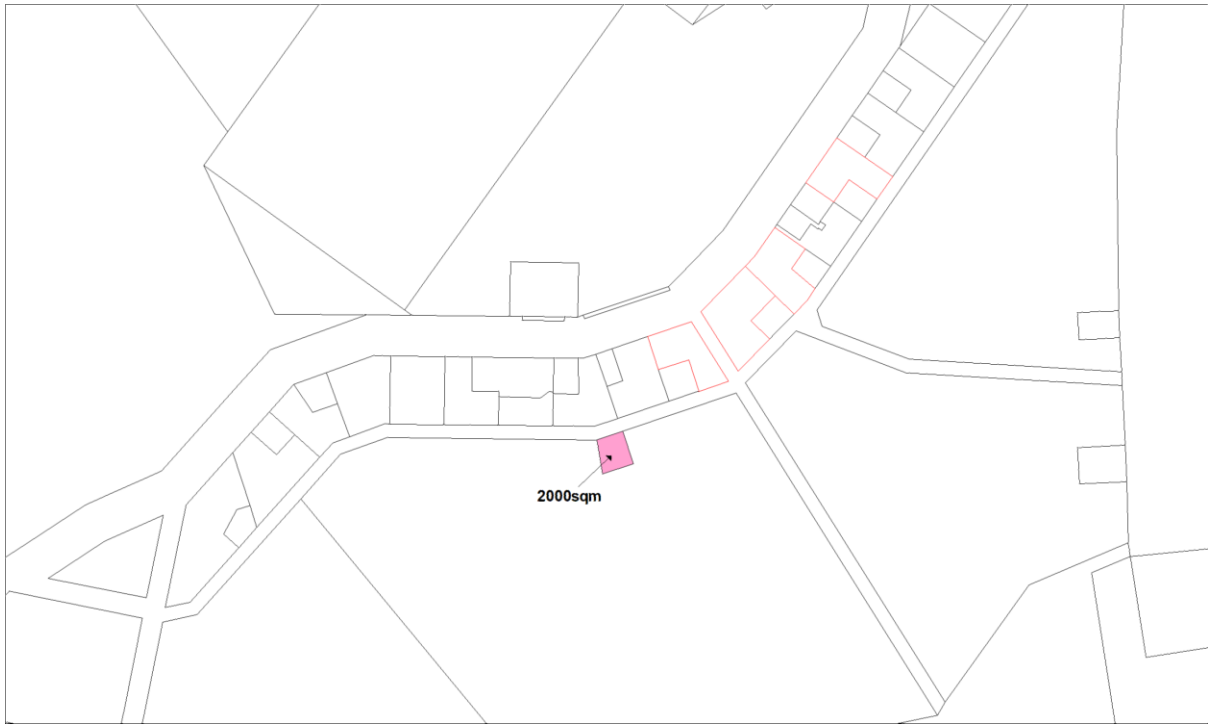


Figure 14: Lot 344 DP 750227 Arthur Kaine Drive, Pambula - Proposed Minimum Lot Size

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of any strategic study or report?

Council resolved on the 13th December 2005 to prepare a draft Comprehensive Local Environmental Plan to replace BVLEP 2002. The draft BVLEP 2010 was prepared based on the following:

- The majority of the Shire was changed to the closest comparable zone available in the standard State wide template.
- Where changes were proposed, the focus was on improving opportunities for economic development and jobs in the Bega Valley town centres, through the expansion of business, mixed use and industrial zones.
- Protection of productive agricultural land through the use of RU1 Primary Production and RU2 Rural Landscape zones.
- Establishment of allotment sizes through a “Lot Size Map”, thus determining subdivision and dwelling entitlements.
- Recognition of environmentally sensitive land through the use of E3 Environmental Management and E4 Environmental Living zones.
- Protection of sensitive foreshore areas and bushland public reserves through the use of E2 Environmental Conservation zone.

The Draft BVLEP 2010 was publically exhibited from the 12th May 2011 to the 29th July 2011 and 456 submissions were received. Following consideration of those submissions, Council categorised them into four groups:

- Appendix 1: Support (or partial support) for the submission request, with only minor changes required to the exhibited draft CLEP. The CLEP was amended in line with these recommendations.
- Appendix 2: Support (or partial support) for the submission request, however, due to the nature of changes proposed re-exhibition would be required. Land subject to the submissions is to be identified as a ‘deferred matter’ in the CLEP. Staff are to prepare planning proposals seeking to amend the CLEP, once adopted, in accordance with Councils’ resolutions and a “gateway determination” by the Minister for Planning required prior to re-exhibition.
- Appendix 3: Further research is to be carried out by Council staff prior to progressing a resolution of the submissions via a future report to Council. Land subject to the submissions is to be identified as a ‘deferred matter’ in the CLEP.
- Appendix 4: No agreement with the submission request, or the submission to be noted but no need for further action at this time. No change to exhibited draft CLEP is required.

The full Council Report and adopted minutes from the relevant meeting of 12th June 2012 are in Attachment 1.

Part Lot 881 DP 1063701 Tathra-Bermagui Road, Bermagui is “deferred” and therefore a planning proposal is required to apply BVLEP 2013 and resolve the issue of appropriate land use controls for this land.

The remainder of the subject properties in this planning proposal have been identified as anomalies following the gazettal of BVLEP 2013. The minor amendments contained in this planning proposal are required to resolve these anomalies to permit existing lawful uses occurring on the site. All of these properties have been reported to Council, with Council resolving to support the provision of a Planning Proposal to resolve land use application and zoning anomalies (see Attachment 1 for details).

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. It is considered that this Planning Proposal is the only available means of achieving the above stated objectives and intended outcomes.

The use of Schedule 1 Additional Uses of BVLEP 2013 for Lot 282 DP 853663 Sapphire Coast Drive, Bournda is preferable to the alternative of rezoning the land to B1 Neighbourhood Centre. The B1 zone would enable a greater range of uses on the land which are likely to be incompatible with the characteristics of the area considering the high visibility of the site to the major road of Sapphire Coast Drive. In addition the use of Schedule 1 will restrict the proposed commercial uses to the site itself and not allow commercial uses to be developed onto adjacent sites under BVLEP 2013 Clause 5.3 Development Near Zone Boundaries.

Schedule 1 Additional Uses of BVLEP 2013 could be used as an alternative in resolving the anomalies for the remaining subject properties. However, there would be no additional benefit in these instances and it would cause ambiguity on the zoning maps and in the land use table. It is not the preferred approach in this instance given the desirability of securing the long-term identification and use of the subject properties for this purpose.

Section B – Relationship to Strategic Planning Framework

Q3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional or sub regional strategy?

South Coast Regional Strategy

One of the main objectives of the South Coast Regional Strategy is to ensure that important natural assets, including biodiversity values, are to be identified and protected through the land use planning process. This Planning Proposal aims to protect the important ecological values of the Barragoot Lake Estuary by zoning Barragoot Swamp E2 Environmental Conservation, which will provide a high level of protection whilst allowing uses compatible with the Swamp's ecological values.

The remainder of the provisions in this planning proposal correct minor anomalies and are not inconsistent with the objectives and actions of the South Coast Regional Strategy.

Q4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

Bega Valley 2030 Community Strategic Plan

The Community Strategic Plan identifies the long term aspirations of the Bega Valley Shire's community. This planning proposal supports the key directions of the Community Strategic Plan with regard to 'A Sustainable Place by 2030 in the Bega Valley' by ensuring:

- The natural environment and ecosystems are appropriately protected and enhanced.
- Our community has the services, opportunities and support to live sustainably.
- The character and amenity of our towns and villages is protected and enhanced.
- There is proactive planning with the community for the protection of our built and natural environment.

Q5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

This Planning Proposal is consistent with the applicable State Environmental Planning Policies (SEPPs). The SEPPs that are applicable to this Planning Proposal are detailed in this section. For a complete checklist of SEPPs refer to Attachment 2.

SEPP No. 55 Remediation of Land

This SEPP introduces planning controls for the remediation of contaminated land. The policy states that land must not be developed if contamination renders it unsuitable for a proposed use. If the land is unsuitable, remediation must take place before the land is developed.

This planning proposal is consistent with SEPP 55. Council's records indicate that none of the land is contaminated, In addition, the subject land has been assessed to ascertain the

likelihood of contamination and it is concluded that it is highly unlikely that the subject land is contaminated from past uses or existing uses on the land or other uses in the vicinity. The planning proposal does not contain provisions that will alter the existing uses of the subject land therefore the planning proposal is highly unlikely to result in land contamination or be affected by contamination from non-residential uses in the vicinity of the subject land.

SEPP No. 71 Coastal Protection

SEPP 71 controls development in the coastal zone. SEPP 71 aims to ensure that development in the NSW coastal zone is appropriate and suitably located, that there is a consistent and strategic approach to coastal planning and management, and that there is a clear development assessment framework for the coastal zone.

Lot 881 DP 1063701 and Lot 411 DP 1073628 Tathra-Bermagui Road, Bermagui are located within the Coastal Zone. This planning proposal is consistent with this SEPP as it will not contradict or hinder the application of the coastal planning provisions contained within SEPP 71. Additionally, this planning proposal does not promote development that will impede or diminish access to coastal foreshores, result in effluent discharge that negatively affects water quality, or involve a discharge of untreated storm water into the sea, a beach, an estuary, or coastal lake or creek.

Q6. Is the Planning Proposal consistent with applicable Ministerial Directions?

This Planning Proposal is consistent with the applicable Section 117 Ministerial Directions. The Section 117 Ministerial Directions that are applicable to this Planning Proposal are detailed in this section. For a complete checklist of Section 117 Ministerial Directions refer to Attachment 2.

2.1 Environment Protection Zone

This Direction applies when a relevant planning authority prepares a Planning Proposal. The objective is to protect and conserve environmentally sensitive areas.

This planning proposal is consistent with this Direction as it proposes zoning and minimum lot size amendments that aim to recognise environmental values of the subject land and identify and protect environmentally sensitive areas.

Parts of Lot 881 DP 1063701 and Lot 411 DP 1073628 Tathra-Bermagui Road, Bermagui are considered to be ecologically sensitive. The proposed amendments to the E2 Environmental Conservation Zone contained in this planning proposal will increase the area of the properties zoned E2 Environmental Conservation to protect the environmental sensitivity of Barragoot Swamp.

2.2 Coastal Protection

This Direction applies when a planning authority prepares a Planning Proposal that applies to land in the Coastal Zone. The objective is to implement the principles in the NSW Coastal Policy.

This planning proposal is seeking to apply appropriate zones to Lot 881 DP 1063701 and Lot 411 DP 1073628 Tathra-Bermagui Road, Bermagui and Lot 20 DP 1042188 Sapphire Coast Drive, Wallagoot which are located within the Coastal Zone.

This planning proposal is consistent with this Direction as it does not contradict or hinder the application of the coastal planning provisions contained in the NSW Coastal Policy, the Coastal Design Guidelines 2003 or the NSW Coastline Development Manual 1993.

With the objective of implementing the principles of the NSW Coastal Policy, this planning proposal will ensure the application of BVLEP 2013 to the subject land which includes the Standard Instrument Clauses 5.5 and 5.7 relating to development within the Coastal Zone and below mean high water mark, as well as local Clause 6.4 Coastal Risk Planning.

3.5 Development near Licensed Aerodromes

This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.

The objectives of this Direction are to ensure the effective and safe operation of aerodromes, ensure that their operation is not compromised by development and ensure development for residential purposes is not adversely affected by aircraft noise.

Lot 344 DP 750227 Arthur Kaine Drive, Pambula is located within the vicinity of Merimbula Airport. This planning proposal is, however, consistent with this Direction as the subject land is not in an area where the Australian Noise Exposure Forecast exceeds 20 and the planning proposal will not result in development that will provide a new hazard to aircraft.

Clause 6.8 of BVLEP 2013 provides a number of provisions that aim to protect the airspace operations of Merimbula Airport as well as the community from undue risk, including consultation with the relevant Commonwealth body. In this regard, consultation with the relevant Commonwealth body will form part of the planning proposal process.

4.1 Acid Sulfate Soils

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. The objective of this Direction is to avoid significant adverse environmental impacts from the use of land that has the probability of containing Acid Sulfate Soils.

Parts of Lot 881 DP 1063701 and Lot 411 DP 1073628 Tathra-Bermagui Road, Bermagui are identified on the BVLEP 2013 Acid Sulfate Soils Map as containing Class 2 and 3 Acid Sulfate Soils. This Planning Proposal is, however, consistent with this Direction as it applies the E2 Environmental Conservation to those parts of land that have a probability of containing acid sulphate soils which will avoid adverse environmental land uses from future land use by prohibiting such development.

4.4 Planning for Bushfire Protection

This Direction applies when a relevant planning authority prepares a Planning Proposal that will affect, or is in proximity to land mapped as bushfire prone land. The objectives of this Direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and encourage sound management of bush fire prone areas.

The properties that are the subject of this planning proposal are identified as containing bushfire vegetation within category 1 and/or 2 therefore, consultation with the NSW Rural Fire Service under Section 56 of the *Environmental Planning and Assessment Act 1979* will form part of the planning proposal process. This planning proposal is consistent with the objectives of this Direction as it does not encourage the establishment of incompatible land uses and appropriate development of the land can occur through the application of the provisions contained within Planning for Bushfire Protection 2006.

5.1 Implementation of Regional Strategies

Planning Proposals must be consistent with a regional strategy released by the Minister for Planning.

As detailed at Section Q3, this Planning Proposal is consistent with the vision, land use strategy, policies, outcomes and actions defined by the South Coast Regional Strategy.

6.3 Site Specific Provisions

This Direction applies when a relevant planning authority prepares a Planning Proposal that will allow a particular development to be carried out. The objective is to discourage unnecessarily restrictive site specific planning controls.

This Planning Proposal does not seek to include additional uses beyond what is permitted within the land use table, therefore it is consistent with this Direction.

Section C – Environmental, Social and Economic Impact

Q7. 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 no declared critical habitat in the Bega Valley Shire. With regard to threatened species, populations or ecological communities, Lot 881 DP 1063701, Tathra-Bermagui Road, Bermagui, Barragoot Swamp is an arm of the Barragoot Lake Estuary and contains Endangered Ecological Communities and important bird breeding habitat. These will not be adversely affected by this planning proposal which aims to zone the affected land as E2 Environmental Conservation for protection.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

It is unlikely that there will be any other likely environmental effects resulting from the planning proposal because it aims to regularise the existing uses of the subject lands and will not result in any significant additional development.

Q9. Has the planning proposal adequately addressed any social and economic effects?

It is unlikely that there will be any social or economic effects resulting from the planning proposal because it aims to regularise the existing uses of the subject lands and will not result in significant additional development.

Section D – State and Commonwealth Interests

Q10. Is there adequate public infrastructure for the planning proposal?

No additional demand for infrastructure will result from this planning proposal.

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

Consultation with State and Commonwealth public authorities has not yet been undertaken. The level of consultation will be determined by the NSW Department of Planning and Infrastructure when it makes its Gateway Determination.

Government agencies identified for consultation with regard to this Planning Proposal are:

- NSW Department of Planning and Infrastructure
- NSW Office of Environment and Heritage
- Australian Government Civil Aviation Safety Authority
- NSW Roads and Maritime Services
- NSW Rural Fire Service

Part 4 – Mapping

This Planning Proposal will result in changes to the following properties on the following BVLEP 2013 maps:

CL1_020C

Amend map sheet CL1_020C by applying:

- 'Additional Permitted Uses' to Lot 292 DP 853663 Sapphire Coast Drive, Bournda

LAP_001

Amend map sheet LAP_001 by deleting:

- DM Deferred Matter for Part Lot 881 DP 1063701 Tathra-Bermagui Road, Bermagui.

LSZ_019

Amend map sheet LSZ_019 by applying:

- AB1 10 hectares to Lot 20 DP 1042188 Sapphire Coast Drive, Wallagoot

LSZ_020A

Amend map sheet LSZ_020A by applying:

- V 2000sqm to Lot 344 DP 750227 Arthur Kaine Drive, Pambula

LZN_017C

Amend map sheet LZN_017C by applying:

- E2 Environmental Conservation Zone to Part Lot 881 DP 1063701 and Part Lot 411 DP 1073628 Tathra-Bermagui Road, Bermagui.
- E3 Environmental Management Zone to Part Lot 881 DP 1063701 and Part Lot 411 DP 1073628 Tathra-Bermagui Road, Bermagui.

LZN_018

Amend map sheet LZN_018 by applying:

- E2 Environmental Conservation Zone to Part Lot 881 DP 1063701 and Part Lot 411 DP 1073628 Tathra-Bermagui Road, Bermagui.
- E3 Environmental Management Zone to Part Lot 411 DP 1073628 Tathra-Bermagui Road, Bermagui.

LZN_020A

Amend map sheet LZN_020A by applying:

- E4 Environmental Living Zone to Lot 344 DP 750227 Arthur Kaine Drive, Pambula

WCL_017C

Amend map sheet WCL_017 by applying:

- the notation “ Barragoot Swamp”

WCL_017C

Amend map sheet WCL_018 by applying:

- the notation “ Barragoot Swamp”

Part 5 – Community Consultation

The Gateway Determination will confirm community consultation requirements. If this Planning Proposal is supported, it is likely that the Proposal will be exhibited as a 'low' impact proposal for a period of not less than 14 days in accordance with Section 5.5.2 of *A Guide to Preparing LEPs*. A 'low' impact proposal is defined as *'a planning proposal that, in the opinion of the person making the Gateway determination is:*

- *Consistent with the pattern of surrounding land use zones and/or land uses*
- *Consistent with the strategic planning framework*
- *Presents no issues with regard to infrastructure servicing*
- *Not a principle LEP*
- *Does not re-classify public land*

Public exhibition of the planning proposal will include notification of on the Bega Valley Shire Council website, notification in the newspapers that circulate widely in the area (Merimbula News Weekly, Eden Magnet and Bega District News) and in writing to affected landowners.

Information relating to the Planning Proposal will also be on display at the following Bega Valley Shire Council customer service centres:

Place	Address
Bega	Zingle Place, Bega NSW 2551
Merimbula	Market St, Merimbula NSW 2548
Eden	Cnr Imlay and Mitchell St, Eden NSW 2550
Bermagui	Bunga St, Bermagui NSW 2546

Part 6 – Timeline

The Project Timeline will assist with tracking the progress of the Planning Proposal through the various stages of consultation and approval. It is estimated that this amendment to *Bega Valley Local Environmental Plan 2013* will be completed by March 2016.

Council requests delegation to carry out certain plan-making functions in relation to this proposal. Delegation would be exercised by Council's General Manager or Director of Planning and Environmental Services.

Table A: Approximate Project Timeline

Key Stages of Consultation and Approval	Estimated Timeframe
STAGE 1 – Submit Planning Proposal to the Department	November 2014
STAGE 2 – Receive Gateway Determination	January 2015
STAGE 3 – Preparation of documentation for Public Exhibition	March 2015
STAGE 4 – Public Exhibition of the Planning Proposal	May 2015
STAGE 5 – Review/consideration of submissions received	August 2015
STAGE 6 – Council Report	October 2015
STAGE 7 – Meetings	December 2015
STAGE 8 – Forward Planning Proposal to Department of Planning and Infrastructure with request amendment is made	February 2016
STAGE 9 – Date Council will make the Plan (if delegated), including any required consultation with the Parliamentary Counsel	March 2016
STAGE 10 – Anticipated date Council will forward Plan to the Department for notification	March 2016

Attachments

Attachment 1: Council reports and resolutions

Council Report: Planning and Environment Committee No. 4 - 12 June 2012

4. Bega Valley Local Environmental Plan 2012

In accordance with the Council resolution of 22 May 2012 staff have assessed both the written and oral presentations to the Council meeting regarding the Draft Comprehensive Local Environmental Plan 2010 (Draft CLEP). The staff summary is included as Appendix 7 of this report.

The report recommends amendment to the Draft CLEP and adoption of the plan. Further that the amended plan be forwarded to the Director-General requesting that the “plan be made” by the Minister for Planning.

Group Manager, Planning and Environment

Background

Council at its meeting held on 22 May 2012 gave consideration to a report on the Bega Valley Local Environmental Plan 2010 with the following staff recommendation:

“That, in regards to the draft Comprehensive Local Environmental Plan, Council resolves to:

1. Adopt the recommendations for the submissions outlined in:
 - Appendix 1 - support (or partial support) for the submission request, with only minor changes required to the exhibited draft Comprehensive Local Environmental Plan;
 - Appendix 2 - support (or partial support) for the submission request however, due to the nature of changes proposed, a “planning proposal” is to be prepared by Council and a “gateway determination” by the Minister for Planning is required prior to re-exhibition;
 - Appendix 3 - further research to be carried out by Council staff prior to progressing via a future report to Council; and
 - Appendix 4 - no agreement with the submission request, or the submission to be noted with no need for further action at this time – therefore proceed with the draft Comprehensive Local Environmental Plan as exhibited.
2. Amend the draft Comprehensive Local Environmental Plan in accordance with the recommendations in Appendix 1, the reclassification of various parcels of Council land in accordance with the report of the public hearing in Appendix 5, and the revised written instrument in Appendix 6.
3. Incorporate lot averaging into the draft Comprehensive Local Environmental Plan for land zoned R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living.
4. Adopt the amended draft Comprehensive Local Environmental Plan as per points 2 and 3 above, and forward the plan to the Director-General of NSW Planning & Infrastructure in accordance with the Environmental Planning and Assessment Act 1979 requesting that “the plan be made” by the Minister for Planning.
5. Proceed with a “planning proposal” and, if agreed by the Minister for Planning, re-exhibit those properties in accordance with the adopted recommendations of agreed submissions contained within Appendix 2. In the interim the subject land be “deferred”, *thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.*
6. Defer a decision on the submissions in Appendix 3 until strategic investigations are completed and reported back to Council. In the interim the subject land be “deferred”, *thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.*
7. Undertake further investigations into potential industrial sites in the Bega District for the longer term, noting that the draft Comprehensive Local Environmental Plan has already identified additional industrial land for the short to medium term in Bega (South) and Kalaru.

8. Note that the draft Comprehensive Development Control Plan requires further investigation and refinement, incorporating appropriate changes emanating from submissions.
 9. Advise all those persons who have made submissions of the above.”
- In accordance with Council’s Code of Meeting Practice the report was deferred for a further report due to addresses.

WHAT DOES THE PLAN SEEK TO ACHIEVE?

- The majority of the Shire has simply been changed to the closest comparable zone available in the standard State wide template. This means that the majority of land owners wanting to develop or improve their properties will not be affected by the draft plan.
- Where there are changes proposed, the focus is on improving opportunities for economic development and jobs in the Bega Valley town centres, through the expansion of business, mixed use and industrial zones.
- Protection of productive agricultural land through the use of RU1 Primary Production and RU2 Rural Landscape zones.
- Establishment of allotment sizes through a “Lot Size Map”, thus determining subdivision and dwelling entitlements.
- Recognition of environmentally sensitive land through the use of E3 Environmental Management and E4 Environmental Living zones.
- Protection of sensitive foreshore areas and bushland public reserves through the use of E2 Environmental Conservation zone.

Addresses to Council

There were a total of 22 individual addresses to Council while Mr C Maxted of Caddey Searl & Jarman addressed on behalf of 17 client submissions as well as matters raised by Caddey Searl and Jarman relating to subdivision clauses, lot sizing and height controls. In addition 11 written addresses were received.

The issues raised in all the addresses have been reviewed by Council staff including site meetings where appropriate.

As a result of this review, the staff recommendations for 21 of the submissions subject to addresses have been revised from that which was previously recommended to the Council on 22 May 2012.

Appendix 7 to this report is the staff summary of the addresses.

Appendix 1, 2, 3 and 4 attached to this report have been updated in accordance with the staff position included in Appendix 7.

Link to Planning & Environment Report 5 - 22 May 2012

Advice from the Department of Planning

Council on 28 February 2012 gave consideration to a staff report on the draft CLEP and as part of the resolution resolved the following:

- “1. That to progress the Comprehensive Local Environmental Plan:
 - Council staff work with the Department of Planning on the proposed amendments to the exhibited CLEP that would be considered minor and not warrant further exhibition.
 - Staff report to Council on those proposed amendments that are deemed not to require further exhibition.
 - The mapping to the CLEP be amended in accordance with that following Council resolution.

Council has now received a solid overall endorsement of its approach to the finalisation of the CLEP as per the response of 31 May 2012 from the Regional Director, Department of Planning (see Appendix 8).

The Department has raised two main issues for consideration which relate to Littleton Gardens and to land owned by Bermagui Country Club.

In response, the following action is proposed by staff:

1. Further justification to be provided regarding Council's intended RE1 Public Recreation zoning of Littleton Gardens.
2. The E3 zone at the Bermagui Country Club be amended to E2 in accordance with the advice.

HEIGHT CONTROLS IN MERIMBULA, BEGA AND EDEN TOWN CENTRES

Staff have reviewed the height controls in Merimbula Town Centre in consideration of a number of submissions and workshop discussions with local professionals and Councillors. For the sake of consistency across the Shire reviews are now being undertaken for Bega and Eden Town Centres.

The matter is expected to be reported to Council in July and that any proposed changes will be treated as per Appendix 2.

Planning comment

The preparation of the draft CLEP has been a lengthy and extensive process for not only Councillors and staff, but the community as a whole. The process has included the 12 weeks of exhibition, including public information sessions, and a series of workshops with Councillors over the past 9 months since the completion of the exhibition period.

Further, Council staff have held a number of meetings with officers of the Department of Planning regarding all aspects of both the written instrument and the maps. Officers of the Department have also met with Councillors on several occasions over the last 6-7 years. These meetings clarified many issues and led to the inclusion of rural worker's dwellings becoming permissible with consent in the rural zones as part of the draft CLEP.

All public submissions and addresses, as well as Government agency submission and staff recommended changes, have been considered by Councillors at workshops.

Staff are of the opinion that Council is now in a position to resolve on the submissions and addresses received.

It is proposed that Appendix 1 be adopted by Council and that the draft CLEP be amended accordingly, including the mapping, and referred to the Department of Planning requesting that "the plan be made" by the Minister for Planning.

Appendix 2 and 3 represent submissions that are agreed to and require re-exhibition or submissions that require further investigation prior to resolution by Council. In the interim, it is proposed that the subject land be "deferred" thus retaining all the existing zonings and other provisions contained in the BVLEP 2002.

Staff are of the opinion that this pathway would finalise the CLEP process for the vast majority of landholders in the Shire and give surety and confidence in the planning process and strategic direction for the Shire.

Also, those persons who made submissions that are deferred would have the confidence that there would be no change to the current status of their land under BVLEP 2002 until their submission is re-exhibited or further investigated and finally resolved by Council.

The remaining submissions are proposed to be noted and/or not to be supported at this time.

Notwithstanding extensive workshopping of all the submissions with Councillors, it is open for any submission to be debated by Council at the meeting.

It should be noted that recommendation 7 to this report refers to investigations being undertaken into Industrial Land for the Shire as a whole, not the Bega District as recommended in the report to Council on 22 May 2102. This recommendation now accurately reflects Council's previously resolved position of 28 February 2012.

Conclusion

The draft CLEP has been prepared and exhibited in accordance with the provisions of the Environmental Planning and Assessment Act 1979 (the Act) and all submissions are now placed formally before Council for determination. A public hearing has been held in relation to the reclassification of Council owned land.

It is proposed that the draft CLEP be amended as per the recommendations of this report and referred to the NSW Department of Planning in accordance with the Act, requesting that "the plan be made" by the Minister.

Recommendation

That, in regards to the draft Comprehensive Local Environmental Plan, Council resolves to:

1. Adopt the recommendations for the submissions outlined in:
 - Appendix 1 - support (or partial support) for the submission request, with only minor changes required to the exhibited draft Comprehensive Local Environmental Plan;
 - Appendix 2 - support (or partial support) for the submission request however, due to the nature of changes proposed, a "planning proposal" is to be prepared by Council and a "gateway determination" by the Minister for Planning is required prior to re-exhibition;
 - Appendix 3 - further research to be carried out by Council staff prior to progressing via a future report to Council; and
 - Appendix 4 - no agreement with the submission request, or the submission to be noted with no need for further action at this time – therefore proceed with the draft Comprehensive Local Environmental Plan as exhibited.
2. Amend the draft Comprehensive Local Environmental Plan in accordance with the recommendations in Appendix 1, the reclassification of various parcels of Council land in accordance with the report of the public hearing in Appendix 5, and the revised written instrument in Appendix 6.
3. Incorporate lot averaging into the draft Comprehensive Local Environmental Plan for land zoned R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living.
4. Adopt the amended draft Comprehensive Local Environmental Plan as per points 2 and 3 above, and forward the plan to the Director-General of NSW Planning & Infrastructure in accordance with the Environmental Planning and Assessment Act 1979 requesting that "the plan be made" by the Minister for Planning.
5. Proceed with a "planning proposal" and, if agreed by the Minister for Planning, re-exhibit those properties in accordance with the adopted recommendations of agreed submissions contained within Appendix 2. In the interim the subject land be "deferred", thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.
6. Defer a decision on the submissions in Appendix 3 until strategic investigations are completed and reported back to Council. In the interim the subject land be "deferred", thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.
7. Undertake further investigations into potential industrial sites in the Bega Valley Shire for the longer term, noting that the draft Comprehensive Local Environmental Plan has already identified additional industrial land for the short to medium term in Bega (South) and Kalaru.
8. Note that the draft Comprehensive Development Control Plan requires further investigation and refinement, incorporating appropriate changes emanating from submissions.
9. Advise all those persons who have made submissions of the above.

Council Minutes: Planning and Environment Committee No. 4 - 12 June 2012

4. Bega Valley Local Environmental Plan 2012

1. That the following items be placed appropriately in Appendices 1 -4 as listed below:
That the following item be moved from Appendix 4 to Appendix 1 and thus deleted from the Heritage Schedule:
[section deleted]
2. That in regard to the draft Comprehensive Local Environmental Plan Council adopts the recommendations for the submissions outlined in:
 - • Appendix 1 - support (or partial support) for the submission request, with only minor changes required to the exhibited draft Comprehensive Local Environmental Plan;
 - • Appendix 2 - support (or partial support) for the submission request however, due to the nature of changes proposed, a “planning proposal” is to be prepared by Council and a “gateway determination” by the Minister for Planning is required prior to re-exhibition;
 - • Appendix 3 - further research to be carried out by Council staff prior to progressing via a future report to Council; and
 - • Appendix 4 - no agreement with the submission request, or the submission to be noted with no need for further action at this time – therefore proceed with the draft Comprehensive Local Environmental Plan as exhibited.
3. That Council amend the draft Comprehensive Local Environmental Plan in accordance with the recommendations in Appendix 1, the reclassification of various parcels of Council land in accordance with the report of the public hearing in Appendix 5, and the revised written instrument in Appendix 6.
4. That Council incorporate lot averaging into the draft Comprehensive Local Environmental Plan for land zoned R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living.
5. Adopt the amended draft Comprehensive Local Environmental Plan as per points 3 and 4 above, and forward the plan to the Director-General of NSW Planning & Infrastructure in accordance with the Environmental Planning and Assessment Act 1979 requesting that “the plan be made” by the Minister for Planning.
6. That Council proceed with a “planning proposal” and, if agreed by the Minister for Planning, re-exhibit those properties in accordance with the adopted recommendations of agreed submissions contained within Appendix 2. In the interim the subject land be “deferred”, thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.
7. That Council defer a decision on the submissions in Appendix 3 until strategic investigations are completed and reported back to Council. In the interim the subject land be “deferred”, thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.
8. That Council undertake further investigations into potential industrial sites in the Bega Valley Shire for the longer term, noting that the draft Comprehensive Local Environmental Plan has already identified additional industrial land for the short to medium term in Bega (South) and Kalaru.
9. That Council note that the draft Comprehensive Development Control Plan requires further investigation and refinement, incorporating appropriate changes emanating from submissions.
10. That Council advise all those persons who have made submissions of the above.

Council Report Planning and Environment Committee No. 8.4 – 6 November 2013

8.4. Proposed Amendments to BVLEP 2013

Since the adoption of BVLEP 2013 a number of minor zoning matters have arisen that require amendment. This report outlines those matters and recommends the process for resolution.

Group Manager Planning & Environment

BACKGROUND

At the meeting on 12 June 2012 Council resolved to support (or partially support) a number of the submissions made to draft BVLEP 2010, known as Appendix 2 matters, which require the preparation of Planning Proposals.

During the preparation of these Planning Proposals and as a result of the implementation of BVLEP 2013, a number of zoning and related matters have been identified.

The following sites require Council consideration and resolution.

DETAILS OF SITES AND RECOMMENDED ACTIONS

Arthur Kaine Drive – land opposite Merimbula Airport

Lot 1 DP 1004805, Lot 120 DP 847899 and Lot 2 DP 549112 are located on the eastern side of Arthur Kaine Drive, directly opposite Merimbula Airport.

Under BVLEP 2013 Lot 1 DP 1004805 is zoned SP2 Infrastructure. Lot 120 DP 847899 and Lot 2 DP 549112 were included in Appendix 2, as deferred matters, and proposed to be zoned SP1 Special Activities. See Figure 1 of Attachment 1 for a map of current zones.

To ensure consistency with the approved Merimbula Airport Master Plan 2033 and in consideration of the recommendations of the NSW Office of Environment and Heritage (OEH) made during the exhibition of the draft LEP, it is proposed to zone Lot 120 DP 847899 as SP1 Special Activities 'Community Facilities and Carparking'. It is also recommended that Lot 1 DP 1004805 and Lot 2 DP 549112 be zoned E2 Environmental Conservation with the exception of a small piece of Lot 2 opposite the current airport terminal which is proposed to be zoned SP1 Special Activities Carparking'. See Figure 2 of Attachment 1 for a map of proposed zones.

OEH strongly requested the application of the E2 zone on all three of these properties due to the presence of a number of threatened species and the presence of an endangered ecological community. However, a large portion of the vegetation on Lot 120 has been modified due to airport obstacle maintenance activities and the section of Lot 2 proposed for SP1 is already cleared. Therefore planning staff are of the opinion that appropriate justification can be provided for the recommended zonings.

With the Merimbula Airport Master Plan now finalised it is recommended that Council apply zones to these three lots that conserve the existing environmental characteristics while making allowance for future public requirements on the less environmentally sensitive land.

Figure 2 of Attachment 1 contains a map of the proposed zones.

Arthur Kaine Drive – land opposite Merimbula Pambula Golf Course

The majority of land on the eastern side of Arthur Kaine Drive, opposite the Merimbula Pambula Golf Course, is currently zoned SP3 Tourist under BVLEP 2013. Four of the properties (Lots 327, 329 and 331 DP 750227 and Lot 350 DP 1144511) were also proposed for SP3 zoning but were deferred and included in Appendix 2 due to submissions received during the exhibition period. Council has resolved to zone the 4 lots B4 Mixed Use. See Figure 3 of Attachment 1 for a map of the current zones.

The reason for selection of the B4 zone was to allow a more appropriate mix of commercial opportunities given the existing uses of the properties. Existing uses in the vicinity include: residential, oyster processing, aquaculture, restaurant, education facility, hotel accommodation, storage facility, car wash and plant hire. This variety of uses stems from the previous zones (under BVLEP 2002 the land was zoned 3(b) Special Business and 1(a) Rural General) and has led to some land use conflict with residential uses in the area.

To set the future direction of this area and minimise future land use conflict, it is proposed to zone all of the land currently zoned SP3 zoning under BVLEP 2013 and the 4 deferred lots, as B5 Business Development. See Figure 4 of Attachment 1 for a map of the proposed B5 zone.

BVLEP 2013 does not currently utilise the B5 zone and the introduction of the zone specifically to apply to this section of Arthur Kaine Drive will enable the future development of the area for commercial purposes that are not appropriate in core commercial or mixed use areas. The mix of oyster produce industries / aquaculture and tourism opportunities in this area is an important component of regional tourism and the B5 zone will allow this synergy to further evolve. The B5 zone will satisfy the need for land near Merimbula and Pambula to accommodate uses that are not appropriate in core commercial or residential areas due to land and access requirements.

PROPOSED B5 Business Development Zone

The land use table for the proposed new B5 Business Development zone has been designed specifically to limit uses to those that will not compete with the viability of nearby town centres and that will permit a suitable range of compatible uses to facilitate expansion of existing uses and provide future employment opportunities.

The following is recommended for the B5 Land Use Table, including appropriate zone objectives and nominated permissible land uses.

Zone B5 Business Development

1 Objectives of zone

- To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.
- To cater specifically for uses that require a high degree of visibility and accessibility to passing traffic and that generate a high proportion of single purpose vehicle trips.
- To enable the establishment of an aquaculture, agricultural produce and tourist precinct at Arthur Kaine Drive, Merimbula.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Agricultural produce industry; Building identification sign; Bulky goods premises; Business identification sign; Child care centres; Community facilities; Educational establishments; Function centres; Garden centres; Hardware and building supplies; Highway service centres; Hotel or motel accommodation; Information and education facilities; Landscaping material supplies; Light industries; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Research stations; Respite day care centres; Restricted premises; Roads; Service stations; Sewerage systems; Storage premises; Transport depots; vehicle body repair workshop; Vehicle repair station; Vehicle sales or hire premises; Warehouse or distribution centres; Water supply systems.

4 Prohibited

Any development not specified in item 2 or 3

Lot 344 DP 750227 Arthur Kaine Drive

Lot 344 DP 750227 is located behind the Fairway Motel on Arthur Kaine Drive. It was zoned 1(a) General Rural under BVLEP 2002 and was incorrectly zoned E2 Environmental Conservation in BVLEP 2013. See Figure 5 of Attachment 1 for a map of the current zone.

The lot is just over 2,000sqm and contains a dwelling. It is proposed to rezone the land E4 Environmental Living with a 2,000sqm lot size in keeping with the general zoning strategy for such land. This will permit the further development of the land for residential purposes without having to rely on existing use rights provisions. See Figure 6 of Attachment 1 for a map of the proposed zone.

Rural Residential – Bournda Park Way, Kalaru

Lot 21 DP 816824 is approximately 1ha in size and is zoned E3 Environmental Management under BVLEP 2013. Lot 21 adjoins the “Kalaru Lodge” property on the corner of Bournda Park Way and Sapphire Coast Drive.

The “Kalaru Lodge” site is a deferred matter under BVLEP 2013 and is included in Appendix 2. Council has resolved to zone the “Kalaru Lodge” land E4 with a 1ha lot size. See Figure 7 of Attachment 1 for a map of the existing zones in the area.

As part of the preparation of the Planning Proposal to progress the zoning of “Kalaru Lodge” land it became evident to planning staff that the most appropriate zone for Lot 21 would also be E4.

An E4 zone for Lot 21 would ensure all of the land on Bournda Park Way, suitable for smaller lot rural residential development, will be zoned E4 Environmental Living. A 1ha lot size is also proposed to reflect the size of the land and the Council resolution for the adjoining “Kalaru Lodge” land. See Figure 8 of Attachment 1 for a map of the proposed E4 zone.

Rural Residential – Oaklands Road, Pambula

In response to a joint submission to Draft BVLEP 2010, Lots 441 & 442 DP 1077278, Lot 434 DP 1152077 and Part Lot 381 DP 1027113, Oaklands Road Pambula, were identified as deferred matters under BVLEP 2013 and included in Appendix 2. Council resolved to zone the 4 lots E4 Environmental Living with a 1ha lot size.

The adjacent Lots 431-433 DP 1152077 and Lot 45 DP 807327 are currently zoned RU2 Rural Landscape Zone with a minimum lot size of 120 ha under BVLEP 2013. The land located immediately to the north of the lots is zoned E4 Environmental Living with a 2ha minimum lot size. See Figure 9 of Attachment 1 for a map of the current zones in the area.

Lots 431-433 DP 1152077 are approximately 5,000m² and are in the process of being developed for rural residential purposes. Lot 45 DP 807327 is approximately 3.6 ha and is currently used for rural residential purposes. Given that these properties are well below the 120ha minimum lot size, have been created for dwelling purposes and represent a natural extension of the rural residential land to the north, it is recommended that these lots also be zoned E4 with a 2ha lot size. This would potentially permit two additional rural residential dwellings on lot 45. See Figure 10 of Attachment 1 for a map of the proposed zones.

Commercial premises – Main Street, Merimbula

Lot 1 DP 1051587 is located in the northern part of the Merimbula Town Centre and contains a number of professional premises and health service facilities known as the Merimbula Professional Centre.

The property is currently zoned B2 Local Centre under BVLEP 2013. The properties east of Lot 1 DP 1051587 are zoned B4 Mixed Use under BVLEP 2013 and Council has resolved to rezone adjoining properties Lots 1 and 2 DP 521571, west of Lot 1 DP 1051587, B4 Mixed Use. See Figure 11 of Appendix 1 for a map of the current zones in the area.

Lots 1 & 2 DP 521571 are included as Appendix 2 deferred matters under BVLEP 2013. As part of the process of preparing the Planning Proposal for Lots 1 and 2 in accordance with the Council resolution, it became evident that Lot 1 DP 1051587 would effectively become an isolated B2 zoned allotment.

Therefore it is recommended that the subject land be zoned B4 Mixed Use to acknowledge the existing land use and to ensure a logical extension of the B4 Mixed Use Zone boundary. If agreed by Council, the land would be included in the Planning Proposal currently being prepared for Lots 1 and 2 DP 521571. See Figure 12 of Attachment 1 for a map of the proposed B4 zone.

Barragoot Swamp – Tathra-Bermagui Road

Council previously resolved to amend the zoning of part of Lot 881 DP 1063701 covered by Barragoot Swamp to E2 Environmental Conservation to ensure the protection of the wetland which is considered to be a valuable ecological asset. Barragoot Swamp was originally excluded from the E2 zone due to an error in the mapping of the estuarine foreshore in this area. See Figure 13 of Attachment 1 for a map of the current zones.

On further investigation it has become evident that Barragoot Swamp also covers a portion of the adjacent Lot 411 DP 1073628 and it is recommended that Council zone part of Lot 411 as E2 to ensure the whole wetlands area is protected. This will not have any impact on the development potential of Lot 411 DP 1073628 which is a large lot containing an existing dwelling with no further subdivision potential. If agreed by Council the land would be included in the Planning Proposal currently being prepared for Lot 881.

See Figure 14 of Attachment 1 for a map of the proposed E2 zone.

Stone House Café – Sapphire Coast Drive

The property at Lot 292 DP 853663, known as the Stone House Café, is currently zoned R5 Large Lot Residential under BVLEP 2013 with no subdivision potential. It contains a general store and disused service station and although these uses are legally approved, they are prohibited under the current zone.

See Figure 15 of Attachment 1 for a map of the current zones in the area.

The general store currently operates under existing use rights. To facilitate the continued use of the property as a general store and as a long term solution to the zoning/land use issue, it is proposed to include the property in LEP 2013 Schedule 1 Additional Permitted Uses with Neighbourhood Shop and Service Station listed as permitted uses.

The use of Schedule 1 in this instance is preferable to the alternative of rezoning the land to B1 Neighbourhood Centre. The B1 zone would enable a greater range of uses on the land which are likely to be incompatible with the characteristics of the area considering the high visibility of the site to the major road of Sapphire Coast Drive. In addition the use of Schedule 1 will restrict the proposed commercial uses to the site itself and not allow commercial uses to be developed onto adjacent sites under LEP 2013 Clause 5.3 Development Near Zone Boundaries.

CONCLUSION

The proposed amendments are considered to be minor in nature and will resolve existing anomalies which have become evident as part of the planning proposal process and implementation of BVLEP 2013.

It is anticipated that as BVLEP 2013 is used over the coming months other minor matters may arise that would require Council's consideration and resolution.

ATTACHMENTS

1. Current zones and proposed amendments to BVLEP 2013 maps

RECOMMENDATION

That Council resolve to make the following amendments to Bega Valley Local Environmental Plan 2013:

1. Lot 120 DP 847899 Arthur Kaine Drive Merimbula be zoned SP1 Special Activities 'Community Facilities and Carparking'
Lot 1 DP 1004805 Arthur Kaine Drive Merimbula be zoned E2 Environmental Conservation
Lot 2 DP 549112 Arthur Kaine Drive, Merimbula be zoned E2 Environmental Conservation except for the area of land identified in Figure 2 of Attachment 1 to this report which shall be zoned SP1 Special Activities 'Carparking'
2. A B5 Business Development zone be included as a Land Use Zone in the Plan in accordance with the following;
Zone B5 Business Development
 - 1 Objectives of zone
 - To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.
 - To cater specifically for uses that require a high degree of visibility and accessibility to passing traffic and that generate a high proportion of single purpose vehicle trips.
 - To enable the establishment of an aquaculture, agricultural produce and tourist precinct at Arthur Kaine Drive, Merimbula.
 - 2 Permitted without consent
Environmental protection works
 - 3 Permitted with consent
Agricultural produce industry; Building identification sign; Bulky goods premises; Business identification sign; Child care centres; Community facilities; Educational establishments; Function centres; Garden centres; Hardware and building supplies; Highway service centres; Hotel or motel accommodation; Information and education facilities; Landscaping material supplies; Light industries; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Research stations; Respite day care centres; Restricted premises; Roads; Service stations; Sewerage systems; Storage premises; Transport depots; vehicle body repair workshop; Vehicle repair station; Vehicle sales or hire premises; Warehouse or distribution centres; Water supply systems.
 - 4 Prohibited
Any development not specified in item 2 or 3
3. Lots 398 & 339 DP 40361, 325, 326, 334, 335, part 340, 341, 345, 346, 371, 378, 379, 382, 383 & 386 DP 750227, 385 & 386 DP 811258, 10 DP 1057525, 281 & 282 DP 1135670 and 349 DP 1144511 Arthur Kaine Drive, Merimbula be zoned B5 Business Development.
4. Lot 344 DP 250227 Arthur Kaine Drive Merimbula be zoned E4 Environmental Living with a 2,000sqm lot size.
5. Lot 21 DP 816824 Bournda Park Way, Kalaru be zoned E4 Environmental Living with a 1ha lot size.
6. Lots 431, 432 and 433 DP 1152077 and 45 DP 807327 Oaklands Road, Pambula be zoned E4 Environmental Living with a 1ha lot size.
7. Lot 1 DP 1051587 Main Street, Merimbula be zoned B4 Mixed Use.
8. That part of Lot 411 DP 1073628 identified in Figure 14 of Attachment 1 to this report, which is part of Barragoot Swamp, be Zoned E2 Environmental Conservation.
9. Lot 292 DP 853663 Sapphire Coast Drive, Bournda be included in LEP 2013 Schedule 1 Additional Permitted Uses with Neighbourhood Shop and Service Station listed as permitted uses.

Council Minutes: Planning and Environment Committee No. 8.4 – 6 November 2013

That Council resolve to make the following amendments to Bega Valley Local Environmental Plan 2013:

1. Lot 120 DP 847899 Arthur Kaine Drive Merimbula be zoned SP1 Special Activities 'Community Facilities and Carparking'
Lot 1 DP 1004805 Arthur Kaine Drive Merimbula be zoned E2 Environmental Conservation
Lot 2 DP 549112 Arthur Kaine Drive, Merimbula be zoned E2 Environmental Conservation except for the area of land identified in Figure 2 of Attachment 1 to this report which shall be zoned SP1 Special Activities 'Carparking'
2. A B5 Business Development zone be included as a Land Use Zone in the Plan in accordance with the following;
Zone B5 Business Development
 - 1 Objectives of zone
 - To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.
 - To cater specifically for uses that require a high degree of visibility and accessibility to passing traffic and that generate a high proportion of single purpose vehicle trips.
 - To enable the establishment of an aquaculture, agricultural produce and tourist precinct at Arthur Kaine Drive, Merimbula.
 - 2 Permitted without consent
Environmental protection works
 - 3 Permitted with consent
Agricultural produce industry; Building identification sign; Bulky goods premises; Business identification sign; Child care centres; Community facilities; Educational establishments; Function centres; Garden centres; Hardware and building supplies; Highway service centres; Hotel or motel accommodation; Information and education facilities; Landscaping material supplies; Light industries; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Research stations; Respite day care centres; Restricted premises; Roads; Service stations; Sewerage systems; Storage premises; Transport depots; vehicle body repair workshop; Vehicle repair station; Vehicle sales or hire premises; Warehouse or distribution centres; Water supply systems.
 - 4 Prohibited
Any development not specified in item 2 or 3
3. Lots 398 & 339 DP 40361, 325, 326, 334, 335, part 340, 341, 345, 346, 371, 378, 379, 382, 383 & 386 DP 750227, 385 & 386 DP 811258, 10 DP 1057525, 281 & 282 DP 1135670 and 349 DP 1144511 Arthur Kaine Drive, Merimbula be zoned B5 Business Development.
4. Lot 344 DP 250227 Arthur Kaine Drive Merimbula be zoned E4 Environmental Living with a 2,000sqm lot size.
5. Lot 21 DP 816824 Bournda Park Way, Kalaru be zoned E4 Environmental Living with a 1ha lot size.
6. Lots 431, 432 and 433 DP 1152077 and 45 DP 807327 Oaklands Road, Pambula be zoned E4 Environmental Living with a 1ha lot size.
7. Lot 1 DP 1051587 Main Street, Merimbula be zoned B4 Mixed Use.
8. That part of Lot 411 DP 1073628 identified in Figure 14 of Attachment 1 to this report, which is part of Barragoot Swamp, be Zoned E2 Environmental Conservation.
9. Lot 292 DP 853663 Sapphire Coast Drive, Bournda be included in LEP 2013 Schedule 1 Additional Permitted Uses with Neighbourhood Shop and Service Station listed as permitted uses.

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8.2. Amendment to minimum lot size map Bega Valley Local Environmental Plan 2013 - Lot 20 DP 1042188 Sapphire Coast Drive, Wallagoot

Council has received a request to amend the Bega Valley Local Environmental Plan 2013 (BVLEP 2013) minimum lot size map as it applies to Lot 20 DP 1042188 Sapphire Coast Drive, Wallagoot to permit a dwelling on the land with development consent.

Group Manager Planning & Environment

BACKGROUND

Lot 20 DP 1042188 is located between Sapphire Coast Drive and Wallagoot Lake (see Map 1). The property is approximately 10.5 hectares and contains a large bulk store structure with attached ancillary dwelling. The property has been substantially cleared and used for agricultural purposes.

The property is currently zoned E3 Environmental Management with a minimum lot size of 120ha under Bega Valley Local Environmental Plan (BVLEP) 2013.

Map 1: Subject Land Lot 20 DP 1042188

DEVELOPMENT HISTORY

In 1993 development consent was issued for the erection of a shed and dwelling on Lot 2 DP 794421 Sapphire Coast Drive. The following year consent was issued for the use of the shed as a bulk store for storage and distribution of goods. In 2000 development consent was issued under Bega Valley Local Environmental Plan 1987 (BVLEP 1987) for the subdivision of Lot 2 DP 794421 into three lots creating Lots 20, 21 and 22 DP 1042188. Lot 22 adjoins Wallagoot Lake and was dedicated as a public reserve.

Whilst consent was issued for the creation of Lot 20- there was no dwelling entitlement under BVLEP 1987. The only way a dwelling-house could be approved on the land was as an ancillary use to another approved use, in this case a commercial use. Consequently the subdivision was approved subject to an 88B restriction being placed on the title of Lot 20 identifying that:

The land burdened is restricted from having a dwelling erected upon it except where the dwelling is ancillary to the main commercial purpose of the said land with that purpose being the use of an existing bulk store or other purpose approved by Bega Valley Shire Council. Should the principal commercial purpose of the land burdened cease then the use of any building as a dwelling on the land shall also cease. The sole authority to release vary or modify this covenant is the Bega Valley Shire Council.

ISSUES

Council has received a submission on behalf of the current owners of the property requesting the restriction on the use of the Lot 20 DP 1042188 be removed and that the BVLEP 2013 Lot Size Map be amended to permit a dwelling with development consent.

In support of the request the applicant has submitted that the restriction on the use of the property is no longer valid and can be modified or removed; that the current ancillary dwelling provides all elements for domestic

habitation and is properly serviced by an onsite effluent disposal system; and that amending the lot size will simply reflect the true and ongoing circumstances of the land and not confer any subdivision potential.

DISCUSSION

BVLEP 2013 recognised the environmental characteristics of this area, zoning the subject land and surrounding area as E3 Environmental Management and limiting further subdivision for dwelling purposes. Storage premises are not permitted within the E3 zone, and while the subject property is no longer operating as a storage and distribution facility, the structure and the ancillary dwelling remains.

As dwellings are permitted subject to development consent within the E3 zone, conversion of the existing structure solely for use as a dwelling is considered to be more in keeping with the objectives of the zone than the current approved commercial use. As such, staff are of the opinion that the request to remove the 88B restriction on the use of the land and amend the minimum lot size map to permit a dwelling on Lot 20 DP 1042188 is justified.

CONCLUSION

Council's previous consent for a commercial premises and ancillary dwelling resulted in the erection of a structure on Lot 20 DP 1042188. The building is no longer required as a commercial premises and a commercial premises is a prohibited use in the current E3 Environmental Management zone of the land. The amended minimum lot size for the land will enable the use of the land for a dwelling and would not permit any additional residential subdivision or enable future development of the land for unsuitable purposes. It is considered that the use of the land for dwelling purposes is consistent with the objectives of the E3 Environmental Management Zone.

ATTACHMENTS

Nil

RECOMMENDATION

1. That Council staff prepare a planning proposal to amend the Bega Valley Local Environmental Plan 2013 Lot Size Map applying to Lot 20 DP 1042188 from 120ha to 10ha.
2. That Council modify the section 88B instrument applying to Lot 20 DP 1042188 by removing the restriction requiring any dwelling to be ancillary to the main commercial purpose of the land upon finalisation of the amendment to the lot size map.
3. That the owner of Lot 20 DP 1042188 agrees to meet all costs associated with the modification of the Section 88B Instrument.

Council Minutes Planning and Environment Committee No. 8.2 – 28 May 2014

8.2. Amendment to minimum lot size map Bega Valley Local Environmental Plan 2013 - Lot 20 DP 1042188 Sapphire Coast Drive, Wallagoot

1. That Council staff prepare a planning proposal to amend the Bega Valley Local Environmental Plan 2013 Lot Size Map applying to Lot 20 DP 1042188 from 120ha to 10ha.
2. That Council modify the section 88B instrument applying to Lot 20 DP 1042188 by removing the restriction requiring any dwelling to be ancillary to the main commercial purpose of the land upon finalisation of the amendment to the lot size map.
3. That the owner of Lot 20 DP 1042188 agrees to meet all costs associated with the modification of the Section 88B Instrument.

Attachment 2: List of State Environmental Planning Policies

State Environmental Planning Policy		Compliance
SEPP No. 1	Development Standard	N/A
SEPP No. 4	Development without Consent and Miscellaneous Exempt and Complying Development	N/A
SEPP No. 6	Number of Storeys in a Building	N/A
SEPP No. 14	Coastal Wetlands	N/A
SEPP No. 15	Rural Land Sharing Communities	N/A
SEPP No. 19	Bushland in Urban Areas	N/A
SEPP No. 21	Caravan Parks	N/A
SEPP No. 22	Shops and Commercial Premises	N/A
SEPP No. 26	Littoral Rainforests	N/A
SEPP No. 29	Western Sydney Recreational Area	N/A
SEPP No. 30	Intensive Agriculture	N/A
SEPP No. 32	Urban Consolidation (Redevelopment of Urban Land)	N/A
SEPP No. 33	Hazardous and Offensive Development	N/A
SEPP No. 36	Manufactured Home Estates	N/A
SEPP No. 38	Olympic Games and Related Projects	N/A
SEPP No. 39	Spit Island Bird Habitat	N/A
SEPP No. 41	Casino/Entertainment Complex	N/A
SEPP No. 44	Koala Habitat Protection	N/A
SEPP No. 47	Moore Park Showground	N/A
SEPP No. 50	Canal Estate Development	N/A
SEPP No. 52	Farm Dams and Other Works in Land and Water Management Plan Areas	N/A
SEPP No. 53	Metropolitan Residential Development	N/A
SEPP No. 55	Remediation of Land	Consistent
SEPP No. 56	Sydney Harbour Foreshores and Tributaries	N/A
SEPP No. 59	Central Western Sydney Regional and Open Space and Residential	N/A
SEPP No. 60	Exempt and Complying Development	N/A
SEPP No. 62	Sustainable Aquaculture	N/A
SEPP No. 64	Advertising and Signage	N/A
SEPP No. 65	Design Quality of Residential Flat Development	N/A
SEPP No. 70	Affordable Housing (Revised Schemes)	N/A
SEPP No. 71	Coastal Protection	Consistent
SEPP No. 74	Newcastle Port and Employment Lands	N/A
SEPP	Housing for Seniors or People with a Disability 2004	N/A
SEPP	Building Sustainability Index: BASIX 2004	N/A
SEPP	Major Development 2005	N/A
SEPP	Development on Kurnell Peninsula 2005	N/A
SEPP	Sydney Region Growth Centres 2006	N/A
SEPP	Mining, Petroleum Production and Extractive Industries 2007	N/A
SEPP	Infrastructure 2007	N/A
SEPP	Temporary Structures 2007	N/A
SEPP	Kosciuszko National Park – Alpine Resorts 2007	N/A
SEPP	Rural Lands 2008	N/A
SEPP	Affordable Rental Housing 2009	N/A
SEPP	Western Sydney Employment Area 2009	N/A
SEPP	Exempt and Complying Development Codes 2008	N/A
SEPP	Western Sydney Parklands 2009	N/A

Attachment 3: List of applicable Section 117 Ministerial Directions

Section 117 Direction	Compliance
1. Employment and Resources	
1.1 Business and Industrial Zones	N/A
1.2 Rural Zones	N/A
1.3 Mining, Petroleum and Extractive Industries	N/A
1.4 Oyster Aquaculture	N/A
1.5 Rural Lands	N/A
2. Environment and Heritage	
2.1 Environment Protection Zone	Consistent
2.2 Coastal Protection	Consistent
2.3 Heritage Conservation	N/A
2.4 Recreation Vehicle Areas	N/A
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	N/A
3.2 Caravan Parks and Manufactured Home Estates	N/A
3.3 Home Occupations	N/A
3.4 Integrating Land Use and Transport	N/A
3.5 Development Near Licensed Aerodromes	Consistent
3.6 Shooting Ranges	N/A
4. Hazard and Risk	
4.1 Acid Sulphate Soils	Consistent
4.2 Mine Subsidence and Unstable Land	N/A
4.3 Flood Prone Land	N/A
4.4 Planning for Bushfire Protection	Consistent
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent
5.2 Sydney Drinking Water Catchment	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	N/A
5.5 Second Sydney Airport: Badgerys Creek	N/A
6. Local Plan Making	
6.1 Approval and Referral Requirements	N/A
6.2 Reserving Land for Public Purposes	N/A
6.3 Site Specific Provisions	Consistent
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Plan for Sydney 2036	N/A