

# Attachments

## **Attachment 1: Council Report Planning and Environment Committee No. 4 - 12 June 2012**

### **4. Bega Valley Local Environmental Plan 2012**

In accordance with the Council resolution of 22 May 2012 staff have assessed both the written and oral presentations to the Council meeting regarding the Draft Comprehensive Local Environmental Plan 2010 (Draft CLEP). The staff summary is included as Appendix 7 of this report.

The report recommends amendment to the Draft CLEP and adoption of the plan. Further that the amended plan be forwarded to the Director-General requesting that the "plan be made" by the Minister for Planning.

#### **Group Manager, Planning and Environment**

#### **Background**

Council at its meeting held on 22 May 2012 gave consideration to a report on the Bega Valley Local Environmental Plan 2010 with the following staff recommendation:

"That, in regards to the draft Comprehensive Local Environmental Plan, Council resolves to:

1. Adopt the recommendations for the submissions outlined in:
  - Appendix 1 - support (or partial support) for the submission request, with only minor changes required to the exhibited draft Comprehensive Local Environmental Plan;
  - Appendix 2 - support (or partial support) for the submission request however, due to the nature of changes proposed, a "planning proposal" is to be prepared by Council and a "gateway determination" by the Minister for Planning is required prior to re-exhibition;
  - Appendix 3 - further research to be carried out by Council staff prior to progressing via a future report to Council; and
  - Appendix 4 - no agreement with the submission request, or the submission to be noted with no need for further action at this time – therefore proceed with the draft Comprehensive Local Environmental Plan as exhibited.
2. Amend the draft Comprehensive Local Environmental Plan in accordance with the recommendations in Appendix 1, the reclassification of various parcels of Council land in accordance with the report of the public hearing in Appendix 5, and the revised written instrument in Appendix 6.
3. Incorporate lot averaging into the draft Comprehensive Local Environmental Plan for land zoned R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living.
4. Adopt the amended draft Comprehensive Local Environmental Plan as per points 2 and 3 above, and forward the plan to the Director-General of NSW Planning & Infrastructure in accordance with the Environmental Planning and Assessment Act 1979 requesting that "the plan be made" by the Minister for Planning.
5. Proceed with a "planning proposal" and, if agreed by the Minister for Planning, re-exhibit those properties in accordance with the adopted recommendations of agreed submissions contained within Appendix 2. In the interim the subject land be "deferred", *thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.*
6. Defer a decision on the submissions in Appendix 3 until strategic investigations are completed and reported back to Council. In the interim the subject land be "deferred", *thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.*
7. Undertake further investigations into potential industrial sites in the Bega District for the longer term, noting that the draft Comprehensive Local Environmental Plan has already identified additional industrial land for the short to medium term in Bega (South) and Kalaru.

8. Note that the draft Comprehensive Development Control Plan requires further investigation and refinement, incorporating appropriate changes emanating from submissions.

9. Advise all those persons who have made submissions of the above."

In accordance with Council's Code of Meeting Practice the report was deferred for a further report due to addresses.

#### **WHAT DOES THE PLAN SEEK TO ACHIEVE?**

- The majority of the Shire has simply been changed to the closest comparable zone available in the standard State wide template. This means that the majority of land owners wanting to develop or improve their properties will not be affected by the draft plan.
- Where there are changes proposed, the focus is on improving opportunities for economic development and jobs in the Bega Valley town centres, through the expansion of business, mixed use and industrial zones.
- Protection of productive agricultural land through the use of RU1 Primary Production and RU2 Rural Landscape zones.
- Establishment of allotment sizes through a "Lot Size Map", thus determining subdivision and dwelling entitlements.
- Recognition of environmentally sensitive land through the use of E3 Environmental Management and E4 Environmental Living zones.
- Protection of sensitive foreshore areas and bushland public reserves through the use of E2 Environmental Conservation zone.

#### **Addresses to Council**

There were a total of 22 individual addresses to Council while Mr C Maxted of Caddey Searl & Jarman addressed on behalf of 17 client submissions as well as matters raised by Caddey Searl and Jarman relating to subdivision clauses, lot sizing and height controls. In addition 11 written addresses were received.

The issues raised in all the addresses have been reviewed by Council staff including site meetings where appropriate.

As a result of this review, the staff recommendations for 21 of the submissions subject to addresses have been revised from that which was previously recommended to the Council on 22 May 2012.

Appendix 7 to this report is the staff summary of the addresses.

Appendix 1, 2, 3 and 4 attached to this report have been updated in accordance with the staff position included in Appendix 7.

Link to Planning & Environment Report 5 - 22 May 2012

#### **Advice from the Department of Planning**

Council on 28 February 2012 gave consideration to a staff report on the draft CLEP and as part of the resolution resolved the following:

- "1. That to progress the Comprehensive Local Environmental Plan:
  - Council staff work with the Department of Planning on the proposed amendments to the exhibited CLEP that would be considered minor and not warrant further exhibition.
  - Staff report to Council on those proposed amendments that are deemed not to require further exhibition.
  - The mapping to the CLEP be amended in accordance with that subsequent Council resolution.

Council has now received a solid overall endorsement of its approach to the finalisation of the CLEP as per the response of 31 May 2012 from the Regional Director, Department of Planning (see Appendix 8).

The Department has raised two main issues for consideration which relate to Littleton Gardens and to land owned by Bermagui Country Club.

In response, the following action is proposed by staff:

1. Further justification to be provided regarding Council's intended RE1 Public Recreation zoning of Littleton Gardens.
2. The E3 zone at the Bermagui Country Club be amended to E2 in accordance with the advice.

## **HEIGHT CONTROLS IN MERIMBULA, BEGA AND EDEN TOWN CENTRES**

Staff have reviewed the height controls in Merimbula Town Centre in consideration of a number of submissions and workshop discussions with local professionals and Councillors. For the sake of consistency across the Shire reviews are now being undertaken for Bega and Eden Town Centres.

The matter is expected to be reported to Council in July and that any proposed changes will be treated as per Appendix 2.

### **Planning comment**

The preparation of the draft CLEP has been a lengthy and extensive process for not only Councillors and staff, but the community as a whole. The process has included the 12 weeks of exhibition, including public information sessions, and a series of workshops with Councillors over the past 9 months since the completion of the exhibition period.

Further, Council staff have held a number of meetings with officers of the Department of Planning regarding all aspects of both the written instrument and the maps. Officers of the Department have also met with Councillors on several occasions over the last 6-7 years. These meetings clarified many issues and led to the inclusion of rural worker's dwellings becoming permissible with consent in the rural zones as part of the draft CLEP.

All public submissions and addresses, as well as Government agency submission and staff recommended changes, have been considered by Councillors at workshops.

Staff are of the opinion that Council is now in a position to resolve on the submissions and addresses received.

It is proposed that Appendix 1 be adopted by Council and that the draft CLEP be amended accordingly, including the mapping, and referred to the Department of Planning requesting that "the plan be made" by the Minister for Planning.

Appendix 2 and 3 represent submissions that are agreed to and require re-exhibition or submissions that require further investigation prior to resolution by Council. In the interim, it is proposed that the subject land be "deferred" thus retaining all the existing zonings and other provisions contained in the BVLEP 2002.

Staff are of the opinion that this pathway would finalise the CLEP process for the vast majority of landholders in the Shire and give surety and confidence in the planning process and strategic direction for the Shire.

Also, those persons who made submissions that are deferred would have the confidence that there would be no change to the current status of their land under BVLEP 2002 until their submission is re-exhibited or further investigated and finally resolved by Council.

The remaining submissions are proposed to be noted and/or not to be supported at this time.

Notwithstanding extensive workshoping of all the submissions with Councillors, it is open for any submission to be debated by Council at the meeting.

It should be noted that recommendation 7 to this report refers to investigations being undertaken into Industrial Land for the Shire as a whole, not the Bega District as recommended in the report to Council on 22 May 2102. This recommendation now accurately reflects Council's previously resolved position of 28 February 2012.

## Conclusion

The draft CLEP has been prepared and exhibited in accordance with the provisions of the Environmental Planning and Assessment Act 1979 (the Act) and all submissions are now placed formally before Council for determination. A public hearing has been held in relation to the reclassification of Council owned land.

It is proposed that the draft CLEP be amended as per the recommendations of this report and referred to the NSW Department of Planning in accordance with the Act, requesting that "the plan be made" by the Minister.

## Recommendation

That, in regards to the draft Comprehensive Local Environmental Plan, Council resolves to:

1. Adopt the recommendations for the submissions outlined in:
  - Appendix 1 - support (or partial support) for the submission request, with only minor changes required to the exhibited draft Comprehensive Local Environmental Plan;
  - Appendix 2 - support (or partial support) for the submission request however, due to the nature of changes proposed, a "planning proposal" is to be prepared by Council and a "gateway determination" by the Minister for Planning is required prior to re-exhibition;
  - Appendix 3 - further research to be carried out by Council staff prior to progressing via a future report to Council; and
  - Appendix 4 - no agreement with the submission request, or the submission to be noted with no need for further action at this time – therefore proceed with the draft Comprehensive Local Environmental Plan as exhibited.
2. Amend the draft Comprehensive Local Environmental Plan in accordance with the recommendations in Appendix 1, the reclassification of various parcels of Council land in accordance with the report of the public hearing in Appendix 5, and the revised written instrument in Appendix 6.
3. Incorporate lot averaging into the draft Comprehensive Local Environmental Plan for land zoned R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living.
4. Adopt the amended draft Comprehensive Local Environmental Plan as per points 2 and 3 above, and forward the plan to the Director-General of NSW Planning & Infrastructure in accordance with the Environmental Planning and Assessment Act 1979 requesting that "the plan be made" by the Minister for Planning.
5. Proceed with a "planning proposal" and, if agreed by the Minister for Planning, re-exhibit those properties in accordance with the adopted recommendations of agreed submissions contained within Appendix 2. In the interim the subject land be "deferred", thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.
6. Defer a decision on the submissions in Appendix 3 until strategic investigations are completed and reported back to Council. In the interim the subject land be "deferred", thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.
7. Undertake further investigations into potential industrial sites in the Bega Valley Shire for the longer term, noting that the draft Comprehensive Local Environmental Plan has already identified additional industrial land for the short to medium term in Bega (South) and Kalaru.
8. Note that the draft Comprehensive Development Control Plan requires further investigation and refinement, incorporating appropriate changes emanating from submissions.
9. Advise all those persons who have made submissions of the above.

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1. That the following items be placed appropriately in Appendices 1 -4 as listed below:  
That the following item be moved from Appendix 4 to Appendix 1 and thus deleted from the Heritage Schedule: [section deleted]
2. That in regard to the draft Comprehensive Local Environmental Plan Council adopts the recommendations for the submissions outlined in:
  - • Appendix 1 - support (or partial support) for the submission request, with only minor changes required to the exhibited draft Comprehensive Local Environmental Plan;
  - • Appendix 2 - support (or partial support) for the submission request however, due to the nature of changes proposed, a "planning proposal" is to be prepared by Council and a "gateway determination" by the Minister for Planning is required prior to re-exhibition;
  - • Appendix 3 - further research to be carried out by Council staff prior to progressing via a future report to Council; and
  - • Appendix 4 - no agreement with the submission request, or the submission to be noted with no need for further action at this time – therefore proceed with the draft Comprehensive Local Environmental Plan as exhibited.
3. That Council amend the draft Comprehensive Local Environmental Plan in accordance with the recommendations in Appendix 1, the reclassification of various parcels of Council land in accordance with the report of the public hearing in Appendix 5, and the revised written instrument in Appendix 6.
4. That Council incorporate lot averaging into the draft Comprehensive Local Environmental Plan for land zoned R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living.
5. Adopt the amended draft Comprehensive Local Environmental Plan as per points 3 and 4 above, and forward the plan to the Director-General of NSW Planning & Infrastructure in accordance with the Environmental Planning and Assessment Act 1979 requesting that "the plan be made" by the Minister for Planning.
6. That Council proceed with a "planning proposal" and, if agreed by the Minister for Planning, re-exhibit those properties in accordance with the adopted recommendations of agreed submissions contained within Appendix 2. In the interim the subject land be "deferred", thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.
7. That Council defer a decision on the submissions in Appendix 3 until strategic investigations are completed and reported back to Council. In the interim the subject land be "deferred", thereby retaining its current zoning and status under Bega Valley Local Environmental Plan 2002.
8. That Council undertake further investigations into potential industrial sites in the Bega Valley Shire for the longer term, noting that the draft Comprehensive Local Environmental Plan has already identified additional industrial land for the short to medium term in Bega (South) and Kalaru.
9. That Council note that the draft Comprehensive Development Control Plan requires further investigation and refinement, incorporating appropriate changes emanating from submissions.
10. That Council advise all those persons who have made submissions of the above.

## **Attachment 2: Council Report Planning and Environment Committee No. 5 – 24 July 2012**

### **5. Review of Comprehensive Local Environmental Plan Height Control for Merimbula, Bega and Eden Central Business Districts and Review of proposed zoning Eden Fishermens Club Imlay Street Eden.**

The purpose of the report is to advise Council of the outcomes of the review of the exhibited height controls in the CBD's of Merimbula, Bega and Eden and also the review of the proposed B2 Local Centre zone of the Eden Fishermens Club land in Imlay Street Eden.

**Group Manager, Planning & Environment**

#### **Background**

During the exhibition of the draft Comprehensive Local Environmental Plan (CLEP), Council received seven submissions relating to the proposed height controls in the Merimbula CBD, requesting an overall review with consideration to allow increased heights to facilitate redevelopment.

One submission was received from the Eden Fishermen's Club requesting an increase in height from 14m to 16m for the Club site in Imlay Street Eden, as well as a review of the proposed B2 Local Centre zone. A further submission was received in respect of the former BP site at Snug Cove requesting an increase in height from 10m to 16m for part of the site.

At the Council workshop held in Merimbula on 24 January 2012 Councillors heard representation from a number of persons who made submissions on the proposed height controls in Merimbula, including local designers.

Essentially concerns were raised that the proposed height limits of 7.5m, 10m and 14m respectively did not allow for 2, 3 and 4 storey developments with commercial components.

The consensus of the Councillors at the workshop was for staff to review the height controls having regard to the submissions received and content of the representations.

The submissions received in regard to the height controls in the Merimbula CBD were included as items in Appendix 3, for further assessment by Council staff, when presented to the Council meeting held on 12 June 2012 as part of the report on the draft CLEP. The resolution of Council on 12 June 2012 included adoption of Appendix 3.

It should be noted that the Eden Fishermens Club land in Imlay Street Eden and the former BP site at Snug Cove were also included in Appendix 3 for assessment by staff of the request for a 16m height limit and also a change in zone from B2 Local Centre to B4 Mixed Use for the Club land.

#### **Review of Height Controls**

The height control limits exhibited for the Merimbula, Bega and Eden CBD's are outlined below. It should be noted that the maximum height limits relate to the number of storeys considered appropriate for the land;

|      |   |             |
|------|---|-------------|
| 7.5m | - | (2 storeys) |
| 10m  | - | (3 storeys) |
| 14m  | - | (4 storeys) |

The written submissions to Council during the exhibition period of the draft CLEP and the presentations at the Councillor workshop in Merimbula, raised concerns that the proposed maximum height limits would not allow for the proposed number of storeys to be achieved due to design constraints for commercial developments.

In particular:

- Greater floor to ceiling heights were required for retail development up to 3.6m as opposed to 2.4m for residential developments.
- The proposed height controls did not allow for modern design principles to be adopted.
- Greater service areas were required between floor areas.
- The proposed heights would severely restrict the ability of a designer to produce a quality design, including roof articulation.
- The proposed height controls would not encourage redevelopment of existing older buildings due to limited opportunity for economic gain.

In support of the submissions and representations, a local designer in Merimbula provided staff with typical cross-sections of the following:

- 2, 3 and 4 storey commercial development
- 3 & 4 storey mixed use commercial/residential development.

(Appendix 1- Typical Cross-section Diagrams)

The CBD areas include both B2 – Local Centre and B4 – Mixed Use zones. The B2 allows commercial development on the ground floor and above, and dwellings at the first floor level and above, while B4 allows straight commercial, straight residential or mixed residential/commercial development..

In discussions between staff and a number of those persons who made submissions in respect to the height controls in the Merimbula CBD it was agreed that the likely type of development to be realised in the Merimbula CBD was:

- 2 storey commercial
- 3 & 4 storey commercial/residential mix

Based on the cross-sections received, staff are of the opinion that in order to achieve 2, 3 and 4 storey development the following height controls are appropriate:

|     |   |                      |
|-----|---|----------------------|
| 10m | - | 2 storey development |
| 12m | - | 3 storey development |
| 16m | - | 4 storey development |

### **Review of height controls Merimbula, Bega and Eden Central Business Districts**

Staff have undertaken a review of the height controls in the three (3) CBDs with a view to implementing the proposed 10m, 12m and 16m height limits and each CBD is discussed separately below.

#### **Merimbula**

The exhibited height controls for the CBD are included as Appendix 2 to this report (Appendix 2 – Merimbula CBD Exhibited Height Map). It should be noted that the CBD area does not include that land west of Sapphire Coast Drive along Merimbula Drive that is zoned B4. Staff are of the opinion that this area is not core CBD land.

Staff have reviewed the exhibited height controls and recommend the following:

- Retention of a 10m height limit for the land fronting Beach Street (B2 and B4 zoned land only).
- An increase in height to 16m for the Palmer Street carpark land and inclusion of additional adjoining land in the 16m height limit area.

- A reduction in height from 14m to 12m for land at the north-east corner of Cameron street and Main Street and west for six lots. The purpose of this reduction is that it is considered the exhibited 14m or in fact a 16m height limit would have a significant impact on the adjoining residential zoned land which has a proposed height limit of 10m. The remainder of the land north of Main Street exhibited as 14m be increased to 16m.
- A 10m height limit for the land bounded by Alice Street, Beach Street and south of the laneway adjoining the Chemist on the western side of Market Street.
- The B2 zoned land extending from Monaro Street south be increased from 7.5m to 10m.
- A 12m height limit for the remainder of the land in the CBD.

(Appendix 3 – Merimbula CBD Amended Height Control Map)

## **Eden**

The exhibited height limit for the CBD was 10m except for the Fishermens Club which was exhibited as 14m.

(Appendix 4 – Eden CBD Exhibited Height Map)

It is recommended that the 10m height limit be increased to 12m and the 14m height limit be increased to 16m. The suggested changes would support the request from the Fishermens Club which is a landmark site in a key location next to the main part of the town centre. The request for the former BP Site at Snug Cove to increase from 10m to 16m is not supported by staff – 12m is considered more appropriate in this prominent location.

(Appendix 5 - Eden CBD Amended Height Control Map)

## **Bega**

The exhibited height controls for the Bega CBD mirrored the height controls adopted in Development Control Plan No 41 Bega Town Centre. (Appendix 6 – Bega CBD Exhibited Height Map). The exhibited height map identified four areas as 14m with the remainder of the land in the CBD exhibited as 10m.

As part of the review of the height limits in Bega, staff have reconsidered the amount of land identified as 14m and the suitability for the height limit.

Staff recommend the following height limits for the Bega CBD;

- The area on the east side of Gipps Street exhibited as 14m be reduced to a 12m height limit.
- The area identified as 14m on the southern side of Upper Street be reduced to a 12m height limit.
- The land fronting Peden Street identified as 14m be reduced to a 12m height limit.
- The remaining land exhibited as 14m be increased to a 16m height limit.
- The remainder of the land exhibited as 10m be increased to a 12m height limit.

(Appendix 7 – Bega CBD Amended Height Control Map)

## **EDEN FISHERMANS CLUB LAND, IMLAY STREET EDEN - REVIEW OF PROPOSED B2 LOCAL CENTRE ZONE**

The proposed zoning of the Club land has been reviewed including a site inspection by staff. During the site inspection it was considered that not only the Fishermens Club but also the land fronting either side of Imlay Street between Chandos Street and Cocora Street which is proposed as B2 Local Centre under the CLEP would be more appropriately zoned B4 Mixed Use.

(Appendix 8 – Eden CBD Amended B2 to B4 zone)



Staff are of the opinion that the current mix of uses including motels, club facilities, retail, business and residential would be more suited to a B4 mixed use zone. It is considered that the zoning of this land as B4 would complement the future development of Eden, at the same time as focussing commercial and retail development in the main part of the town centre between Mitchell and Chandos Streets.

### **Conclusion**

The intention of the exhibited height controls for the Central Business Districts of Merimbula, Bega and Eden of 7.5m, 12m and 14m was to facilitate 2, 3 and 4 storey developments whether straight commercial or a mix of commercial and residential.

The submissions received during the exhibition of the draft CLEP and subsequent representations have identified that the exhibited height controls would not achieve the desired outcome in terms of the number of storeys due to building design and development constraints.

Staff are of the opinion that to achieve the planned outcomes of a mix of 2, 3 and 4 storey development in the Central Business Districts of Merimbula, Bega and Eden that the height limits should be increased to 10m, 12m, and 16m respectively.

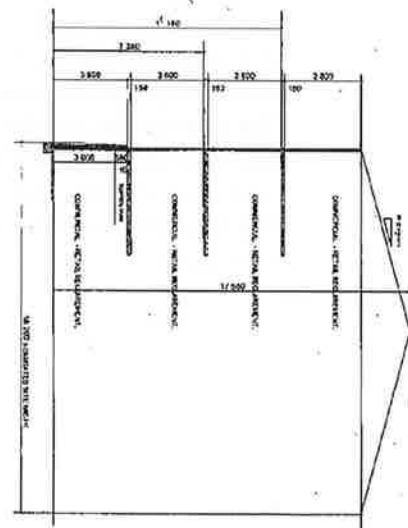
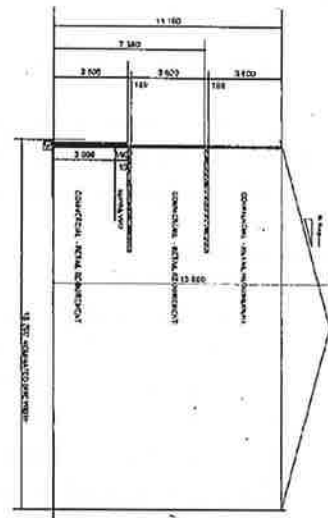
To ensure that buildings are developed to meet the expected outcomes for the number of storeys having regard to best design principles, it is proposed that a section be included in the draft Comprehensive Development Control Plan addressing design principles for development in the commercial areas. In preparing this section input from a specialist architect is to be sought.

The proposed B2 Local Centre zoning of the Eden Fishermens Club land has been reviewed and staff are of the opinion that the land and adjoining land fronting Imlay Street, between Chandos Street and Cocora Street, would more appropriately be zoned B4 Mixed Use.

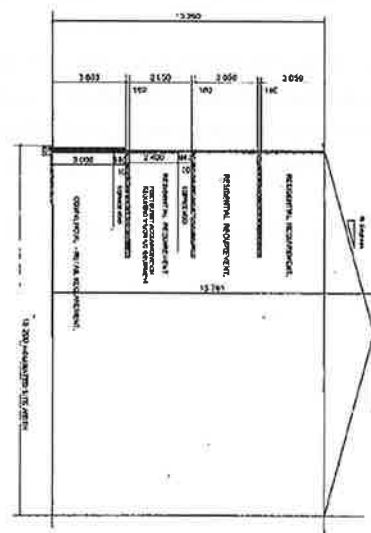
### **Recommendation**

1. That Council adopt the recommended height limits in order to seek further public comment for the Central Business Districts of Merimbula, Bega and Eden as identified in:
  - Appendix 3 – Merimbula
  - Appendix 5 – Eden
  - Appendix 7 - Bega
2. That Council amend the proposed zoning of the land fronting either side of Imlay Street between Chandos Street and Cocora Street which was exhibited as B2 Local Centre to B4 Mixed Use as identified in Appendix 8.
3. That Council proceed with a "planning proposal" and, if agreed by the Minister for Planning, re-exhibit the subject properties in accordance with the adopted recommendations of 1 and 2 above.
4. That a section be included in the draft Comprehensive Development Control Plan addressing design principles, including number of storeys, for the B2 and B4 zoned areas under the Comprehensive Local Environmental Plan.
5. That Council advise those persons who have made submissions the outcome of their requests as per 1 – 4 above.

## Appendix 1 – Typical Cross-Section Diagrams

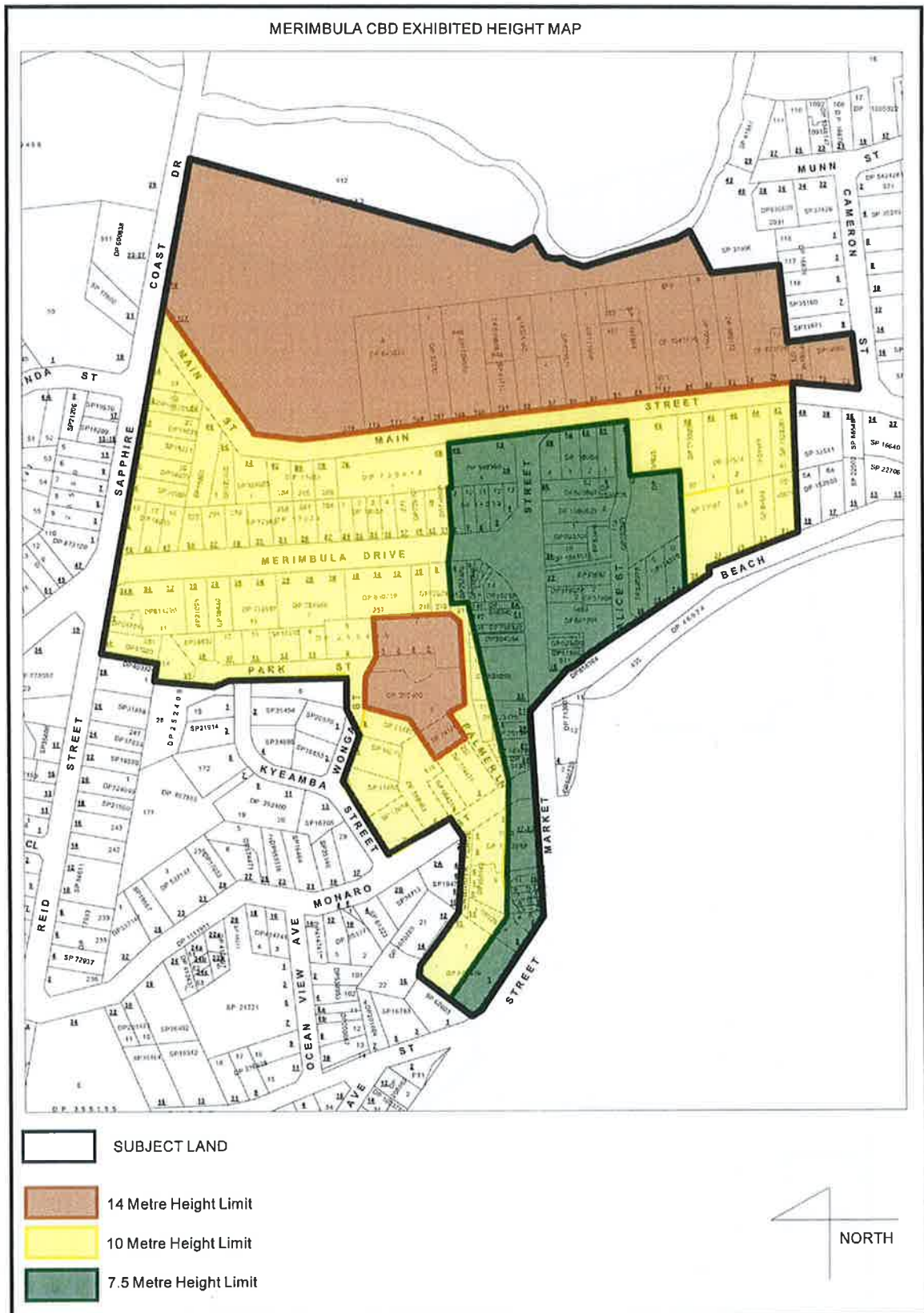


### COMMERCIAL DESIGNATED BUILDING

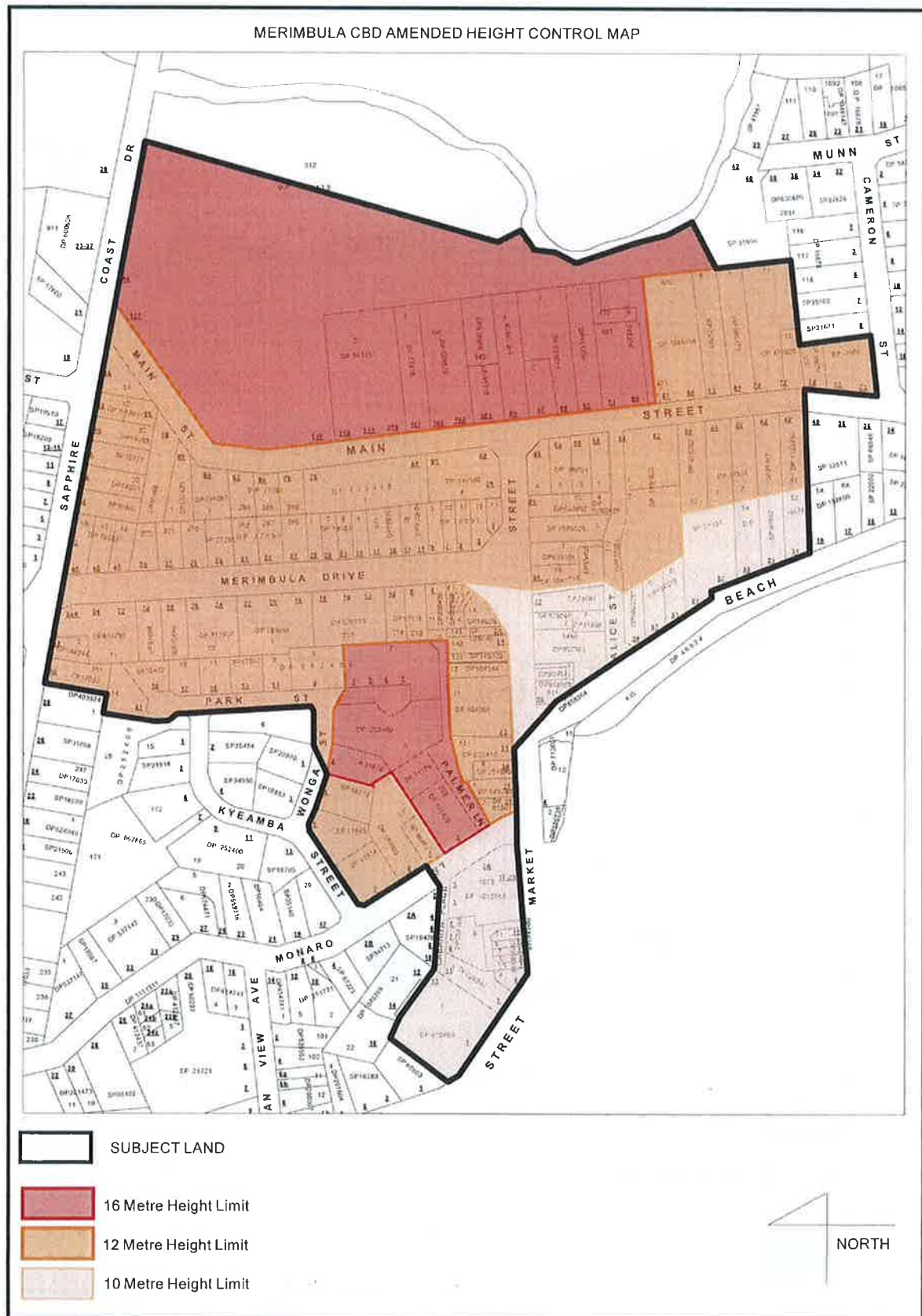


### COMMERCIAL / RESIDENTIAL MIX BUILDING

## Appendix 2 – Merimbula CBD Exhibited Height Map

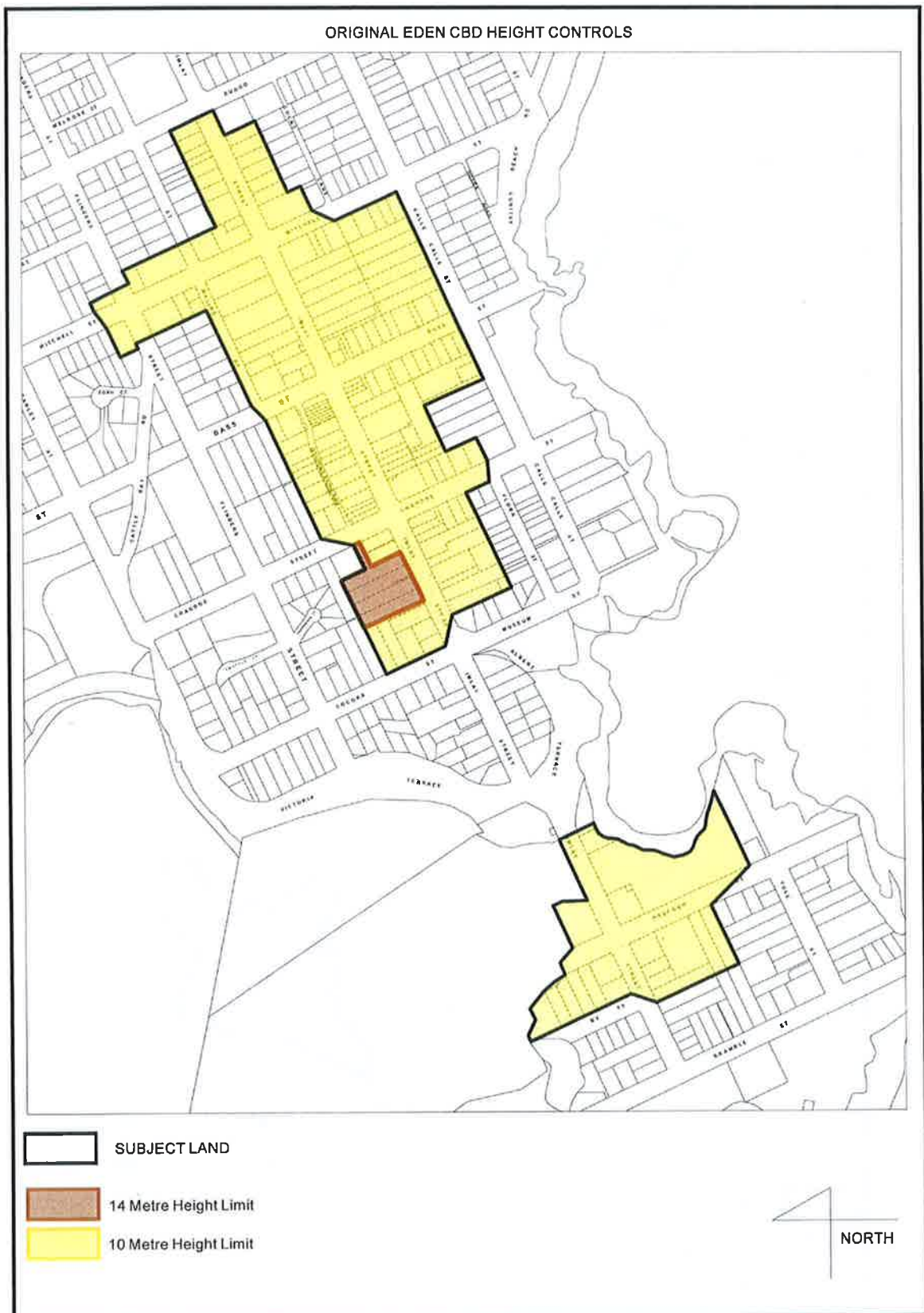


### Appendix 3 – Merimbula CBD Amended Height Control Map

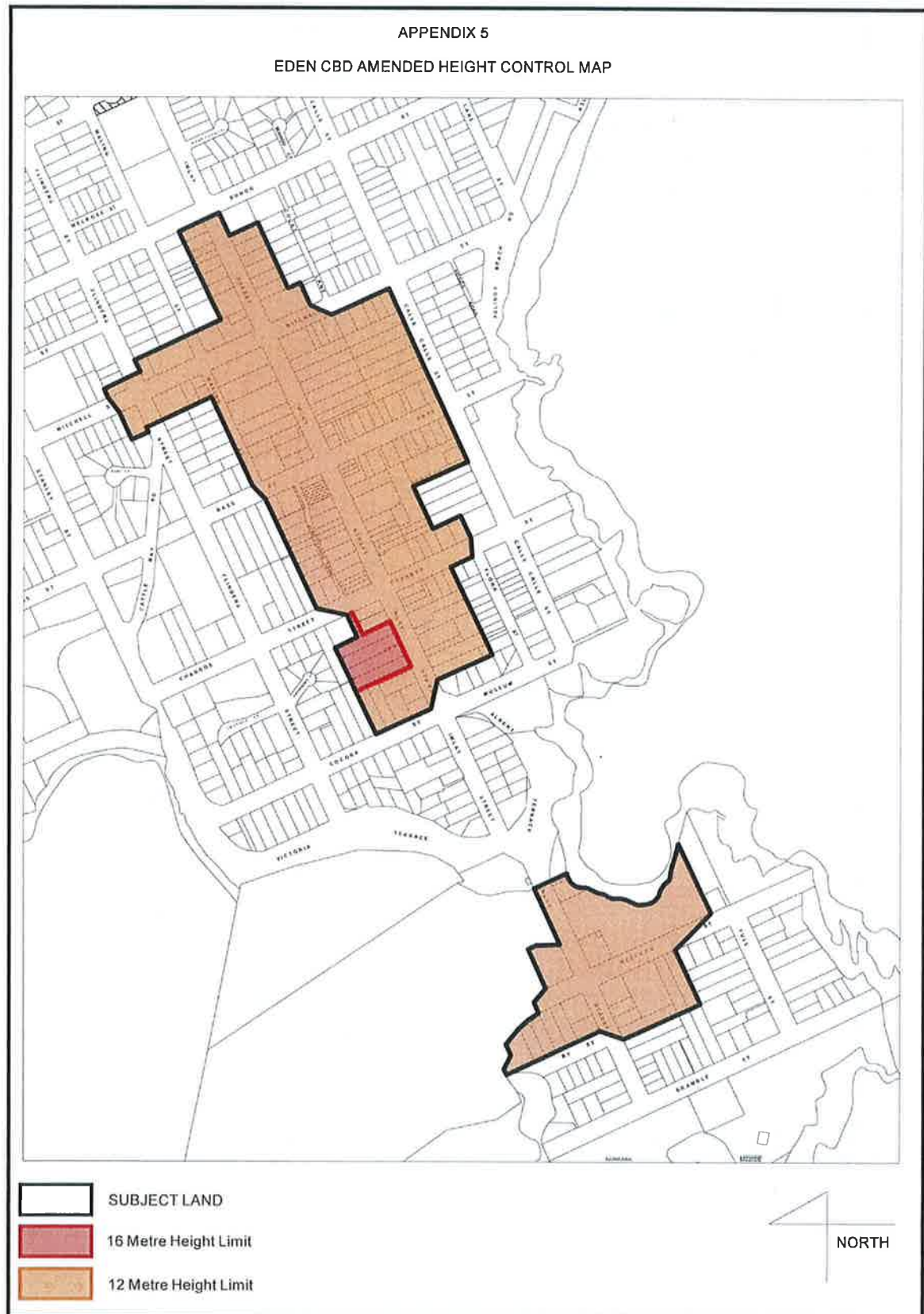




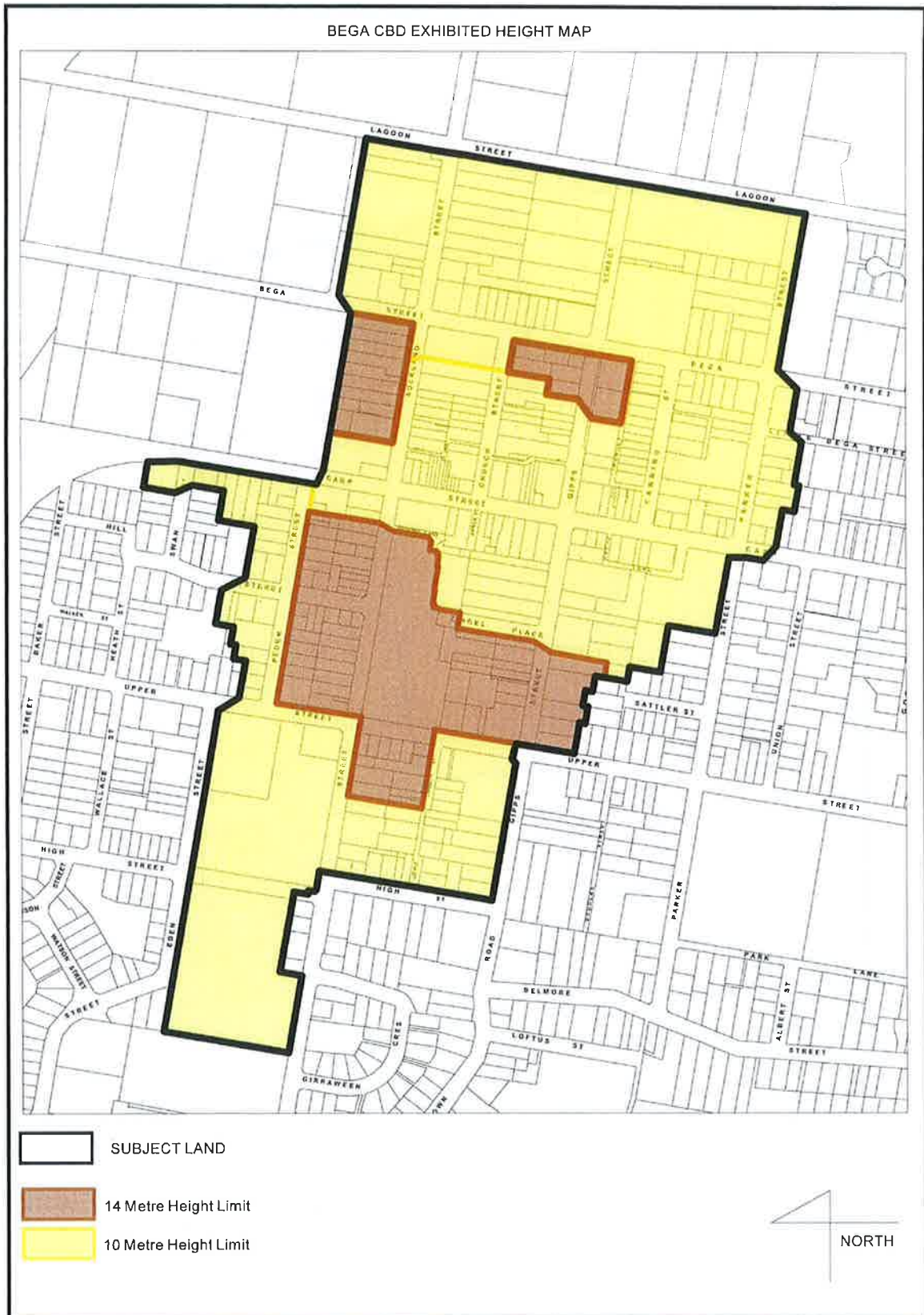
## Appendix 4 – Eden CBD Exhibited Height Map



## Appendix 5 – Eden CBD Amended Height Control Map

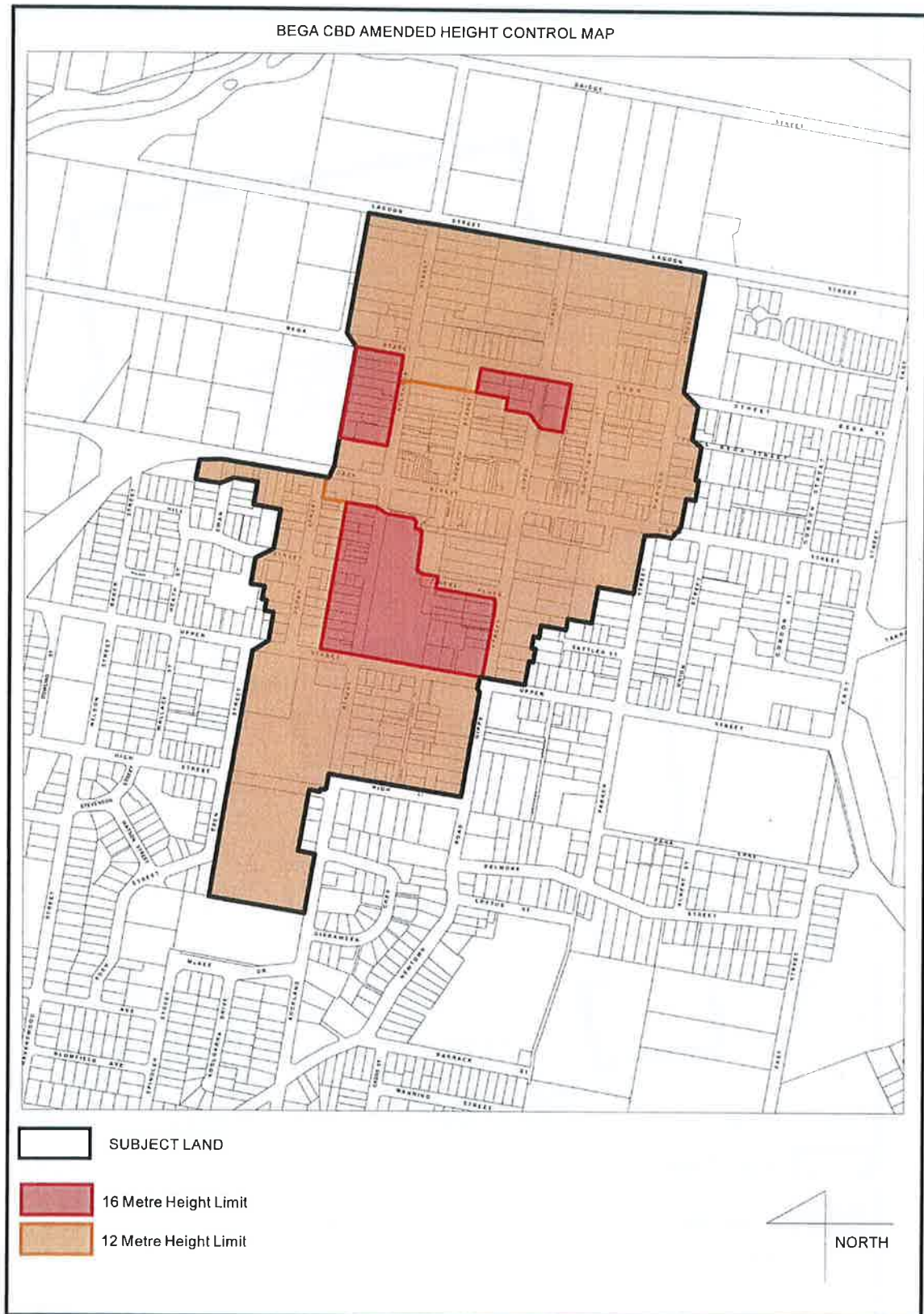


## Appendix 6 – Bega CBD Exhibited Height Map



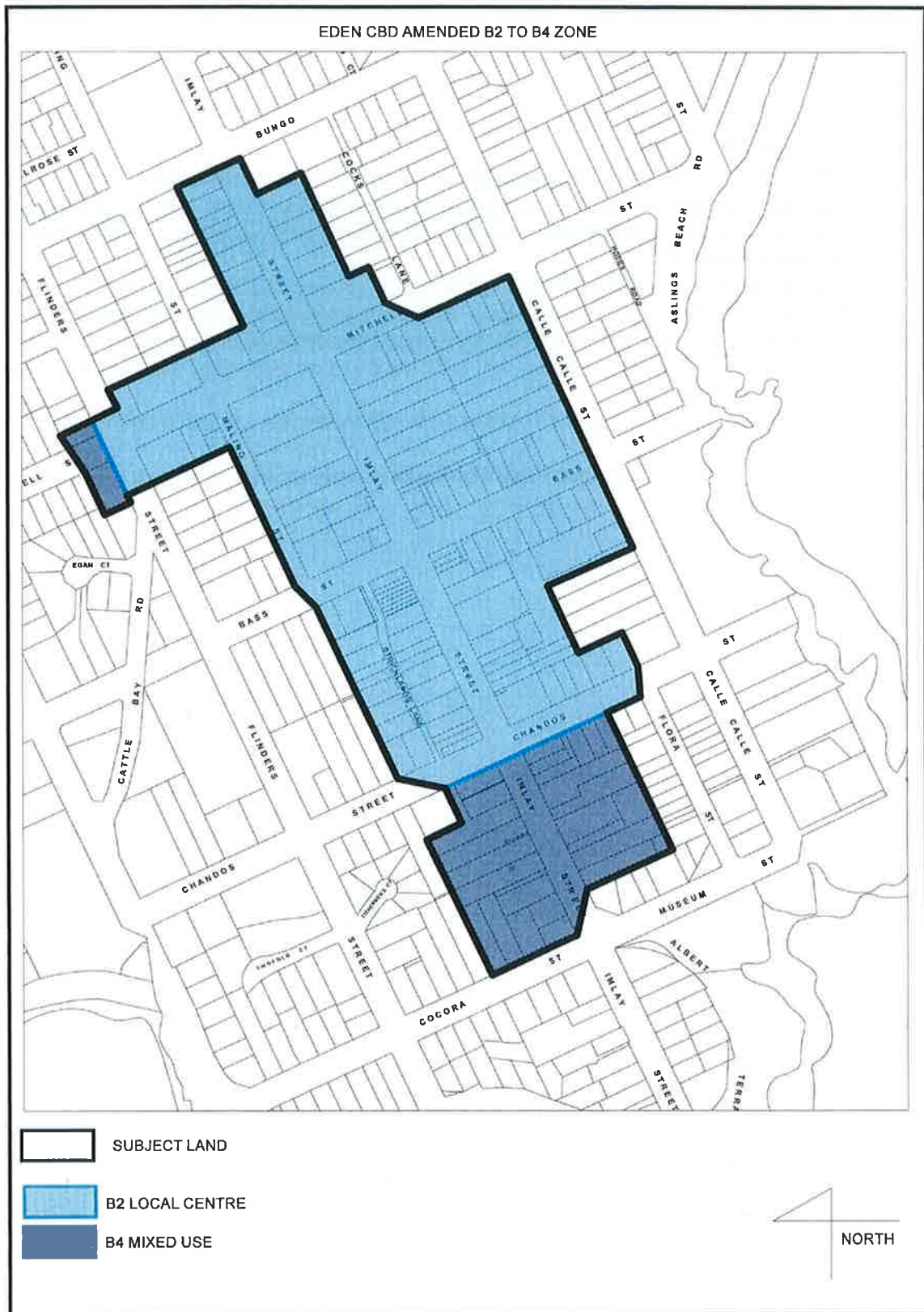


## Appendix 7 – Bega CBD Amended Height Control Map





## Appendix 8 – Eden CBD Amended B2 to B4 Zone



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1. That Council adopt the recommended height limits in order to seek further public comment for the Central Business Districts of Merimbula, Bega and Eden as identified in:
  - Appendix 3 – Merimbula (with the addition of the land to the east of Market Street, south of Beach Street, having a 10 m height limit).
  - Appendix 5 – Eden.
  - Appendix 7 – Bega.With the 12 m height limit (3 storeys) adjusted to 13 m for the three town centres.
2. That Council amend the proposed zoning of the land fronting either side of Imlay Street between Chandos Street and Cocora Street Eden which was exhibited as B2 Local Centre to B4 Mixed Use as identified in Appendix 8.
3. That Council proceed with a “planning proposal” and, if agreed by the Minister for Planning, re-exhibit the subject properties in accordance with the adopted recommendations of 1 and 2 above.
4. That a section be included in the draft Comprehensive Development Control Plan addressing design principles, including number of storeys, for the B2 and B4 zoned areas under the Comprehensive Local Environmental Plan.
5. That Council advise those persons who have made submissions the outcome of their requests as per 1 – 4 above.
6. That Council receive a report on the height survey for the Palmer Street, Merimbula Car Park.

## **Attachment 3: Council Report Planning and Environment Committee No. 8.4 – 6 November 2013**

### **8.4. Proposed Amendments to BVLEP 2013**

Since the adoption of BVLEP 2013 a number of minor zoning matters have arisen that require amendment. This report outlines those matters and recommends the process for resolution.

Group Manager Planning & Environment

#### **BACKGROUND**

At the meeting on 12 June 2012 Council resolved to support (or partially support) a number of the submissions made to the Draft BVLEP 2010, known as Appendix 2 matters, which require the preparation of Planning Proposals.

During the preparation of these Planning Proposals and as a result of the implementation of BVLEP 2013, a number of zoning and related matters have been identified.

The following sites require Council consideration and resolution.

#### **DETAILS OF SITES AND RECOMMENDED ACTIONS**

##### **Arthur Kaine Drive – land opposite Merimbula Airport**

Lot 1 DP 1004805, Lot 120 DP 847899 and Lot 2 DP 549112 are located on the eastern side of Arthur Kaine Drive, directly opposite Merimbula Airport.

Under BVLEP 2013 Lot 1 DP 1004805 is zoned SP2 Infrastructure. Lot 120 DP 847899 and Lot 2 DP 549112 were included in Appendix 2, as deferred matters, and proposed to be zoned SP1 Special Activities. See Figure 1 of Attachment 1 for a map of current zones.

To ensure consistency with the approved Merimbula Airport Master Plan 2033 and in consideration of the recommendations of the NSW Office of Environment and Heritage (OEH) made during the exhibition of the draft LEP, it is proposed to zone Lot 120 DP 847899 as SP1 Special Activities 'Community Facilities and Carparking'. It is also recommended that Lot 1 DP 1004805 and Lot 2 DP 549112 be zoned E2 Environmental Conservation with the exception of a small piece of Lot 2 opposite the current airport terminal which is proposed to be zoned SP1 Special Activities Carparking'. See Figure 2 of Attachment 1 for a map of proposed zones.

OEH strongly requested the application of the E2 zone on all three of these properties due to the presence of a number of threatened species and the presence of an endangered ecological community. However, a large portion of the vegetation on Lot 120 has been modified due to airport obstacle maintenance activities and the section of Lot 2 proposed for SP1 is already cleared. Therefore planning staff are of the opinion that appropriate justification can be provided for the recommended zonings.

With the Merimbula Airport Master Plan now finalised it is recommended that Council apply zones to these three lots that conserve the existing environmental characteristics while making allowance for future public requirements on the less environmentally sensitive land.

Figure 2 of Attachment 1 contains a map of the proposed zones.

##### **Arthur Kaine Drive – land opposite Merimbula Pambula Golf Course**

The majority of land on the eastern side of Arthur Kaine Drive, opposite the Merimbula Pambula Golf Course, is currently zoned SP3 Tourist under BVLEP 2013. Four of the properties (Lots 327, 329 and 331 DP 750227

and Lot 350 DP 1144511) were also proposed for SP3 zoning but were deferred and included in Appendix 2 due to submissions received during the exhibition period. Council has resolved to zone the 4 lots B4 Mixed Use. See Figure 3 of Attachment 1 for a map of the current zones.

The reason for selection of the B4 zone was to allow a more appropriate mix of commercial opportunities given the existing uses of the properties. Existing uses in the vicinity include: residential, oyster processing, aquaculture, restaurant, education facility, hotel accommodation, storage facility, car wash and plant hire. This variety of uses stems from the previous zones (under BVLEP 2002 the land was zoned 3(b) Special Business and 1(a) Rural General) and has led to some land use conflict with residential uses in the area.

To set the future direction of this area and minimise future land use conflict, it is proposed to zone all of the land currently zoned SP3 zoning under BVLEP 2013 and the 4 deferred lots, as B5 Business Development. See Figure 4 of Attachment 1 for a map of the proposed B5 zone.

BVLEP 2013 does not currently utilise the B5 zone and the introduction of the zone specifically to apply to this section of Arthur Kaine Drive will enable the future development of the area for commercial purposes that are not appropriate in core commercial or mixed use areas. The mix of oyster produce industries / aquaculture and tourism opportunities in this area is an important component of regional tourism and the B5 zone will allow this synergy to further evolve. The B5 zone will satisfy the need for land near Merimbula and Pambula to accommodate uses that are not appropriate in core commercial or residential areas due to land and access requirements.

### **PROPOSED B5 Business Development Zone**

The land use table for the proposed new B5 Business Development zone has been designed specifically to limit uses to those that will not compete with the viability of nearby town centres and that will permit a suitable range of compatible uses to facilitate expansion of existing uses and provide future employment opportunities.

The following is recommended for the B5 Land Use Table, including appropriate zone objectives and nominated permissible land uses.

#### **Zone B5 Business Development**

##### **1 Objectives of zone**

- To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.
- To cater specifically for uses that require a high degree of visibility and accessibility to passing traffic and that generate a high proportion of single purpose vehicle trips.
- To enable the establishment of an aquaculture, agricultural produce and tourist precinct at Arthur Kaine Drive, Merimbula.

##### **2 Permitted without consent**

Environmental protection works

##### **3 Permitted with consent**

Agricultural produce industry; Building identification sign; Bulky goods premises; Business identification sign; Child care centres; Community facilities; Educational establishments; Function centres; Garden centres; Hardware and building supplies; Highway service centres; Hotel or motel accommodation; Information and education facilities; Landscaping material supplies; Light industries; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Research stations; Respite day care centres; Restricted premises; Roads; Service stations; Sewerage systems; Storage premises; Transport depots; vehicle body repair workshop; Vehicle repair station; Vehicle sales or hire premises; Warehouse or distribution centres; Water supply systems.

##### **4 Prohibited**

Any development not specified in item 2 or 3

### **Lot 344 DP 750227 Arthur Kaine Drive**

Lot 344 DP 750227 is located behind the Fairway Motel on Arthur Kaine Drive. It was zoned 1(a) General Rural under BVLEP 2002 and was incorrectly zoned E2 Environmental Conservation in BVLEP 2013. See Figure 5 of Attachment 1 for a map of the current zone.

The lot is just over 2,000sqm and contains a dwelling. It is proposed to rezone the land E4 Environmental Living with a 2,000sqm lot size in keeping with the general zoning strategy for such land. This will permit the further development of the land for residential purposes without having to rely on existing use rights provisions. See Figure 6 of Attachment 1 for a map of the proposed zone.

### **Rural Residential – Bournda Park Way, Kalaru**

Lot 21 DP 816824 is approximately 1ha in size and is zoned E3 Environmental Management under BVLEP 2013. Lot 21 adjoins the "Kalaru Lodge" property on the corner of Bournda Park Way and Sapphire Coast Drive.

The "Kalaru Lodge" site is a deferred matter under BVLEP 2013 and is included in Appendix 2. Council has resolved to zone the "Kalaru Lodge" land E4 with a 1ha lot size. See Figure 7 of Attachment 1 for a map of the existing zones in the area.

As part of the preparation of the Planning Proposal to progress the zoning of "Kalaru Lodge" land it became evident to planning staff that the most appropriate zone for Lot 21 would also be E4.

An E4 zone for Lot 21 would ensure all of the land on Bournda Park Way, suitable for smaller lot rural residential development, will be zoned E4 Environmental Living. A 1ha lot size is also proposed to reflect the size of the land and the Council resolution for the adjoining "Kalaru Lodge" land. See Figure 8 of Attachment 1 for a map of the proposed E4 zone.

### **Rural Residential – Oaklands Road, Pambula**

In response to a joint submission to Draft BVLEP 2010, Lots 441 & 442 DP 1077278, Lot 434 DP 1152077 and Part Lot 381 DP 1027113, Oaklands Road Pambula, were identified as deferred matters under BVLEP 2013 and included in Appendix 2. Council resolved to zone the 4 lots E4 Environmental Living with a 1ha lot size.

The adjacent Lots 431-433 DP 1152077 and Lot 45 DP 807327 are currently zoned RU2 Rural Landscape Zone with a minimum lot size of 120 ha under BVLEP 2013. The land located immediately to the north of the lots is zoned E4 Environmental Living with a 2ha minimum lot size. See Figure 9 of Attachment 1 for a map of the current zones in the area.

Lots 431-433 DP 1152077 are approximately 5,000m<sup>2</sup> and are in the process of being developed for rural residential purposes. Lot 45 DP 807327 is approximately 3.6 ha and is currently used for rural residential purposes. Given that these properties are well below the 120ha minimum lot size, have been created for dwelling purposes and represent a natural extension of the rural residential land to the north, it is recommended that these lots also be zoned E4 with a 2ha lot size. This would potentially permit two additional rural residential dwellings on lot 45. See Figure 10 of Attachment 1 for a map of the proposed zones.

### **Commercial premises – Main Street, Merimbula**

Lot 1 DP 1051587 is located in the northern part of the Merimbula Town Centre and contains a number of professional premises and health service facilities known as the Merimbula Professional Centre.

The property is currently zoned B2 Local Centre under BVLEP 2013. The properties east of Lot 1 DP 1051587 are zoned B4 Mixed Use under BVLEP 2013 and Council has resolved to rezone adjoining properties Lots 1



and 2 DP 521571, west of Lot 1 DP 1051587, B4 Mixed Use. See Figure 11 of Appendix 1 for a map of the current zones in the area.

Lots 1 & 2 DP 521571 are included as Appendix 2 deferred matters under BVLEP 2013. As part of the process of preparing the Planning Proposal for Lots 1 and 2 in accordance with the Council resolution, it became evident that Lot 1 DP 1051587 would effectively become an isolated B2 zoned allotment.

Therefore it is recommended that the subject property be zoned B4 Mixed Use to acknowledge the existing land use and to ensure a logical extension of the B4 Mixed Use Zone boundary. If agreed by Council, the land would be included in the Planning Proposal currently being prepared for Lots 1 and 2 DP 521571. See Figure 12 of Attachment 1 for a map of the proposed B4 zone.

#### **Barragoot Swamp – Tathra-Bermagui Road**

Council previously resolved to amend the zoning of part of Lot 881 DP 1063701 covered by Barragoot Swamp to E2 Environmental Conservation to ensure the protection of the wetland which is considered to be a valuable ecological asset. Barragoot Swamp was originally excluded from the E2 zone due to an error in the mapping of the estuarine foreshore in this area. See Figure 13 of Attachment 1 for a map of the current zones.

On further investigation it has become evident that Barragoot Swamp also covers a portion of the adjacent Lot 411 DP 1073628 and it is recommended that Council zone part of Lot 411 as E2 to ensure the whole wetlands area is protected. This will not have any impact on the development potential of Lot 411 DP 1073628 which is a large lot containing an existing dwelling with no further subdivision potential. If agreed by Council the land would be included in the Planning Proposal currently being prepared for Lot 881.

See Figure 14 of Attachment 1 for a map of the proposed E2 zone.

#### **Stone House Café – Sapphire Coast Drive**

The property at Lot 292 DP 853663, known as the Stone House Café, is currently zoned R5 Large Lot Residential under BVLEP 2013 with no subdivision potential. It contains a general store and disused service station and although these uses are legally approved, they are prohibited under the current zone.

See Figure 15 of Attachment 1 for a map of the current zones in the area.

The general store currently operates under existing use rights. To facilitate the continued use of the property as a general store and as a long term solution to the zoning/land use issue, it is proposed to include the property in LEP 2013 Schedule 1 Additional Permitted Uses with Neighbourhood Shop and Service Station listed as permitted uses.

The use of Schedule 1 in this instance is preferable to the alternative of rezoning the land to B1 Neighbourhood Centre. The B1 zone would enable a greater range of uses on the land which are likely to be incompatible with the characteristics of the area considering the high visibility of the site to the major road of Sapphire Coast Drive. In addition the use of Schedule 1 will restrict the proposed commercial uses to the site itself and not allow commercial uses to be developed onto adjacent sites under LEP 2013 Clause 5.3 Development Near Zone Boundaries.

#### **CONCLUSION**

The proposed amendments are considered to be minor in nature and will resolve existing anomalies which have become evident as part of the planning proposal process and implementation of BVLEP 2013.

It is anticipated that as BVLEP 2013 is used over the coming months other minor matters may arise that would require Council's consideration and resolution.

#### **ATTACHMENTS**

1. Current zones and proposed amendments to BVLEP 2013 maps

## RECOMMENDATION

That Council resolve to make the following amendments to Bega Valley Local Environmental Plan 2013:

1. Lot 120 DP 847899 Arthur Kaine Drive Merimbula be zoned SP1 Special Activities 'Community Facilities and Carparking'  
Lot 1 DP 1004805 Arthur Kaine Drive Merimbula be zoned E2 Environmental Conservation  
Lot 2 DP 549112 Arthur Kaine Drive, Merimbula be zoned E2 Environmental Conservation except for the area of land identified in Figure 2 of Attachment 1 to this report which shall be zoned SP1 Special Activities 'Carparking'
2. A B5 Business Development zone be included as a Land Use Zone in the Plan in accordance with the following;  
Zone B5 Business Development
  - 1 Objectives of zone
    - To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.
    - To cater specifically for uses that require a high degree of visibility and accessibility to passing traffic and that generate a high proportion of single purpose vehicle trips.
    - To enable the establishment of an aquaculture, agricultural produce and tourist precinct at Arthur Kaine Drive, Merimbula.
  - 2 Permitted without consent  
Environmental protection works
  - 3 Permitted with consent  
Agricultural produce industry; Building identification sign; Bulky goods premises; Business identification sign; Child care centres; Community facilities; Educational establishments; Function centres; Garden centres; Hardware and building supplies; Highway service centres; Hotel or motel accommodation; Information and education facilities; Landscaping material supplies; Light industries; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Research stations; Respite day care centres; Restricted premises; Roads; Service stations; Sewerage systems; Storage premises; Transport depots; vehicle body repair workshop; Vehicle repair station; Vehicle sales or hire premises; Warehouse or distribution centres; Water supply systems.
  - 4 Prohibited  
Any development not specified in item 2 or 3
3. Lots 398 & 339 DP 40361, 325, 326, 334, 335, part 340, 341, 345, 346, 371, 378, 379, 382, 383 & 386 DP 750227, 385 & 386 DP 811258, 10 DP 1057525, 281 & 282 DP 1135670 and 349 DP 1144511 Arthur Kaine Drive, Merimbula be zoned B5 Business Development.
4. Lot 344 DP 250227 Arthur Kaine Drive Merimbula be zoned E4 Environmental Living with a 2,000sqm lot size.
5. Lot 21 DP 816824 Bournda Park Way, Kalaru be zoned E4 Environmental Living with a 1ha lot size.
6. Lots 431, 432 and 433 DP 1152077 and 45 DP 807327 Oaklands Road, Pambula be zoned E4 Environmental Living with a 1ha lot size.
7. Lot 1 DP 1051587 Main Street, Merimbula be zoned B4 Mixed Use.
8. That part of Lot 411 DP 1073628 identified in Figure 14 of Attachment 1 to this report, which is part of Barragoot Swamp, be Zoned E2 Environmental Conservation.
9. Lot 292 DP 853663 Sapphire Coast Drive, Bournda be included in LEP 2013 Schedule 1 Additional Permitted Uses with Neighbourhood Shop and Service Station listed as permitted uses.

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**Attachment 4: List of State Environmental Planning Policies**

| <b>State Environmental Planning Policy</b> |                                                                                | <b>Compliance</b> |
|--------------------------------------------|--------------------------------------------------------------------------------|-------------------|
| SEPP No. 1                                 | Development Standard                                                           | N/A               |
| SEPP No. 4                                 | Development without Consent and Miscellaneous Exempt and Complying Development | N/A               |
| SEPP No. 6                                 | Number of Storeys in a Building                                                | N/A               |
| SEPP No. 14                                | Coastal Wetlands                                                               | N/A               |
| SEPP No. 15                                | Rural Land Sharing Communities                                                 | N/A               |
| SEPP No. 19                                | Bushland in Urban Areas                                                        | N/A               |
| SEPP No. 21                                | Caravan Parks                                                                  | N/A               |
| SEPP No. 22                                | Shops and Commercial Premises                                                  | Consistent        |
| SEPP No. 26                                | Littoral Rainforests                                                           | N/A               |
| SEPP No. 29                                | Western Sydney Recreational Area                                               | N/A               |
| SEPP No. 30                                | Intensive Agriculture                                                          | N/A               |
| SEPP No. 32                                | Urban Consolidation (Redevelopment of Urban Land)                              | N/A               |
| SEPP No. 33                                | Hazardous and Offensive Development                                            | N/A               |
| SEPP No. 36                                | Manufactured Home Estates                                                      | N/A               |
| SEPP No. 38                                | Olympic Games and Related Projects                                             | N/A               |
| SEPP No. 39                                | Spit Island Bird Habitat                                                       | N/A               |
| SEPP No. 41                                | Casino/Entertainment Complex                                                   | N/A               |
| SEPP No. 44                                | Koala Habitat Protection                                                       | N/A               |
| SEPP No. 47                                | Moore Park Showground                                                          | N/A               |
| SEPP No. 50                                | Canal Estate Development                                                       | N/A               |
| SEPP No. 52                                | Farm Dams and Other Works in Land and Water Management Plan Areas              | N/A               |
| SEPP No. 53                                | Metropolitan Residential Development                                           | N/A               |
| SEPP No. 55                                | Remediation of Land                                                            | Consistent        |
| SEPP No. 56                                | Sydney Harbour Foreshores and Tributaries                                      | N/A               |
| SEPP No. 59                                | Central Western Sydney Regional and Open Space and Residential                 | N/A               |
| SEPP No. 60                                | Exempt and Complying Development                                               | N/A               |
| SEPP No. 62                                | Sustainable Aquaculture                                                        | Consistent        |
| SEPP No. 64                                | Advertising and Signage                                                        | N/A               |
| SEPP No. 65                                | Design Quality of Residential Flat Development                                 | N/A               |
| SEPP No. 70                                | Affordable Housing (Revised Schemes)                                           | N/A               |
| SEPP No. 71                                | Coastal Protection                                                             | Consistent        |
| SEPP No. 74                                | Newcastle Port and Employment Lands                                            | N/A               |
| SEPP                                       | Housing for Seniors or People with a Disability 2004                           | N/A               |
| SEPP                                       | Building Sustainability Index: BASIX 2004                                      | N/A               |
| SEPP                                       | Major Development 2005                                                         | N/A               |
| SEPP                                       | Development on Kurnell Peninsula 2005                                          | N/A               |
| SEPP                                       | Sydney Region Growth Centres 2006                                              | N/A               |
| SEPP                                       | Mining, Petroleum Production and Extractive Industries 2007                    | N/A               |
| SEPP                                       | Infrastructure 2007                                                            | N/A               |
| SEPP                                       | Temporary Structures 2007                                                      | N/A               |
| SEPP                                       | Kosciuszko National Park – Alpine Resorts 2007                                 | N/A               |
| SEPP                                       | Rural Lands 2008                                                               | N/A               |
| SEPP                                       | Affordable Rental Housing 2009                                                 | N/A               |
| SEPP                                       | Western Sydney Employment Area 2009                                            | N/A               |
| SEPP                                       | Exempt and Complying Development Codes 2008                                    | N/A               |
| SEPP                                       | Western Sydney Parklands 2009                                                  | N/A               |

**Attachment 5: List of applicable Section 117 Ministerial Directions**

| <b>Section 117 Direction</b>                                                 | <b>Compliance</b> |
|------------------------------------------------------------------------------|-------------------|
| <b>1. Employment and Resources</b>                                           |                   |
| 1.1 Business and Industrial Zones                                            | Consistent        |
| 1.2 Rural Zones                                                              | Inconsistent      |
| 1.3 Mining, Petroleum and Extractive Industries                              | N/A               |
| 1.4 Oyster Aquaculture                                                       | Inconsistent      |
| 1.5 Rural Lands                                                              | Consistent        |
| <b>2. Environment and Heritage</b>                                           |                   |
| 2.1 Environment Protection Zone                                              | Inconsistent      |
| 2.2 Coastal Protection                                                       | Consistent        |
| 2.3 Heritage Conservation                                                    | Consistent        |
| 2.4 Recreation Vehicle Areas                                                 | N/A               |
| <b>3. Housing, Infrastructure and Urban Development</b>                      |                   |
| 3.1 Residential Zones                                                        | Consistent        |
| 3.2 Caravan Parks and Manufactured Home Estates                              | N/A               |
| 3.3 Home Occupations                                                         | N/A               |
| 3.4 Integrating Land Use and Transport                                       | Consistent        |
| 3.5 Development Near Licensed Aerodromes                                     | Inconsistent      |
| 3.6 Shooting Ranges                                                          | N/A               |
| <b>4. Hazard and Risk</b>                                                    |                   |
| 4.1 Acid Sulphate Soils                                                      | N/A               |
| 4.2 Mine Subsidence and Unstable Land                                        | N/A               |
| 4.3 Flood Prone Land                                                         | N/A               |
| 4.4 Planning for Bushfire Protection                                         | Consistent        |
| <b>5. Regional Planning</b>                                                  |                   |
| 5.1 Implementation of Regional Strategies                                    | Consistent        |
| 5.2 Sydney Drinking Water Catchment                                          | N/A               |
| 5.3 Farmland of State and Regional Significance on the NSW Far North Coast   | N/A               |
| 5.4 Commercial and Retail Development along the Pacific Highway, North Coast | N/A               |
| 5.5 Second Sydney Airport: Badgerys Creek                                    | N/A               |
| <b>6. Local Plan Making</b>                                                  |                   |
| 6.1 Approval and Referral Requirements                                       | N/A               |
| 6.2 Reserving Land for Public Purposes                                       | N/A               |
| 6.3 Site Specific Provisions                                                 | Consistent        |
| <b>7. Metropolitan Planning</b>                                              |                   |
| 7.1 Implementation of the Metropolitan Plan for Sydney 2036                  | N/A               |