

Reclassify part Lot 1042 DP 833411, Mirador to Operational Land and Rezone to R2 Low Density Residential Zone (550 M2 MLS)

Proposal Title : **Reclassify part Lot 1042 DP 833411, Mirador to Operational Land and Rezone to R2 Low Density Residential Zone (550 M2 MLS)**

Proposal Summary : **Council seeks to amend both the Bega LEP 2002 and the exhibited draft Bega LEP 2012 to reclassify Part lot 1040 DP 833411 Camilla Court, Mirador (1,033 m2) from Community land to Operational Land and to rezone the land from 6(a) Public Open Space (Bega LEP 2002) to:**

A. Bega LEP 2002 - Residential 2(a) Zone.

B. Draft Bega LEP 2012 - R2 Low Density Residential Zone and 550 m2 minimum lot size

Mirador is a subdivision of approximately 600 lots with only one access road in a high bush fire prone area. The rezoning and reclassification will allow another vehicular access/egress for emergency vehicles to the Mirador residential area by allowing Council to exchange the subject Council land with a private land holder for another parcel of land that will provide access for emergency vehicles.

PP Number : **PP_2012_BEGAV_002_00** Dop File No : **10/11132**

Proposal Details

Date Planning Proposal Received :	20-Apr-2012	LGA covered :	Bega Valley
Region :	Southern	RPA :	Bega Valley Shire Council
State Electorate :	BEGA	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	Camilla Court		
Suburb :	Mirador	City :	Tura Beach
		Postcode :	2548
Land Parcel :	Part Lot 1042 DP 833411		

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DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	South Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :	N/A	Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	1	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

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

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **The lot is currently zoned 6(a) (Existing Open Space) under the Bega Valley LEP 2002. Council has requested the reclassification and rezoning for the current LEP from 6(a) Existing Open Space to Residential 2(a) Low Density under the current LEP, as well as amending the zoning map and Lot Size map in the Draft Bega LEP 2012 to R2 Low Density Residential Zone and 550 m2 minimum lot size.**

The Bega Valley Draft LEP 2012 has been exhibited, and is due for completion by the end

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of August/September 2012.

Adequacy Assessment

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

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

Comment : The objective is to provide for emergency vehicle access, particularly in bush fires where there is currently only one road into the estate. The objective of the Planning Proposal is to provide an opportunity for Council to exchange an area currently zoned open space for residential land and to use the residential land for another emergency access.

This responds to concerns raised over the years by residents and the bushfire service about the single point of entry into and out of the estate in the event of an emergency.

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

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

Comment : There has been some correspondence between the Department and the Region about this process, and the Department has been concerned that Council has not been prioritising the Draft Bega LEP 2012.

Council has requested in the PP that both the Bega Valley LEP 2002 and the draft Bega 2012 LEP be amended. Given the likely timing for the completion of the Draft Bega 2012 LEP (September 2012) amending the draft Bega LEP 2012 is the most appropriate means of achieving the objectives of the Planning Proposal, to avoid duplication of administration in amending two LEPs and to encourage Council to focus on finalising the draft Bega LEP 2012.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

2.2 Coastal Protection

* May need the Director General's agreement

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.2 Reserving Land for Public Purposes

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

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

N/A

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

DIRECTOR GENERAL'S REQUIREMENTS FOR THE RECLASSIFICATION OF LAND

Council have indicated that the reclassification be undertaken using Schedule 4 Part 1 of the draft Bega LEP 2012 and this implies that no interest are to be changed. However a copy of the title has not been provided with the PP and Council has not explicitly stated in the PP that no interests are to be extinguished. It is uncertain if Council has checked to ensure if any interests should be extinguished.

Council has therefore not adequately addressed the Director General's requirement for the reclassification of land regarding extinguishment of any current interests, including Trusts and Covenants on the land (See Figure 4 in "A guide to preparing local environmental plans". A copy of the title is also required to be provided by Council at s59.

RECOMMENDATION

Recommended that Council revise the PP to address the Director General's requirements for reclassifying land, particularly in respect to whether or not the reclassification will or will not extinguish any current interests, including Trusts and

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Covenants on the land. The revised planning proposal is also to include a copy of the title for the land.

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

If No, explain :

s117 DIRECTION 6.2 RESERVING LAND FOR PUBLIC PURPOSES

The Director General's approval will be required in respect to the inconsistency with 6.2 Reserving Land for Public Purposes because the PP seeks to rezone and reclassification public open space. The inconsistency is considered to be of minor significance.

Recommend that the Director General approve the inconsistency with s117 Direction 6.2 on the basis that the PP is of minor significance.

S117 DIRECTION 4.4 PLANNING FOR BUSHFIRE PROTECTION

Council has not indicated in the PP if they have consulted with the Commissioner of the NSW Rural Fire Service in response to the requirements of S117 4.4 Planning for Bushfire Protection.

Recommend that Council consult with the NSW Fire Commissioner under s117 Direction 4.4 to ensure consistency with this direction.

STANDARD INSTRUMENT LEP

The inconsistency with the standard template is based on Council's request to amend the current Bega LEP 2002. The amendment to Bega LEP 2002 is likely to be overlap with the finalisation of the Draft Bega LEP 2012 and potentially use up Council and the Department's resources processing two LEP amendments.

Recommend Council revise the PP to be an amendment to the Bega LEP 2012 but not the Bega LEP 2002.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

A location map has been provided with the PP but there are no maps in the PP showing the proposed zones and lot sizes under the Bega LEP 2012.

Recommend that Council revise the Planning Proposal to include maps identifying the proposed LEP map changes to the Bega LEP 2012 in accordance with s55 (2) (d) of the EPA & A Act.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Yes, though no amount of time has been identified. As this includes a reclassification a public hearing will also be required.

RECOMMENDATION

Recommend a consultation period of 28 days.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons :

Council has not addressed all of the Director General's requirement for the reclassification of land regarding extinguishment of any current interests, including Trusts and Covenants on the land. A copy of the title is also required to be provided by Council at s59.

RECOMMENDATION

Council revise the planning proposal to address the Director General's requirements for

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reclassifying land, particularly in respect to whether or not the reclassification will or will not extinguish any current interests, including Trusts and Covenants on the land. The revised planning proposal is also to include a copy of the title for the land.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **No**

If No, comment : This PP has merit but requires revision to address a number of matters.

1. Recommend that the PP be revised to only be an amendment to Bega LEP 2012 and delete reference to amendments to Bega LEP 2002.
2. Recommend the PP be revised to address the DG's requirements for the reclassification of land, particularly the matter of extinguishment of interests, and to include a copy of the Land Title with the PP.
3. Recommend the PP be revised to include maps that identify the proposed changes to the Land Zone and Minimum Lot Size maps of the draft Bega LEP 2012.

These matters can be addressed with Gateway conditions. The revised PP is to be provided to the Regional Director, Southern Region, prior to Community Consultation.

Proposal Assessment

Principal LEP:

Due Date : **September 2012**

Comments in relation to Principal LEP : The Principle Plan, Draft Bega LEP 2012, has been through the public exhibition process and Council is now assessing the submissions.

Preparation of the Mirador/Berrambool Reclassification and rezoning PP has been in train for some time. There were a number of issues that needed to be addressed by Council and these issues have been resolved. However the delays in resolving these issues has overlapped with the exhibition of the Draft Bega LEP 2012.

There has been some correspondence between the Department and the Region about this process, and the Department has been concerned that Council has not been prioritising the Draft Bega LEP 2012.

Council has requested in the PP that both the Bega Valley LEP 2002 and the draft Bega 2012 LEP be amended. Given the likely timing for the completion of the Draft Bega 2012 LEP (September 2012), it is considered likely that amending the draft Bega LEP 2012 is the most appropriate means of achieving the objectives of the Planning Proposal, avoid duplication of administration by Council and the Department and to encourage Council to focus on finalising the draft Bega LEP 2012.

Recommendation

That the PP be revised to amend only the Bega LEP 2012 and reference to amendment to Bega LEP 2002 be removed for the PP.

Assessment Criteria

Need for planning proposal :

EMERGENCY ACCESS

This Planning Proposal has merit because it will assist in providing emergency access to and from the Mirador residential development. The subdivision was created some years ago, and still has a number of unsold lots. Residents, Council and the NSW Rural Fire Service have been concerned that there is only one entry point to the estate, which is surrounded by heavily timbered crown land. The reclassification provides for a land swap with a neighbour who currently owns the land that is suitable for the emergency access.

Recommendation

The PP has merit based on the need for an additional emergency access into Mirador

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residential area.

Consistency with strategic planning framework :

This is a minor amendment and the rezoning and is not specifically identified in any of the structure plans for Bermagui and Tura.

Environmental social economic impacts :

The PP provides for safe access to residents in the Mirador estate and surrounding residential areas , provides for more than one entry and exit point to the Mirador estate and resolves a long standing neighbourhood issue between Council and the residents concerned.

Recommend that the PP proceed because there are no likely adverse environmental, social or economic impacts arising from the PP.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 Month	Delegation :	DG
Public Authority Consultation - 56(2)(d) :	NSW Rural Fire Service		

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

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

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
20120221 - DP&I letter to GM Bega Council re - provision of specific information for Planning Proposal.pdf	Proposal Covering Letter	No
Bega Valley Shire Council_20-04-2012 00_00_00_Bega - Planning Proposal - Part Lot 1042 DP 833411 Camilla Court Mirador_.pdf	Proposal	Yes

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Planning Team Recommendation

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

S.117 directions: **2.2 Coastal Protection**
 4.4 Planning for Bushfire Protection
 5.1 Implementation of Regional Strategies
 6.2 Reserving Land for Public Purposes

Additional Information : **The Director General, as delegate of the Minister for Planning, determine under section 56(2) of the Environmental Planning & Assessment Act 1979 (EP&A Act) that an amendment to the Bega Local Environmental Plan 2012, to reclassify part Lot 1042 DP 833411 from Community Land to Operational Land and to rezone the subject land from 6(a) Existing Open Space to R2 Low Density Residential Zone with a 550 m2 minimum lot size should proceed subject to the following conditions:**

- 1. The planning proposal is to be revised as an amendment to Bega LEP 2012. All reference to an amendment to Bega LEP 2002 is to be deleted from the planning proposal.**
 - 2. The planning proposal is to be revised to include a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument, i.e. changes to the Land Zoning Map and Lot Size Map, in accordance with section 55 (d) of the EP&A Act.**
 - 3. The planning proposal is to be revised to address the Director General's requirements regarding matters that must be addressed in the justification of a planning proposal to reclassify land, particularly the requirement regarding the extinguishment of any interests in the land (see Figure 4 in "A guide to preparing local environmental plans"). The revised planning proposal must also include a copy of the title of the land.**
 - 4. A copy of the revised planning proposal is to be provided to the Department's Regional Director, Southern Region, for review prior to the commencement of community consultation.**
 - 5. 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 28 days; and**
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).**
 - 6. Consultation is required with the following public authorities under section 56(2) (d) of the EP&A Act:**
 - NSW Rural Fire Service**
- The NSW Rural Fire Service is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.**
- 7. 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).**
 - 8. The timeframe for completing the LEP is to be 12 months from the week following the**

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date of the Gateway determination.

Supporting Reasons :

1. The completion of the Bega Valley LEP 2012 is likely overlap with the Planning Proposal to amend Bega LEP 2002 and Councils limited resources should be focussed on completing the principle plan ahead of minor amendments to the Bega LEP 2002.
2. The planning proposal has not adequately addressed the Director General's requirements for the reclassification of land.
3. The mapping provided with the planning proposal is not consistent with s55 (2) (d) of the EP&A Act.

Signature: _____

Printed Name: _____

Graham Jodge

Date: _____

4 May 2012

*Acting Team
Leader.*