

Correction of errors in Bombala LEP 2012

Proposal Title : **Correction of errors in Bombala LEP 2012**

Proposal Summary : **The planning proposal seeks to correct a number of minor mapping errors in the Bombala LEP 2012 relating to land zoning and minimum lot sizes applying to several properties in the vicinity of Bombala and Cathcart.**

PP Number : **PP_2013_BOMBA_001_00**

Dop File No : **13/19108**

Proposal Details

Date Planning
Proposal Received : **19-Nov-2013**

LGA covered : **Bombala**

Region : **Southern**

RPA : **Bombala Council**

State Electorate : **MONARO**

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

LEP Type : **Housekeeping**

Location Details

Street : **Mahratta and Bright Streets**

Suburb : **Bombala**

City : **Bombala**

Postcode : **2632**

Land Parcel : **Lot 9, DP1065714 and Lot 8, Section 42 DP758129**

Street :

Suburb : **Cathcart**

City : **Cathcart**

Postcode : **2632**

Land Parcel : **Lots 54, 109, 248, 249, 259, 350 DP756826**

Street :

Suburb : **Cathcart**

City : **Cathcart**

Postcode : **2632**

Land Parcel : **Lot 141 DP756826**

DoP Planning Officer Contact Details

Contact Name : **Nathan Foster**
Contact Number : **42249459**
Contact Email : **nathan.foster@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Grantley Ingram**
Contact Number : **0264583555**
Contact Email : **grantley.ingram@bombala.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name : **Mark Parker**
Contact Number : **0242249468**
Contact Email : **mark.parker@planning.nsw.gov.au**

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	N/A
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

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

If No, comment :

Have there been
meetings or
communications with
registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting
Notes : **This is a minor planning proposal to correct errors in land zoning of forestry and private rural land at Cathcart and to make minor changes to industrial and residential zones in Bombala.**

External Supporting
Notes :

Adequacy Assessment

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

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

Comment : Council has stated that the objective of the planning proposal is to correct minor mapping errors in Bombala LEP 2012 relating to land zoning and minimum lot sizes applying to several properties in the vicinity of Bombala and Cathcart.

Whilst Council indicates that the proposal is merely rectifying a number of zone and lot size mapping errors associated with the preparation of the Bombala LEP 2012, the Department, however, notes that Lot 9 DP106514 and Lot 8 Section 42 DP758129 were clearly mapped as industrial land in Council's DCP #2 and subsequently the Bombala Land Use Strategy.

It is noted that the previous zoning in the Bombala LEP 1990 was for residential/village land uses (Zone 2 Urban and Village), however, an effective 'subzoning' within the Bombala DCP #2 identified the subject and surrounding lots for industrial land use. It is therefore considered that the IN2 Zone applied to the subject site during the preparation of the Bombala LEP 2012 was a strategic application based on the DCP and not an error in the LEP 1990 to 2012 conversion process.

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

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

Comment : The provisions of the Bombala LEP 2012 to be amended via the proposal include;

- For Lot 9 DP106514 and Lot 8 Section 42 DP758129; amend the Land Zoning Map from IN2 Light Industrial Zone to R1 General Residential Zone, and amend the Lot Size Map from 100m2 minimum lot size (MLS) to 'no MLS'.

- For Lots 54, 109, 248, 249, 259 & 350 DP756826; amend the Land Zoning Map from RU3 Forestry to RU1 Primary Production, and amend the Lot Size Map from 'no MLS' to a 40ha MLS.

- For Lot 141 DP756826; amend the Land Zoning Map from RU1 Primary Production to RU3 Forestry, and amend the Lot Size Map from a 40ha MLS to 'no MLS'.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

1.1 Business and Industrial Zones

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

3.1 Residential Zones

4.4 Planning for Bushfire Protection

Is the Director General's agreement required?

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

d) Which SEPPs have the RPA identified?

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

Council has identified that the proposal is consistent with the Rural Land SEPP (2008) for the rural lots near Cathcart.

The Department notes that the proposed zoning and lot size amendments for these sites are only to correct errors associated with land ownership and use arising from mapping during the LEP conversion process. The proposal is not considered to be inconsistent with the Rural Lands or any other SEPP.

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

If No, explain :

a) Consistency with DG endorsed Strategy:

The Director General endorsed the Bombala Land Use Strategy in 2010. The Strategy

aimed to inform land zoning etc in the Bombala LEP 2012. Actions in the Strategy sought to allocate urban residential and industrial zones in Bombala township based on 'sub-zones' identified in the former Bombala DCP#2 (Bombala Urban Area). Lot 9 DP1065714 and Lot 8 section 42 DP758129 subject to this planning proposal were identified, along with a number of adjoining lots, as industrial land in the DCP and Strategy, and were subsequently zoned IN2 Zone in the 2012 LEP. Council's planning proposal considers the extent of industrial land mapped in the DCP was an error.

The planning proposal is considered to be inconsistent with the DG endorsed strategy. The inconsistency, however, can be considered minor given the small scale of land involved, and given its historic residential zoning and historic and continued use as residential property. It should also be noted that the the industrial land use (saw mill) on surrounding lots which would have ultimately determined the industrial zoning in the DCP, has now been demolished leaving a large piece of vacant IN2 land.

b) Section 117 Directions;

1.1 Business and Industrial Zones - The land to be rezoned to residential land is occupied by a dwelling and used for residential purposes. There will be no loss to the area of land able to be developed for industrial uses.

The Department is of the opinion that the planning proposal is inconsistent with this Direction, as whilst the historical and existing use of Lot 9 DP106514 and Lot 8 Section 42 DP758129 is as a residential property, that a rezoning from IN2 to R1 does indeed reduce the amount of industrial zoned land available for industrial land uses. For reasons detailed earlier in this report, the inconsistency is considered minor.

1.2 Rural Zones - The planning proposal does not aim to rezone the rural land east of Cathcart for more intense development and seeks to retain the existing agricultural and forestry land uses.

1.5 Rural Lands - The planning proposal is consistent with the Rural Lands SEPP 2008.

3.1 Residential Zones - The planning proposal is consistent because the land is within an urban zone that is already provided with essential services and a development control plan is in place that seeks to encourage sustainable residential development.

4.4 Planning for Bushfire Protection - The land within the urban area is not mapped as bushfire prone. The rural and forestry land east of Cathcart is mapped as bushfire prone, however, this planning proposal does not affect the proposed rezonings or increase development intensity but recognises the current ownership and use of these parcels of land.

RECOMMENDATION:

The Director General can be satisfied that the planning proposal is consistent with relevant s117 Directions or that any inconsistencies are only of minor significance.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : Council has adequately marked up Bombala LEP 2012 mapping and provided aerial photography clearly identifying the involved Lots. Council has no 'in house' GIS capacity and as such has requested the Department to make the final LEP map changes prior to the LEP amendment being notified.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Due to the nature of the planning proposal, Council has proposed only to consult with affected private land owners and the NSW Forestry Corporation and to provide them with 14 days to make comment. The standard 21 days is considered appropriate for

agency response.

The proposed rezoning from IN2 to R1 in Bombala township is considered to be inconsistent with the DG endorsed Bombala Land Use Strategy, and with s117 Direction 1.1 (Business and Industrial Zones) in that it reduces the total amount of industrial zoned land, and raises potential land use conflict issues. Therefore a public exhibition of the planning proposal for a period of 14 days is considered appropriate to allow surrounding land owners etc the opportunity to comment.

The Bombala Land Use Strategy should be amended to reflect this zoning change and exhibited with the planning proposal. Council may also wish to consider the future zoning of the remaining IN2 land in this location.

Additional Director General's requirements

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

If Yes, reasons :

Overall adequacy of the proposal

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

If No, comment : **The planning proposal is considered adequate.**

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Bombala LEP 2012 has been in force since 29 June 2012. This planning proposal is the first to be received from Council to amend the LEP.

Assessment Criteria

Need for planning
proposal :

The planning proposal seeks to amend both the Land Zoning and Lot Size Maps for a number of sites in the LGA. A planning proposal is the only mechanism by which these maps can be amended. The planning proposal is as a result of a number of land owners contacting the Council regarding the zoning of their land following the notification of Bombala LEP 2012.

Council has advised that the involved lots subject to the industrial zoning includes a residential dwelling that is currently for sale, and the industrial zoning is proving to be an inhibiting factor in the sale.

Correction of errors in Bombala LEP 2012

Consistency with strategic planning framework :

There are no applicable regional or sub-regional strategies. With respect to the industrial/residential rezoning proposed on the edge of the Bombala township, Council has indicated that the planning proposal is consistent with the directions and actions of the DG endorsed Bombala Land Use Strategy.

It should, however, be noted that the Bombala Land Use Strategy that informed the LEP identified and mapped the subject lot (Lot 9 DP106514 and Lot 8 Section 42 DP758129) as industrial land. Council has advised that this is consistent with the 'subzoning' identified in the former Bombala DCP No. 2, and consistent with surrounding land use/zoning.

Council has indicated in its planning proposal that it believes the DCP mapping was erroneous in the extent to which it applied the industrial subzoning and that it should not have included the subject land in the DCP, Strategy and subsequent LEP as industrial land as the site has historically and continues to be used as a residential lot.

The surrounding land, also zoned IN2 in the Bombala LEP 2012, was until recently an operational timber mill which has now ceased operation and been demolished, leaving vacant land that remains zoned IN2 Light Industrial. This surrounding land adjoins residential lots zoned R1 General Residential.

Council has also advised that since the introduction of the Bombala LEP 2012, and due to the RU1 Zone now permitting industrial land uses with consent, a number of trucking/industrial type land uses have relocated from residential areas onto nearby RU1 zoned land. The relocation of these land uses is considered a desirable outcome for the town of Bombala and one which will reduce land use conflict in the urban area.

Given the demise of the industrial land uses adjacent to the subject site in the Bombala Urban Area, and the extent of RU1 land where industrial land uses are now permitted, Council could, in consultation with land owners, be encouraged to investigate the potential to rezone all of this IN2 zoned land to an appropriate residential zone consistent with surrounding land uses.

Environmental social economic impacts :

Council has indicated that there are no direct environmental, economic or social effects as a result of the planning proposal.

NSW Forestry Corporation land incorrectly zoned RU1 will be appropriately rezoned RU3, and adjacent privately owned agricultural land inadvertently zoned RU3 will be returned to an appropriate agricultural zone (RU1). This will allow continued future economic use of these lands.

A rezoning from IN2 to R1 will reflect previous LEP zoning and existing site use. It will also assist in the sale of this property as the property is on the market and the unexpected IN2 zoning is proving a deterrent to sale.

Noting the proposed change in zoning from IN2 to R1, the recent demolition of all buildings associated with the adjacent former timber mill, and close proximity to existing residential development within the Bombala urban footprint, it would be considered appropriate for Council to investigate the future use and zoning of all of the IN2 zoned land in this location, to determine whether or not this is the most appropriate land use. It is also worth noting that since the introduction of the Bombala LEP 2012, and the incentives created through the permissibility of industrial land uses in the RU1 Primary Production Zone, a number of industrial and heavy transport related industries have relocated out of existing urban areas to preferred rural locations.

Correction of errors in Bombala LEP 2012

Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **6 months** Delegation :

Public Authority Consultation - 56(2) (d) : **NSW Department of Primary Industries - Forests**

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

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

If no, provide reasons : **It is recommended that the planning proposal proceed.**

Whilst Council has identified the planning proposal as merely a correction of mapping errors, this is not the case with respect to the industrial zoning on Lot 9 DP1065714 and Lot 8 Section 42 DP758129. These lots, and surrounding IN2 zoned land in the Bombala LEP 2012 was formerly zoned 2 (Urban and Village) zone under the previous controls Bombala 1990 LEP and 'subzoned in the former DCP #2 as industrial land, a zoning reflected in the DG endorsed Bombala Land Use Strategy and subsequently included in the Bombala LEP 2012.

Whilst relatively minor in nature, this inconsistency with the DG endorsed strategy should require the public exhibition of the planning proposal.

Council has indicated a short timeframe for the planning proposal of 3 months, however, the requirement for exhibition and with the process running over the Christmas period, 6 months is considered more appropriate.

While Council has not requested the use of its delegations there is no reason why delegation cannot be authorised which should reduce unnecessary delays.

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

If Yes, reasons : **Re-submission is not considered necessary**

Identify any additional studies, if required. :

If Other, provide reasons :

No studies are required

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons : **The provision of state infrastructure is not relevant to this planning proposal**

Documents

Document File Name	DocumentType Name	Is Public
Bombala Council Planning Proposal No 1 October 2013.pdf	Proposal	Yes
CI report and minute 16 Oct 2013.pdf	Proposal	Yes

Zenith Town Planning_19-11-2013_Planning Proposal - _.pdf	Proposal Covering Letter	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
- 3.1 Residential Zones
- 4.4 Planning for Bushfire Protection

Additional Information : The delegate of the Minister for Planning and Infrastructure, determine under section 56(2) of the EP&A Act that an amendment to the Bombala Local Environmental Plan 2012 to rezone:

- lot 9 DP1065714 and lot 8 section 42 DP758129, Mahratta and Bright Streets, Bombala from IN2 Light Industrial Zone (100 m2 minimum lot size (MLS)) to R1 General Residential Zone (No MLS);
- lots 54, 109, 248, 249, 259 and 350 DP756826 in Cathcart from RU3 Forestry (No MLS) to RU1 Primary Production (40ha MLS); and
- Lot 141 DP756826 in Cathcart from RU1 Primary Production (40ha MLS) to RU3 Forestry (No MLS) 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 must be made publicly available for 14 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of 'A guide to preparing local environmental plans' (Department of Planning and Infrastructure 2013).

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

- NSW Forestry Corporation

The public authority is to be provided with a copy of the planning proposal and any relevant supporting material. The 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 on the proposal. A public authority 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 time frame for completing the LEP is to be 6 months from the week following the date of the Gateway determination.

5. Council be authorised to use its delegation of the Minister's plan making functions to complete the LEP following public consultation.

6. The Director General can be satisfied that the planning proposal is consistent with all relevant s117 Directions or that any inconsistencies are of minor significance.

7. No further referral is required in relation to s117 Directions while the planning proposal remains in its current form.

Correction of errors in Bombala LEP 2012

Supporting Reasons :

8. Council should revise 'the Bombala Land Use Strategy' to reflect the changes proposed and exhibit the revised strategy with the planning proposal. Council may also wish to consider the future zoning of the remaining IN2 zoned lands in this locality.

Despite Council suggesting public exhibition is not required, community consultation is considered appropriate due to the inconsistency with the DG endorsed Bombala Land Use Strategy and potential for land use conflicts with adjoining IN2 land.

Council has previously written to the Department on 23/3/2013 accepting delegations pursuant to s23 of the Act and as per PS12-116. Delegation is considered appropriate.

Signature:



Printed Name:

MARK PARKER
Local Planning Manager

Date:

26th November 2013