

Planning Services

Gateway Determination Report

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| LGA | Bega Valley |
| PPA | Bega Valley Shire Council |
| NAME | Amend the Bega Valley Local Environmental Plan 2013 to introduce an existing holdings map and amend clause 4.2A to preserve the permissibility of erecting a dwelling house on land identified as an existing holding beyond the expiry of a sunset clause (affecting 309 vacant existing holdings throughout the LGA) |
| NUMBER | PP_2018_BEGAV_001_00 |
| LEP TO BE AMENDED | Bega Valley LEP 2013 |
| ADDRESS | Various |
| DESCRIPTION | Various lots zoned rural, residential and environmental protection |
| RECEIVED | 5 December 2017 |
| FILE NO. | IRF17/436 |
| POLITICAL DONATIONS | There are no donations or gifts to disclose and a political donation disclosure is not required |
| LOBBYIST CODE OF CONDUCT | There have been no meetings or communications with registered lobbyists with respect to this proposal |

INTRODUCTION

Description of planning proposal

The planning proposal seeks to introduce an existing holdings map set and amend clause 4.2A of the Bega Valley Local Environmental Plan 2013 (BVLEP 2013).

The proposed amendments are intended to preserve the permissibility of erecting a dwelling house on land identified as an existing holding beyond the expiry of clause 4.2A(4) of the BVLEP 2013, which will cease to have effect on 2 August 2018.

Site description

The planning proposal applies to various lots zoned rural, residential and environmental protection across the Bega Valley Shire Council local government area that have been identified as existing holdings in accordance with the provisions of clause 4.2A(6) of the BVLEP 2013.

The planning proposal states there are 309 intact vacant existing holdings throughout the LGA. A list of affected properties is provided at Attachment 2 of the planning proposal.

Summary of recommendation

It is recommended the planning proposal proceed subject to the following conditions:

- community consultation is required for a minimum of 28 days;
- the time frame for completing the LEP is to be 12 months;

- draft LEP maps are to be prepared prior to community consultation;
- Council is to include in the exhibition material a statement clarifying the requirement to continue to obtain approval for the construction of a dwelling on land identified on the existing holdings map set; and
- the planning proposal and draft LEP maps be amended to remove any reference to the term “dwelling entitlement”.

Note: The removal of the term “dwelling entitlement” is considered appropriate given the term is not defined in the BVLEP 2013 and may lead to unrealistic community expectations regarding the ability to erect a dwelling house on land identified as an existing holding. Although the erection of a dwelling house on land identified as an existing holding is permissible, it is not exempt from normal development assessment and approval processes.

PROPOSAL

Objectives or intended outcomes

The objectives of the planning proposal are to introduce an existing holdings map set and amend clause 4.2A of the BVLEP 2013. As a result, the permissibility of erecting a dwelling house on land identified as an existing holding in accordance with clause 4.2A(6) of the BVLEP 2013 will be preserved beyond the expiry of sunset clause 4.2A(4) on 2 August 2018.

Explanation of provisions

To preserve the permissibility of erecting a dwelling house on land identified as an existing holding, the planning proposal seeks to amend the BVLEP 2013 as follows:

- introduce a dwelling entitlement (existing holdings) map set;
- amend clause 4.2A(3)(d) to refer to the dwelling entitlements (existing holdings) map;
- delete clause 4.2A(4); and
- renumber clauses 4.2A(5) and (6) accordingly.

As noted above, it is recommended the term “dwelling entitlement” be removed from the planning proposal and draft map set. It is considered that this term could be interpreted as meaning normal development assessment and approval processes do not apply to the erection of a dwelling house on land identified as an existing holding.

Mapping

The planning proposal seeks to introduce a dwelling entitlement (existing holdings) map set into the BVLEP 2013.

The proposed map set is not included as part of the documentation submitted by Council. However, a list of affected properties is provided at Attachment 2 of the planning proposal.

A condition requiring the preparation of a clear and easy to interpret draft set of maps for use during public exhibition has been discussed with Council and is recommended. It is not considered necessary to require the draft map set to be submitted for review prior to public exhibition as the Department can commence its review during the exhibition process.

A second condition requiring the proposed map set to be renamed to “existing holdings map” as opposed to “dwelling entitlement (existing holdings) map” as proposed by Council is recommended. This is considered appropriate given the term “dwelling entitlement” is not defined in the BVLEP 2013 and suggests there is no need to seek approval for the erection of a dwelling house. The maps will identify where the clause applies as opposed to where an approval “entitlement” to construct a dwelling has been issued.

NEED FOR THE PLANNING PROPOSAL

The planning proposal states:

“Bega Valley Shire Council has expressed an explicit desire to retain the dwelling entitlements previously provided in perpetuity by the Bega Valley LEP 2002. The provisions of Clause 17 of BVLEP 2002 permitted the development of a rural dwelling on an allotment that was created for the purposes of a dwelling, that was a minimum of 120 hectares in the 1 (a) Rural General zone, on land that was identified as an existing holding and that land was not an existing holding that satisfied a specific criteria. There was no expiry applied to these provisions.

“At the time of conversion from the BVLEP 2002 to the BVLEP 2013 these provisions were included; however, a ‘Sunset’ clause was added. Clause 4.2A(4) expires 5 years after the commencement of Bega Valley Local Environmental Plan 2013, being 2 August 2018.

“It is considered that the planning proposal is the most appropriate means of achieving the intended objectives and outcomes.”

The planning proposal is required to amend clause 4.2A of the BVLEP 2013 to retain the permissibility of erecting a dwelling house on land identified as an existing holding beyond the expiry of a sunset clause. Clause 4.2A(4) states that land ceases to be an existing holding on which a dwelling house may be erected if an application for development consent is not made within five years of the commencement of the BVLEP 2013 (2 August 2018).

At present, landowners will no longer be able to use the existing holding provision beyond 2 August 2018. The planning proposal states that the erection of a dwelling house will no longer be permissible on approximately 109 existing holdings should the sunset clause take effect. The planning proposal will preserve this permissibility in perpetuity for those landowners.

The planning proposal is considered the best means of achieving the intended outcome of preserving the permissibility of erecting a dwelling house on land constituting an existing holding.

STRATEGIC ASSESSMENT

South East and Tablelands Regional Plan 2036

The planning proposal states it is consistent with the following Directions of the South East and Tablelands Regional Plan 2036:

- Direction 5: Promote agricultural innovation, sustainability and value-add opportunities;
- Direction 8: Protect important agricultural land; and
- Direction 28: Manage rural lifestyles.

It is considered the planning proposal is consistent with the overall intent of the plan, including the above Directions.

The planning proposal does not introduce new policy or planning controls that will create additional fragmentation or dwelling entitlements. It continues an existing, longstanding policy position held by Council.

Local

The planning proposal states it is consistent with Goals 5 and 8 of the Bega Valley Shire Community Strategic “... as it provides opportunities for future farming enterprise, land management and farm succession which contribute to the social and economic welfare of rural communities”.

The planning proposal also states, “*Council is currently undertaking a Rural Living Strategy to review the current and future trends and provide a clear direction for the planning and development of our rural catchments and villages for the next 25 years.*”

The planning proposal states that Council's Draft Rural Living Strategy identifies 309 intact vacant existing holdings throughout the LGA. The planning proposal recognises that many of these existing holdings are either potentially unsuitable for development, held in public ownership or have permissibility to erect a dwelling house under alternate provisions of the BVLEP 2013.

However, the planning proposal states that approximately 109 existing holdings will be affected if the landowner cannot demonstrate permissibility for a dwelling house prior to the sunset date included in the clause, being 2 August 2018.

The planning proposal is consistent with the above local strategies as it seeks to aid farm succession planning by providing affected landowners with the opportunity to erect a dwelling house on land identified as an existing holding subject to development consent. In some instances, erecting a permanent residence on rural lands can encourage the protection of primary production values, enabling landowners to better manage agricultural land.

In addition, the planning proposal seeks to address the expiry of clause 4.2A(4) of the BVLEP 2013, an issue identified in Council's Draft Rural Living Strategy.

Section 9.1 Ministerial Directions

1.2 Rural Zones

Ministerial Direction 1.2 Rural Zones applies as the planning proposal relates to various lots within rural zones across the LGA. The proposed amendment to clause 4.2A of the BVLEP 2013 applies to the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones.

The planning proposal is consistent with the requirements of this Direction as it does not propose to amend the current zoning applying to the subject sites. The planning proposal seeks to address the issue of permissibility of a land use rather than changing the underlying land use zone applying to the subject sites.

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

1.4 Oyster Aquaculture

The planning proposal states that Ministerial Direction 1.4 Oyster Aquaculture applies. Given the large number of lots affected by the planning proposal, it may relate to land within priority oyster aquaculture areas identified in the NSW Oyster Industry Sustainable Aquaculture Strategy (2016).

Given the planning proposal intends only to extend the permissibility of erecting a dwelling house on an existing holding beyond the current expiry of clause 4.2A(4) of the BVLEP 2013, the planning proposal will not lead to any additional impacts beyond what is currently provided for under the BVLEP 2013. Council has not submitted draft LEP maps for consideration and it is therefore difficult to identify the extent to which this Direction may impact individual lots. The erection of a dwelling house on an existing holding would generally be considered low impact and will continue to require development approval. Where a site is identified as being within a priority oyster aquaculture area identified in the NSW Oyster Industry Sustainable Aquaculture Strategy, Council will be able to request relevant information to consider the nature of any potential impacts.

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

1.5 Rural Lands

Ministerial Direction 1.5 Rural Lands applies as the planning proposal applies to various lots within rural zones across the LGA, including the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones.

The planning proposal is consistent with the requirements of this Direction as no change to minimum lot sizes applying to the affected lands is proposed.

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

2.1 Environment Protection Zones

Ministerial Direction 2.1 Environment Protection Zones applies as the planning proposal relates to various lots within environment protection zones across the LGA, including within the E3 Environmental Management and E4 Environmental Living zones.

The planning proposal does not contravene the requirements of this Direction as the proposed amendment does not reduce the environmental protection standards applying to the affected lands.

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

2.2 Coastal Management

The planning proposal states Ministerial Direction 2.2 Coastal Protection applies. Given the large number of lots affected by the planning proposal, it may relate to land within the coastal zone as defined in the *Coastal Protection Act 1979*.

The planning proposal addresses the issue of the permissibility of erecting a dwelling house on affected lands. Implementation of the planning proposal will facilitate the continued implementation of a longstanding Council policy. The planning proposal will therefore not lead to any additional impacts beyond what is envisaged under the current provisions of the BVLEP 2013. Council has not submitted draft LEP maps for consideration and it is therefore difficult to identify the extent to which this Direction may impact individual lots. However, the erection of a dwelling house on land that meets the existing holding criteria will continue to be subject to development approval.

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

2.3 Heritage Conservation

Ministerial Direction 2.3 Heritage Conservation applies as the planning proposal relates to various lots identified in schedule 5 of the BVLEP 2013.

The planning proposal does not contravene the requirements of this Direction as no changes to the heritage controls applying to the affected lands are proposed.

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

3.1 Residential Zones

Ministerial Direction 3.1 Residential Zones applies as the planning proposal relates to various lots zoned R5 Large Lot Residential across the LGA.

The planning proposal is consistent with the requirements of this Direction as it continues to provide for housing variety and choice across the LGA. The operation of the clause will not be extended to any additional landholdings. The planning proposal will therefore not lead to

any additional impacts beyond what is envisaged under the current provisions of the BVLEP 2013.

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

4.1 Acid Sulfate Soils

The planning proposal states Ministerial Direction 4.1 Acid Sulfate Soils applies. Given the large number of lots affected by the planning proposal, it may relate to land identified on the BVLEP 2013 acid sulfate soils map.

The planning proposal does not contravene the requirements of this Direction as no intensification of development beyond what is already permissible on the affected lands is proposed.

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

4.3 Flood Prone Land

The planning proposal states Ministerial Direction 4.3 Flood Prone Land applies. Given the large number of lots affected by the planning proposal, it may relate to land to which clause 6.3 Flood Planning of the BVLEP 2013 applies.

The planning proposal is consistent with the requirements of this Direction as no intensification of development beyond what may already be permissible on the affected land is proposed. Consent for the erection of a dwelling house affected by this clause continues to be required, which allows Council to consider individual applications against the provisions of clause 6.3 Flood Planning of the BVLEP 2013.

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

4.4 Planning for Bushfire Protection

The planning proposal states Ministerial Direction 4.4 Planning for Bushfire Protection applies. Given the large number of lots affected by the planning proposal, it may relate to land mapped as bushfire prone.

The planning proposal is consistent with the requirements of this Direction as no intensification of development beyond what may already be permissible on the affected lands is proposed. The erection of a dwelling house on land which constitutes an existing holding will continue to be subject to development approval, which in the case of bushfire-prone land will include consultation with the NSW Rural Fire Service.

The Secretary can be satisfied that the requirements of this Direction have been met.

5.10 Implementation of Regional Plans

The planning proposal refers to 5.1 Implementation of Regional Strategies, which was revoked in October 2017.

Ministerial Direction 5.10 Implementation of Regional Plans applies, as land within the Bega Valley LGA is subject to the South East and Tablelands Regional Plan 2036.

The planning proposal does not contravene the requirements of this Direction as it is consistent with the South East and Tablelands Regional Plan 2036.

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

6.1 Approval and Referral Requirements

The planning proposal states section Ministerial Direction 6.1 Approval and Referral Requirements applies.

The planning proposal does not contravene the requirements of this Direction as no intensification of development beyond what may already be permissible on the affected lands is proposed. Relevant agencies will also be consulted during the exhibition of the draft plan.

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

State environmental planning policies

The planning proposal does not list any SEPPs as applicable.

However, it is considered that State Environmental Planning Policy (Rural Lands) 2008 is applicable to the planning proposal and that the planning proposal is consistent with the rural planning principles listed under part 2 of the SEPP.

SITE-SPECIFIC ASSESSMENT

Social, economic and environmental impacts

The planning proposal states the proposed amendment will result in no adverse environmental impacts and will have positive social and economic impacts. Implementing the planning proposal will enable landowners to act on existing dwelling entitlements beyond the expiry of the relevant sunset clause, resulting in better management of agricultural enterprises.

Given the planning proposal intends only to extend the permissibility of erecting a dwelling house on an existing holding beyond the current expiry of clause 4.2A(4) of the BVLEP 2013, the planning proposal will not lead to any additional impacts beyond what is currently provided for under the BVLEP 2013. Any cumulative impacts of permitting the erection of dwelling houses on land identified as an existing holding are considered negligible.

Therefore, it is considered the planning proposal does not pose any significant social, economic or environmental impacts.

CONSULTATION

Community

The planning proposal indicates public exhibition will be undertaken over a period of no less than 28 days. The following means of consultation are proposed by Council:

- notification on Council's website;
- notification in local newspapers;
- writing to affected landowners; and
- displays at Council's customer service centres.

Given the nature of the planning proposal, a public consultation period of 28 days is considered appropriate.

Agencies

Given the planning proposal applies to various lots within rural and environmental zones across the Bega Valley LGA, it is recommended it be referred to the Office of Environment and Heritage and Department of Primary Industries – Agriculture for comment.

TIME FRAME

Council has proposed a project timeline to complete the proposed amendments to the BVLEP 2013 before clause 4.2A(4) expires on 2 August 2018. Although the planning proposal can be completed within this time frame, a period of 12 months is considered an appropriate time frame to account for any unexpected delays.

The expiration of clause 4.2A(4) of the BVLEP 2013 will no longer enable the erection of a dwelling house on land identified as an existing holding.

To manage the risk to landowners if Council is not able to finalise the proposed amendments prior to 2 August 2018, Council could be provided with the Secretary's assumed concurrence under clause 4.6 of the LEP. This would provide continued dwelling permissibility for lots affected by the expiration of clause 4.2A(3)(d), being those identified as existing holdings, that do not meet the minimum lot size specified in clause 4.2A(3)(a). The concurrence would only be issued if Council is unable to finalise the draft LEP before 2 August 2018.

The Department's view is that providing Council with assumed concurrence from the Secretary under clause 4.6 in relation to clause 4.2A(3)(a) is possible and is a sound approach to addressing the risks associated with Council not being able to make the plan within the required time frame.

The Southern Region team will work closely with Council to ensure the risks associated with not meeting the required time frame for the plan are managed.

LOCAL PLAN-MAKING AUTHORITY

Council has requested authorisation to be the local plan-making authority to prepare the draft LEP under section 3.36 of the *Environmental Planning and Assessment Act 1979*.

Given the planning proposal does not seek to impose any development standards or requirements in addition to those already contained in the BVLEP 2013, it is considered appropriate that authorisation be given to Council.

CONCLUSION

The planning proposal is supported to proceed with conditions and is considered to satisfy the requirements of the Department's *A guide to preparing planning proposals*.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree that the planning proposal is consistent with section 9.1 Directions 1.2 Rural Zones, 1.4 Oyster Aquaculture, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.1 Residential Zones, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.10 Implementation of Regional Plans and 6.1 Approval and Referral Requirements.

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. Draft LEP maps shall be prepared prior to community consultation and made available during the community consultation period.
2. The planning proposal and draft LEP maps should be amended to remove any reference to the term "dwelling entitlement".
3. Council should include in the exhibition material a statement clarifying the requirement to obtain approval for a dwelling house on land identified as an existing holding.

4. The planning proposal should be made available for community consultation for a minimum of 28 days.
5. Consultation is required with the following public authorities under section 3.34(2)(d) of the Act:
 - Office of Environment and Heritage;
 - NSW Rural Fire Service; and
 - Department of Primary Industries – Agriculture.

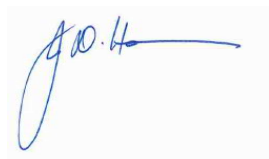
Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

6. A public hearing is not required to be undertaken.
7. The planning proposal authority is authorised as the local plan-making authority.
8. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.



03/04/2018

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