

Amend Eurobodalla LEP 2012 - Housekeeping matters - correct omissions and anomalies with maps, clauses, land use tables and Schedules

Proposal Title : Amend Eurobodalla LEP 2012 - Housekeeping matters - correct omissions and anomalies with maps, clauses, land use tables and Schedules

Proposal Summary : The planning proposal seeks to amend the Eurobodalla LEP 2012 to correct a number of omissions from the LEP Maps and address anomalies with the LEP Maps, clauses, zone land use tables and Schedules.

The Planning Proposal is divided into 6 sections (A-F) as follows;

SECTION A MAPPING OMISSIONS

Fifteen (15) sites deferred under the Eurobodalla LEP 2012 are to be zoned similar zoning currently provided by Eurobodalla Urban LEP 1999. These sites had been deferred as Council previously proposed an E3 Environmental Management Zone under the draft exhibited LEP.

SECTION B MAPPING ANOMALIES

LEP Map amendments for eight (8) items (10 sites) to correct minor LEP Map anomalies.

SECTION C LAND USE TABLE ANOMALIES

Change the land use table for the R3 Medium Density Residential Zone, B5 Business Development Zone, E2 Environmental Conservation Zone and IN1 General Industrial Zone to permit the following uses;

R3 Medium Density Residential Zone

Home-based childcare, home business, home industries and secondary dwellings

B5 Business Development Zone

Plant nurseries

E2 Environmental Conservation Zone

Roads and camping grounds

IN1 General Industrial Zone

Bulky goods premises

SECTION D CLAUSE AND SCHEDULE 1 ANOMALIES

1. Amend clause 4.2A (7) to change the term 'existing holding' to 'existing parcel' and change the definition of "1987 holding" so they are consistent with the wording in the exhibited draft LEP before these terms were changed by Parliamentary Counsel for the notification of the Eurobodalla LEP 2012.

2. Remove local subclause 3.3 (ja) land to which clause 6.7 Riparian Land and watercourses applies to enable farm dams to be undertaken as 'exempt development'.

3. Schedule 1 Additional uses - Correct the property description for item 20 to 'Ainslie Parade'.

SECTION E HERITAGE SCHEDULE AND MAP ANOMALIES

Correct 18 errors in property and/or item descriptions in Schedule 5 Environmental Heritage and 7 mapping errors on the Heritage Map.

SECTION F EXEMPT AND COMPLYING DEVELOPMENT ANOMALIES

Delete items that are now covered by the SEPP (Exempt and Complying Development) 2008.

PP Number : PP_2015_EUROB_001_00

Dop File No :

14/20163

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with maps, clauses, land use tables and Schedules**

Proposal Details

Date Planning Proposal Received :	19-Feb-2015	LGA covered :	Eurobodalla
Region :	Southern	RPA :	Eurobodalla Shire Council
State Electorate :	BEGA	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :	.		
Suburb :	.	City :	.
Land Parcel :	Whole of LGA	Postcode :	.

DoP Planning Officer Contact Details

Contact Name :	Nathan Foster
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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name :	George Curtis
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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	N/A

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MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :			
Have there been meetings or communications with registered lobbyists? : No			
If Yes, comment :			
Supporting notes			
Internal Supporting Notes :	The proposal is generally supported. However, Council's proposal to zone land at Broulee that is affected by coastal hazards to an R2 zone is not supported.		
External Supporting Notes :	Council provided the Department with a revised planning proposal on the 19 February 2015 that included better quality mapping to indicate the proposed changes to the LEP maps and improved descriptions of proposed changes to the LEP. Council also clarified on the 27 February 2015 that the proposed changes to clause 4.2A (7) were in response to late changes made to the final draft LEP by PC prior to the LEP being notified. Council are seeking to change the LEP back to the wording used as part of the exhibited draft LEP. Council has provided further information/mapping as requested regarding the proposed rezoning of lands deferred from the Eurobodalla LEP 2012 which remain zoned under the Urban LEP 1999.		

Adequacy Assessment

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

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

Comment : **The statement of objectives clearly states the the planning proposal is intended to correct a number of mapping omissions and anomalies with mapping, and amend the land use table and certain clauses.**

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

Is an explanation of provisions provided? **Yes**

Comment : **Council has provided an explanation of the changes in the planning proposal that also includes a series of coloured maps showing proposed changes to the LEP maps.**

The proposed changes include amendments to an extensive number of Eurobodalla LEP 2012 maps including Land Zoning, Height of Buildings, Lot Size, Heritage, Acid Sulphate Soils, Terrestrial Biodiversity, Wetlands Riparian Lands and Watercourses, Land Release Area, Dwelling Entitlement and Dwelling Density maps.

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The planning proposal also seeks to make various amendments, generally adding to the permitted land uses within the Land use tables for the R3 (Medium Density Residential), B5 (Business Development), E2 (Environmental Conservation) and IN1 (General Industry) zones.

A number of clauses are proposed to be amended including Clause 4.2A (Erection of dwelling houses or dual occupancies on land in Zone RU1 Primary Production), and clause 3.3 (Environmentally sensitive areas excluded).

Council has also included amendments to Schedule 1 (Additional permitted uses), Schedule 2 (Exempt Development), Schedule 3 (Complying Development) and Schedule 5 (Environmental Heritage).

Pages 2 to 7 of Council's planning proposal outlines the proposed changes, and further specific details are provided in attachments 1, 2, 3A and 3B.

The planning proposal involves multiple sites and can be improved by better mapping and cross referencing. However the explanation of provisions is considered adequate for the purpose of this planning proposal provided the 'Zoning Context Maps' are uploaded into the planning proposal.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 5.2 Sydney Drinking Water Catchments**
- 6.1 Approval and Referral Requirements**

Is the Director General's agreement required? **N/A**

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

d) Which SEPPs have the RPA identified?

- SEPP No 14—Coastal Wetlands**
- SEPP No 26—Littoral Rainforests**
- SEPP No 71—Coastal Protection**
- SEPP (Exempt and Complying Development Codes) 2008**
- SEPP (Infrastructure) 2007**
- SEPP (Rural Lands) 2008**
- Drinking Water Catchments Regional Environmental Plan No. 1**
- Lower South Coast REP No. 2**

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

Eurobodalla Shire Council has identified and addressed the applicable SEPPs (Appendix B) and s.117 Directions (Appendix C) that apply to the various components of this planning proposal.

Council has formed the opinion that the planning proposal is not inconsistent with any applicable SEPP.

Note: The Drinking Water Catchments REP No.1 listed above is now known as the Sydney Drinking Water Catchment SEPP 2011.

Council has identified that the planning proposal is inconsistent in relation to certain s117 Directions and provides the following justifications;

- 2.1 (Environmental Protection Zones): Proposed amendment item 3 of the planning proposal makes a minor boundary adjustment, amendment item 5 correctly aligns zoning with existing uses (wetland to SP3 zone) and amendment item 12 re-instates previously permissible land uses inadvertently omitted from Eurobodalla LEP 2012. Council considers these inconsistencies as being of minor significance.

Comment and Recommendation

Council be required to consult with the Office of Environment and Heritage as part of its agency consultation. No approval of the potential inconsistency with the s117 Direction occur until the outcomes of the consultation are known.

- 4.3 (Flood prone land) Inconsistencies include a minor boundary adjustment between the R2 (Low density residential) and E2 (Environmental protection) zone (amendment #3(i)), and the reinstatement of a dwelling as being permitted on land that was unintentionally removed when making the Eurobodalla LEP 2012 (amendment #17). Council considers these inconsistencies as being of minor significance.

Comment and Recommendation:

Council has not provided a map showing the amount of land affected by the 1:100 year flood for item 3 under section B (Mapping Anomalies). A condition of the Gateway Determination should require Council to amend the Planning Proposal to show the land affected by the 1:100 year flood level prior to exhibition. Council should also be required to consult with the Office of Environment and Heritage (Flood Unit) as part of the exhibition process.

RECOMMENDATION:

- a) No approval be given to the inconsistency with s117 Direction 4.3
- b) Council amend the Planning Proposal to show the area affected by the 1:100 ARI flood level for item 3.

- 4.4 (Planning for Bushfire Protection)

Further to the applicable s117 Directions identified by Council, the Department has identified that the planning proposal involves provisions that will affect/is in close proximity to land mapped as bushfire prone land, and therefore s117 Direction 4.4 (Planning for Bushfire Protection) applies.

RECOMMENDATION: A condition be included in the Gateway determination that consultation be undertaken with the NSW Rural Fire Service prior to community consultation to ensure that the Secretary can be satisfied that the requirements of the Direction have been met.

Have inconsistencies with items a), b) and d) being adequately justified? No

If No, explain :

A number of inconsistencies with applicable s117 Directions identified by Council have been adequately justified and are considered minor. However, there are a number of inconsistencies with the following s117 Directions that require either further justification or changes to the planning proposal.

2.1 Environmental Protection Zones – The zoning of the Coronation Drive, Broulee site is inconsistent with this direction in that it seeks to reduce the environmental protection standards that apply to the land.

The proposed rezoning from a current 7(f1) environmental protection zone to a standard residential zone clearly reduces these standards of protection. The site is located on a sand dune which Council has mapped as having coastal erosion hazard risk. Council has not justified the inconsistency of the planning proposal with the direction through a study or strategy. The inconsistency is not considered to be of minor significance.

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An E4 zone is appropriate for the site and best reflects the planning provisions that currently apply to the site.

Recommendation: That Council is required to zone the site E4 Environmental Living when it exhibits the proposal.

2.2 Coastal Protection – The rezoning of the Coronation Drive, Broulee site from a 7(f1) environmental protection zone under current planning controls to the R2 Low Density Residential Zone in the Eurobodalla LEP 2012 is likely to increase the development potential of the 4 lots included in this environmentally sensitive coastal location. For example multi-dwelling housing is permissible in the R2 Zone under the Eurobodalla LEP 2012.

The proposed R2 zoning of the site is considered to be inconsistent with the objectives and principles of the various coastal policies to which this direction calls up.

Eurobodalla Shire Council has not satisfactorily addressed the inconsistency of the planning proposal with the direction through a study or strategy. As previously mentioned, the site is located on a sand dune which Council has mapped as having coastal erosion hazard risk. The inconsistency with the direction is therefore not considered to be of minor significance.

An E4 zone is appropriate for the site and best reflects the planning provisions that currently apply to the site.

Recommendation: That Council is required to zone the site E4 Environmental Living when it exhibits the proposal.

The Region's position on the Coronation Drive Broulee site is explained in greater detail in Attachment 1 - Department Justification - Coronation Drive Broulee.

Other than previous comments relating to flooding and bushfire, the proposal is considered to be generally consistent with other relevant s.117 directions and SEPP's or any inconsistency is minor in nature.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : The mapping provided by Council following a request for further information by the Department is considered adequate for the purpose of consultation. Council will need to be required to prepare appropriate Standard Instrument LEP Maps when finalising the LEP.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council has proposed a 14 day exhibition period.

Given that the proposal includes deferred lands being converted from the Eurobodalla Urban LEP 1999 into the Eurobodalla LEP 2012, as well as a number of rezonings, changes to land use tables, lot sizes, building heights etc, it is considered that a 28 day exhibition period is considered more appropriate to allow for adequate community consideration and comment.

Additional Director General's requirements

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

If Yes, reasons : There are no further Director General's requirements.

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Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? No

If No, comment : **The planning proposal is considered adequate for the purpose of exhibition, with the exception of the proposed rezoning of land at Broulee that should be changed to an E4 zone - see Attachment 1 for more details.**

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The Eurobodalla LEP 2012 was notified in 2012.**

Assessment Criteria

Need for planning proposal :

The proposed amendments to the Eurobodalla LEP 2012 are either to address issues associated with urban lands zoned under the Eurobodalla Urban LEP 1999 that were deferred from Eurobodalla LEP 2012, or are anomalies in the LEP.

A planning proposal is the only method of correcting omissions and anomalies with the Eurobodalla LEP 2012.

Council considers that the planning proposal will strengthen the existing LEP by ensuring that it is up to date and robust, and thereby providing the community with greater certainty.

The proposed changes to land use zoning tables either are appropriate in the zone, or in the case of 'Bulky Goods' reflect previous uses permissible in industrial zones.

The planning proposal addresses mapping omissions and minor anomalies with maps, clauses, land use tables and schedules.

Consistency with strategic planning framework :

Council have advised that the planning proposal is not a result of a planning study or report. It argues that the planning proposal seeks to address a number of anomalies and omissions in the LEP (housekeeping matters) and it is generally consistent with the strategic planning framework.

Environmental social economic impacts :

Council has formed the opinion that there is no likelihood of any adverse effect on any critical habitat or threatened species, populations or ecological communities, or their habitats nor any other environmental effects as a result of this proposal.

No significant social or economic effects are forecast by Council.

It is unlikely that the items in the planning proposal (other than the Coronation Drive, Broulee site) will have a significant adverse environmental, social or economic impact.

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Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Office of Environment and Heritage
NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **The Department supports this planning proposal proceeding to public consultation subject to the following;**

- That the proposal is to be amended in relation to the rezoning of land at Coronation Drive Broulee (Amendment No. 1.10-1.13. The proposed zone is to be changed from the R2 Low Density Residential zone proposed by Council, to the E4 Environmental Living Zone. The E4 Zone has more suitable objectives and more appropriate permissible land uses for the site.

The E4 zone represents a more appropriate transfer from the current planning controls that apply to the site. Further information justifying the Department's support for the E4 zoning as opposed to Council's proposed R2 zoning is included in the documents section of this planning proposal (Attachment 1 - Department Justification - Coronation Drive Broulee)

- Council is required to consult with, and consider the comments of the NSW Rural Fire Service prior to public exhibition. This will ensure consistency with S117 Direction 4.4 (Planning for Bushfire Protection). Council is also required to consult with OEH on the proposed reduction in E2 zonings as well as the changes to lands zoned that are potentially within the 1:00 ARI flood areas.

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

If Yes, reasons : **re-submission not required**

Identify any additional studies, if required. :

If Other, provide reasons :

No further studies are required.

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons : **Provision of State Infrastructure is not relevant.**

Documents

Document File Name	DocumentType Name	Is Public
20150219 - Planning Proposal Housekeeping 7 - Amendments requested by DPE Jan 2015.pdf	Proposal	Yes
Minutes-Ordinary-Council-25-November-2014.pdf	Proposal Covering Letter	Yes

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Eurobodalla Shire Council_03-12-2014_Planning Proposal - Housekeeping Amendments to LEP 2012_.pdf	Proposal Covering Letter	Yes
Planning Proposal Attachment 4 - Maps.pdf	Proposal	Yes
Justification for proposed amendments to clause 4 2A.pdf	Proposal	Yes
10_03_2015 Additional Maps_Context maps for deferred lands _Urban LEP.pdf	Map	Yes
10 03 2015 Coronation Drive Broulee Coastal Hazards Map.pdf	Map	Yes
Attachment 1 - Department Justification - Coronation Drive Broulee.docx	Study	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones
- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.2 Sydney Drinking Water Catchments
- 6.1 Approval and Referral Requirements

Additional Information :

The Secretary, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the Eurobodalla Local Environmental Plan 2012 to correct a number of omissions from the LEP Maps and anomalies with the LEP Maps, clauses, Zone land use tables and LEP Schedules should proceed subject to the following conditions:

1. The planning proposal is to be amended prior to community consultation as follows:
 - a) The planning proposal be updated to include the planning proposal context maps prepared by Council on 9 March 2015.
 - b) The proposed zoning of the site at Coronation Drive, Broulee is to be changed from R2 Low Density Residential to E4 Environmental Living.
 - c) mapping is to be provided that illustrates the amount of flood prone land that affects sites under item 3 Section in B (Mapping Anomalies) of the Planning Proposal.

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

- (a) the planning proposal must be made publicly available for a minimum of 28 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Environment 2013).

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

- Office of Environment and Heritage (s117 Direction 2.1 and 4.3)
- NSW Rural Fire Service (s117 Direction 4.4 Planning for Bushfire Protection)

Each public authority is to be provided with a copy of the planning proposal and any

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relevant supporting material, and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The Secretary can be satisfied that the planning proposal will be consistent with section 117 Direction 4.4 (Planning for Bushfire Protection) once the Council has consulted with the NSW Rural Fire Service prior to community consultation and taken into account and comments received.

6. The Council be advised the Secretary will need to approve further inconsistencies with s117 Directions 2.1 (Environmental Protection Zones) and 4.3 (Flood Prone Land) following the receipt of advice from OEH.

7. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

Supporting Reasons :

The proposal will correct anomalies and update the LEP and is supported subject to the planning proposal is amended prior to consultation to apply an E4 Environmental living zone to land identified in the planning proposal at Coronation Drive, Broulee.

Signature:

Printed Name:

BRETT WHITWORTH

Date:

24 March 2015

Brett Whitworth
General Manager
SOUTHERN REGION