

Bournda Downs Planning Proposal

Proposal Title : **Bournda Downs Planning Proposal**

Proposal Summary : **Rezone land at Bournda Downs, Sapphire Coast Drive, Wallagoot, to RU2 Rural Landscape, E3 Environmental Management and E4 Environmental Living Zones.**

PP Number : **PP_2016_BEGAV_003_00**

Dop File No : **16/09397**

Proposal Details

Date Planning : **05-Jul-2016**

Proposal Received :

LGA covered : **Bega Valley**

Region : **Southern**

RPA : **Bega Valley Shire Council**

State Electorate : **BEGA**

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

LEP Type : **Precinct**

Location Details

Street : **Sapphire Coast Drive**

Suburb : **Wallagoot**

City : **Bega**

Postcode : **2550**

Land Parcel : **Lot 34 DP 875572, Lot 42 DP 815711 & Lot 85 DP 750194**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name : **Deanne Frankel**

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Land Release Data

Growth Centre : **N/A**

Release Area Name : **N/A**

Regional / Sub : **South Coast Regional**

Consistent with Strategy : **Yes**

Regional Strategy : **Strategy**

Bournda Downs Planning Proposal

MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg

Residential /

Employment land) :

No. of Lots : 0

No. of Dwellings : 37
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

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

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **The planning proposal will resolve the zoning of 346ha of land deferred from Bega Valley LEP 2013.**

The planning proposal identifies a range of zones and lot sizes that respect the area's physical attributes and constraints.

Land to be zoned RU2 Rural Landscape and E3 Environmental Management will have a minimum lot size of 40ha which supports the agricultural productivity and environmental values and enables a maximum potential of 7 lots.

Land to be zoned E4 Environmental Living will apply to cleared and/or less environmentally constrained land and its 2ha minimum lot size will enable a maximum potential of 30 lots. The ability to apply lot averaging has the potential to further protect environmental attributes.

The planning proposal represents a balance between agriculture, environmental management and small lot rural living.

Adequacy Assessment

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

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

Comment : **Apply appropriate zones and minimum lot sizes to the land at Bournda Downs to reflect its values for environmental, rural and rural residential purposes.**

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

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

Comment : **The proposal will amend the relevant map sheets to:**
• **zone the land RU2 Rural Landscape, E3 Environmental Management and E4 Environmental Living;**
• **identify minimum lot sizes of 40ha for RU2 and E3 and 2ha for E4 zoned land.**

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

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

2.1 Environment Protection Zones

2.3 Heritage Conservation

4.1 Acid Sulfate Soils

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

Is the Director General's agreement required? **Yes**

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

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

SEPP (Rural Lands) 2008

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

DEFERRED MATTER

The land is currently zoned Rural 1(c) under Bega Valley LEP 2002 and was exhibited as part of the preparation of Bega Valley LEP 2013 and subsequently deferred from that LEP. This planning proposal will improve environmental and rural outcomes for the land.

S117 DIRECTIONS

1.2 Rural Zones: This Direction applies as it is proposed to change a rural zone and introduce a new rural zone. Council has indicated that the planning proposal is inconsistent with the Direction because it rezones an existing Rural 1(c) rural residential area to E4 Environmental Living Zone. However, the planning proposal can be considered justifiably inconsistent with the Direction because:

- it does not rezone any of the land to a residential, business, industrial, village or tourist zone;
- it does not include provisions that increase permissible density in a rural zone. The existing rural zone is in effect a rural residential zone over 322ha with a minimum lot size of 5,000m² and the potential for in excess of 120 lots. The proposed environmental protection and rural zones will increase the minimum lot sizes to 40ha and 2 ha and reduce the potential lot yield to 37;
- the proposed rezoning is identified in Council's Draft Rural Living Strategy;
- it is of minor significance.

Recommendation: The Secretary's delegate can be satisfied that the inconsistencies with s117 Direction 1.2 are justified by Bega Valley Council's Draft Rural Living Strategy and/or are of minor significance.

1.3 Mining, Petroleum Production and Extractive Industries: This Direction applies as there is an existing extractive industry on part of the site. However, the planning proposal's inconsistencies with the Direction can be considered to be of minor significance because:

- the previous development consent has expired and there only remains a small amount of previously extracted material to be removed;
- Council will consult the NSW Department of Industry (Resources and Energy) during the public consultation process.

Recommendation: The Secretary's delegate can be satisfied that the inconsistencies with s117 Direction 1.3 are of minor significance and support Council's decision to consult with the NSW Department of Industry (Resources and Energy).

1.5 Rural Lands: The planning proposal can be considered to be consistent with the

Direction because it is consistent with the Rural Planning Principles and Rural Subdivision Principles of the Rural Lands SEPP specifically:

- promotes and protects opportunities for productive and sustainable activities;
- recognises the importance of rural lands and agriculture and its social and economic benefits;
- balances social, economic and environmental interests;
- identifies and protects natural resources;
- provides opportunities for rural lifestyle, settlement and housing;
- considers the impact on services and infrastructure through a rural settlement strategy;
- is consistent with the South Coast Regional Strategy.

In addition the planning proposal:

- reduces the potential for rural fragmentation in this area;
- is strategic in the location of living areas and rural areas to reduce the potential for conflict;
- establishes lot sizes to reflect the desired outcomes of agricultural and living opportunities;
- applies zones to reflect the attributes of the land.

Recommendation: The Secretary's delegate can be satisfied that the planning proposal is consistent with the Direction in achieving the planning and subdivision principles of the Rural Lands SEPP or that any inconsistencies are of minor significance.

2.1 Environment Protection Zones: The planning proposal is consistent with this Direction in that it applies zones that reflect and provide improved protection for the environmental values of the land.

Recommendation: The Secretary's delegate can be satisfied that the planning proposal is consistent with the Direction.

2.3 Heritage Conservation: The planning proposal is consistent with the Direction in that the Bega Valley LEP 2013 includes standard heritage provisions for the consideration and protection of heritage items, Aboriginal places and objects.

Recommendation: The Secretary's delegate can be satisfied that the planning proposal is consistent with the Direction.

4.1 Acid Sulfate Soils: The planning proposal is consistent with this Direction in that the Bega Valley LEP 2013 contains the standard acid sulfate soil provisions. In addition the land identified as potentially containing acid sulfate soils is to be included in an RU2 Rural Landscape Zone with a 40ha minimum lot size. Any development likely to disturb subsurface soils can be easily directed away from potential acid sulfate soils.

Recommendation: The Secretary can be satisfied that the planning proposal is consistent with the Direction.

4.4 Planning for Bushfire Protection: This Direction does apply to the planning proposal as it is in close proximity to land mapped as bushfire prone land. The planning proposal will be consistent with this Direction as the Council has indicated:

- It will consult with the NSW Rural Fire Service under s56 of the Act and take into account any comments made;
- Development of the land will comply with the provisions contained in 'Planning for Bushfire Protection 2006'.

Recommendation: The Secretary's delegate can be satisfied that the requirements of the Direction will be met once consultation with the NSW Rural Fire Service has occurred and its comments have been taken into account.

5.1 Implementation of Regional Strategies: The planning proposal is consistent with this Direction as it achieves the broad requirements of the South Coast Regional Strategy:

- Rezoning and more intense development is not located on agricultural land. It actually

Bournda Downs Planning Proposal

significantly reduces potential densities on rural land;

- The proposal reduces the potential of intensity of development within the Wallagoot Lake catchment, a lake identified for significant protection in the strategy;
- It zones land to E3 Environmental Management that forms part of a habitat corridor identified in the strategy.

Recommendation: The Secretary's delegate can be satisfied that the planning proposal is consistent with the South Coast Regional Strategy.

SEPPs

The planning proposal is consistent with all applicable SEPPs.

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

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : The maps in the planning proposal are adequate for exhibition purposes with zones and minimum lot sizes overlaid on an aerial photograph of the site.

Recommendation:

Council is to prepare maps in accordance with the 'Standard Technical Requirements for Spatial Datasets and Maps (Department of Planning and Environment 2015)' when the plan is submitted for finalisation.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Bega Valley Shire Council did not nominate an exhibition period. However, it was considered low impact requiring exhibition for not less than 14 days.

Given that this area was deferred from Bega Valley LEP 2013 and that it represents a substantial reduction in the intensity of development exhibited with that plan and an even greater reduction in potential from its current zoning under Bega Valley LEP 2002 it is appropriate to exhibit the planning proposal for a period of at least 28 days.

Additional Director General's requirements

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

If Yes, reasons :

Overall adequacy of the proposal

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

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **Bega Valley LEP 2013**
This land was deferred after exhibition of Bega Valley LEP 2013 and remains zoned under Bega Valley LEP 2002.

Assessment Criteria

Need for planning proposal :	The land has been deferred from Bega Valley LEP 2013 and remains zoned under Bega Valley LEP 2002. Council's subsequent investigations have identified a substantial reduction in potential development intensity for the site based on its attributes and constraints. The planning proposal is the only means of applying appropriate zones and development controls to reflect the land's capability.
Consistency with strategic planning framework :	Bega Valley Shire Council has prepared a 'Draft Rural Living Strategy 2016'. The planning proposal is consistent with the draft strategy. The rezoning to enable 37 lots in this location is close to a number of service centres including Bega and Merimbula. The planning proposal is also consistent with the South Coast Regional Strategy in that it supports agriculture and proposes development on disturbed less viable land. Rural residential development is located close to services and supports smaller communities and environmental values are protected.
Environmental social economic impacts :	The proposed zonings and minimum lot sizes protect environmental and agricultural attributes of the land. The reduction in potential intensity of development of the site is a positive environmental and agricultural outcome. The provision of rural residential development opportunities within an E4 Environmental Living Zone will provide additional rural residential living opportunities (30 lots) close to the small settlement of Kalaru. The application of lot averaging provisions will provide flexibility to provide buffers between and to environmental management areas and agricultural lands. Land use conflicts will be managed. There are significant areas of rural residential development within the local area and this addition will further support services that can be provided in Kalaru (6km). Larger settlements of Tathra (9km) and Bega (16km) provide higher level services.

Assessment Process

Proposal type :	Precinct	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 Transport for NSW - Roads and Maritime Services Other		
Is Public Hearing by the PAC required?	No		
(2)(a) Should the matter proceed ?	Yes		
If no, provide reasons :			
Resubmission - s56(2)(b) : No			
If Yes, reasons :			
Identify any additional studies, if required. :			

Bournda Downs Planning Proposal

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Bournda Downs Bushfire Map.pdf	Map	Yes
Extract BVSC Draft rural Living Strategy.pdf	Study	Yes
Bournda Downs Council Letter.pdf	Proposal Covering Letter	Yes
Final Bournda_Downs_PP_July_2016.pdf	Proposal	Yes
Bournda Downs Council Resolution 8 June 2016.pdf	Proposal	Yes
Bournda Downs Council Report.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones
- 1.3 Mining, Petroleum Production and Extractive Industries
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 4.1 Acid Sulfate Soils
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies

Additional Information : The Acting Director Regions, Southern, as delegate of the Minister for Planning, determines under section 56(2) of the EP&A Act that an amendment to the Bega Valley Local Environmental Plan 2013 to rezone land at Bournda Downs to RU2 Rural Landscape, E3 Environmental Management and E4 Environmental Living, being land described as Lot 34 DP875572, Lot 42 DP815711 and Lot 85 DP750194 Sapphire Coast Drive, Wallagoot should proceed subject to the following conditions:

1. 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 is to be made publicly available for 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 local environmental plans' (Department of Planning and Environment April 2013).

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

- * NSW Rural Fire Service (s117 Direction 4.4);
- * Office of Environment and Heritage;
- * Transport for NSW - Roads and Maritime Services;
- * NSW Department of Industry (Resources and Energy).

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that it will require additional time to comment

Bournda Downs Planning Proposal

on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

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

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

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

6. SECTION 117 DIRECTIONS – It is recommended that:

(a) The Secretary's delegate can be satisfied that the planning proposal is consistent with s117 Directions 1.5 Rural Lands; 2.1 Environmental Protection Zones; 2.3 Heritage Conservation; 4.1 Acid Sulfate Soils; and 5.1 Implementation of Regional Strategies.

(b) The planning proposal is potentially inconsistent with the s117 Direction 1.2 Rural Zones, however, the Secretary's delegate can be satisfied that the inconsistency is justified by Bega Valley Council's 'Draft Rural Living Strategy' and/or is of minor significance.

(c) The planning proposal is potentially inconsistent with the s117 Direction 1.3 Mining, Petroleum and Extractive Industries, however, the Secretary's delegate can be satisfied that the inconsistency is of minor significance and support Council's decision to consult with NSW Department of Industry (Resources and Energy).

(d) The Secretary's delegate can be satisfied that the planning proposal will be consistent with s117 Direction 4.4 Planning for Bushfire Protection when Council has consulted with the NSW Rural Fire Service and taken into consideration any comments it makes prior to community consultation.

(e) The Secretary's delegate can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are only of minor significance.

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

7. The Secretary's delegate notes that the planning proposal is considered to be consistent with all relevant SEPPs.

Supporting Reasons :

The planning proposal applies appropriate zones and reduces the potential intensity of development to manage environmental and rural values of the land and minimise land use conflicts with rural residential development.

It resolves the future planning for an area of land deferred from Bega Valley LEP 2013.

Signature:



Printed Name:

Jeanne Frankel

Date:

14/7/16