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Bega Valley Local Environmental Plan 2013

Planning Proposal:

Zoning and Height Limits for
Bega, Merimbula and Eden
CBDs & Arthur Kaine Drive

January 2014



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Part 1 – Objectives or Intended Outcomes

The objectives of this Planning Proposal are to:

- Facilitate an increase in the height of buildings within the Bega, Merimbula and Eden CBDs to encourage commercial re-development opportunities.
- Apply business zones within the Bega, Merimbula and Eden town centres to reflect the current mix of uses and provide for compatible future uses which will contribute to the revitalisation of the CBDs by focusing commercial and retail development in the centre of the CBDs and ancillary uses on the edges.
- To introduce the B5 Business Development Zone and apply it to a specific area to enable development for commercial purposes that are not appropriate in core commercial or mixed use areas.
- Apply appropriate zonings for certain land fronting Arthur Kaine Drive in Merimbula to reflect the current mix of uses and provide for compatible future uses.

Part 2 – Explanation of the Provisions

To achieve the objectives outlined in Part 1, this Planning Proposal seeks to:

1. Amend the HOB map series to introduce M 13 metres and O 16 metres.
2. Amend the LZN map series to introduce B5 Business Development.
3. Amend Clause 2.1 of Bega Valley Shire Local Environmental Plan 2013 to include B5 Business Development.
4. Properties in Bega Town Centre
 - Amend map sheet HOB_011B as it applies to certain properties from K 10 metres to M 13 metres, from N 14 metres to M 13 metres, or from N 14 metres to O 16 metres.
5. Properties in Eden Town Centre
 - Amend map sheet HOB_021A as it applies to certain properties from K 10 metres to M 13 metres or from N 14 metres to O 16 metres.
6. Properties in Merimbula Town Centre
 - Amend map sheet HOB_020B as it applies to certain properties from N-14 metres to O 16 metres, from N 14 metres to M 13 metres, from K 10 metres to M 13 metres, from K 10 metres to N 14 metres, from H 7.5 metres to K 10 metres or from H 7.5 metres to M 13 metres.

7. SP 73171 and Lots 25-28 & 31-34 DP 208862 Carolynne Street, Merimbula
 - Amend map sheet LAP_001 by deleting DM Deferred Matter applying to Lot 28 DP 208862
 - Amend map sheet LZN_020B by applying R3 Medium Density Residential Zone to Lot 28 DP 208862
 - Amend map sheet HOB_020B for affected properties from H 7.5 metres to K 10 metres.
8. Lots 1-6 DP 993 Sattler Street, Bega; Lot 5 and 6 DP 993, Lots 1-3 DP 571741, Lots 346 and 347 DP 635577, Lot 1 DP 417220, Lot A DP 370462, and Lot 1 and Part Lot 2 DP 747017 Parker Street, Bega; and Lots 2 & 3 DP 948040 Peden Street, Bega.
 - Amend map sheet LAP_001 by deleting DM Deferred Matter
 - Amend map sheet LZN_011B by applying B4 Mixed Use Zone
 - Amend map sheet FSR_011B by removing D 0.5:1
 - Amend map sheet LSZ_011B by removing K 550 square metres.
9. Part Lot 912 DP 855433, Lots 1 & 2 DP 521571 and Lot 1 DP 1051587 Main Street, Merimbula
 - Amend map sheet LAP_001 by deleting DM Deferred Matter applying to part of Lot 912 DP 855433
 - Amend map sheet LZN_020B by applying B4 Mixed Use Zone to part of Lot 912 DP 855433
 - Amend map sheet LZN_020B applying to Lots 1 & 2 DP 521571 and Lot 1 DP 1051587 from B2 Local Centre to B4 Mixed Use Zone.
10. Lots 1 and 2 DP 1167612 and Lot 23 DP 602200 Cocora Street, Eden; Lots A and B DP 412563, Lot 32 DP 393913, Lot 91 DP 709087, Lot 6 DP 64421, Lot 5 Sec 2 DP 758379, Lot 33 DP 505878, Lot 1 DP 1158312, Lot 3 Sec 2 DP 758379, Lots 21 and 22 DP 602200, Lot 60 DP 732500, Lot 1 DP 743994, Lots 1 and 2 DP 741178, Lot 211 DP 800057, Lot 12 DP 702211, Lots 13 and 14 DP 702741, Lot 1 DP 546266, Lot 6 DP 1087954, Lot 122 DP 1027835 Imlay Street, Eden; Part Lot 121 DP 1027835 Flora Street, Eden; Lot 21 DP 545540, Lot 1 DP 730700, Lot 1 DP 711547 and Lot 20 DP 794186 Chandos Street, Eden
 - Amend map sheet LAP_001 by deleting DM Deferred Matter
 - Amend map sheet LZN_021A by applying B4 Mixed Use Zone.
11. Lot 10 DP 516613 Flinders Street, Eden; and Lot 10 Sec 20 DP 758379 Mitchell Street, Eden.
 - Amend map sheet LAP_001 by deleting DM Deferred Matter
 - Amend map sheet LZN_021A by applying B4 Mixed Use Zone
 - Amend map sheet FSR_021A by removing D 0.5:1
 - Amend map sheet LSZ_021A by removing K 550 square metres.

12. Lot 11 DP 1166395 Flinders Street and Part Lot 12 DP 1166395 Mitchell Street, Eden
- Amend map sheet LAP_001 by deleting DM Deferred Matter
 - Amend map sheet LZN_021A by applying B2 Local Centre Zone
 - Amend map sheet FSR_021A by removing D 0.5:1
 - Amend map sheet LSZ_021A by removing K 550 square metres.
13. Lot 21 DP 788099 Princes Highway, Eden
- Amend map sheet LAP_001 by deleting DM Deferred Matter.
 - Amend map sheet LZN_021A by applying by applying B4 Mixed Use Zone
 - Amend map sheet FSR_021A by removing F 0.6:1
 - Amend map sheet LSZ_021A by removing K 1000 square metres.
14. Lots 398 & 339 DP 40361, 325, 326, 327, 329, 331, 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 & 350 DP 1144511 Arthur Kaine Drive, Merimbula.
- Amend map sheet LAP_001 by deleting DM Deferred Matter applying to Lots 327, 329 & 331 DP 750227 and Lot 350 DP 1144511
 - Amend map sheet LZN_020A by applying B5 Business Development Zone to Lots 327, 329 & 331 DP 750227 and Lot 350 DP 1144511
 - Amend map sheet LZN_020A by replacing SP3 Tourist with B5 Business Development Zone for the remainder of lots.
15. Lot 120 DP 847899, Lot 2 DP 549112 and Lot 1 DP 1004805 Arthur Kaine Drive, Merimbula
- Amend map sheet LAP_001 by deleting DM Deferred Matter applying to Lot 120 DP 847899 and Lot 2 DP 549112.
 - Amend map sheet LZN_020A by applying part E2 Environmental Conservation and part SP1 Special Activities Zone 'Carparking' to Lot 2 DP 549112.
 - Amend map sheet LZN_020B by applying SP1 Special Activities Zone 'Community Facilities and Carparking' to Lot 120 DP 847899
 - Amend map sheet LZN_020B by applying E2 Environmental Conservation to Lot 2 DP 549112.
 - Amend map sheet LZN_020B by replacing SP2 Air Transport Facility with E2 Environmental Conservation Zone on Lot 1 DP 1004805.

Part 3 – Justification

3.1 Height Controls: Bega, Eden and Merimbula CBDs

During the exhibition of the Draft LEP 2010 Council received a number of submissions relating to the proposed height controls in the Merimbula and Eden CBDs and requesting an overall review with consideration to allow increased heights to facilitate re-development.

The submissions from local designers and developers raised concerns that the proposed height limits of 7.5 metres, 10 metres and 14 metres respectively did not allow for 2, 3 and 4 storey developments with commercial components due to design constraints. In particular:

- Greater floor to ceiling heights are required for retail development up to 3.6 metres as opposed to 2.4 metres for residential developments;
- The proposed height controls do not allow for modern design principles to be adopted;
- Greater service areas are required between floor areas in developments with commercial components;
- The proposed heights would severely restrict the ability of a designer to produce a quality design, including roof articulation; and
- The proposed height controls would not encourage re-development of existing older buildings due to limited opportunity for economic gain.

On review of the height controls for each of the Bega, Eden and Merimbula CBDs, Council resolved to prepare a Planning Proposal to amend the maximum heights within the CBDs to allow for the proposed number of storeys to be achieved.

In forming their decision, Council considered typical cross-sections of 2, 3 and 4 storey commercial development and 3 & 4 storey mixed use commercial/residential development provided by a local designer (see Attachment 2 – Council Report 24th July 2012 Appendix 1: Typical Cross-Section Diagrams).

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

The likely types of future development in the Shire's CBDs are 2 storey commercial and 3 & 4 storey commercial/residential mix. Therefore, based on the cross-sections, in order to achieve 2, 3 and 4 storey development, the following revised height controls were determined by Council to be appropriate: 10 metres - 2 storeys, 13 metres - 3 storeys and 16 metres - 4 storeys.

To ensure that buildings are developed to meet the expected outcomes for the number of storeys with regard to best design principles, a Section is currently being prepared by a qualified architect for inclusion in Council's Development Control Plan so as to address the design principles required for development within the commercial areas.

In addition to altering the height limits for 2, 3 and 4 storey development, Council also reviewed the application of the various heights within each CBD based on topography and impact on surrounding land uses. The new proposed height limits for the three CBDs are illustrated in Figures 1, 2 and 3. Details of Council's review of the exhibited height controls for the three CBDs are detailed in the report to Council on the 24th July 2012 and corresponding minutes (see Attachment 2).

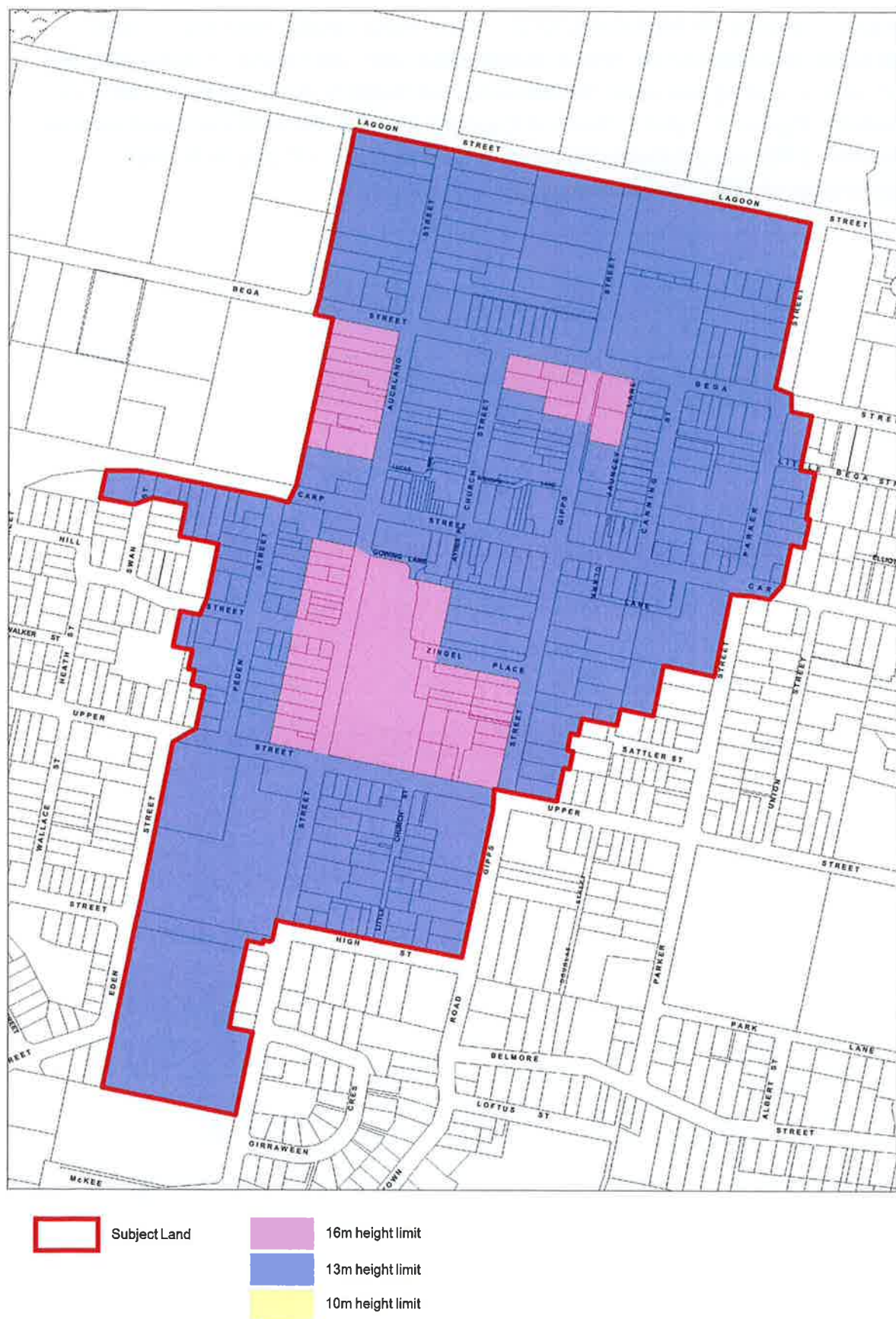


Figure 1: Proposed height controls Bega CBD

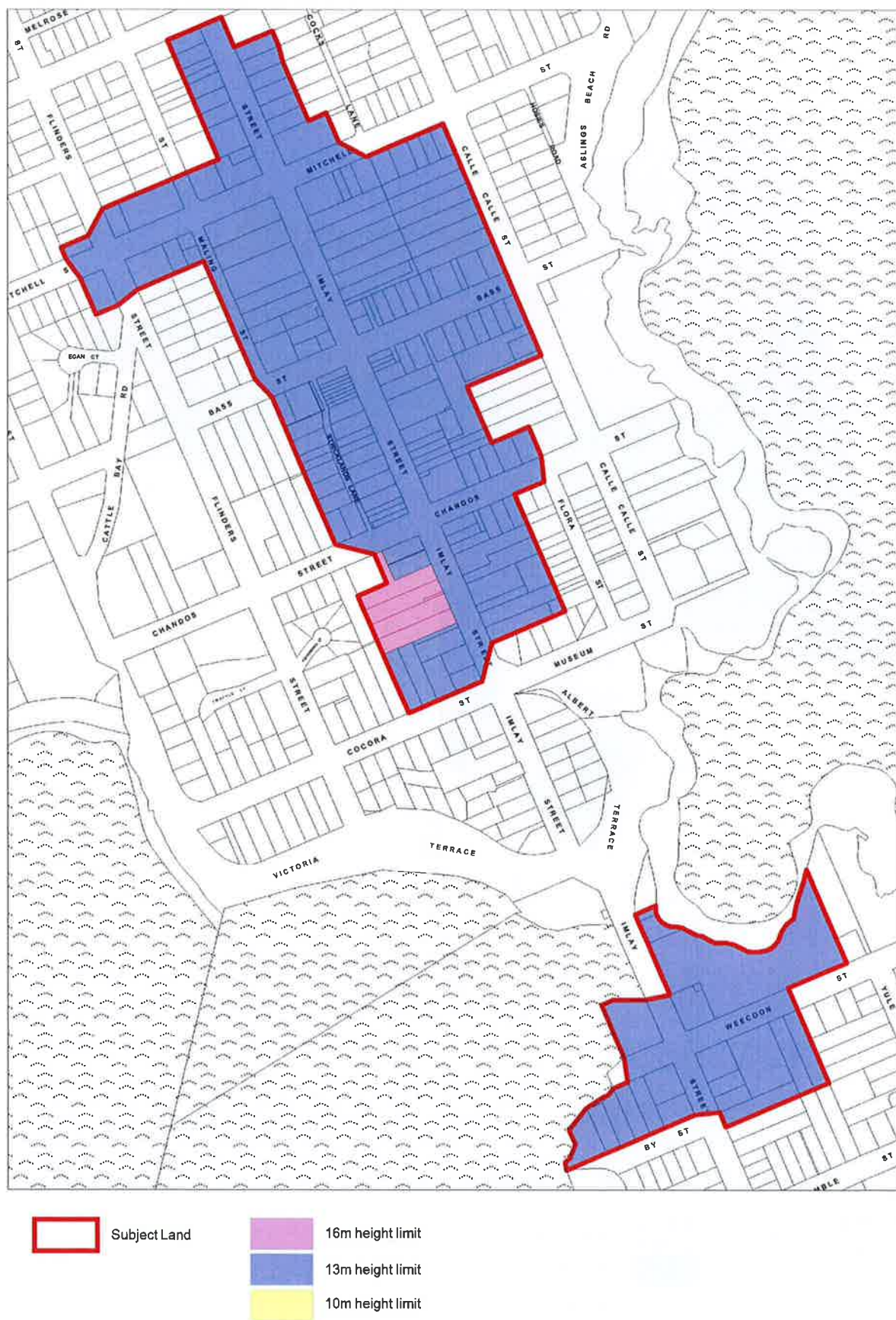


Figure 2: Proposed height controls Eden CBD

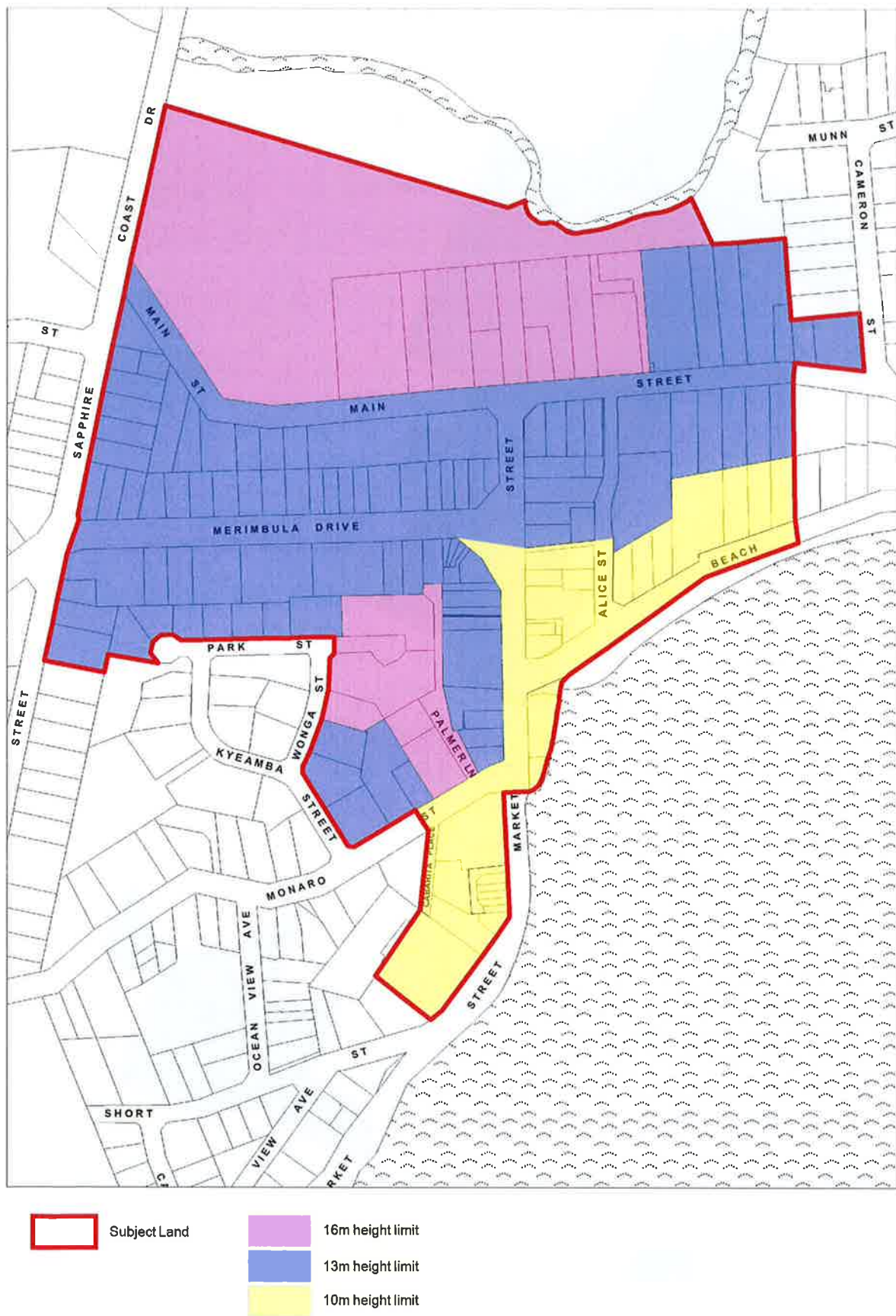


Figure 3: Proposed height controls Merimbula CBD

3.2 Height Controls: Merimbula Residential

SP 73171, Lots 25-28 DP 208862 and Lots 31-34 DP 208862 Carolynne Street, Short Street and Ocean View Avenue Merimbula



Figure 4: Merimbula residential heights subject land aerial photograph

The subject properties are located within the township of Merimbula approximately 150 metres southwest of the Town Centre. The properties range in size from 579m² to 1,317m² and are predominantly developed for residential uses containing dwelling houses, a multi-unit development and associated outbuildings and landscaping (see Figure 4). Development within the immediate area of the subject properties generally comprises dwelling houses, multi-unit developments and tourist accommodation.

With the exception of Lot 28 DP 208862 which is deferred from BVLEP 2013, the subject properties and the surrounding area are currently zoned R3 Medium Density Residential with a minimum lot size control of 1,000m². Maximum building heights in the area vary from 10 metres to 5.5 metres. The subject land has a maximum height limit of 7.5 metres (see Figure 5).



Figure 5: Merimbula residential heights maximum building heights – deferred property Lot 28 DP 208862 indicated in white

In response to a submission received from the landowner of Lot 28 DP 208862 during the public exhibition of Draft BVLEP 2010, the property was deferred from the BVLEP 2013 pending a review of the sites' maximum height control and current 2(b) Residential Medium Density zoning under BVLEP 2002. Under BVLEP 2002, this site and the immediately surrounding area have a maximum building height of 10 metres.

Subsequent to a review of the issue, Council resolved to re-instate the 10 metre maximum height control to the subject property and all of the land bounded by Carolynne Street, Short Street and Ocean View Avenue. This was considered appropriate given that a number of the subject properties already contain developments that are built to a 10 metre maximum. Further to this, the topography of the land surrounding and contained with the subject properties slopes steeply to the south/southeast towards Merimbula Lake. In this regard, it is anticipated that a 10 metre height control will not adversely affect the views currently enjoyed by surrounding properties to the north and west.

No changes to the R3 Medium Density Zone standard for floorspace ratios of 0.6:1 or minimum lot sizes of 1000 square metres that apply to the subject land are proposed in this planning proposal.

3.3 Business Zones: Bega, Merimbula and Eden CBDs

3.3.1 Bega – Parker Street

Lots 1-4 DP 993 Sattler Street and Lot 5 and 6 DP 993, Lots 1-3 DP 571741, Lots 346 and 347 DP 635577, Lot 1 DP 417220, Lot A DP 370462, and Lot 1 and Part Lot 2 DP 747017 Parker Street, Bega



Figure 6: Bega CBD land use zones– deferred properties indicated in white

The subject properties are located on the south-eastern edge of the Bega CBD (see Figure 6). Development on Parker Street within the subject allotments generally comprises town centre/residential support activities, including a gymnasium and an intact cottage precinct containing professional offices that integrate with the commercial core.

The subject properties were deferred from BVLEP 2013 and are currently zoned 2(a) Residential Low Density Zone under BVLEP 2002. In the Draft BVLEP 2010, the subject properties were proposed to be zoned R2 Low Density Residential Zone on the basis that this zone represented the best fit from the existing zoning.

In response to a submission received on behalf of the landowner during the public exhibition of Draft BVLEP 2010, the proposed zoning of this area was reviewed. This review determined that the proposed R2 Low Density Residential Zone did not reflect the existing and established commercial development on the subject property or the current mixed use nature of the immediately surrounding area.

As a result, Council resolved to apply the B4 Mixed Use Zone to the subject properties to recognise the existing commercial uses within the Parker Street precinct and provide for compatible future uses that will contribute to the CBD core. The B4 Mixed Use Zone will provide a transition between the commercial core and the residential precinct west of the town centre.

To facilitate the development of the land in accordance with the proposed zone, the floorspace ratio of 0.5:1 and minimum lot size of 550 square metres applying to the subject land are proposed to be removed. These standards were applied in accordance with Council's strategy for applying controls to low density residential land in the Shire and are therefore no longer applicable. No changes to the 10 metre maximum height limit are proposed.

3.3.2 Bega – Peden Street

Lots 2 & 3 DP 948040 Peden Street, Bega

The subject properties are located on the south-western edge of the Bega CBD (see Figure 6). Development in the Peden Street precinct generally comprises town centre support activities, including professional premises, education facilities, retail bulky goods, health facilities and low density housing, which integrate with the CBD core.

The subject properties are in one ownership and are currently developed for residential use. The existing residence, front yard and part of the back yard are located on Lot 3 DP 948040, and Lot 2 DP 948040 makes up the other part of the back yard.

The subject properties were deferred from BVLEP 2013 and are currently zoned 2(a) Residential Low Density under BVLEP 2002. In the Draft BVLEP 2010, Lot 3 DP 948040 as well as all the other properties within the Peden Street precinct, were proposed to be zoned B4 Mixed Use Zone. However, Lot 2 DP 948040 was proposed to be zoned R2 Low Density Residential Zone, in keeping with the surrounding properties to the west of Peden Street.

The submission from the landowner to Draft BVLEP 2010 detailed that the subject properties were purchased for the purpose of developing professional offices and associated off-street car parking for an environmental consultancy. Under the proposed zoning, the renovation of the existing residence to accommodate the office premises would be permissible with consent however, the associated off-street car parking at the rear of the site could not be achieved because car parking is a prohibited land use within the R2 Low Density Residential Zone.

Given the mixed nature of existing developments within Peden Street and the minor impact of the proposed re-zoning in the context of the boundary of the B4 Mixed Use/R2 Low Density Residential Zone, Council resolved to zone Lot 2 DP 948040 as B4 Mixed Use to enable the re-development of the whole site.

To facilitate the development of the land in accordance with the proposed zone, the floorspace ratio of 0.5:1 and minimum lot size of 550 square metres applying to Lot 2 DP 948040 are proposed to be removed. These standards were applied in accordance with Council's strategy for applying controls to low density residential land in the Shire and are therefore no longer applicable.

3.3.3 Merimbula – Bowling Club

Lot 912 DP 855433 Main Street, Merimbula



Figure 7: Location of the subject land in Main Street Merimbula (outlined in red)

Lot 912 DP 855433 is owned by the Merimbula Imlay Bowling Club Ltd. The 6.7 hectare property is located at the north-western extent of the Merimbula Town Centre and is home to the Merimbula Imlay Bowling Club, which is located in the south-western corner of the property. The property adjoins Sapphire Coast Drive to the west and Main Street to the south (see Figure 7).

The site comprises elevated land which slopes towards Merimbula Creek, which forms the northern property boundary. The northern portions of the site are generally flat and are identified by Council's mapping as being affected by flooding. There are steep embankments to the south, east and west.

Under the BVLEP 2002, the property was zoned part 2(b) Residential Medium Density Zone (3.24 hectares), 2(c) Residential Tourist Zone (0.21 hectares), 3(a) General Business Zone (1.43 hectares) and 6(c) Private Open Space Zone (1.84 hectares). In the Draft BVLEP 2010, the property was proposed to be zoned part B2 Local Centre Zone (1.45 hectares), B4 Mixed Use Zone (3.43 hectares) and RE2 Private Recreation Zone (1.85 hectares) (see Figure 8).



Figure 8: Main Street Merimbula land use zones (subject land outlined in red)

In response to a submission received on behalf of the landowner during the public exhibition of Draft BVLEP 2010, those parts of the subject property proposed to be zoned B2 Local Centre Zone and B4 Mixed Use Zone, were deferred from the BVLEP 2013 pending a review of the proposed zoning.

Following the review of the submission, Council resolved to amend the B2 Local Centre Zone to B4 Mixed Use Zone. The property is not located within the core commercial area of the Merimbula Town Centre and the added potential of the B4 Mixed Use Zone will help ensure the long-term viability of the Club as well as increasing the economic viability of the Town Centre by encouraging compatible development that will integrate with the commercial core.

In accordance with Council's strategy for applying controls to land zoned for business purposes no minimum lot size or floorspace ratios are proposed for the subject land. Section 3.1 outlined proposed changes to the maximum heights for the Merimbula CBD and the subject land is proposed to have a 16 metre height limit.

Details of Council's review of this land are detailed in the report to Council on the 6th November 2013 and corresponding minutes (see Attachment 3).

3.3.4 Merimbula – Main Street

Lots 1 & 2 DP 521571 and Lot 1 DP 1051587 Main Street, Merimbula

These properties are located at the northern extent of the Merimbula Town Centre. Development within this precinct generally comprises town centre/residential support activities including professional premises, education facilities, health facilities, entertainment and recreation facilities (indoor) and low and medium density housing, which integrate with the CBD core.

Lot 1 DP 521571 is currently developed with a dwelling and comprises a site area of approximately 3,000m². Lot 2 DP 521571 comprises a site area of approximately 1,000m² and contains a small derelict dwelling pending re-development (see Figure 7). Lot 1 DP 1051587 is approximately 2,000m² contains a multi-unit development, which has been converted into a number of professional premises and health services facilities.

The subject properties were not deferred from BVLEP 2013 and were zoned B2 Local Centre on the basis that this zone represented the best fit from 3(a) General Business in BVLEP 2002 (see Figure 8).

In response to a submission received on behalf of the landowner of Lot 1 and 2 DP 521571 during the public exhibition of Draft BVLEP 2010, the proposed zoning was reviewed. This review determined that the land is suitable for wider range of uses including retail, employment, residential, community and other uses. As a result, Council resolved to apply the B4 Mixed Use Zone to the subject properties and the adjacent Lot 1 DP 1051587 to acknowledge the existing uses, encourage a wider range of future uses, assist the transition between the commercial core and the residential precinct to the northeast of the Town Centre and ensure the logical extension of the B4 Mixed Use zone boundary.

In accordance with Council's strategy for applying controls to land zoned for business purposes no minimum lot size or floorspace ratios are proposed for the subject land. Section 3.1 outlined proposed changes to the maximum heights for the Merimbula CBD and the subject land is proposed to have a 16 metre height limit.

3.3.5 Eden – Fishermen's Club

Eden Fishermen's Club land and the land fronting either side of Imlay Street between Chandos Street and Cocora Street. (Lots 1 and 2 DP 1167612 and Lot 23 DP 602200 Lots A and B DP 412563, Lot 32 DP 393913, Lot 91 DP 709087, Lot 6 DP 64421, Lot 5 Sec 2 DP 758379, Lot 33 DP 505878, Lot 1 DP 1158312, Lot 3 Sec 2 DP 758379, Lots 21 and 22 DP 602200, Lot 60 DP 732500, Lot 1 DP 743994, Lots 1 and 2 DP 741178, Lot 211 DP 800057, Lot 12 DP 702211, Lots 13 and 14 702741, Lot 1 DP 546266, Lot 6 DP 1087954, Lot 122 DP 1027835 Part Lot 121 DP 1027835 Lot 21 DP 545540, Lot 1 DP 730700, Lot 1 DP 711547 and Lot 20 DP 794186)

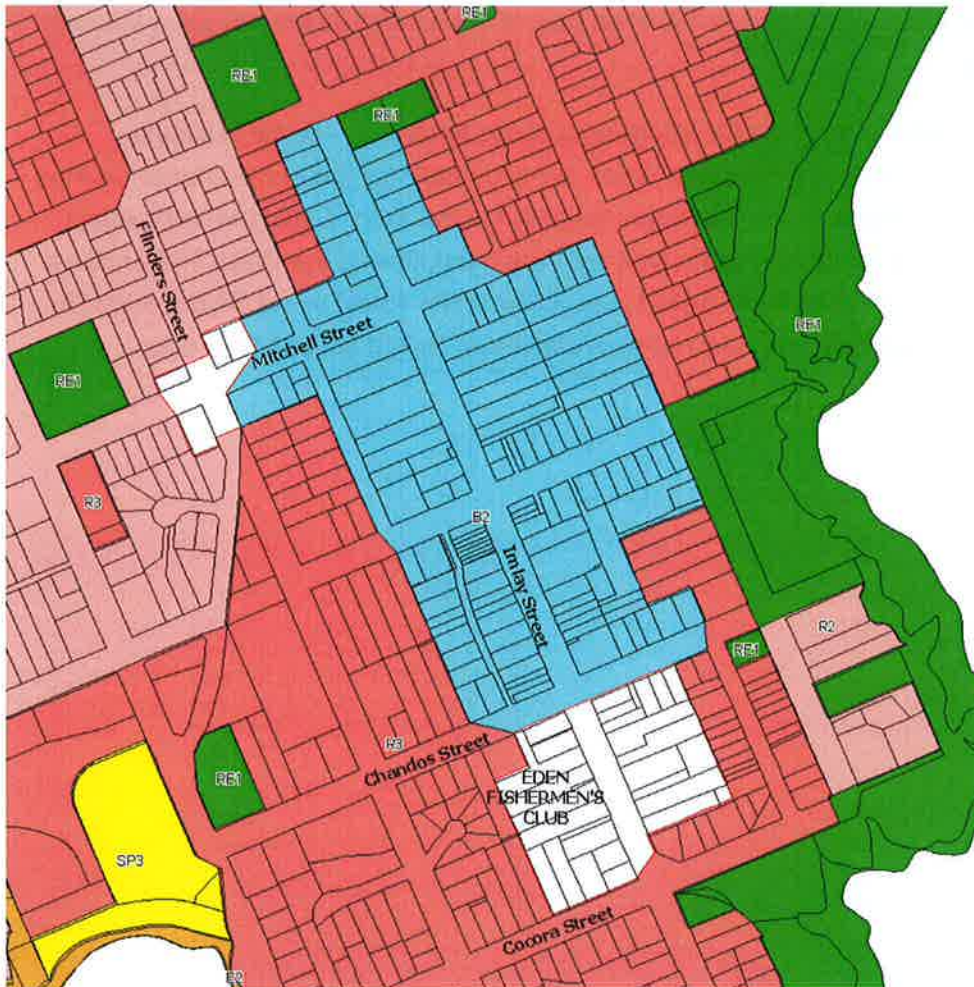


Figure 9: Eden Town Centre land use zones – deferred properties indicated in white

The subject properties were deferred from BVLEP 2013 and are currently zoned 2(e) Urban Zone under BVLEP 2002. In the Draft BVLEP 2010 the properties were proposed to be zoned B2 Local Centre Zone.

In response to a submission to Draft BVLEP 2010 received on behalf of the Eden Fishermen's Club, the proposed zoning of the Eden Fishermen's Club's land and the surrounding area was reviewed.

From this review Council decided that the Fishermen's Club land and the land fronting either side of Imlay Street between Chandos Street and Cocora Street, which was also proposed as B2 Local Centre Zone in Draft BVLEP 2010, would be more appropriately zoned B4 Mixed Use Zone.

The land fronting both sides of Imlay Street between Chandos Street and Cocora Street is at the southern extent of the exhibited B2 Local Centre Zone (see Figure 9) and is currently developed for a mixture of uses including motels, club facilities, retail, business and residential uses. The zoning of this land as B4 Mixed Use will better complement the existing development and also the future development of Eden by focussing commercial and retail development north of the subject land in the main part of the Town Centre between Mitchell and Chandos Streets.

In accordance with Council's strategy for applying controls to land zoned for business purposes no minimum lot size or floorspace ratios are proposed for the subject land. Section 3.1 outlined proposed changes to the maximum heights for the Eden CBD and the subject land is proposed to have a 13 metre height limit with the exception of the Eden Fishermen's Club land (Lot 91 DP 709087, Lot 6 DP 64421, Lot 5 Sec 2 DP 758379, Lot 33 DP 505878 and Lot 60 DP 732500) which is proposed have a maximum height limit of 16 metres.

3.3.5 Eden – Flinders & Mitchell Streets

Lot 10 DP 516613 and Lot 11 DP 1166395 Flinders Street and Lot 10 Sec 20 DP 758379 and Part Lot 12 DP 1166395 Mitchell Street, Eden

The subject properties are located on the north western fringe of the Eden CBD (see Figure 9). Developments within Flinders Street and Mitchell Street generally comprise town centre support activities, including professional premises, transport depots, vehicle repair and vehicle sales premises, service stations, an indoor recreation facility and low density housing, which surround and integrate with the CBD core. The subject properties are developed as a professional office, dwelling house, bus transport depot and a vehicle sales yard.

The subject properties were deferred from BVLEP 2013 and are currently zoned 2(e) Urban Zone under BVLEP 2002. In the Draft BVLEP 2010 the properties were proposed to be zoned R2 Low Density Residential Zone on the basis that this zone represented the best fit from the existing zoning and applicable uses identified in the old Eden Urban Area Development Control Plan.

In response to a submission received on behalf of the landowners during the exhibition of the Draft BVLEP 2010, Council resolved to extend the B2 Local Centre Zone along Mitchell Street to include Lot 11 DP 1166395 and Part Lot 12 DP 1166395. In addition, Council resolved to apply the B4 Mixed Use Zone to Lot 10 DP 516613 and Lot 10 Sec 20 DP 758379 on the western boundary of the existing/proposed B2 Local Centre Zone. The intention of these proposed zoning amendments is to recognise the existing and established commercial uses and to provide for compatible future uses that will contribute to the revitalisation of the Eden business area.

In accordance with Council's strategy for applying controls to land zoned for business purposes no minimum lot size or floorspace ratios are proposed for the subject land. Section 3.1 outlined proposed changes to the maximum heights for the Eden CBD and the subject land is proposed to have a 13 metre height limit.

3.3.6 Eden – Princes Highway

Lot 21 DP 788099 Princes Highway, Eden

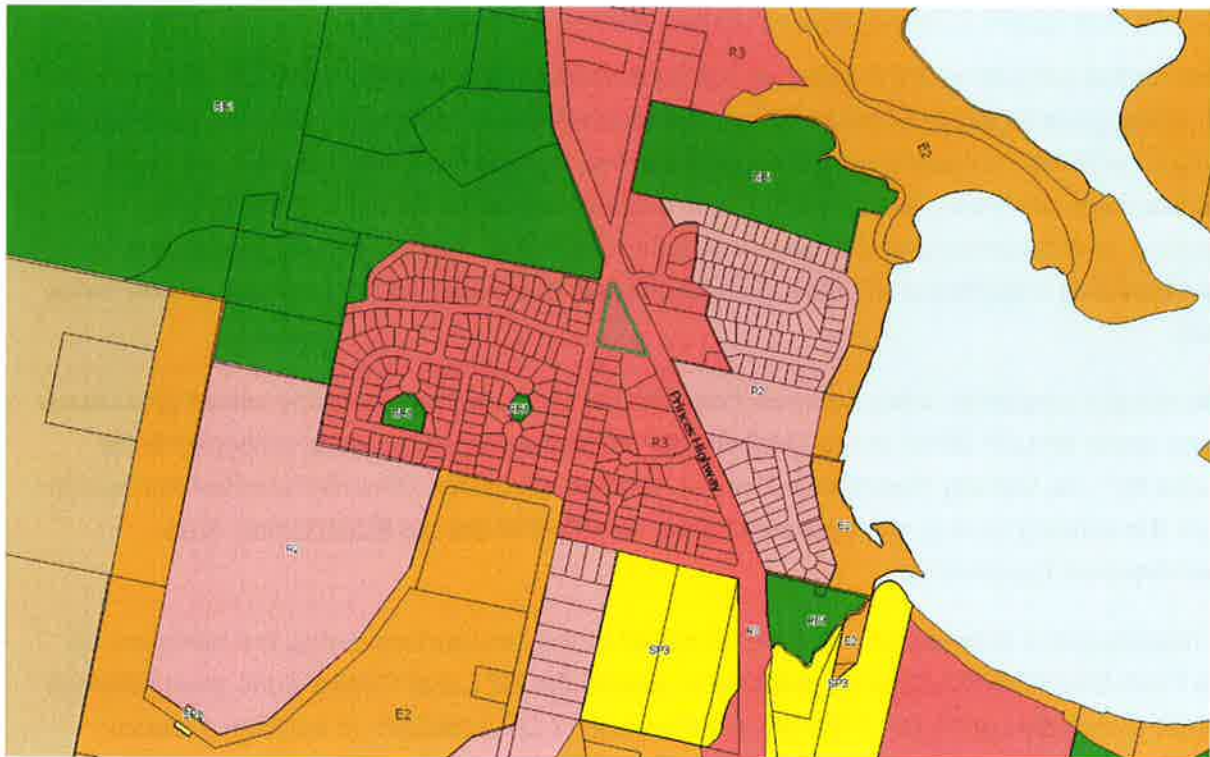


Figure 10: Eden land use zones – deferred property Lot 21 DP 788099 indicated by green outline

Lot 21 DP 788099 is currently undeveloped and is bounded by West Street and the Princes Highway in the northern part of Eden's urban area. Development within the immediate area is currently characterised by a variety of residential premises, tourist and visitor accommodation, outdoor recreation facilities, a veterinary hospital and plant nursery.

The subject property was deferred from BVLEP 2013 and is currently zoned 2(e) Urban Zone under BVLEP 2002. In the Draft BVLEP 2010 the property and the surrounding area were proposed to be zoned R3 Medium Density Residential Zone (see Figure 10).

In response to a submission received on behalf of the landowner during the exhibition of the Draft BVLEP 2010, the proposed zoning was reviewed. Following this review, Council resolved to apply a B4 Mixed Use Zone to the property given the mixed nature of the surrounding development and to enable the land to be developed for a greater range of land uses in an accessible location. This land could be developed to service the surrounding area depending on the future needs of the local population.

In accordance with Council's strategy for applying controls to land zoned for business purposes no minimum lot size or floorspace ratios are proposed for the subject land. Section 3.1 outlined proposed changes to the maximum heights for the Eden CBD and the subject land is proposed to have a 13 metre height limit.

3.4 Business and Special Use Zones: Arthur Kaine Drive

3.4.1 B5 Business Development Zone

BVLEP 2013 currently contains three business zones: B1 Neighbourhood, B2 Local Centre and B4 Mixed Use. This planning proposal introduces a fourth business zone available in the Standard Instrument which is B5 Business Development. The aim of the B5 Business Development Zone is to enable development for a defined range of commercial purposes in areas close to town centres.

The need for a new zone became apparent during consideration of the appropriate zone for an area of land between Merimbula and Pambula which has been developed for a number of purposes as a result of the previous zonings under BVLEP 2002. The B5 zone was deemed appropriate as the area contained a wide variety of commercial, tourism and residential uses, including a number of uses that are not appropriate in core commercial, mixed use areas or residential areas due to land and access requirements as well as amenity issues.

The location of the area, extent of development and variety of existing uses meant that the application of either the B1 or B2 zones was inappropriate and the SP3 Tourist zone was too restrictive. The B4 zone does allow for a wide variety of commercial opportunities, however to minimise land use conflict with residential uses, Council determined that the most applicable zone to set the future direction of this area was B5 Business Development.

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.

Section 3.4.2 outlines the rationale for the introduction of the new zone to certain lots on Arthur Kaine Drive between Merimbula and Pambula. Although it is possible that this zone may be applied in other areas of the Shire in the future, any future applications of the zone would need to be made based on site specific and strategic justification.

The B5 Land Use Table proposed for BVLEP 2013 including appropriate zone objectives and nominated permissible land uses is as follows:

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

3.4.2 Arthur Kaine Drive – Mixed Use

Lots 398 & 339 DP 40361, 325, 326, 327, 329, 331, 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 & 350 DP 1144511 Arthur Kaine Drive, Merimbula.



Figure 11: Aerial photograph of subject properties on Arthur Kaine Drive, Merimbula

The subject properties are located approximately 4 kilometres to the south of Merimbula and approximately 1.5 kilometres to the east of Pambula, on the eastern side of Arthur Kaine Drive opposite the Merimbula Pambula Golf Course (see Figure 11). Council's sewerage treatment works and the Merimbula Airport are located nearby to the north-west.

Of the subject properties: 6 are vacant, 12 contain dwellings and associated outbuildings and 8 contain businesses and associated uses including self-storage, car wash, equipment hire, intensive fish farm, hotel, restaurant and oyster processing facilities. Lots sizes range from 1269m² to 8632m² with 13 of the 26 lots over 4000m² in area.

In the Draft BVLEP 2010, these properties were proposed to be zoned SP3 Tourist to encourage a variety of tourist-orientated development and related uses. This was based on the Bega Valley Shire Commercial Strategy adopted by Council in December 2006, which recommended that the 3(b) Special Business Zone opposite the Pambula/Merimbula Golf Club be reviewed for possible rezoning to SP3 Tourist Zone as part of the Comprehensive LEP. Consequently, the land and other land south of the area covered by the recommendation, which was zoned 1(a) General Rural in BVLEP 2002, was exhibited as SP3 in the Draft BVLEP 2010. The remaining lots in the area in public ownership were

proposed to be zoned E2 Environmental Conservation to preserve an existing wildlife corridor.



Figure 12: Land use zones Arthur Kaine Drive, Merimbula - deferred properties indicated in white

Four of the subject properties (Lots 327, 329 and 331 DP 750227 and Lot 350 DP 1144511) were deferred from the BVLEP 2013 in response to submissions received from landowners to Draft BVLEP 2010 requesting a B4 Mixed Use Zone and are currently zoned either 3(b) Special Business Zone or 1(a) Rural General Zone under the BVLEP 2002. The remainder of the subject land is currently zoned SP3 Tourism under BVLEP 2013 (see figure 12).

The B4 zone was requested 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.

Following a review of the zoning of the deferred properties and the properties in the surrounding area, Council considered that to set the future direction of this area and minimise future land use conflict all of the subject land currently zoned SP3 zoning under BVLEP 2013 and the 4 deferred lots, should be zoned as B5 Business Development (see Figure 13).

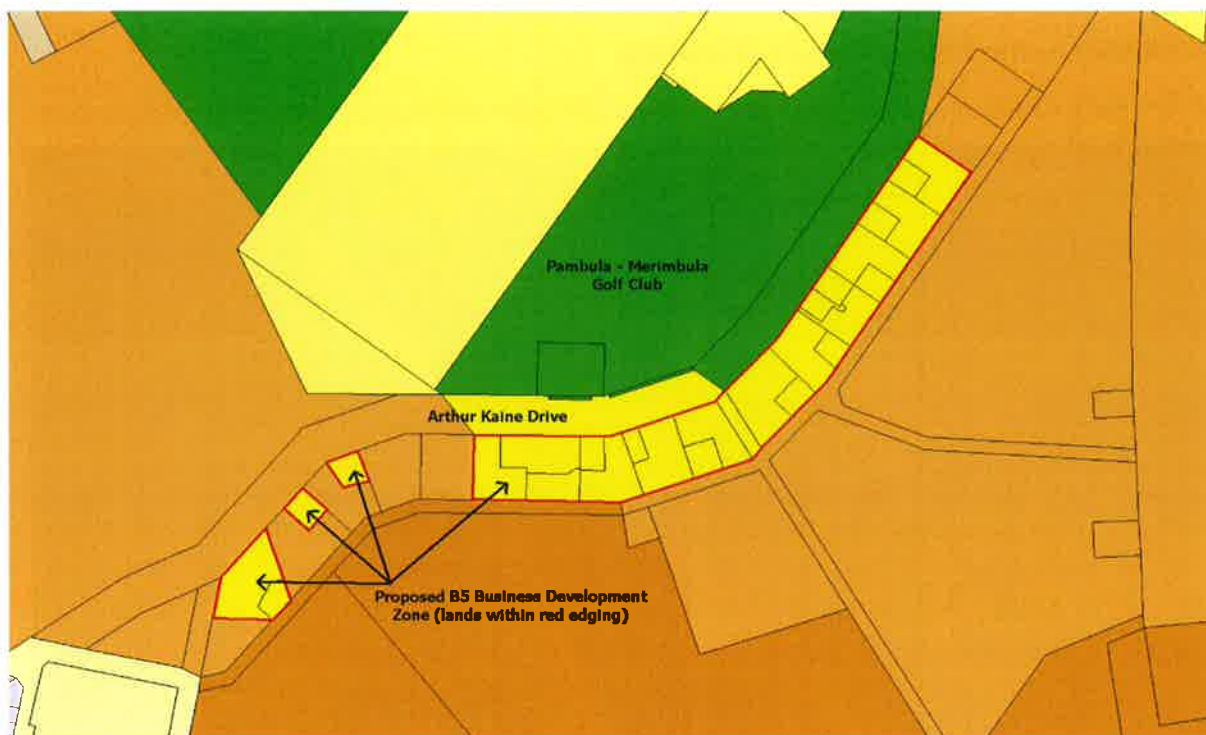


Figure 13: proposed land use zones Arthur Kaine Drive, Merimbula

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. Section 3.4.2 contains details of the B5 Business Development Zone proposed for inclusion in BVLEP 2013.

In accordance with Council's strategy for applying controls to land zoned for business purposes no minimum lot size or floorspace ratios are proposed for the subject land and no change to the applicable 10 metre height limit is proposed.

Details of Council's review of this land are detailed in the report to Council on the 6th November 2013 and corresponding minutes (see Attachment 3).

3.4.3 Arthur Kaine Drive – Special Activities

Lot 120 DP 847899, Lot 2 DP 549112 and Lot 1 DP 1004805 Arthur Kaine Drive, Merimbula



Figure 14: Aerial photograph of subject properties near Merimbula Airport, Arthur Kaine Drive, Merimbula

The subject properties are located on the eastern side of Arthur Kaine Drive, directly opposite Merimbula Airport (see Figure 14). Together they comprise an area of approximately 25 hectares and are currently vacant and is predominantly vegetated. A small portion of Lot 2 DP 549112, located opposite the existing airport terminal, is cleared and is currently utilised as an informal overflow parking area for airport users and a large portion of the vegetation on Lot 120 DP 847899 has been modified due to airport obstacle maintenance activities

In Draft BVLEP 2010, Lot 120 DP 847899 and Lot 1 DP 1004805 were proposed to be zoned SP2 Infrastructure, and Lot 2 DP 549112 was proposed to be zoned E2 Environmental Conservation Zone (see Figure 15). Lot 120 DP 849899 and Lot 2 DP 549112 were deferred from BVLEP 2013, in order to seek a change from the exhibited SP2 Infrastructure Zone, to SP1 - Special Activities Community Purposes and Carparking. They are currently zoned 2(c) Residential Tourist and 7(f1) Coastal Lands Protection Zone under BVLEP 2002 respectively.



Figure 15: Land use zones as exhibited in Draft LEP 2010. Subject land on Arthur Kaine Drive indicated in red.

The proposed zoning of the subject properties was reviewed in the context of the recently adopted Merimbula Airport Masterplan 2033 and advice from the NSW Office of Environment and Heritage (OEH).

OEH strongly requested the application of the E2 Environmental Conservation 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.

The Merimbula Airport Masterplan 2033 includes the “development of the new passenger terminal precinct and the reuse of the existing terminal building for a Visitor Information Centre, a dedicated parking area opposite the existing passenger terminal building on the opposite side of Arthur Kaine Drive could be developed for this purpose. This parking could include accommodation of long-vehicles such as campervans and vehicles with caravans”.¹ See Figure 17 for details.

To ensure consistency with the approved Merimbula Airport Master Plan 2033 and in consideration of the recommendations of OEH made during the exhibition of Draft BVLEP 2010 Council has resolved to zone Lot 120 DP 847899 as SP1 Special Activities ‘Community Facilities and Carparking’ and Lot 1 DP 1004805 and Lot 2 DP 549112 as E2

¹ Rehbein Airport Consulting *The Merimbula Airport Masterplan 2033*

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 16)

By locating the SP1 zone on the modified and cleared sections of land, the zoning plan proposed for the subject land will conserve the important existing environmental characteristics while making allowance for future public requirements on the less environmentally sensitive land.

In accordance with Council's strategy for applying controls to land zoned for special purposes no minimum lot size or floorspace ratios are proposed for the subject land and no change to the applicable 10 metre height limit is proposed.

Details of Council's review of this land are detailed in the report to Council on the 6th November 2013 and corresponding minutes (see Attachment 3).



Figure 16: Proposed land use zones near Merimbula Airport, Arthur Kaine Drive, Merimbula

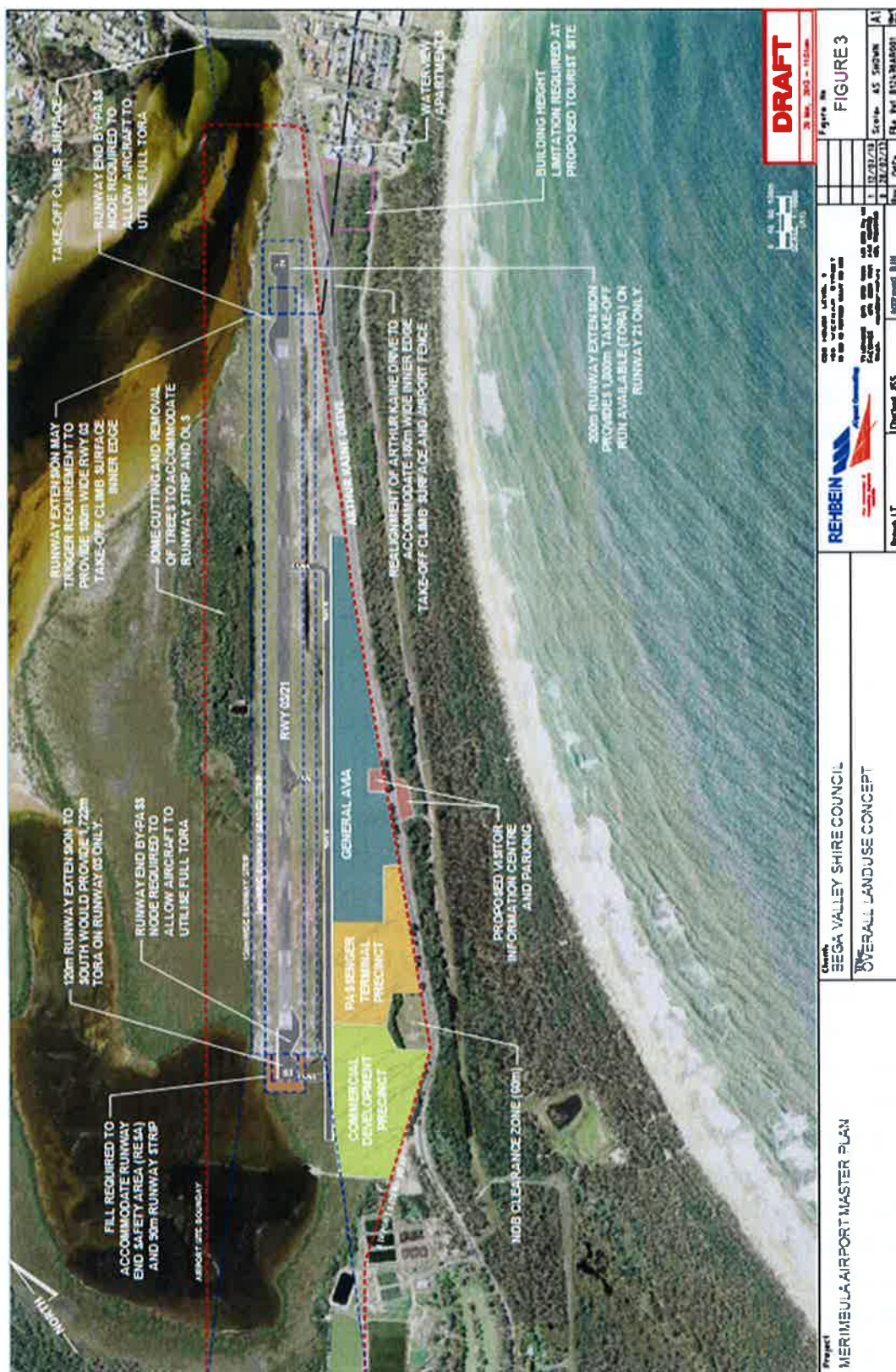


Figure 17: Overall Airport Land Use concept from Draft Merimbula Airport Masterplan 2033

Section A – Need for the Planning Proposal

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

Council resolved on 13th December 2005 to prepare a draft Comprehensive Local Environmental Plan (CLEP) to replace BVLEP 2002. The CLEP, later known as draft BVLEP 2010, was prepared based on the following:

- 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.

The Draft BVLEP 2010 was publically exhibited from the 12th May 2011 to the 29th July 2011 and 456 submissions were received. Following consideration of those submissions, Council categorised them into four groups:

- Appendix 1: Support (or partial support) for the submission request, with only minor changes required to the exhibited draft CLEP. The CLEP was amended in line with these recommendations.
- Appendix 2: Support (or partial support) for the submission request, however, due to the nature of changes proposed re-exhibition would be required. Land subject to the submissions is to be identified as a ‘deferred matter’ in the CLEP. Staff are to prepare planning proposals seeking to amend the CLEP, once adopted, in accordance with Councils’ resolutions and a “gateway determination” by the Minister for Planning required prior to re-exhibition.
- Appendix 3: Further research is to be carried out by Council staff prior to progressing a resolution of the submissions via a future report to Council. Land subject to the submissions is to be identified as a ‘deferred matter’ in the CLEP.
- Appendix 4: No agreement with the submission request, or the submission to be noted but no need for further action at this time. No change to exhibited draft CLEP is required.

The full Council Report and adopted minutes from the relevant meeting of 12th June 2012 are in Attachment 1.

The majority of properties that are the subject of this planning proposal are in Appendix 2 and were deferred from the BVLEP 2013, consequently the zoning and status under BVLEP 2002 still applies to the land and a planning proposal is required to apply BVLEP 2013 to resolve the issues of appropriate building heights and zonings within the Bega, Merimbula and Eden CBDs and the appropriate zone for certain land fronting Arthur Kaine Drive.

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

Yes. This plan seeks to apply BVLEP 2013 to certain deferred properties to which the BVLEP 2002 currently applies. This planning proposal will resolve the uncertainty that currently exists by appropriately zoning the land and applying suitable controls to the land.

Schedule 1 – Additional Uses of BVLEP 2013 could be used as an alternative to reflect the current mix of uses within the Bega and Eden CBDs and the Arthur Kaine Drive precincts; however it would bring no additional benefit and would add to the ambiguity in the zoning schedules. Although a valid option in some cases, it is not the preferred approach in this instance given the desirability of securing the long-term identification and use of the subject land. Further to this, the NSW Department of Planning and Infrastructure's policy position states that additional listings in the LEP Schedule 1 should be minimised and should only proceed where a council can demonstrate that there is no other acceptable solution to progress the matter.

Placing the height limits in Council's Comprehensive Development Control Plan was considered, but is not seen as being as legally effective as inclusion in the Height of Buildings Map in BVLEP 2013.

A planning proposal is also required to amend BVLEP 2013 to add B5 Business Development Zone to Clause 2.1 and the Land Use Table.

Section B – Relationship to Strategic Planning Framework

Q3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

South Coast Regional Strategy

The primary purpose of the South Coast Regional Strategy (SCRS) is to ensure that adequate land is available and appropriately located to sustainably accommodate projected housing and employment needs for the South Coast Region for the next 25 years.

One of the major aims of the Strategy is to ensure an adequate supply of land to support economic growth and to provide capacity to accommodate a projected 5,200 new jobs in the Bega Valley Shire. Section 7 of the Strategy addresses Economic Development and Employment Growth and provides a number of key action points. The key action points that are supported by this Planning Proposal include:

- Zoning changes that address concerns regarding tenure, location, constraints and specific opportunities;
- Protection and addition of employment lands in existing economic centres, including major regional centres and major towns through local environmental plans
- Implementation of Council-based mechanisms or controls that will preserve and support the hierarchy of commercial centres for the South Coast Region.

Q4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

Bega Valley 2030 Community Strategic Plan

The Community Strategic Plan identifies the long term aspirations of the community. This Planning Proposal is consistent with three of the five major themes, being the promotion of 'Enterprising', 'Sustainable' and 'Accessible' outcomes. In particular, the proposed amendments will:

- Increase business capacity within existing commercial centres that will generate ongoing economic development and re-development;
- Preserve and support Bega as a strong regional centre and Merimbula and Eden as vibrant district centres;
- Encourage business development and re-development opportunities in existing commercial centres that have adequate infrastructure to support growth; and
- Manage development and re-development opportunities so as to minimise impacts on the natural and built environment.

Bega Valley Shire Commercial Strategy 2006

The Bega Valley Shire Commercial Strategy 2006 delivered a development strategy for the commercial areas of the Shire, which was used to inform BVLEP 2013. Specifically, this Planning Proposal addresses one of the key objectives of the Strategy, which is to retain and

promote compact commercial areas and to identify re-development opportunities whilst conserving what the community values in its town centres.

Bega Town Centre Planning Report – August 2007

The Bega Town Centre Planning Report provides a context for the evolution of Bega as the Regional Centre. The Report details Bega's key strategic advantage as being a compact centre with a distinct core, perimeter of support activities and pronounced edges that project convenience and ease of access for the catchment population. In raising the height controls and providing more B4 Mixed Use zoned land within the CBD, Council is reinforcing this existing structure and strengthening Bega's role as the Regional Centre by encouraging compatible re-development opportunities.

Q5. Is the Planning Proposal consistent with applicable State Environmental Planning

The SEPPs applicable to this Planning Proposal are detailed below. For a complete checklist of SEPPs refer to Attachment 4.

SEPP No. 22 Shops and Commercial Premises

This SEPP allows a change of use from a shop to another kind of shop or commercial premises, or alternatively from a commercial premises to a shop or another kind of commercial premises where the new use is prohibited under an environmental planning instrument. Council must, however, be satisfied that the change of use will have not more than a minor environmental impact and is in-keeping with the objectives of the zone.

This Planning Proposal is consistent with the requirements of this SEPP.

SEPP No. 55 Remediation of Land

This SEPP introduces planning controls for the remediation of contaminated land. The policy states that land must not be developed if contamination renders it unsuitable for a proposed use. If the land is unsuitable, remediation must take place before the land is developed.

Bega Valley Shire Council's records indicate that Lots 325 & 326 DP 750227 and Lot 341 DP 750227 Arthur Kaine Drive, Merimbula may be contaminated as these properties were previously utilised as a 'nightsoil and garbage depot'. Lot 341 DP 750227 is currently developed with a dwelling house and the possible contamination on Lots 325 and 326 will be considered by the consent authority during the consideration of any future development application.

The inconsistency of this Planning Proposal with the application of this SEPP is minor and one dwelling on the affected land has already been approved. Therefore, it is unlikely that contamination will render the land unsuitable for the proposed use.

SEPP No. 62 Sustainable Aquaculture

SEPP 62 regulates aquaculture activities and aims to encourage sustainable aquaculture, including sustainable oyster aquaculture. Specifically, Clause 15(c) requires consideration of whether a proposal will have an adverse impact on oyster aquaculture.

The Merimbula Town Centre as well as SP 73171, Lots 25-28 DP 208862 and Lots 31-34 DP 208862 Carolynne Street, Merimbula, are within close proximity to existing oyster leases that have been identified by the Department of Primary Industries (August 2006) as being within Priority Oyster Aquaculture Areas.

This Planning Proposal is inconsistent with the SEPP as it is acknowledged that future re-developments within the Town Centre and abovementioned properties may have the potential to impact on oyster aquaculture in terms of cumulative nutrient impacts and cumulative pathogen impacts. In this regard, consultation with the Director General of Primary Industries will be undertaken as part of the Planning Proposal process.

However as the affected land in this Planning Proposal is within the existing Merimbula CBD and a nearby established urban residential area, the inconsistency with the SEPP provisions is of minor significance as it is unlikely that the additional developments will have adverse impacts on oyster aquaculture. Any issues that have the potential to impact on water quality will be adequately addressed through the appropriate design of future development, connection to existing reticulated water, sewer and storm water management systems.

Council propose to consult with the Director General of Primary Industries as part of the Planning Proposal process.

SEPP No. 71 Coastal Protection

SEPP 71 controls development in the coastal zone. SEPP 71 aims to ensure that development in the NSW coastal zone is appropriate and suitably located, there is a consistent and strategic approach to coastal planning and management, and there is a clear development assessment framework for the coastal zone.

The Merimbula and Eden CBDs and the Arthur Kaine Drive precincts are located within the Coastal Zone. This Planning Proposal is consistent with this SEPP as it does not contradict or hinder the application of the coastal planning provisions contained within the SEPP and does not promote development that will impede or diminish access to coastal foreshores, result in effluent discharge that negatively affects water quality, or involve a discharge of untreated storm water into the sea, a beach, an estuary, or coastal lake or creek.

The overall intent of the SEPP is to manage residential and rural residential development in sensitive coastal locations. Although the scale of development likely to result from this Planning Proposal is very small, given that the Merimbula and Eden CBDs and the Arthur Kaine Drive precincts are within a defined sensitive coastal location, the Minister may require that a Master Plan be prepared for future development of the subject properties.

Q6. Is the Planning Proposal consistent with applicable Ministerial Directions?

This section addresses consistency with applicable Section 117 Directions. Attachment 5 contains a complete list of all 117 Ministerial Directions applicable in the Bega Valley Shire.

1.1 Business and Industrial Zones

This Direction applies when a relevant planning authority prepares a Planning Proposal that will affect land within an existing or proposed business or industrial zone. The objectives of this Direction are to encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the viability of identified strategic centres.

This Planning Proposal is consistent with this Direction as it contains provisions that will:

- Provide for more opportunities for the economic re-development of specific land within the existing commercial centres of Bega, Merimbula and Eden and the Arthur Kaine Drive precinct;
- Increase the total potential floor space area for employment uses in business zones;
- Encourage commercial and employment growth in suitable locations;
- Protect existing employment land in business and industrial zones; and
- Protect and support the viability of identified strategic centres. In particular, Bega as the Regional Centre and Merimbula and Eden as viable District Centres.

1.2 Rural Zones

This Direction applies when a relevant planning authority prepares a Planning Proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). The objective of this Direction is to protect the agricultural production value of rural land.

A number of the properties along Arthur Kaine Drive included in this planning proposal are currently zoned 1(a) Rural General Zone. Therefore this Planning Proposal is inconsistent with this Direction as it contains provisions that will rezone land from a rural zone to a business zone. However this inconsistency is minor as it does not seek to increase the permissible density of any land that is currently used for agricultural production. Under BVLEP 2002 the subject land consists of parcels of land zoned 1(a) Rural General Zone that are well below the minimum 120 hectare subdivision standard and were created for the purposes of a dwelling. There is no land used for either grazing or cultivation in the vicinity.

Therefore, this Planning Proposal will have no impact on the existing or future agricultural production value of rural land as none currently exists.

1.4 Oyster Aquaculture

This Direction applies when a relevant planning authority prepares any Planning Proposal that proposes a change in land use which could result in adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”; or incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate” and other land uses.

The objectives of this Direction are to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered when preparing a Planning Proposal; and protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.

This Planning Proposal is inconsistent with this Direction as it contains provisions which could result in adverse impacts to an existing Priority Oyster Aquaculture Area.

The Merimbula Town Centre as well as SP 73171, Lots 25-28 DP 208862 and Lots 31-34 DP 208862 Carolynne Street, Merimbula, are located within close proximity to existing oyster leases that have been identified by the Department of Primary Industries (August 2006) as being within Priority Oyster Aquaculture Areas.

This Planning Proposal seeks to permit an increase in the height of buildings within the Merimbula CBD and a nearby established urban residential area which will aim to encourage re-development opportunities.

As such, the inconsistency of is planning proposal with these provisions is of minor significance as it is unlikely that the additional developments will have adverse impacts on oyster aquaculture. Any issues that have the potential to impact on water quality will be adequately addressed through the appropriate design of future development, connection to existing reticulated water, sewer and storm water management systems.

Council propose to consult with the NSW Department of Primary Industries in relation to this Planning Proposal.

1.5 Rural Lands

This Direction applies when a relevant planning authority prepares a Planning Proposal that will affect land within an existing or proposed rural or environment protection zone or that changes the existing minimum lot size on land within a rural or environment protection zone.

The objectives of this Direction are to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands for rural and related purposes.

This Planning Proposal seeks to re-zone a number of lots on Arthur Kaine Drive, Merimbula from 1(a) Rural General Zone to B5 Business Development in BVLEP 2013. The proposed

application of the B5 Business Development is consistent with this Direction given that the outcomes will conform with the Rural Planning and Rural Subdivision Principles listed in State Environmental Planning Policy (Rural Lands) 2008.

In particular, this Planning Proposal will not enable the fragmentation of high quality agricultural land or the potential for additional rural land use conflicts, particularly between residential land uses and other rural land uses; and will provide commercial opportunities, including business, office and retail premises and home businesses, industries and occupations in an area close to existing town centres and regional transport networks, including the Princes Highway and the Merimbula Airport.

2.1 Environment Protection Zones

This Direction applies when a relevant planning authority prepares a Planning Proposal. The objective is to protect and conserve environmentally sensitive areas.

This planning proposal is inconsistent with this direction to the extent that Lot 120 DP 847899 and Lot 2 DP 549112 opposite Merimbula Airport on Arthur Kaine Drive, Merimbula are environmentally sensitive areas. The NSW Office of Environment and Heritage have advised Council that these lots contain the listed Endangered Ecological Community Bangalay Sand Forest and Threatened Species have been recorded on the land.

The inconsistency of this Planning Proposal with the terms of this Direction is of minor significance as only a small part of Lot 2 DP 549112 is proposed to be developed by the under the Merimbula Airport Master Plan 2033. The remainder of the lot is proposed to be protected through the application of the E2 Environmental Conservation Zone. The area of Lot 2 proposed for SP1 Special Activities 'Carparking' is already cleared, is currently used as an informal over-flow carparking area and is located adjacent to the existing road reserve as illustrated by the aerial photograph in Figure 16.

The proposal to zone Lot 120 DP 847899 as SP1 Special Activities 'Community Facilities and Carparking' is also justified as a minor inconsistency with the objectives of this direction on the basis that the vegetation has been modified (and will continue to be modified) due to airport obstacle maintenance activities. The adjacent Lot 1 DP 1004805 is proposed to be wholly zoned E2 Environmental Conservation.

By locating the SP1 zone is on the modified and cleared sections of Lot 120 DP 847899 and Lot 2 DP 549112 the important existing environmental characteristics of the land will be conserved while making allowance for future public requirements on the less environmentally sensitive land.



Figure 16: Aerial photograph of Merimbula Airport terminal and cleared land proposed for future car parking facilities associated with the Airport on Lot 2 DP 549112.

2.2 Coastal Protection

This Direction applies when a relevant planning authority prepares a Planning Proposal that applies to land in the coastal zone. The objective is to implement the principles in the NSW Coastal Policy.

This Planning Proposal seeks to amend the minimum lot size controls for the following properties located within the Coastal Zone: the Merimbula and Eden CBDs as well as the various Arthur Kaine Drive properties and SP 73171, Lots 25-28 DP 208862 and Lots 31-34 DP 208862 Carolynne Street, Merimbula.

This Planning Proposal is consistent with this Direction as it does not contradict or hinder the application of the coastal planning provisions contained in the NSW Coastal Policy, the Coastal Design Guidelines 2003 or the NSW Coastline Development Manual 1993.

With the objective of implementing the principles of the NSW Coastal Policy, this Planning Proposal will ensure the application of BVLEP 2013 to the subject land, which includes the Standard Instrument Clauses 5.5 and 5.7 relating to development within the Coastal Zone and below mean high water mark, as well as local Clause 6.4 Coastal Risk Planning.

2.3 Heritage Conservation

This Direction applies when a relevant planning authority prepares a Planning Proposal. The objective is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

This Planning Proposal is inconsistent with this direction as the Bega, Merimbula and Eden CBDs contain a number of items of local environmental heritage significance listed on Schedule 5 of BVLEP 2013. Additionally, the Bega CBD also contains a number of Heritage Conservation Areas listed on Schedule 5 of BVLEP 2013.

Further to this, the Planning Proposal is also seeking to zone Lot 120 DP 847899, Lot 2 DP 549112 and Lot 1 DP 1004805 Arthur Kaine Drive, Merimbula (opposite the Merimbula Airport) as SP1 Special Activities Zone so as to secure the long-term expansion of the Airport and to provide for future community facilities. These properties are located within an area which is known to contain significant Aboriginal cultural heritage values, including Aboriginal burial sites. It is therefore possible that the properties may contain items, areas, objects and/or places of Aboriginal cultural heritage.

Clause 5.10 of BVLEP 2013 and Clause 5.2 of the Draft Comprehensive Development Control Plan (CDCP) 2013 contain a number of provisions that aim to conserve environmental heritage throughout the Bega Valley Shire. In particular, the provisions allow for the sensitive adaptation of existing structures and infill development where appropriate. The application of the LEP and DCP provisions will enable the consideration of environmental heritage values in the light of a development proposal and ensure that developments are designed and sited appropriately.

The impacts of the proposed increases in the height of buildings and zone changes within the Bega, Merimbula and Eden CBDs as well as the application of the proposed SP1 Special Activities Zone to properties opposite the Merimbula Airport, in relation to the conservation of environmental heritage and indigenous heritage significance are of minor significance. Any issues that have the potential to impact on known items, areas, objects and places of environmental heritage significance can be adequately addressed during the development assessment process.

3.1 Residential Zones

This Direction applies when a relevant planning authority prepares a Planning Proposal that will affect land within an existing or proposed residential zone or any other zone in which significant residential development is permitted or proposed to be permitted.

The objectives of this Direction are to encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services and minimise the impact of residential development on the environment and resource lands.

This Planning Proposal is seeking to apply a 10 metre maximum building height to SP 73171, Lots 25-28 DP 208862 and Lots 31-34 DP 208862 Carolynne Street, Merimbula, which are zoned R3 Medium Density Residential Zone under BVLEP 2013.

The proposed increase in maximum building height is consistent with this Direction as it will support a range of housing choices, enable medium density residential type developments to integrate with the surrounding existing urban environments and not reduce the permissible density of land.

Further to this, the proposed amendments will not affect existing or proposed residential zones in which significant residential development is permitted or proposed to be permitted.

3.4 Integrating Land Use and Transport

Applies when a relevant planning authority prepares a Planning Proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

The objective of this Direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts to improve access to housing, increasing the choice of available transport, reduce travel demand, support public transport services, and provide for the efficient movement of freight.

This Planning Proposal is consistent with this Direction as adequate infrastructure is available to service any additional development that results from this Planning Proposal in the Bega, Merimbula and Eden CBD areas as well as the Arthur Kaine Drive and Merimbula Airport precinct.

The proposed zoning and height control amendments will encourage a comparable mix of development and/or re-development opportunities to co-locate and achieve the planning objectives of improved access to housing, jobs and services by walking, cycling and public transport, reduction in the dependence on cars and travel demand and efficient and viable operation of public transport services.

3.5 Development near Licensed Aerodromes

This direction applies when a relevant planning authority prepares a Planning Proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.

The objectives of this Direction are to ensure the effective and safe operation of aerodromes, ensure that their operation is not compromised by development and ensure development for residential purposes is not adversely affected by aircraft noise.

The Merimbula Town Centre and residential area of Merimbula as well as the Arthur Kaine Drive subject properties are located within close proximity to the Merimbula Airport.

The highest part of any of the subject lots in Merimbula is 20m and all of the affected land is located within either the Inner Horizontal Surface RL or Transitional Surface RL of 46m. As such development between 10 and 16 metres, as proposed in this Planning Proposal, will not penetrate the Obstacle Limitation Surface for the Airport. This Planning Proposal is consistent with this direction because the subject land is not in an area where the Australian Noise Exposure Forecast exceeds 20 and the Planning Proposal will not result in development that will provide a new hazard to aircraft.

Some of the subject land at Arthur Kaine Drive opposite the Sapphire Coast Golf Club ranges from approximately 24 metres to 34 metres AHD and is within the 40 metre RL Horizontal Section. Other land in this area ranges from 32 metres to 40 metres AHD and is within the 40 metre or 46 metre Transitional Surface RL. In addition, the subject land on Arthur Kaine Drive opposite Merimbula Airport is at approximately 6 metres AHD and is within the 10 metre to 30 metre RL Transitional Surface RL.

Therefore, development to the proposed maximum height of 10 metres in these areas could potentially penetrate the Obstacle Limitation Area. This Planning Proposal is inconsistent with the Direction in terms of its application to the properties along Arthur Kaine Drive. This inconsistency is minor as the potential hazard to aircraft can be dealt with through the application of Clause 6.8 of BVLEP 2013, which provides a number of provisions that aim to protect the airspace operations of Merimbula Airport as well as the community from undue risk, including consultation with the relevant Commonwealth body. In this regard, consultation with the relevant Commonwealth body will form part of the Planning Proposal process. Council are prepared to co-operate with the relevant Commonwealth body to apply any height restriction on development that they require should they not be prepared to leave the matter to the development assessment process.

4.4 Planning for Bushfire Protection

This Direction applies when a relevant planning authority prepares a Planning Proposal that will affect, or is in proximity to land mapped as bushfire prone land. The objectives of this Direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and encourage sound management of bush fire prone areas.

The properties that are the subject of this Planning Proposal are identified as containing bushfire vegetation within category 1 and/or 2 therefore consultation with the NSW Rural Fire Service under Section 56 of the *Environmental Planning and Assessment Act 1979* will form part of the Planning Proposal process.

This Planning Proposal is consistent with the objectives of this Direction as it does not encourage the establishment of incompatible land uses and appropriate development of the land can occur through the application of the provisions contained within Planning for Bushfire Protection 2006.

5.1 Implementation of Regional Strategies

Planning Proposals must be consistent with a regional strategy released by the Minister for Planning.

As detailed at Section Q3, this Planning Proposal is consistent with the vision, land use strategy, policies, outcomes and actions defined by the South Coast Regional Strategy.

6.3 Site Specific Provisions

This Direction applies when a relevant planning authority prepares a Planning Proposal that will allow a particular development to be carried out. The objective is to discourage unnecessarily restrictive site specific planning controls.

This Planning Proposal does not seek to include additional uses beyond what is permitted within the land use table for the applicable zone. Therefore, it is consistent with this Direction.

Section C – Environmental, Social and Economic Impact

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

This Planning Proposal is highly unlikely to affect any critical habitat or threatened species, populations or ecological communities, or their habitats as all of the affected properties are highly developed CBD urban areas or have been developed for many years, with little to no habitat remaining on these lots.

Lot 120 DP 847899, Lot 2 DP 549112 and Lot 1 DP 1004805 Arthur Kaine Drive, Merimbula

These properties on the eastern side of Arthur Kaine Drive, opposite Merimbula Airport contain a listed Endangered Ecological Community (EEC), Bangalay Sand Forest. The area between Arthur Kaine Drive and the beach has records for a number of threatened species including Yellow-bellied Glider, Grey-headed Flying Fox, Brush-tailed Phascogale, Powerful, Masked and Sooty Owls, Glossy Black Cockatoos, Gang Gangs, Pink Robin and Swift Parrots and the following threatened bats: Eastern False Pipistrelle, Eastern Bent-winged Bat (greater Bent-winged Bat), Greater broad-nosed Bat, Eastern Free-tailed Bat (Eastern Little Mastiff Bat) and Large Footed Myotis (Large Footed Mouse-eared Bat).

Lot 2 DP 549112 and Lot 1 DP 1004805 in particular have the most intact, higher value areas of EEC, particularly east of the existing powerline easement. Any development in the area east of the powerlines would have significant impact on this community.

Lot 120 DP 847899 and the areas of the other lots west of the powerlines have been subject to a greater level of historic disturbance due mainly to vegetation management activities associated with maintaining the Airport's obstacle limitation surface area.

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

It is unlikely that the proposed amendments to BVLEP 2013 contained in this planning proposal will result in development creating any environmental effects that cannot be readily controlled. Environmental impacts from development, which may proceed as a result of this planning proposal such as overshadowing and other amenity issues such as bulk and scale will be controlled by the application of objectives and requirements of BVLEP 2013 and Council's Development Control Plan.

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

The proposed zoning and height control amendments will have positive social and economic effects. In particular:

Raising the maximum height controls within the Bega, Merimbula and Eden CBDs will:

- Provide opportunities for above ground residential development that is within close proximity to existing services and facilities;
- Enable flexible designs for development that is contextually appropriate;
- Protect the aesthetic qualities of the existing commercial centres whilst promoting their sub-regional strategic hierarchy; and
- Encourage beneficial re-development opportunities.

The proposed amendments to the B2 Local Centre Zone, B4 Mixed Use Zone, B5 Business Development and SP3 Tourist Zone will:

- Provide greater employment opportunities in existing commercial centres to meet sub-regional employment projections;
- Integrate suitable business, office, residential, retail and other development in accessible locations to maximise public transport patronage and encourage walking and cycling;
- Encourage a diverse and compatible range of activities to co-locate, which will contribute to the revitalisation of the commercial areas; and
- Promote and support the sub-regional strategic hierarchy.

Section D – State and Commonwealth Interests

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

Given the scale of the proposed zoning and height control amendments, the types of development that are likely to result, and the location within existing urban areas, it is considered that the existing public infrastructure has adequate capacity to meet the additional demands generated by future development.

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

Consultation with State and Commonwealth public authorities has not yet been undertaken. The level of consultation will be determined by the NSW Department of Planning and Infrastructure when it makes its Gateway Determination.

Government agencies identified for consultation with regard to this Planning Proposal are:

- NSW Department of Planning and Infrastructure
- NSW Office of Environment and Heritage
- NSW Roads and Maritime Services
- NSW Rural Fire Service

Part 4 – Mapping

Mapping details for the proposed amendments to the BVLEP 2013 are attached as follows:

LAP_001

Amend map sheet LAP_001 by deleting DM Deferred Matter for Lots 1-6 DP 993, Lots 1-3 DP 571741, Lots 346-347 DP 635577, Lot 1 DP 417220, Lot A DP 370462, Lots 2 & 3 DP 948040, Lot 1 and part of Lot 2 DP 747017, Lot 912 DP 855433, Lot 327, 329 and 331 DP 750227, Lot 350 DP 1144511, Lot 120 DP 847899, Lot 2 DP 549112, Lots 1-2 DP 1167612, Lot 23 DP 602200, Lots A-B DP 412563, Lot 32 DP 393913, Lot 91 DP 709087, Lot 6 DP 64421, Lot 5 Sec 2 DP 758379, Lot 33 DP 505878, Lot 1 DP 1158312, Lot 3 Sec 2 DP 758379, Lots 21-22 DP 602200, Lot 60 DP 732500, Lot 1 DP 743994, Lots 1-2 DP 741178, Lot 211 DP 800057, Lot 12 DP 702211, Lots 13- 14 702741, Lot 1 DP 546266, Lot 6 DP 1087954, Lot 122 DP 1027835, Part Lot 121 DP 1027835, Lot 21 DP 545540, Lot 1 DP 730700, Lot 1 DP 711547, Lot 20 DP 794186, Lot 10 DP 516613, Lot 10 Sec 20 DP 758379, Lot 28 DP 208862, Lot 11 DP 1166395, Part Lot 12 DP 1166395, Lot 21 DP 788099.

HOB

Amend the HOB map series to introduce M 13 metres and O 16 metres.

HOB_011B

Amend map sheet HOB_011B, applying to the Bega CBD, from K 10 metres to M 13 metres, from N 14 metres to M 13 metres or from N 14 metres to O 16 metres.

HOB_020B

Amend map sheet HOB_020B, applying to the Merimbula CBD, from N 14 metres to O 16 metres, from N 14 metres to M 13 metres, from K 10 metres to M 13 metres, from K 10 metres to N 14 metres, from H 7.5 metres to K 10 metres or from H 7.5 metres to M 13 metres.

Amend HOB_020B by applying K 10 metres to SP 73171, Lots 25-28 DP 208862 and Lots 31-34 DP 208862.

HOB_021A

Amend map sheet HOB_021A, applying to the Eden CBD, from K 10 metres to M 13 metres or from N 14 metres to O 16 metres.

LZN

Amend the LZN map series to introduce B5 Business Development.

LZN_011B

Amend map sheet LZN_011B, applying to Lots 1-6 DP 993, Lot 5 and 6 DP 993, Lots 1-3 DP 571741, Lots 346 and 347 DP 635577, Lot 1 DP 417220, Lot A DP 370462, and Lot 1 and Part Lot 2 DP 747017 and Lots 2 & 3 DP 948040 by applying B4 Mixed Use Zone.

LZN_020A

Amend map sheet LZN_020A, applying to Lots 398 & 339 DP 40361, 325, 326, 327, 329, 331, 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 & 350 DP 1144511, Lot 120 DP 847899, part of Lot 2 DP 549112 and Lot 1 DP 1004805 by applying B5 Business Development Zone.

Amend map sheet LZN_020A applying to part of Lot 2 DP 549112 by applying part E2 Environmental Conservation and part SP1 Special Activities Zone 'Carparking'.

LZN_020B

Amend map sheet LZN_020B, applying to Part Lot 912 DP 855433, Lots 1 & 2 DP 521571, Lot 1 DP 1051587 by applying B4 Mixed Use Zone.

Amend map sheet LZN_020B, applying to Lot 120 DP 847899 by applying SP1 Special Activities Zone 'Community Facilities and Carparking'.

Amend map sheet LZN_020B, applying to part of Lot 2 DP 549112 and Lot 1 DP 1004805 by applying E2 Environmental Conservation Zone.

Amend map sheet LZN_020B, applying to Lot 28 DP 208862 by applying R3 Medium Density Residential Zone.

LZN_021A

Amend map sheet LZN_021A, applying to Lot 21 DP 788099, Lot 10 DP 516613 and Lot 10 Sec 20 DP 758379 by applying B4 Mixed Use Zone.

Amend map sheet LZN_021A, applying to Lot 11 DP 1166395 and Part Lot 12 DP by applying B2 Local Centre Zone.

FSR_011B

Amend map sheet FSR_011B by removing D 0.5:1 from Lots 1-6 DP 993 Lot 5 and 6 DP 993, Lots 1-3 DP 571741, Lots 346 and 347 DP 635577, Lot 1 DP 417220, Lot A DP 370462, and Lot 1 and Part Lot 2 DP 747017 and Lots 2 & 3 DP 948040.

FSR_021A

Amend map sheet FSR_021A by removing D 0.5:1 from Lot 10 DP 516613 and Lot 10 Sec 20 DP 758379, Lot 11 DP 1166395 and Part Lot 12 DP 1166395.

Amend map sheet FSR_021A by removing F 0.6:1 from Lot 21 DP 788099.

LSZ_011B

Amend map sheet LSZ_011B by removing K 550 square metres from Lots 1-6 DP 993 Sattler Street, Bega; Lot 5 and 6 DP 993, Lots 1-3 DP 571741, Lots 346 and 347 DP 635577, Lot 1 DP 417220, Lot A DP 370462, and Lot 1 and Part Lot 2 DP 747017 and Lots 2 & 3 DP 948040.

LSZ_021A

Amend map sheet LSZ_021A by removing K 550 square metres from Lot 10 DP 516613, Lot 11 DP 1166395 Flinders Street and Part Lot 12 DP 1166395.

Amend map sheet LSZ_021A by removing K 1000 square metres from Lot 21 DP 788099.

Part 5 – Community Consultation

The Gateway Determination will confirm community consultation requirements. If this Planning Proposal is to be supported, it is likely that the Proposal will be exhibited as a 'low' impact proposal for a period of not less than 14 days in accordance with Section 5.5.2 of A Guide to Preparing LEPs. A 'low' impact proposal is defined as 'a planning proposal that, in the opinion of the person making the Gateway determination is:

- Consistent with the pattern of surrounding land use zones and/or land uses;
- Consistent with the strategic planning framework;
- Presents no issues with regard to infrastructure servicing;
- Not a principle LEP; and
- Does not re-classify public land'.

Public exhibition of the planning proposal will include notification on the Bega Valley Shire Council website, notification in the newspapers that circulate widely in the area (Bega District News, Eden Magnet and Merimbula News Weekly) and in writing to landowners who made a submission to draft BVLEP 2010 as well as all affected owners on Arthur Kaine Drive Merimbula.

Information relating to the Planning Proposal will also be on display at the following Bega Valley Shire Council customer service centres:

Place	Address
Bega	Zingle Place, Bega NSW 2551
Merimbula	Market St, Merimbula NSW 2548
Eden	Cnr Imlay and Mitchell St, Eden NSW 2550
Bermagui	Bunga St, Bermagui NSW 2546

Part 6 – Timeline

The Project Timeline will assist with tracking the progress of the Planning Proposal through the various stages of consultation and approval. It is estimated that this amendment to *Bega Valley Local Environmental Plan 2013* will be completed by August 2014.

Council requests delegation to carry out certain plan-making functions in relation to this proposal. Delegation would be exercised by Council's General Manager or Director of Planning and Environmental Services.

Table A: Approximate Project Timeline

Key Stages of Consultation and Approval	Estimated Timeframe
STAGE 1 – Submit Planning Proposal to the Department	January 2013
STAGE 2 – Receive Gateway Determination	March 2014
STAGE 3 – Preparation of documentation for Public Exhibition	April 2014
STAGE 4 – Public Exhibition of the Planning Proposal	May 2014
STAGE 5 – Review/consideration of submissions received	July 2014
STAGE 6 – Council Report	July 2014
STAGE 7 – Meetings	August 2014
STAGE 8 – Forward Planning Proposal to Department of Planning and Infrastructure with request amendment is made	August 2014
STAGE 9 – Date Council will make the Plan (if delegated), including any required consultation with the Parliamentary Counsel	September 2014
STAGE 10 – Anticipated date Council will forward Plan to the Department for notification	October 2014