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PLANNING PROPOSAL

**Amendment to Bega Valley Local Environmental Plan -
Reclassification of Land at Cattle Bay
from Community to Operational Land**

Prepared for Bega Valley Shire Council

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Prepared by

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EXECUTIVE SUMMARY

This Planning Proposal has been prepared by Andrew Wilson (PIA Certified Practising Planner) for Bega Valley Shire Council to classify a strip of land on the foreshore of Cattle Bay at Eden as 'operational' via an amendment to the Bega Valley Local Environmental Plan (LEP) 2013. It has been prepared in accordance with the requirements of section 55 of the *Environmental Planning and Assessment Act 1979* and associated guidelines 'A guide to preparing planning proposals' published in October 2012, 'A guide to preparing local environmental plans' published in April 2013, and the *LEP Practice Note PN-09-003 – Classification and reclassification of public land through a local environmental plan*.

Subject Land

The subject land is Part Lot 4 DP 1138056 located on the foreshore of Cattle Bay in Eden. It has an area of approximately 210sq.m and is rectangular in shape with a width of approximately 7m across the foreshore. Lot 4 was dedicated to Council as part of an approved tourist and residential Masterplan at Cattle Bay. The land is characterised by remnant industrial structures and an adjacent jetty which is the subject of a proposed marina development.



Aerial photo of the subject land shown solid red (with Lot 4 shown in red outline and yellow shading)

Objectives and Intended Outcomes

The objectives and intended outcomes of this Planning Proposal are:

- to classify the subject land as 'operational' under Part 2 of Chapter 6 of the Local Government Act 1993, and;
- to enable access and services across the foreshore of Cattle Bay for the existing jetty and proposed marina development;
- to rectify a previous oversight in the dedication of the public reserve to Bega Valley Council by the proponents of the approved Masterplan at Cattle Bay;
- to retain public access across the foreshore at Cattle Bay; and
- to facilitate the sustainable development of Cattle Bay for tourist and marina purposes, and the associated socio-economic benefits to the community of Eden.

Explanation of Provisions for LEP Amendment

The Planning Proposal is to reclassify the subject land to operational land by an amendment to the Bega Valley Local Environmental Plan 2013 - Schedule 4 Classification and reclassification of public land - Part 2 Land classified, or reclassified, as operational land—interests changed.

Justification

Need for the planning proposal

The Planning Proposal is a result of the Part 3A Concept Plan Approval (Masterplan) for a mixed tourist and residential development at Cattle Bay that included dedication of the foreshore as a public reserve, and the need to also provide for legal access and services across the foreshore for the existing jetty and proposed marina development which is the subject of a current Development Application.

Consistency with strategic planning framework

The Planning Proposal is consistent with the relevant State and Council strategic plans, policies and directions including the following:

- South Coast Regional Strategy;
- Bega Valley Council Strategic Plan, Commercial Strategy, Land Investment Strategy, Land Use Planning Strategy, and Social Issues Paper;
- State environmental planning policies (SEPPs) including SEPP 71 – Coastal Protection; and
- relevant S.117 Ministerial Directions being 5.1 Implementation of Regional Strategies, 6.2 Reserving Land for Public Purposes, and 6.3 Site Specific Provisions;

Environmental effects

The Planning Proposal does not raise any significant environmental issues relating to the visual landscape, built environment, surrounding properties, heritage, traffic, water management, flora and fauna, energy efficiency, air quality or waste. The potential environmental issues associated with access and services across the foreshore relate to the following:

- Coastal processes and hazards - The subject land is at a level of approximately RL2m above significant risk of inundation from normal coastal processes and predicted sea level rise. The proposal for access and services will not affect coastal processes.
- Construction activities relating to the provision of utility services are the subject of a separate Development Application for the adjacent marina. A construction management plan will be prepared prior to any works to manage potential impacts.

Social and economic effects

The social and economic issues associated with the Planning Proposal are as follows:

- public access to the foreshore is retained;
- economic and social benefits to the community of Eden resulting from the reclassification facilitating the refurbishment of the existing jetty and proposed marina development which further act as catalyst for tourist and residential development at Cattle Bay;
- safety and security which is addressed in the Development Application and Operational Environmental Management Plan for the proposed marina development adjacent to the subject land.

State and Commonwealth interests - public infrastructure

Utility services are available to service public access across the foreshore to the jetty and proposed marina development. The adequacy of utility services associated with the refurbishment of the existing jetty and development of the marina are the subject of a separate Development Application for the marina.

Community consultation

The Planning Proposal is intended to be the subject of a public hearing and community consultation in accordance with the provisions of the *Environmental Planning and Assessment Act 1979 and Regulation 2000*.

Conclusion

Given the circumstances above, the Planning Proposal has strategic planning merit and is recommended to the Minister for Planning or his delegate for a gateway determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979* to enable it to proceed to public hearing and exhibition, finalisation and gazettal of an LEP amendment.

INTRODUCTION

This Planning Proposal is for an amendment to Bega Valley Local Environmental Plan (LEP) 2013 to reclassify land described as Part Lot 4 DP 1138056 at Cattle Bay in Eden from community to operational land under the Local Government Act 1993. The purpose of the reclassification is to facilitate access across a foreshore public reserve (Lot 4 DP 1138056) for the existing jetty and proposed marina at Cattle Bay.

The foreshore public reserve (Lot 4 DP 1138056) was dedicated to Bega Valley Council by the proponent of the marina as part of the approved tourist and residential Masterplan on the land base at Cattle Bay.

This Planning Proposal has been prepared by Andrew Wilson (PIA Certified Practising Planner) for Bega Valley Shire Council in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and associated guideline 'A guide to preparing planning proposals' published in October 2012, 'A guide to preparing local environmental plans' published in April 2013, and *LEP Practice Note PN-09-003 – Classification and reclassification of public land through a local environmental plan*. The guide to preparing planning proposals specifies the following required contents:

- Objectives and intended outcomes;
- Explanation of provisions;
- Justification in terms of consistency with State and local planning strategies, and consideration of relevant environmental, social and economic issues;
- Mapping;
- Community consultation; and
- Project timeline.

SUBJECT LAND

Location and Context

The subject land is located on the foreshore of Cattle Bay in Eden as shown in the location plan and aerial photos in Figures 1 to 3. The site is characterised by remnant industrial structures in an amphitheatre of bushland around Cattle Bay as shown in Figures 2 to 5 below.

Land Description

The legal description of the subject land is Part Lot 4 DP 1138056. It has an area of approximately 210sq.m and is rectangular in shape with a width of approximately 7m across the foreshore of Cattle Bay. Aerial photos of the site are in Figures 2 and 3 below.

Topography and Vegetation

The subject land is on the foreshore of Cattle Bay and relatively flat with a very gentle slope from the high point on the northern end to the low point on the southern end at a level of approximately RL2 AHD above the mean high water mark. There is no vegetation on the subject land.

Existing Development

The subject land currently contains an existing concrete slab and two storey building which is a remnant from a previous industrial use as shown in Figure 4 and 5. Water and electricity conduits currently pass through the site.

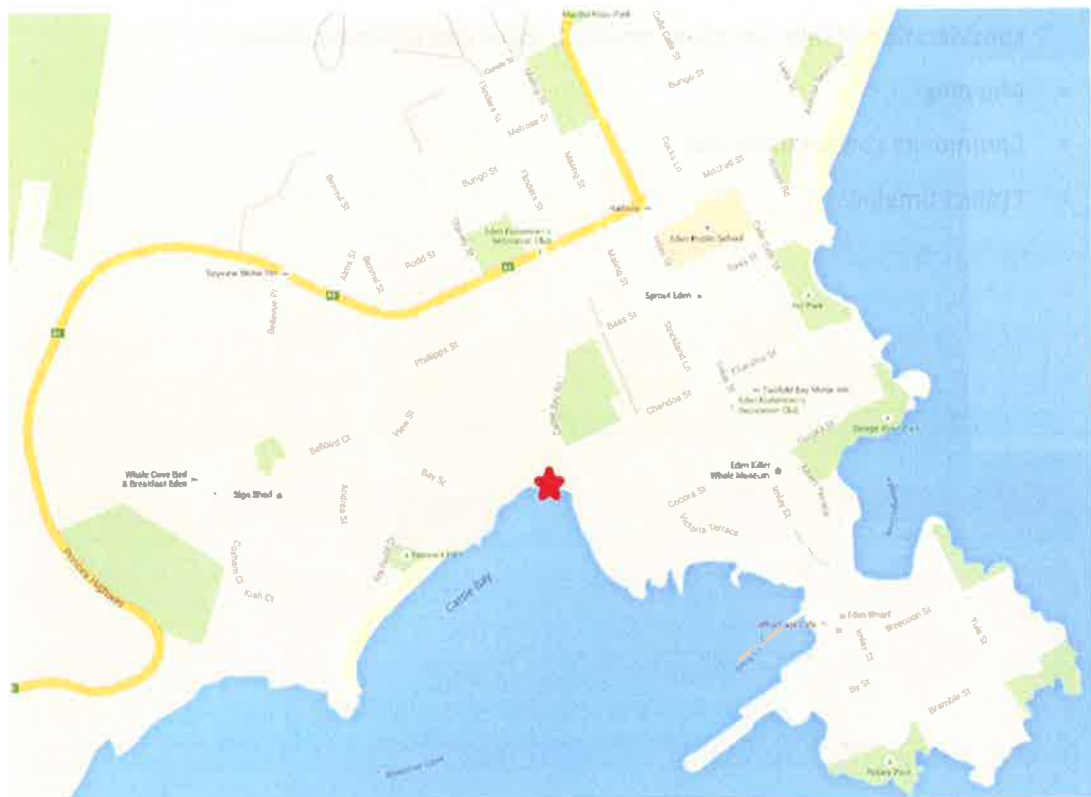


Figure 1 – Location Plan of Cattle Bay at Eden (with subject land shown as red star)



Figure 2 – Aerial photo of the site locality (with Lot 4 shown in red outline and land proposed for reclassification in solid red)



Figure 3 – Aerial photo of the subject land (with Lot 4 shown in red outline and land proposed for reclassification in solid red)



Figure 4 – Aerial photo of the subject land (with Lot 4 shown in thin red outline and land proposed for reclassification in thick red outline)



Figure 5 – Photo of the subject land proposed for reclassification in red outline

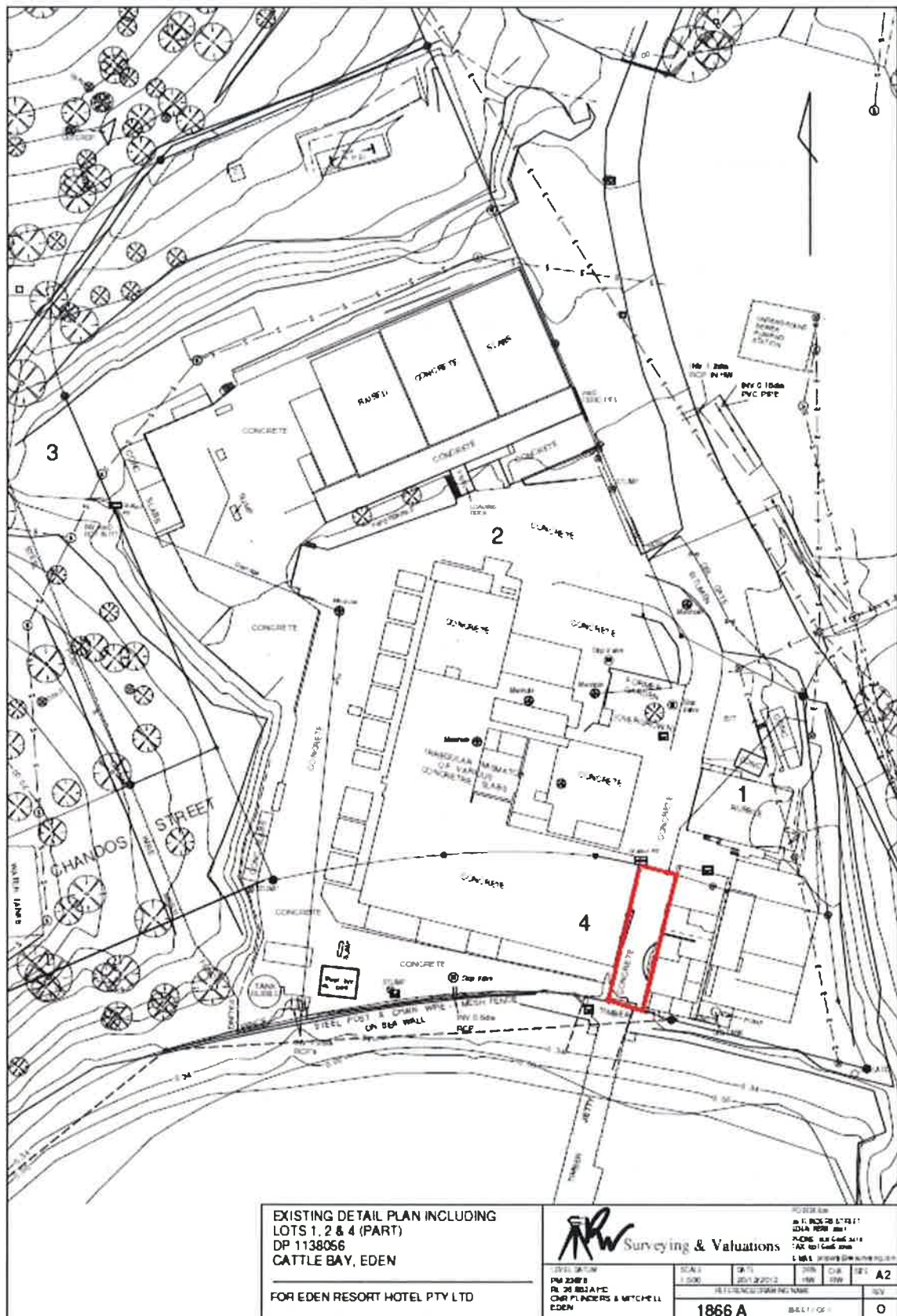


Figure 6 – Site Survey (with subject land shown in red outline)





To the immediate north and east of the subject land is the site of the former industrial use at Cattle Bay with remnant industrial building structures. This is the site of the approved concept plan for a mixed tourist and residential Masterplan shown in Figure 9, and also the site of temporary land based facilities for a proposed marina development shown in Figure 10.

To the west of the subject land is the foreshore of Cattle Bay.



Figure 9 – Approved mixed tourist and residential concept plan at Cattle Bay

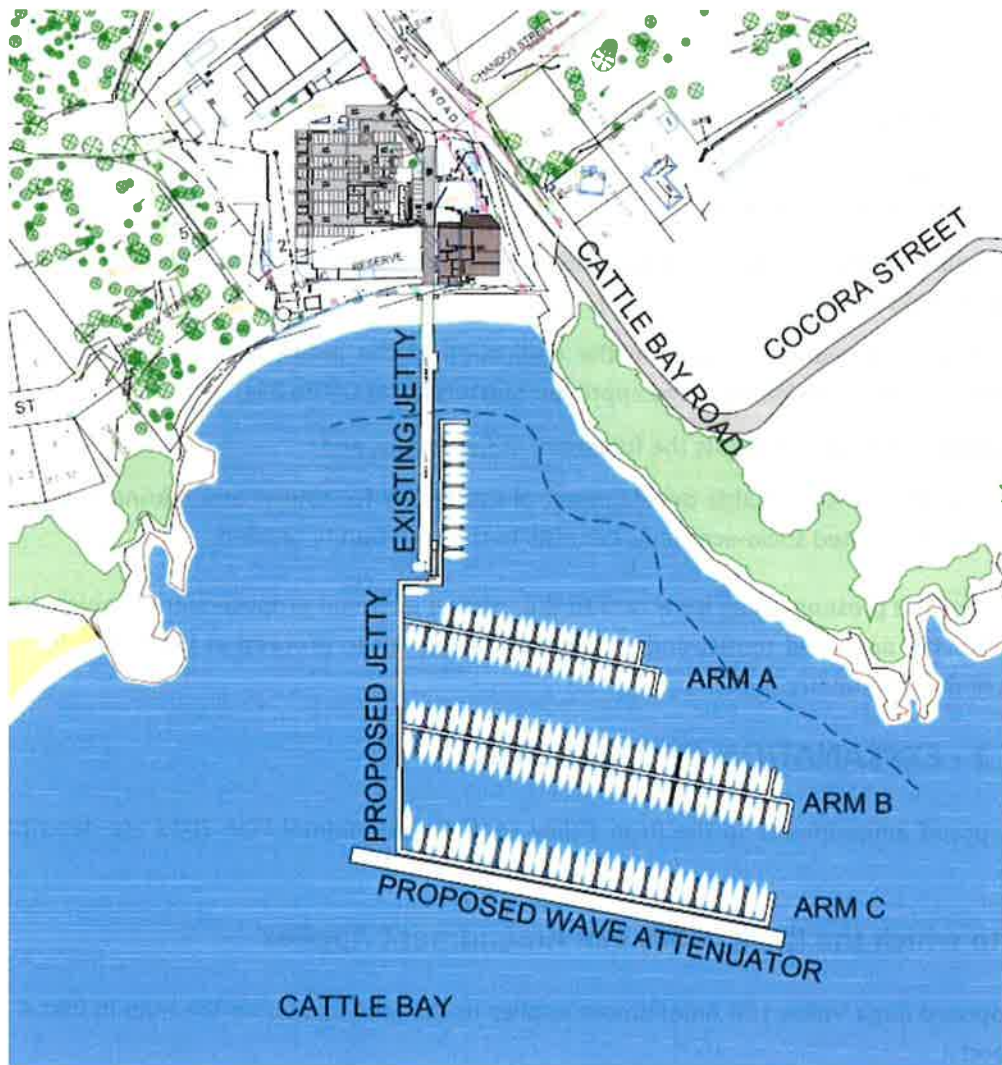


Figure 10 – Proposed marina development (with temporary land based facilities pending the construction for the approved tourist Masterplan shown in Figure 9)

PART 1 - OBJECTIVES AND INTENDED OUTCOMES

The objectives and intended outcomes of this Planning Proposal are:

- to classify the subject land as 'operational' under Part 2 of Chapter 6 of the Local Government Act 1993, and;
- to enable access and services across the foreshore of Cattle Bay for the existing jetty and marina development;
- to rectify a previous oversight in the dedication of the public reserve to Bega Valley Council by the proponents of the approved Masterplan at Cattle Bay;
- to retain public access across the foreshore at Cattle Bay; and
- to facilitate the sustainable development of Cattle Bay for tourist and marina purposes, and the associated socio-economic benefits to the community of Eden.

The subject land presents a key for access to the existing jetty and propose marina which are a catalyst for the approved tourist and residential Masterplan to proceed at Cattle Bay for the benefit of the community.

PART 2 - EXPLANATION OF PROVISIONS

The proposed amendments to the Bega Valley Local Environmental Plan 2013 are described below.

Land to which the Bega Valley LEP Amendment Applies

The proposed Bega Valley LEP Amendment applies to the land shown on the map in Part 4 of this report.

Schedule 4 Classification and reclassification of public land

Part 2 Land classified, or reclassified, as operational land—interests changed

Column 1 Locality	Column 2 Description	Column 3 Any trusts etc not discharged
Cattle Bay Eden	Part Lot 4 DP 1138056	Nil

Note that public reserve status will be retained on the remainder of Lot 4 DP 1138056 that is not subject to this planning proposal.

PART 3 - JUSTIFICATION

This section of the Planning Proposal provides a justification in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the specific headings and questions in the associated guideline '*A guide to preparing planning proposals*' published by the Department of Planning and Infrastructure in October 2012.

Section A - Need for the planning proposal

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

The need for the Planning Proposal is a result of the following developments at Cattle Bay:

- Part 3A Concept Plan Approval for a mixed tourist and residential Masterplan at Cattle Bay that included dedication of the foreshore as a public reserve;
- Development Application for a marina adjacent to the public reserve and approved tourist masterplan.

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

The options for achieving access across the public reserve for the existing jetty and proposed marina include:

- Section 88K of the Conveyancing Act;
- Section 10 of the Roads Act 1993;
- Lease or licence under Section 47 or 47A of the Local Government Act 1993;
- Reclassification to operational land under Section 33 of the Local Government Act 1993 and by amendment to the Bega Valley LEP 2013.

The reclassification of the land to 'operational' is the best means of achieving access due to the legal limitations of the other options and as it provides the best legal certainty and remedy.

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

The Planning Proposal is consistent with the South Coast Regional Strategy 2007 in facilitating the recreational use of

Natural environment – The Planning Proposal for access across the public reserve itself will not have any significant effect on the natural environment, particularly as the subject land is currently a concrete slab remaining from a previous industrial use. (The environmental issues associated with the proposed marina are the subject of assessment as part of the separate Development Application for the marina.)

Natural hazards – The Planning Proposal for access across the public reserve does not raise any significant issues associated with natural hazards. If the subject land becomes inundated over time due to sea level rise, then access is still available on adjacent higher elevated land.

Housing and settlement – The Planning Proposal for access across the public reserve does not raise any significant issues associated with housing directly. It facilitates a marina infrastructure that has benefit to the settlement of Eden.

Economic development and employment growth – The Planning Proposal for access across the public reserve facilitates a marina infrastructure that has benefits to the economy and employment in Eden.

Rural landscape and rural communities – The Planning Proposal for access across the public reserve does not raise any significant issues associated with rural landscape and rural communities directly.

Water, energy and waste resources – The Planning Proposal for access across the public reserve does not itself raise any significant issues associated with water, energy and waste. (The environmental issues associated with the proposed marina are the subject of assessment as part of the separate Development Application for the marina.)

Cultural heritage – The Planning Proposal for access across the public reserve is to facilitate use of existing jetty and development of a marina which are consistent with the cultural heritage of maritime activities at Twofold Bay in Eden.

Q4. Is the planning proposal consistent with a Council's local strategy or other local strategic plan?

Community Strategic Plan - Bega Valley 2030

The Planning Proposal is consistent with the key directions in the Bega Valley 2030 Community Strategic Plan as described below.

A liveable place – The Planning Proposal is consistent with providing a liveable place in facilitating access for maritime infrastructure and retaining public access to the foreshore at Cattle Bay.

An enterprising place – The Planning Proposal is to facilitate an enterprising marina development which is a catalyst to further enterprising tourist development.

A sustainable place – The Planning Proposal is to facilitate access to sustainable development in the form of a marina which is a catalyst to further tourist development.

An accessible place – The Planning Proposal is to provide access to an existing jetty and proposed marina, and retain public access to the foreshore at Cattle Bay.

A leading organisation – The Planning Proposal balances access to a private marina with public access to the existing jetty and foreshore which is evidence of a leading organisation.

Land Investment Strategy

The public reserve on the foreshore of Cattle Bay was dedicated to Bega Valley Shire Council by the proponent of the marina and approved tourist Masterplan at Cattle Bay. The Planning Proposal is to rectify an oversight in the dedication of the public reserve and provide legal access to the existing jetty and proposed marina.

Bega Valley Shire Council Commercial Strategy

The Commercial Strategy has the following role for the Eden local centre:

Role of Eden local centre

The role for the Eden commercial centre is seen as that of a local centre servicing the weekly shopping needs of the Eden/Boydton District catchment.

Eden local centre theme

- *Promote as "Port of Eden"*
- *Southern tourist centre of the Shire*
- *Commercial support for significant industries relating to fishing, forestry and port activities*
- *Promote local history and nature tourism*
- *Better utilise topography and the magnificent setting of the commercial area*
- *Increase potential for tourism and permanent accommodation in commercial area.*

The Planning Proposal for access across the public reserve does not raise any significant issues directly associated with the role of Eden local centre. It is consistent with the Commercial Strategy for Eden in facilitating a marina infrastructure that supports tourism and maritime use and activities at Eden.

Social Issues Papers

Is to retain public use of the foreshore as well as facilitate access to the existing jetty and marina development which will be a catalyst for tourist development and have socio-economic benefits to the community of Eden.

Bega Valley Shire Land Use Planning Strategy

The Planning Proposal is consistent with the key elements of Council's Land use planning strategy as follows:

Economic Land use issues – The Planning Proposal for access across the public reserve facilitates a marina infrastructure that has benefits to the economy and employment in Eden.

Social land use and housing issues – The Planning Proposal for access across the public reserve does not raise any significant issues associated with social land use and housing directly. It facilitates a marina infrastructure that has benefit to the community of Eden.

Protecting the natural environment – The Planning Proposal for access across the public reserve itself will not have any significant effect on the natural environment, particularly as the subject land is currently a concrete slab remaining from a previous industrial use. (The environmental issues associated with the proposed marina are the subject of assessment as part of the separate Development Application for the marina.)

Protecting the landscape – The Planning Proposal is for access across the public reserve which does not require any modification to the landscape.

Protecting development from hazards – The Planning Proposal for access across the public reserve does not raise any significant issues associated with natural hazards. If the subject land becomes inundated over time due to sea level rise, then access is still available on adjacent higher elevated land.

Conserving our heritage – The Planning Proposal for access across the public reserve is to facilitate use of existing jetty and development of a marina which are consistent with the heritage of maritime activities at Twofold Bay in Eden.

Direction for the main town centres – The Planning Proposal for access across the public reserve does not raise any significant issues associated with the town centre directly. It facilitates a marina infrastructure that has benefit to Eden.

Rural land use direction – The Planning Proposal for access across the public reserve does not raise any significant issues associated with rural landscape and rural communities directly.

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

The relevant State environmental planning policies (SEPPs) are shown in the table below.

SEPP	Applicability
SEPP No 1—Development Standards	No
SEPP No 4—Development Without Consent and Miscellaneous Exempt and Complying	No
SEPP No 6—Number of Storeys in a Building	No
SEPP No 14—Coastal Wetlands	No
SEPP No 15—Rural Landsharing Communities	No
SEPP No 19—Bushland in Urban Areas	No
SEPP No 21—Caravan Parks	No
SEPP No 22—Shops and Commercial Premises	No
SEPP No 26—Littoral Rainforests	No
SEPP No 29—Western Sydney Recreation Area	No
SEPP No 30—Intensive Agriculture	No
SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)	No
SEPP No 33—Hazardous and Offensive Development	No
SEPP No 36—Manufactured Home Estates	No
SEPP No 39—Spit Island Bird Habitat	No
SEPP No 44—Koala Habitat Protection	No
SEPP No 47—Moore Park Showground	No
SEPP No 50—Canal Estate Development	No
SEPP No 52—Farm Dams and Other Works in Land and Water Management Plan Areas	No
SEPP No 55—Remediation of Land	Yes
SEPP No 59—Central Western Sydney Regional Open Space and Residential	No
SEPP No 60—Exempt and Complying Development	No
SEPP No 62—Sustainable Aquaculture	No
SEPP No 64—Advertising and Signage	No
SEPP No 65—Design Quality of Residential Flat Development	No
SEPP No 70—Affordable Housing (Revised Schemes)	No
SEPP No 71—Coastal Protection	Yes
SEPP (Affordable Rental Housing) 2009	No

SEPP	Applicability
SEPP (Building Sustainability Index: BASIX) 2004	No
SEPP (Exempt and Complying Development Codes) 2008	No
SEPP (Housing for Seniors or People with a Disability) 2004	No
SEPP (Infrastructure) 2007	No
SEPP (Kosciuszko National Park—Alpine Resorts) 2007	No
SEPP (Kurnell Peninsula) 1989	No
SEPP (Major Development) 2005	No
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	No
SEPP (Penrith Lakes Scheme) 1989	No
SEPP (Port Botany and Port Kembla) 2013	No
SEPP (Rural Lands) 2008	No
SEPP (SEPP 53 Transitional Provisions) 2011	No
SEPP (State and Regional Development) 2011	No
SEPP (Sydney Drinking Water Catchment) 2011	No
SEPP (Sydney Region Growth Centres) 2006	No
SEPP (Temporary Structures) 2007	No
SEPP (Urban Renewal) 2010	No
SEPP (Western Sydney Employment Area) 2009	No
SEPP (Western Sydney Parklands) 2009	No

The SEPPs relevant to this Planning Proposal are:

- SEPP No. 55—Remediation of Land;
- SEPP No.71 Coastal Protection;

There are no other SEPPs applicable to the Planning Proposal.

SEPP 55 - Remediation of Land

Clause 6 of SEPP 55 states the following:

6 Contamination and remediation to be considered in zoning or rezoning proposal

(1) In preparing an environmental planning instrument, a planning authority is not to include in a particular zone (within the meaning of the instrument) any land specified in subclause (4) if the inclusion of the land in that zone would permit a change of use of the land, unless:

- (a) the planning authority has considered whether the land is contaminated, and*
- (b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
- (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.*

(2) Before including land of a class identified in subclause (4) in a particular zone, the planning authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

(3) If a person has requested the planning authority to include land of a class identified in subclause (4) in a particular zone, the planning authority may require the person to furnish the report referred to in subclause (2).

(4) The following classes of land are identified for the purposes of this clause:

- (a) land that is within an investigation area,*
- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:*
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

The Planning Proposal for reclassification does not alter the zoning or permissible uses in the zone. The proposal is to reclassify the land for access and services which are currently permissible in the zone.

State Environmental Planning Policy No.71 – Coastal Protection

SEPP No.71 Coastal Protection applies to the subject land and includes the following provisions under clauses 2 and 8 that are required to be considered in LEP amendments.

SEPP 71 Clause	Consideration
2 Aims of Policy	
(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and	The natural, cultural, recreational and economic attributes of the foreshore and coast are not significantly affected by the proposed reclassification to enable legal access and services.
(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and	Public access is intended to be retained across the foreshore with the proposed reclassification enabling an easement to also provide legal access to the proposed jetty and marina development.
(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and	Public access is intended to be retained across the foreshore with the proposed reclassification enabling an easement to also provide legal access to the proposed jetty and marina development.
(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and	Aboriginal cultural heritage will not be affected by the proposed reclassification for access and services to the jetty and marina as the subject land has previously been used for industrial purposes and public access will remain.
(e) to ensure that the visual amenity of the coast is protected, and	Visual amenity will not be significantly affected by the proposed reclassification for access and services. The impact of services is the subject of assessment in a separate DA for the marina..
(f) to protect and preserve beach environments and beach amenity, and	Beach amenity and the beach environment will not be significantly affected by the proposed reclassification to enable access and services for the proposed marina development as it maintains existing environmental conditions at the subject land.
(g) to protect and preserve native coastal vegetation, and	There is no vegetation on the subject land or that will be affected by the proposed reclassification for access and services.
(h) to protect and preserve the marine environment of New South Wales, and	The proposed reclassification to enable access and services is on the land base and will not harm the marine environment. The proposed marina development and its impacts on the marine environment is the subject of assessment in a separate Development Application.

SEPP 71 Clause	Consideration
(i) to protect and preserve rock platforms, and	There is no rock platform on the subject land or that will be affected by the proposed reclassification for access and services.
(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the <i>Protection of the Environment Administration Act 1991</i>), and	Is consistent with ESD principles in that it has no significant effect on biodiversity particularly as there is no vegetation on the subject land, provides intergenerational equity in facilitating social, economic and equitable access benefits and would not significantly harming the environment for future generations.
(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and	The scale of the proposed reclassification is relatively minor and has no significant impact on the built environment or natural scenic quality.
(l) to encourage a strategic approach to coastal management.	The proposed reclassification is strategic in providing a long term solution for legal access and services for the jetty and proposed marina development whilst retaining public access across the foreshore.
Part 2 Matters for consideration 7 Application of clause 8 matters The matters for consideration set out in clause 8: (a) should be taken into account by a council, when it prepares a draft local environmental plan that applies to land to which this Policy applies, and	See clause 8 considerations below.
8 Matters for consideration The matters for consideration are the following:	
(a) the aims of this Policy set out in clause 2,	The aims in clause 2 are addressed above in this table.
(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,	Public access is intended to be retained across the foreshore with the proposed reclassification enabling an easement to also provide legal access to the existing jetty and proposed marina development.
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	The proponent has dedicated the entire foreshore across Cattle Bay to Council as a public reserve as part of the approved tourist development. The refurbishment and landscaping of the foreshore will occur as part of the first stage of any subsequently approved tourist development.

SEPP 71 Clause	Consideration
(d) the suitability of development given its type, location and design and its relationship with the surrounding area,	The use of the subject land for access and services for the existing jetty and proposed marina development is suitable as it is maintaining a history of providing access and services to the jetty and is intended to also provide public access across the foreshore.
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,	The proposed reclassification enables access and services across the subject land will have no significant effect on solar access, views or amenity.
(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	The proposed reclassification to enable access and services across the subject land will have no significant effect on scenic quality.
(g) measures to conserve animals (within the meaning of the <u>Threatened Species Conservation Act 1995</u>) and plants (within the meaning of that Act), and their habitats,	No plants or animal habitat are on the subject land or will be significantly affected by the proposed reclassification to enable access and services.
(h) measures to conserve fish (within the meaning of Part 7A of the <u>Fisheries Management Act 1994</u>) and marine vegetation (within the meaning of that Part), and their habitats	The proposed reclassification to enable access and services across the subject land will have no significant effect on marine vegetation, fish or their habitats. .
(i) existing wildlife corridors and the impact of development on these corridors,	No wildlife corridor exists on the subject land or will be affected by the proposed reclassification to enable access and services.
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,	The proposed reclassification to enable access and services across the subject land will not affect coastal processes or hazards. The land is at a level of approximately RL 2 which will not be inundated from normal coastal processes or predicated sea level rise.
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,	The proposed reclassification is to provide legal clarity and enable orderly access and services across the subject land which reduces potential for conflict.
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	Aboriginal cultural heritage will not be affected by the proposed reclassification for access and services to the jetty and marina as the subject land has previously been used for industrial purposes and public access will remain.

SEPP 71 Clause	Consideration
(m) likely impacts of development on the water quality of coastal waterbodies,	Water quality will not be affected by the proposed reclassification to enable access and services across the subject land.
(n) the conservation and preservation of items of heritage, archaeological or historic significance,	No item of heritage significance is on the subject land or will be affected by the proposed reclassification to enable access and services. The proposal will facilitate the continued use of the jetty which has some historic significance.
(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,	The proposal to reclassify the land has no direct link to compact cities and towns other than to facilitate proposed marina and tourist development within the existing broad urban areas of Eden.
(p) only in cases in which a development application in relation to proposed development is determined: (i) the cumulative impacts of the proposed development on the environment, and (ii) measures to ensure that water and energy usage by the proposed development is efficient.	 The proposal is to reclassify the land has no significant cumulative effect as it is a relatively narrow strip of land across the foreshore for access and services (maintaining its historic use) and also retains it for public use / access. The proposed reclassification for legal access and services does not generate water and energy usage.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The relevant S.117 Directions are shown in the following table:

S.117 Direction	Applicability
1 Employment & Resources	No
1.1 Business and Industrial Zones	No
1.2 Rural Zones	No
1.3 Mining, Petroleum Production and Extractive Industries	No
1.4 Oyster Aquaculture	No
2 Environment & Heritage	No
2.1 Environmental Protection Zones	No
2.2 Coastal Protection	No
2.3 Heritage Conservation	No
2.4 Recreation Vehicle Areas	No

S.117 Direction	Applicability
3 Housing, Infrastructure and Urban Development	No
3.1 Residential Zones	No
3.2 Caravan Parks and Manufactured Home Estates	No
3.3 Home Occupations	No
3.4 Integrating Land Use and Transport	No
3.5 Development Near Licensed Aerodromes	No
4 Hazard and Risk	No
4.1 Acid Sulfate Soils	No
4.2 Mine Subsidence and Unstable Land	No
4.3 Flood Prone Land	No
4.4 Planning for Bushfire Protection	No
5 Regional Planning	No
5.1 Implementation of Regional Strategies	Yes
5.2 Sydney Drinking Water Catchments	No
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	No
5.6 Sydney to Canberra Corridor	No
5.7 Central Coast	No
5.8 Second Sydney Airport: Badgerys Creek	No
6 Local Plan Making	No
6.1 Approval and Referral Requirements	No
6.2 Reserving Land for Public Purposes	Yes
6.3 Site Specific Provisions	Yes
7 Metropolitan Planning	No
7.1 Implementation of the Metropolitan Strategy	No

The S.117 Ministerial Directions relevant to this Planning Proposal are:

- 5.1 Implementation of Regional Strategies;
- 6.2 Reserving Land for Public Purposes; and
- 6.3 Site Specific Provisions.

S.117 Direction – 5.1 Implementation of Regional Strategies

S.117 Direction No.5.1 states the following:

Objective

(1) The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

Where this direction applies

(2) This direction applies to land to which the following regional strategies apply:

(a) Far North Coast Regional Strategy

(b) Lower Hunter Regional Strategy

(c) Illawarra Regional Strategy

(d) South Coast Regional Strategy

(e) Sydney–Canberra Corridor Regional Strategy

(f) Central Coast Regional Strategy, and

(g) Mid North Coast Regional Strategy.

When this direction applies

(3) This direction applies when a relevant planning authority prepares a planning proposal.

What a relevant planning authority must do if this direction applies

(4) Planning proposals must be consistent with a regional strategy released by the Minister for Planning.

Consistency

(5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy:

(a) is of minor significance, and

(b) the planning proposal achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.

The Planning Proposal is consistent with the South Coast Regional Strategy as described above in Part 3 Section B and complies with the S.117 Direction No.5.1.

S.117 Direction – 6.2 Reserving Land for Public Purposes

S.117 Direction No.6.2 states the following:

Objectives

(1) The objectives of this direction are:

- (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and*
- (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.*

Where this direction applies

(2) This direction applies to all relevant planning authorities.

When this direction applies

(3) This direction applies when a relevant planning authority prepares a planning proposal.

What a relevant planning authority must do if this direction applies

(4) A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

The Planning Proposal affects a public reserve for which Council is landowner and the relevant public authority. It is consistent with the S.117 Direction No.6.2.

S.117 Direction – 6.3 Site Specific Provisions

S.117 Direction No.6.3 states the following:

Objective

(1) The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

Where this direction applies

(2) This direction applies to all relevant planning authorities.

When this direction applies

(3) This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.

What a relevant planning authority must do if this direction applies

(4) A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:

- (a) allow that land use to be carried out in the zone the land is situated on, or*
- (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*

(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

(5) A planning proposal must not contain or refer to drawings that show details of the development proposal.

Consistency

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

The Planning Proposal is consistent with clause 4 of the S.117 Direction No.6.3 in that it retains the existing zoning, utilises existing provisions in the Bega Valley LEP, and does not impose any additional development standards or requirements to those already contained in the zone.

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 critical habitat or threatened species, populations or ecological communities, or their habitats on or adjoining the subject land or that will be significantly affected by the Planning Proposal.

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

The Planning Proposal does not raise any significant environmental effects relating to the visual landscape, built environment, surrounding properties, heritage, traffic, water management, flora and fauna, energy efficiency, air quality or waste.

The potential environmental issues associated with the proposed reclassification to enable legal access and utility services across the foreshore relate to coastal processes and potential impacts of construction activities.

The environmental planning issues associated with the refurbishment of the existing jetty and development of the proposed marina are the subject of a separate Development Application.

Coastal processes and hazards

The proposed reclassification to allow legal access and services for the existing jetty and proposed marina will not affect coastal processes.

The subject land is at a level of approximately RL2m which is above any significant risk of inundation from normal coastal processes and predicted sea level rise.

Construction activities

The construction activities and associated potential impacts associated with provision of utility services across the subject land associated with the existing jetty and development of the proposed marina are the subject of a separate Development Application. A construction management plan will be prepared prior to any works commencing to manage and mitigate potential impacts including site safety and security, construction access, soil erosion, dust, sedimentation and turbidity, construction vehicles and waste.

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

The social and economic issues relating to the Planning Proposal include:

- public access to the foreshore;
- economic and social benefits from development at Cattle Bay;
- safety and security.

Public access to the foreshore

The Planning Proposal for reclassification of the subject land is intended to retain Council ownership of the land and public access across it, and also enable a right of way / easement across it for legal access and services benefiting the existing jetty and proposed marina development. Public access across the foreshore including the subject strip of land is intended to be retained.

Economic and social benefits from development at Cattle Bay

The Planning Proposal has the purpose of facilitating the refurbishment of the existing jetty and the proposed marina development, which further act as catalyst for tourist and residential development at Cattle Bay in Eden. These developments will generate social and economic benefits to Eden which are addressed in documentation associated with the Development Application for the marina and Masterplan approval for the tourist development.

Safety and security

Safety and security is addressed in the Development Application for the proposed marina development which includes an Operational Environmental Management Plan.

Section D - State and Commonwealth interests

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

Utility services are available to service public access across the foreshore to the jetty and proposed marina development. The adequacy of utility services associated with the refurbishment of the existing jetty and development of the proposed marina are the subject of a separate Development Application for the marina.

Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

No State and Commonwealth public authorities have been consulted to date by the proponent or consultants. It is expected that the relevant planning authority, Bega Valley Council, will consult with any relevant public authorities after a gateway determination in accordance with legislative requirements and contemporary planning practice.

The proposed marina development and approved Masterplan for a mixed tourist and residential development at Cattle Bay which provide the background to the proposed reclassification were notified to numerous authorities with a stake in them, and authority comments have been addressed in the planning of these developments.

Director-General's Requirements to reclassify public land

'A guide to preparing local environmental plans' published by the Department of Planning and Infrastructure in April 2013 includes the following requirements in italics for the reclassification of land.

5.5.4 Classification and reclassification of public land

In the case of proposed LEPs which are being prepared solely to classify or reclassify public land, the Director-General has issued the following requirements as to the specific matters that must be addressed in the justification for the planning proposal [EP&A Act s. 55(3)]:

Director-General's requirements regarding matters that must be addressed in the justification of all planning proposals to reclassify public land

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

The need for the Planning Proposal is a result of the following developments at Cattle Bay:

- Part 3A Concept Plan (Masterplan) Approval for a mixed tourist and residential development at Cattle Bay that included dedication of the foreshore as a public reserve;
- Development Application for a proposed marina adjacent to the public reserve and approved tourist Masterplan.

b. Is the planning proposal consistent with the local council's community plan, or other local strategic plan?

The Planning Proposal is consistent with the key directions in the Bega Valley 2030 Community Strategic Plan as described below.

A liveable place – The Planning Proposal is consistent with providing a liveable place in facilitating access for maritime infrastructure and retaining public access to the foreshore at Cattle Bay.

An enterprising place – The Planning Proposal is to facilitate an enterprising marina development which is a catalyst to further enterprising tourist development.

A sustainable place – The Planning Proposal is to facilitate access to sustainable development in the form of a marina which is a catalyst to further tourist development.

An accessible place – The Planning Proposal is to provide access to an existing jetty and proposed marina, and retain public access to the foreshore at Cattle Bay.

A leading organisation – The Planning Proposal balances access to a private marina with public access to the existing jetty and foreshore which is evidence of a leading organisation.

c. If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished should be provided.

The reasons for this Planning Proposal to reclassify the subject land as 'operational' under Part 2 of Chapter 6 of the Local Government Act 1993 and extinguish its public reserve status are:

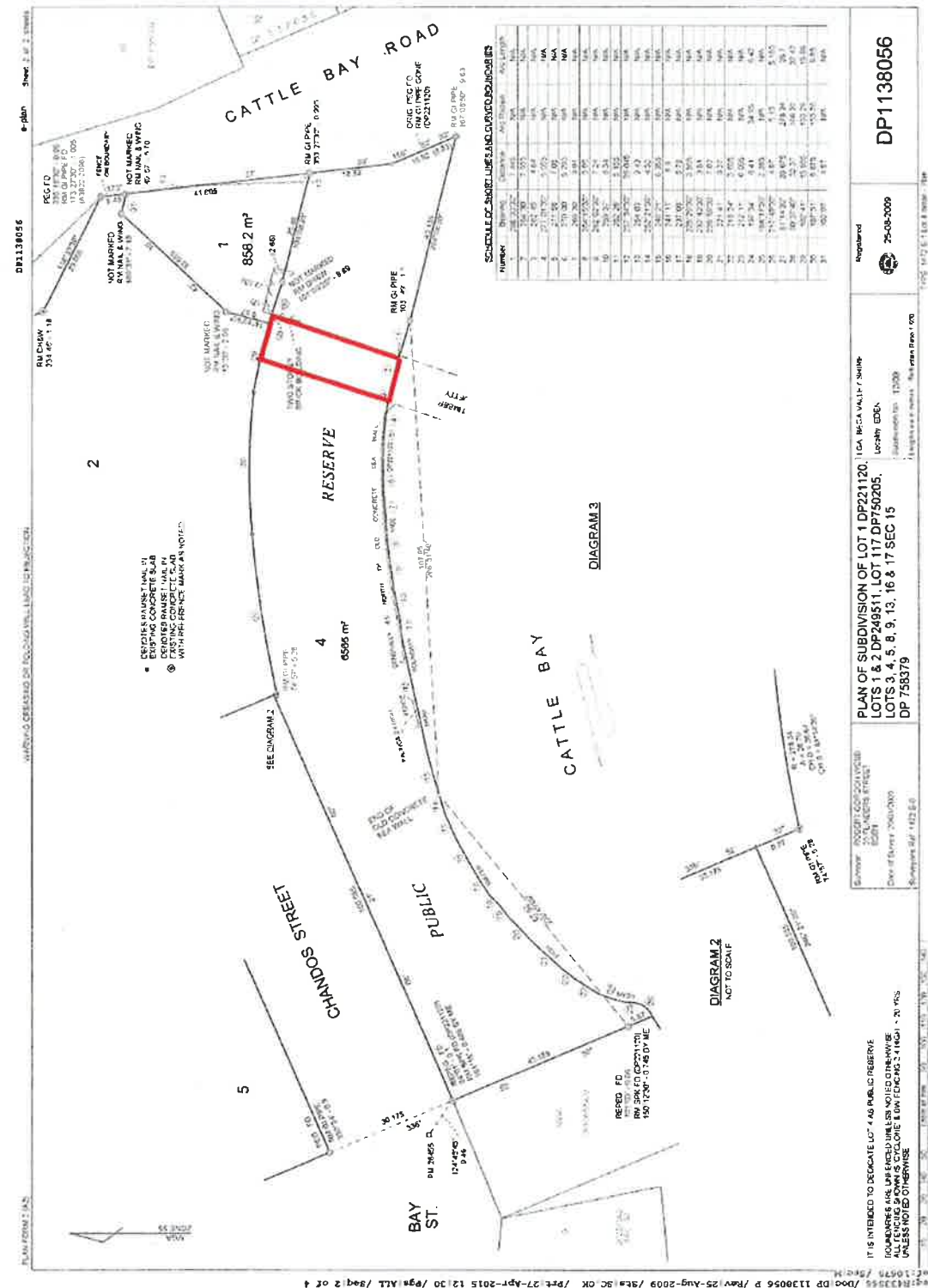
- to rectify a previous oversight in the dedication of the public reserve by the proponents of the approved Masterplan at Cattle Bay to Bega Valley Council; and
- to enable legal access and services across the land for the existing jetty and proposed marina development;
- to retain public access across the foreshore at Cattle Bay.

d. The concurrence of the landowner, where the land is not owned by the relevant planning authority.

The subject land is owned Bega Valley Council.

PART 4 - MAPPING

The Planning Proposal will amend the Bega Valley LEP 2013 Land Reclassification (Part Lots) Map. The subject land proposed for reclassification is shown below in **Figure 11**.



PART 5 - COMMUNITY CONSULTATION

The Planning Proposal will be subject to the statutory consultation requirements applying to the reclassification of land under the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979 and Regulation 2000* including public advertising and exhibition, and public hearing.

The proposed marina development and approved concept plan (Masterplan) for a mixed tourist and residential development at Cattle Bay which provide the background to the proposed reclassification have both been subject to community consultation including public exhibition and advertising in accordance with the relevant development approval processes under the *Environmental Planning and Assessment Act 1979 and Regulation 2000*.

PART 6 - PROJECT TIMELINE

The project timeline anticipated for the project is shown in the table below.

Key Steps and Milestones	Timeline
Council meeting and resolution to proceed to Gateway determination	July 2015
Gateway assessment and determination by Department of Planning & Environment (DPE)	September 2015
Public exhibition, consultation with Government agencies, and public hearing	October 2015
Council consideration of submissions and decision to proceed with LEP	December 2015
Council submission to DPE to finalise LEP	January 2016
Making and gazettal of LEP	March 2016

LEP PRACTICE NOTE PN-09-003

The LEP Practice Note PN-09-003 – *Classification and reclassification of public land through a local environmental plan* specifies the information to be included in a Planning Proposal for reclassification of land which is included in italics below.

The reasons why the draft LEP or planning proposal is being prepared including the planning merits of the proposal, e.g. the findings of a centres' strategy, council's intention to dispose of the land, provision of open space in a town centre

The Planning Proposal to reclassify the land through an LEP amendment is being prepared for the following reasons:

- to enable access and services across the foreshore of Cattle Bay for the existing jetty and proposed marina development;
- to rectify a previous oversight in the dedication of the public reserve by the proponents of the approved Masterplan at Cattle Bay to Bega Valley Council;
- to facilitate the sustainable development of Cattle Bay for tourist and marina purposes, and the associated socio-economic benefits to the community of Eden.

The strategic justification and merits of the proposal are explained further above in Part 3 in accordance with the guidelines 'A guide to preparing planning proposals'.

The current and proposed classification of the land

The land is currently classified as 'community' land. The proposed classification is 'operational' land.

The reasons for the reclassification including how this relates to council's strategic framework, council's proposed future use of the land, proposed zones, site specific requirements, e.g. heritage controls, anticipated physical or operational changes resulting from the reclassification

The reclassification of the land is proposed for the following reasons:

- to enable access and services across the foreshore of Cattle Bay for the existing jetty and proposed marina development;
- to rectify a previous oversight in the dedication of the public reserve by the proponents of the approved Masterplan at Cattle Bay to Bega Valley Council;
- to facilitate the sustainable development of Cattle Bay for tourist and marina purposes, and the associated socio-economic benefits to the community of Eden.

The relationship with Council's strategic framework is explained further above in Part 3 – Section B in accordance with the guidelines 'A guide to preparing planning proposals'.

Council's ownership of the land, if this applies

Council owns the subject land.

The nature of council's interest in the land, e.g. council has a 50 year lease over the site

Council owns the subject land.

How and when the interest was first acquired, e.g. the land was purchased in 20XX through section 94

The subject land was dedicated to Council as a public reserve as part of the Part 3A Concept Plan (Masterplan) Approval for a mixed tourist and residential development at Cattle Bay in Eden.

The reasons council acquired an interest in the land, e.g. for the extension of an existing park; council was given responsibility for the land by a State agency

The subject land was dedicated to Council as a public reserve primarily to provide public foreshore access as part of a Part 3A Concept Plan (Masterplan) Approval for a mixed tourist and residential development at Cattle Bay in Eden.

Any agreements over the land together with their duration, terms, controls, agreement to dispose of the land, e.g. whether any aspect of the draft LEP or planning proposal formed part of the agreement to dispose of the land and any terms of any such agreement

There is no formal agreement over the land. Council and the proponents of the adjacent marina development have an understanding that the subject land will remain in Council ownership and be publicly accessible, and have an easement / right of access over it giving legal access and services for the existing jetty and proposed marina.

An indication, as a minimum, of the magnitude of any financial gain or loss from the reclassification and of the type(s) of benefit that could arise e.g. council could indicate the magnitude of value added to the land based on comparable sites such as the land is currently valued at \$1500 per square metre, nearby land zoned for business development is valued at between \$2000 and \$5000 per square metre

No financial transactions are intended with the reclassification. The subject land was dedicated to Council by the proponents of the approved tourist and residential development and of the proposed marina at Cattle Bay, and the reclassification is proposed to rectify an oversight in the dedication to maintain legal access and services to the existing jetty and proposed marina.

The asset management objectives being pursued, the manner in which they will be achieved and the type of benefits the council wants, i.e. without necessarily providing details of any possible financial arrangements, how the council may or will benefit financially

The asset management objectives are:

- to enable access and services across the foreshore of Cattle Bay for the existing jetty and proposed marina development;
- to maintain public access across the foreshore land;

- to facilitate the sustainable development of Cattle Bay for tourist and marina purposes, and the associated socio-economic benefits to the community of Eden.

No financial benefit is intended with the reclassification as it is proposed to rectify an oversight in the recent dedication of the land.

Whether there has been an agreement for the sale or lease of the land; the basic details of any such agreement and, if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time

The intended outcome of the reclassification is for Council to retain ownership with public access across the subject land; and for an easement to be created for legal access and services across the land for the adjacent jetty and proposed marina development.

Relevant matters required in plan making under the EP&A Act

The relevant matters in plan making including planning proposals under the EP&A Act are addressed in this Planning Proposal document.

A copy of this practice note must be included in the exhibition material to assist the community in identifying information requirements. Council staff may wish to identify the column in Attachment 1 that applies.

Noted. The Practice Note is appended and to be included in the exhibition material.

CONCLUSION

The Planning Proposal for an amendment to Bega Valley LEP 2013 to reclassify part of the foreshore public reserve dedicated at Cattle Bay to operational land has strategic planning merit and is justified in the following respects:

- it is consistent with the South Coast Regional Strategy, Council's strategy plans, relevant State environmental planning policies and S.117 Ministerial Directions;
- it does not raise any significant environmental issues;
- it is intend to have social and economic benefits for the community in facilitating the refurbishment of the existing jetty and the proposed marina development, which further act as catalyst for tourist and residential development at Cattle Bay in Eden;
- it does not raise any significant issues associated with infrastructure which are addressed in separate developments applications for the proposed marina and approved tourist Masterplan.

Given the above strategic planning merits, the Planning Proposal is recommended to the Minister for Planning or his delegate for a gateway determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979* to enable the Proposal to proceed to public hearing and exhibition, finalisation and gazettal of an LEP Amendment.

APPENDIX A

LEP PRACTICE NOTE PN-09-003

