

BEGA VALLEY SHIRE COUNCIL

Bega Valley Local Environmental Plan 2013

Planning Proposal: Eden Business Zones

February 2015

Bega Valley Shire Council

Zingel Place

PO Box 492

Bega NSW 2550

Phone (02) 6499 2222

Fax (02) 6499 2200

Email council@begavalley.nsw.gov.au



www.begavalley.nsw.gov.au

Contents

Part 1 – Objectives or Intended Outcomes	2
Part 2 – Explanation of the Provisions	2
Part 3 – Justification	3
Section A – Need for the Planning Proposal.....	8
Section B – Relationship to Strategic Planning Framework	9
Section C – Environmental, Social and Economic Impact.....	14
Section D – State and Commonwealth Interests.....	15
Part 4 – Mapping	16
Part 5 – Community Consultation	17
Part 6 – Timeline	18
Attachments	19
Attachment 1: Council Report Planning and Environment Committee No. 4 - 12 June 2012.....	19
Attachment 2: Council Report Planning and Environment Committee No. 8.1 – 22 October 2014	24
Attachment 3: List of State Environmental Planning Policies	32
Attachment 4: List of applicable Section 117 Ministerial Directions.....	33

Part 1 – Objectives or Intended Outcomes

The objective of this Planning Proposal is to apply the B4 Mixed Use and B5 Business Development zones around the Eden Town Centre to reflect the current mix of uses and provide for compatible future uses. These amendments will contribute to the revitalisation of the Eden Town Centre by focusing commercial and retail development in the centre of the town centre and encouraging ancillary uses on the edges.

Part 2 – Explanation of the Provisions

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

1. Lot 10 DP 516613 and Lot 11 DP 1166395, Part Lot 12 DP 1166395 and Lot 10 Sec 20 DP 758379 Flinders and 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 sqm.
2. Lots 11 – 15 DP1141003 Calle Calle St, Eden
 - Amend map sheet LZN_021A by removing R3 Medium Density Residential and applying B4 Mixed Use Zone
 - Amend map sheet FSR_021A by removing F 0.6:1
 - Amend map sheet LSZ_021A by removing U 1000 sqm.
3. SP 52149, Lots 24 – 26 DP 162679, Lots A – C DP 163156, Lot D & E DP 164277, Lot 1 DP 197641, Lot 11 DP 250841, Lots A & B DP 383053, Lots 21 – 23 DP 385394, Lot 5 DP 244127, Lots 24 & 25 DP 394723, Lot A DP 403924, Lot 181 – 183 DP 571563, Lot 3 Sec 26 DP 758379, Lots 5-10 Sec 22 DP 758379, Lot 14 Sec 21 DP 758379, Lot 21 DP 998249, Lot 1 DP 999267, Lots 1 & 2 DP 1012271 and Part Lot 12 DP 1166395 Mitchell, Calle Calle, Bass and Chandos Streets, Eden
 - Amend map sheet LZN_021A by removing B2 Local Centre and applying B4 Mixed Use Zone
4. Lots 1 – 3 DP734008, Lots 5-6 DP 734007, Lot 34 DP 999626 and Lot 1 DP 735818 Imlay St, Eden
 - Amend map sheet LZN_021A by removing B2 Local Centre and applying B5 Business Development Zone

Part 3 – Justification

Description

The subject properties are located on the north, north western and eastern fringes of the Eden Town Centre (see Figure 1). The subject land at the northern fringe of the Eden Town Centre on Imlay Street is currently developed for vehicle sales and vehicle repairs.

Developments within the subject land on the north western fringe (around the intersection of Flinders and Mitchell Streets) 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.

Developments within the subject land on the eastern fringe of the Eden Town Centre (around the intersections of Calle Calle Street with Mitchell, Bass and Chandos Streets) generally comprise detached dwellings, vacant land, parts of Eden Marine High School and the old St Joseph's Primary School site.



 Subject Land

Figure 1: Subject Land - Aerial photograph

Current zoning

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

The remainder of the subject properties are currently zoned either B2 Local centre or R3 Medium Density Residential under BVLEP 2013 (see Figure 2).

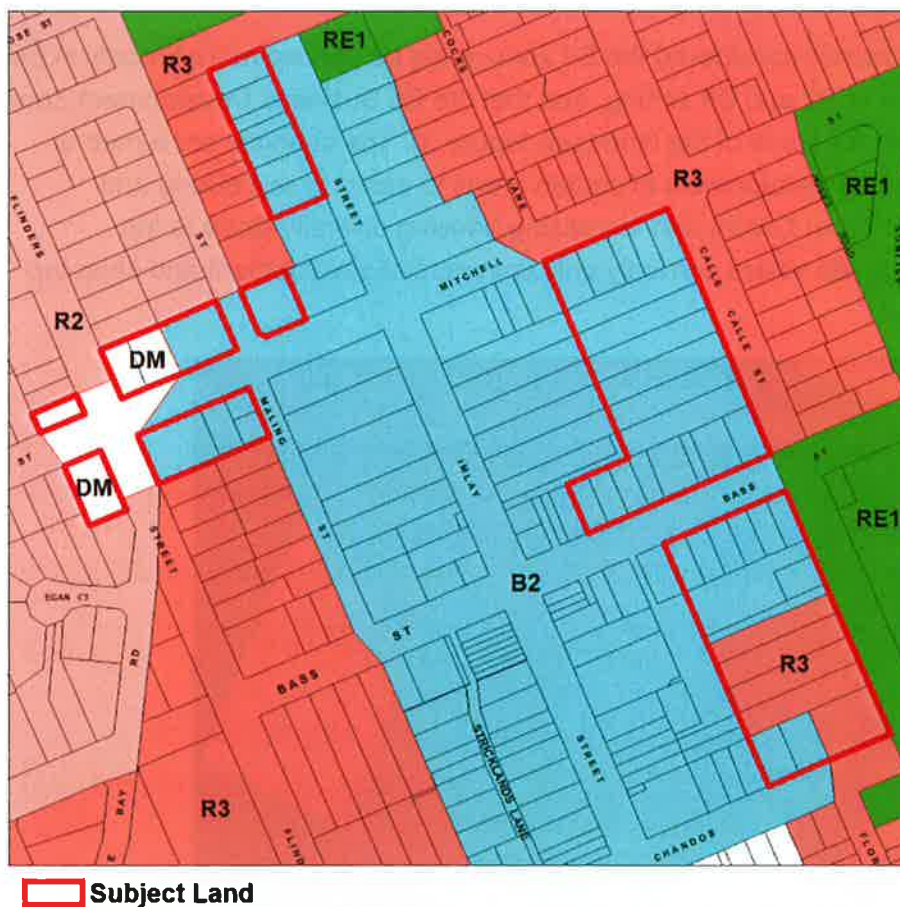


Figure 2: Subject Land – Current zoning

Zoning review

In response to a submission received on behalf of the landowners of the deferred lots during the exhibition of the Draft BVLEP 2010, Council resolved to review the proposed zoning 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.

The revised zones were exhibited in a planning proposal (Business Zones) to which Council received a number of submissions requesting amendments to the current B2 zone

in Eden to provide the flexibility to permit complimentary development, encourage multi-unit development within walking distance to the town centre or to reinstate the permissibility of residential development that was available under BVLEP 2002. On the basis of these submissions, Council reviewed the application of business zones in Eden.

Under BVLEP 2013, the B4 zone has been generally applied throughout the Shire where it is appropriate to encourage a wide range of land uses including commercial, residential, tourist and visitor and community uses. The zone has been applied selectively to land adjacent to commercially zoned areas in town centres to encourage uses that complement the core commercial functions and facilitate a range of housing options close to CBDs.

Proposed zoning

On consideration, Council considered the B4 zone could be applied more broadly in Eden to provide a balance of B2 and B4 zoning, and that the B5 Business Development Zone was also appropriate for some of the land (see Figure 3). The changes are aimed at encouraging residential development in certain areas to assist in revitalising and sustaining the Eden Town Centre and increasing housing diversity close to the commercial core in areas where currently only commercial development and shop top housing is permitted.

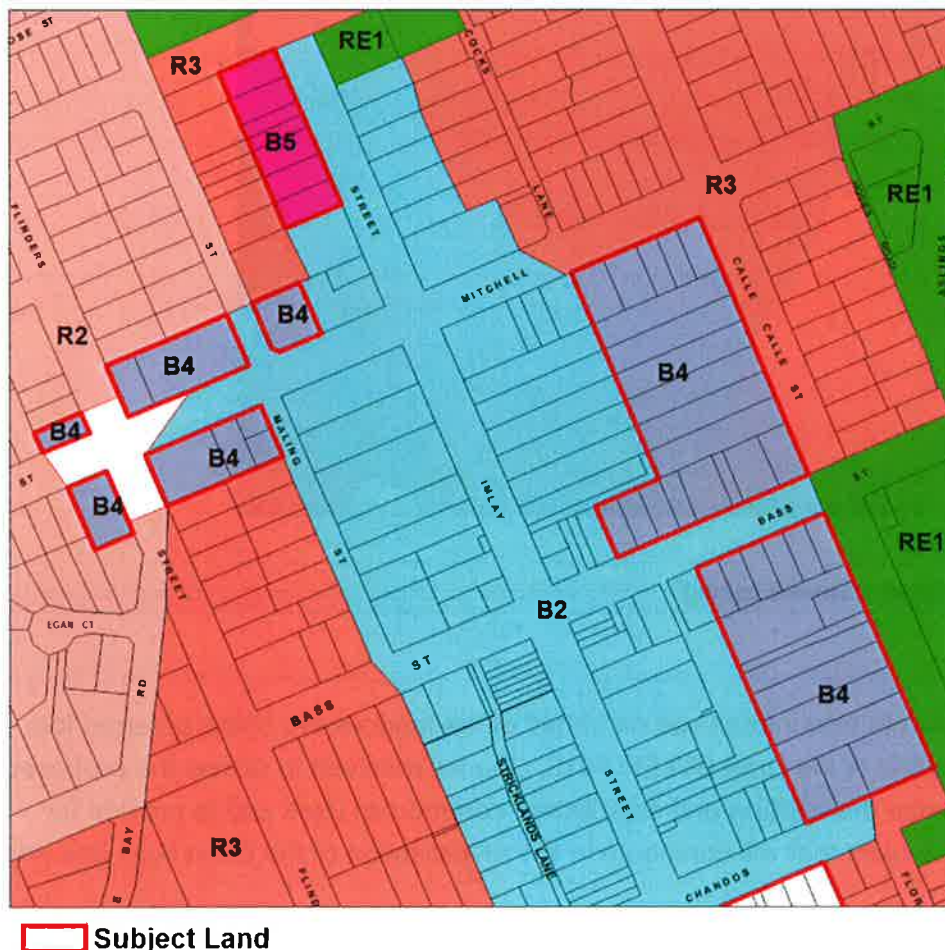


Figure 3: Subject Land – Proposed zoning

Several allotments at the northern end of the Eden Town Centre are proposed to be zoned B5. These allotments are in the one ownership and are currently developed for vehicle sales and vehicle repairs which are not permitted uses within the current B2 zone. The application of the B5 zone to this land is in accordance with the objectives of the zone and will complement the existing uses.

The land identified for zoning to B4 in this planning proposal previously either permitted residential development under BVLEP 2002 or contains existing commercial uses that are not permitted under the current B2 zone. The old St Joseph's Primary School site which comprises five lots on the corner of Calle Calle and Chandos Streets is currently zoned R3 Medium Density Residential has also been included in the revised proposed B4 zone to provide more flexible future development options.

The remainder of the area currently zoned B2 under BVLEP 2013 outside this planning proposal will remain as B2 to ensure commercial development on the ground floor with options for residential development above.

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 (see Figures 4 and 5).



Figure 4: Subject Land – Proposed minimum lot size

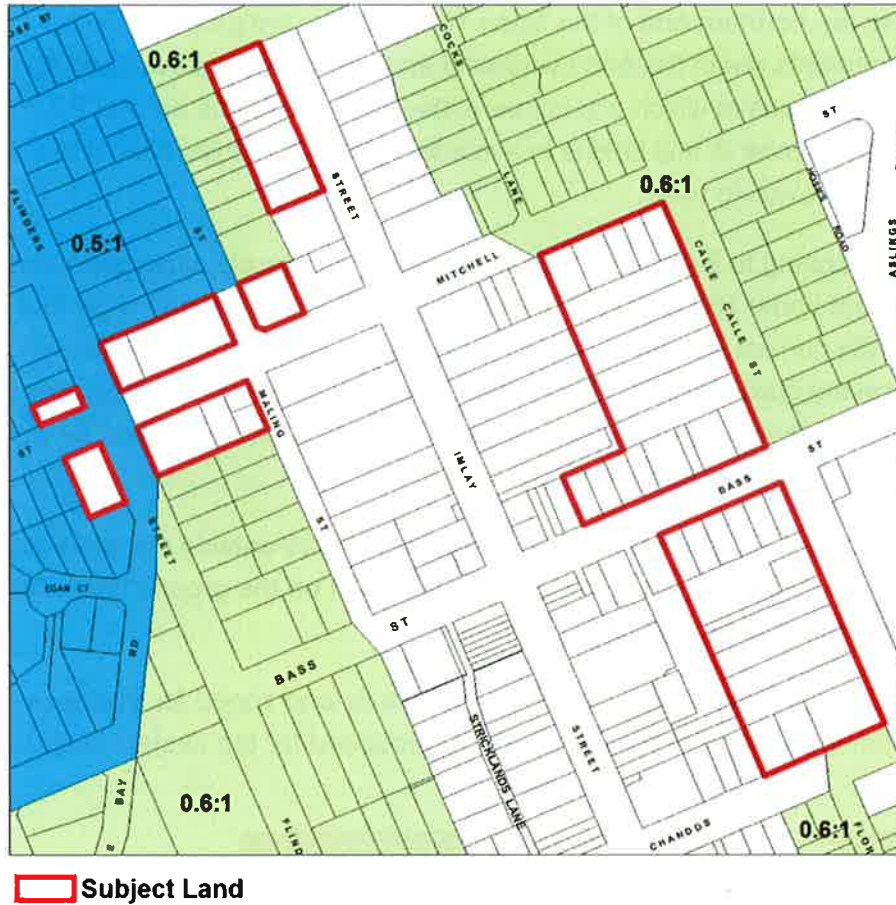


Figure 5: Subject Land – Proposed floor space ratio

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.

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 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 zoning within the Eden Town Centre.

The remainder of the subject land in this planning proposal was identified for rezoning following a review of the business zones within and surrounding the Eden Town Centre by Council and were resolved to be zoned on the meeting of 22nd October 2014.

The full Council Report and adopted minutes from the relevant meeting of 22nd October 2014 are in Attachment 2.

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 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 Eden Town Centre; 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.

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 Eden as a vibrant district centre;
- 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 Valley Development Control Plan 2013

This planning proposal is consistent with the objectives of the Bega Valley Development Control Plan 2013 (DCP). The DCP aims to increase living opportunities within and close to the Eden Town Centre and ensure that Eden evolves as a dynamic, mixed-use centre, which respects its environmental and heritage contexts and capitalises upon its coastal setting.

The DCP envisages the Eden "downtown" shopping precinct as a lively place to be, enhanced by shop top housing and direct resident interaction, grading away to medium density residential precincts, which thrive upon proximity to the commercial core.

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 3.

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 none of the subject land is contaminated.

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 Eden Town Centre is 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 small, given that the Eden Town Centre is 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 4 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 centre of Eden;
- 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 Eden which is identified as a strategic centre.

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 zoning of various properties in the Eden Town Centre located within the Coastal Zone. 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 consistent with this direction. The Eden Town Centre contains a number of items of local environmental heritage significance listed on Schedule 5 of

BVLEP 2013. In particular the subject land includes two properties that are listed on Schedule 5:

- | | |
|--|------------------------|
| • “Cottage” | Lot 21 DP 385394 |
| • “Eden Public School – School Building” | Lot 5 Sec 22 DP 758379 |
| • ‘Hopetoun House’ | Lot A DP 163156 |

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 this planning proposal will not result in any additional impacts in relation to the conservation of environmental heritage and indigenous heritage 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 the B4 Mixed Use Zone to Lots 11 – 15 DP1141003 Calle Calle St, Eden which are currently zoned R3 Medium Density Residential Zone under BVLEP 2013.

The proposed zoning amendment 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 amendment will not restrict the variety and choice of housing types that are available under the existing zone.

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 Eden Town Centre area.

The proposed zoning 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 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.

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 within highly developed urban areas or have been developed for many years, with little to no habitat remaining on these lots.

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 the 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:

The proposed amendments to the business zones within the Eden Town Centre 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 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

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 Lot 10 DP 516613 and Lot 11 DP 1166395, Part Lot 12 DP 1166395 and Lot 10 Sec 20 DP 758379.

LZN_021A

Amend map sheet LZN_011B, applying to Lot 10 DP 516613 and Lot 11 DP 1166395, Lot 12 DP 1166395, Lot 10 Sec 20 DP 758379 SP 52149, Lots 24 – 26 DP 162679, Lots A – C DP 163156, Lot D & E DP 164277, Lot 5 DP 244127, Lot 1 DP 197641, Lot 11 DP 250841, Lots A & B DP 383053, Lots 21 – 23 DP 385394, Lots 24 & 25 DP 394723, Lot A DP 403924, Lot 181 – 183 DP 571563, Lot 3 Sec 26 DP 758379, Lots 5-10 Sec 22 DP 758379, Lot 14 Sec 21 DP 758379, Lot 21 DP 998249, Lot 1 DP 999267, Lots 1 & 2 DP 1012271 and Lots 11 – 15 DP1141003 by applying B4 Mixed Use.

Amend map sheet LZN_011B, applying to Lots 1 – 3 DP734008, Lots 5-6 DP 734007, Lot 34 DP 999626 and Lot 1 DP 735818 by applying B5 Business Development.

FSR_021A

Amend map sheet LZN_011B, applying to Lots Lot 10 DP 516613 and Lot 11 DP 1166395, Part Lot 12 DP 1166395, Lot 10 Sec 20 DP 758379 and Lots 11 – 15 DP1141003 by removing D 0.5:1.

LSZ_021A

Amend map sheet LZN_011B, applying to Lots Lot 10 DP 516613 and Lot 11 DP 1166395, Part Lot 12 DP 1166395, Lot 10 Sec 20 DP 758379 and Lots 11 – 15 DP1141003 by removing K 550 square metres.

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 January 2016

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	February 2015
STAGE 2 – Receive Gateway Determination	April 2015
STAGE 3 – Preparation of documentation for Public Exhibition	May 2015
STAGE 4 – Public Exhibition of the Planning Proposal	June 2015
STAGE 5 – Review/consideration of submissions received	August 2015
STAGE 6 – Council Report	August 2015
STAGE 7 – Meetings	September 2015
STAGE 8 – Forward Planning Proposal to Department of Planning and Infrastructure with request amendment is made	December 2015
STAGE 9 – Date Council will make the Plan (if delegated), including any required consultation with the Parliamentary Counsel	January 2016
STAGE 10 – Anticipated date Council will forward Plan to the Department for notification	February 2016

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 workshopping 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.

Council Minutes: Planning and Environment Committee No. 4 - 12 June 2012

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. 8.1 – 22 October 2014

8.1. Update in Planning Proposal: Zoning and Height Limits for Bega, Merimbula and Eden CBDs and zoning of land at Arthur Kaine Drive, Merimbula

The purpose of the report is to detail the outcomes of the public exhibition and agency consultation of the Planning Proposal for zoning and height limits for Bega, Merimbula and Eden Central Business Districts (CBDs) and zoning of land at Arthur Kaine Drive, Merimbula.

Group Manager Planning and Environment

BACKGROUND

Council at its meeting held on 12 June 2012 gave consideration to a report on the Draft Comprehensive Local Environmental Plan 2010. The resolution of that Council meeting included the following:

"2. That in regard to the draft Comprehensive Local Environmental Plan Council adopts the recommendations for the submissions outlined in:

- 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."

The lands included in Appendix 2 are deferred matters under Bega Valley Local Environmental Plan 2013 (BVLEP 2013) with the provisions of Bega Valley Local Environmental Plan 2002 (BVLEP 2002) applying in the interim.

The Planning Proposal subject to this report addresses those matters in Appendix 2 relating to the application of business zones and heights as well as land at Arthur Kaine Drive, Merimbula.

Council at its meeting held on 24 July 2012 gave consideration to a report on the review of Comprehensive Local Environmental Plan height controls for Merimbula, Bega and Eden CBDs and the proposed zoning of the Eden Fishermen's Club, Imlay Street Eden. The resolution of that Council meeting included the following:

"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."

Council at its meeting held on 6 November 2013 gave consideration to a report on several proposed amendments to BVLEP 2013. The resolution of that Council meeting included the following:

"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....

3. Lots 398 and 339 DP 40361, 325, 326, 334, 335, part 340, 341, 345, 346, 371, 378, 379, 382, 383 and 386 DP 750227, 385 and 386 DP 811258, 10 DP 1057525, 281 and 282 DP 1135670 and 349 DP 1144511 Arthur Kaine Drive, Merimbula be zoned B5 Business Development....

7 Lot 1 DP 1051587 Main Street, Merimbula be zoned B4 Mixed Use."

OVERVIEW OF PLANNING PROPOSAL

Council staff prepared a Planning Proposal addressing the Council resolutions from 12 June 2012, 24 July 2012 and 6 November 2013 relating to commercial zones and height limits in the Bega, Merimbula and Eden CBDs and zoning of land at Arthur Kaine Drive, Merimbula. The objectives of the Planning Proposal are to:

- Facilitate an increase in the height of buildings within the Bega, Merimbula and Eden Town Centres to encourage commercial re-development opportunities. Affected land: various properties within land zoned B2 Local Centre and B4 Mixed Use in Bega, Eden and Merimbula Town Centres.
- 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 town centres by focusing commercial and retail development in the centre and ancillary uses on the edges. Affected land: various properties on Peden, Sattler and Parker Streets in Bega; Cocora, Imlay, Flora, Chandos, Flinders and Mitchell Streets and Princes Highway in Eden; and Main Street in Merimbula.
- Introduce the B5 Business Development Zone to Bega Valley Local Environmental Plan 2013 and apply it to a specific area to enable development for commercial purposes that are not appropriate in core commercial or mixed use areas. Affected land: various properties on Arthur Kaine Drive, Merimbula in the vicinity of the Pambula Merimbula Golf Club.
- Apply appropriate zones to certain land to reflect the existing environmental values and potential for particular community uses in the future. Affected land: various properties on Arthur Kaine Drive, Merimbula in the vicinity of Merimbula Airport.
- Apply appropriate zone and height controls to a specific residential area in Merimbula. Affected land: various properties on Carolynne and Short Streets and Ocean View Avenue in Merimbula.

Council received a Gateway Determination for the Planning Proposal and delegation to make the plan under Section 59 of the Environmental Planning and Assessment Act 1979 from the Minister of Planning and Infrastructure on 3 February 2014. In accordance with the Gateway Determination, the Planning Proposal was placed on public exhibition for 28 days from 14 March until 11 April 2014 and 11 public submissions were received.

The exhibition of the Planning Proposal included notification on Council's website, in local newspapers and in writing to affected landowners on Arthur Kaine Drive and Carolynne and Short Streets, as well as to those who made a submission to draft BVLEP 2010 regarding height in the CBDs. The Bega and Eden Local Aboriginal Land Councils were also notified.

Government agency submissions were received from the NSW Office of Environment and Heritage, NSW Department of Primary Industries (Fishing and Aquaculture), NSW Rural Fire Service, NSW Roads and Maritime Service, and the Australian Government Civil Aviation Safety Authority.

Copies of all the public and agency submissions will be tabled at the Council meeting. The following sections detail the issues raised in those submissions.

GENERAL GOVERNMENT AGENCY FEEDBACK

NSW Rural Fire Service raised no objections to the Planning Proposal, however they did provide some comments in relation to the proposed B5 Special Business land at Arthur Kaine Drive Merimbula which are discussed later in this report.

NSW Office of Environment and Heritage raised concerns relating to some aspects of the Merimbula proposals which are discussed later in this report.

NSW Department of Primary Industries (Fishing and Aquaculture) noted that because of the Priority Oyster Aquaculture Areas in Merimbula Lake and mussel culture leases in Twofold Bay, Eden development associated with the Planning Proposal should include appropriate stormwater management systems to ensure that raised concentrations of pollutants and suspended solids associated with urban development do not affect the health of shellfish and their suitability for human consumption.

|| Staff comment:

It is considered the requirement for appropriate stormwater management systems can be adequately addressed during the assessment of future development applications through standard development assessment processes and conditions of consent.

The NSW Roads and Maritime Service raised concerns with rezonings proceeding without Council considering the potential impacts on the road network, including cumulative impacts, to determine if development contributions for any infrastructure upgrades are required at the rezoning stage.

▯ Staff comment:

The level of development likely to result from the Planning Proposal is highly likely to be able to be catered for by existing road infrastructure, especially given the proposal affects infill development and not greenfield sites.

When a proposal to develop a particular site is assessed, Council would place conditions of consent appropriate for the development proposed. This may include the requirement to upgrade existing road network infrastructure.

SPECIFIC SITES: GOVERNMENT AGENCY AND PUBLIC SUBMISSIONS

Height Controls: Bega, Eden and Merimbula CBDs

One public submission proposed that sites over 1,800sqm in the Bega, Eden and Merimbula CBDs should have a maximum height limit of 16.5m or 5 floors to make development more viable. This could be accompanied by a strategy to encourage high architectural appeal and flexibility in design which will attract more people to CBDs, increase demand for goods and services and make the CBDs safer.

Two public submissions addressed the proposed height increases in the Eden CBD; one supported the proposed 13m height limit and the other suggested the 16m height limit should also apply to the eastern side of Imlay Street from the Post Office to the Great Southern Hotel.

▯ Staff comment:

The amended height controls detailed in the Planning Proposal were based on a review of existing height controls in the three CBDs undertaken by Council staff, local development professionals and Councillors. The aim of increasing heights is to facilitate likely redevelopment which is appropriate in the overall context of the CBDs, being 2 storey commercial and 3 and 4 storey commercial/residential mixed developments. Council staff conducted an extensive review of each of the three CBDs to determine the appropriate height for buildings in particular locations.

The adopted height limits were set specifically to permit good quality design for the corresponding desirable number of storeys and is accompanied by design guidelines prepared by a consultant architect which is proposed to be incorporated into Council's Development Control Plan.

The Eden Fisherman's Club site has been identified as being capable of more intensive development than other areas of Eden as it is located on the high point of the central ridge running through Imlay Street. Higher development on this site will not affect the views from other sites and may assist in creating a positive landmark and place.

No changes to the CBD heights contained in the exhibited Planning Proposal are recommended. Refer to Attachment 1.

Height Controls: Merimbula Residential

This part of the planning proposal aims to increase the height limit from 7.5m to 10m for the following properties: SP 73171, Lots 25-28 DP 208862 and Lots 31-34 DP 208862 Carolynne Street, Short Street and Ocean View Avenue Merimbula; and amend the zoning of Lot 28 DP 208862 from 2(b) Residential Medium Density zoning under BVLEP 2002 to R3 Medium Density under BVLEP 2013.

No public or agency submissions were made regarding this part of the Planning Proposal.

Figure 1: Proposed Height Controls: Merimbula Residential

Business Zones: Bega – Parker Street

This part of the planning proposal aims to change the zoning of the following properties from 2(a) Residential Low Density under BVLEP 2002 to B4 Mixed Use under BVLEP 2013: 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.

Two public submissions requested that Lot 2 DP 571756, 11 Sattler St Bega be included in the adjacent proposed B4 Mixed Use zone to provide more flexibility for future development.

Another public submission objected to the proposed B4 zone in Sattler Street on the basis that other properties in the street and surrounding area are zoned R2 Low Density Residential even though they have mixed uses, and suggested the whole area bounded by Upper and Parker Streets be zoned B4 for consistency.

Figure 2: Proposed B4 Zones: Bega – Parker St

▯ Staff comment:

Lot 2 DP 571756 is currently the only property on Sattler Street zoned B2 Local Centre and is adjacent to the proposed B4 zone. The request for zoning as B4 is supported.

The area selected for the B4 zone around Parker Street contains a mix of dwelling houses and businesses and it is considered a mixed use zone is appropriate to complement the mix of existing uses and assist in the future development of Bega Town Centre by permitting a wide range of suitable future uses close to the commercial core. The remaining part

of Sattler, Upper and Parker Streets contain predominantly residential uses and is recommended to remain zoned as R2 Low Density Residential.

Business Zones: Bega – Peden Street

This part of the planning proposal aims to change the zoning of Lots 2 and 3 DP 948040 Peden Street, Bega from 2(a) Residential Low Density under BVLEP 2002 to B4 Mixed Use under BVLEP 2013.

No public or agency submissions were made regarding this part of the Planning Proposal.

Figure 3: Proposed B4 Zone: Bega – Peden St

Business Zones: Merimbula – Bowling Club

This part of the planning proposal aims to change the zoning of part of Lot 912 DP 855433 Main Street, Merimbula from a mix of 2(b) Residential Medium Density, 2(c) Residential Tourist and 3(a) General Business under BVLEP 2002 to B4 Mixed Use under BVLEP 2013.

The NSW Office of Environment and Heritage noted the Planning Proposal does not contain details regarding the nature, extent or hazard of potential flood affected land and should be considered by Council in accordance with the NSW Flood Prone Land Policy as set out in the Floodplain Development Manual 2005. In addition they advise that due diligence assessments are required to consider Aboriginal Cultural Heritage matters for any development proposals that may occur as a result of the Planning Proposal.

Figure 4: Proposed B4 Zone: Merimbula Bowling Club

□ Staff comment:

Some parts of Lot 912 DP 855433 Main Street, Merimbula that are proposed to be zoned B4 Mixed Use are located within the ARI 100 year flood line, however the majority of the lot is above the flood line and would not be affected.

With the objective of implementing the principles of the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, BVLEP 2013 Clause 6.3 Flood Planning specifically deals with flood planning issues. This will ensure potential impacts on water quality and ecological values are sufficiently addressed in the assessment of any future development applications.

It is considered the requirement for Aboriginal cultural heritage assessments can be appropriately addressed during the assessment of any future development applications.

Business Zones: Merimbula – Main Street

This part of the planning proposal aims to change the zoning of Lots 1 and 2 DP 521571 and Lot 1 DP 1051587 Main Street, Merimbula from B2 Local Centre to B4 Mixed Use under BVLEP 2013.

No public or agency submissions were made regarding this part of the Planning Proposal.

Figure 5: Proposed B4 zone: Merimbula – Main Street

B5 Business Development Zone, Arthur Kaine Drive, Merimbula

This part of the planning proposal aimed to change the zoning of Lots 327, 329 and 331 DP 750227 and Lot 350 DP 1144511 from either 3(b) Special Business Zone or 1(a) Rural General Zone under the BVLEP 2002 to B5 Business Development under BVLEP 2013; and amend the zoning of the following properties from SP3 Tourist to B5 Business Development under BVLEP 2013: Lots 398 and 339 DP 40361, 325, 326, 334, 335, part 340, 341, 345, 346, 371, 378, 379, 382, 383 and 386 DP 750227, 385 and 386 DP 811258, 10 DP 1057525, 281 and 282 DP 1135670 and 349 DP 1144511 Arthur Kaine Drive, Merimbula.

One public submission requested the inclusion of other uses as permissible within the proposed B5 Business Development zone to provide the flexibility of the B4 Mixed Use zone and to fit better with the existing mix of commercial and residential development. The submission stated additional residential development in the area was appropriate as it will have less impact on adjoining residential developments than future commercial development. The submission also stated that, where not covered by the definition of bulky goods, depots or light industry uses such as business offices and sale of commercial goods in conjunction with on-site business operations, should be permitted in the B5 zone.

Figure 6: Proposed B5 zone – Arthur Kaine Drive, Merimbula

□ Staff comment:

The development and introduction of a new B5 Business Development Zone to BVLEP 2013 was specifically in response to the unique mix of existing uses in this area and residential development was deliberately excluded from the zone to minimise future land use conflict. Consequently, it is recommended residential development remains prohibited in the proposed B5 Land Use Table as such development may adversely impact on the use of the land for commercial purposes.

The B5 zone was designed to allow an appropriate mix of future commercial opportunities in the area. Land is available in nearby industrial zones to accommodate businesses that are unable to fit within the definition of a light industry, bulky goods or depots.

The submission by the NSW Rural Fire Service noted Council should be satisfied that the sites are reasonably capable of achieving anticipated development, given that tourist accommodation requires special fire protection under Planning for Bushfire Guidelines 2006 and Asset Protection Zones (APZs) may not be achievable given the surrounding land is identified as having high conservation value.

▯ Staff comment:

It is considered the sites are reasonably capable of achieving the development permitted by the proposed B5 zone. Although some sites may not be viably developed for tourist accommodation, given the requirements of the Planning for Bushfire Guidelines 2006 and Council's requirements for APZs to be located on the same parcel as the proposed development, it is highly likely that relevant acceptable solutions for the bushfire protection measures including alternative access, services and creation of APZs required by "Planning for Bushfire Protection 2006" can be applied to the site to facilitate suitable future development. As such, this matter can be adequately addressed during the consideration of any future development applications within the subject lands.

Special Activities Zones Arthur Kaine Drive, Merimbula

This part of the planning proposal aimed to change the zoning of Lot 120 DP 847899 Arthur Kaine Drive, Merimbula from 2(c) Residential Tourist under BVLEP 2002 to SP1 Special Activities 'Community Facilities and Carparking' under BVLEP 2013; and Lot 2 DP 549112 Arthur Kaine Drive, Merimbula from 7(f1) Coastal Lands Protection under BVLEP 2002 to a mix of E2 Environmental Conservation and SP1 Special Activities Carparking' under BVLEP 2013; and Lot 1 DP 1004805 Arthur Kaine Drive, Merimbula from SP2 Infrastructure 'Air transport facility' to E2 Environmental Conservation under BVLEP 2013.

One public submission opposed the introduction of any zone that would permit any purpose other than environmental protection for the land on Arthur Kaine Drive opposite the airport due to the presence of a number of threatened species, an endangered ecological community and potential for damage to the existing dune system which helps protect infrastructure assets. The submission also states the proposed zone will extend ugly and inefficient ribbon development between Merimbula and Pambula and destroy green space between towns that is characteristic of the area.

The submission from the NSW Office of Environment and Heritage regarding the proposed zone for Lot 120 DP 847899 stated the following:

"the area is dominated by a listed Endangered Ecological Community, Bangalay Sand Forest (validated on site in 2005). There have been 14 threatened fauna species recorded in area adjacent to Lot 120, and there is no evidence that these species are absent from Lot 120.

In all our advice to date we have also outlined the need for a comprehensive Aboriginal Cultural Heritage Assessment to be undertaken, in consultation with the relevant Local Aboriginal Land Council (LALC). The area east of Arthur Kaine Drive has a number of Aboriginal objects recorded and it is almost certain that any development of that area would impact on Aboriginal objects.....the probability of skeletal material occurring within the area east of Arthur Kaine Drive is high, as burials have already been found both to the north and south of the area. There is also a high likelihood for additional midden material and artefacts to be located anywhere along the sandy deposits. As such, OEHL may not issue an AHIP [Aboriginal Heritage Impact Permit] depending on the nature and significance of any discovered material.

... future development may trigger the requirement for a Species Impact Statement (SIS) OEHL would therefore become a concurrence authority.

...there has been no study or analysis of the biodiversity or Aboriginal cultural heritage values, provided in support of the Planning Proposal.

We note that 'delegation' for this planning decision has been given to Council. It is important for Council to understand that should Lot 120 be zoned SP1 without a comprehensive Aboriginal Cultural Heritage Assessment, or flora and fauna assessment to identify the likely constraints, the proposed development potential may not be realised."

With regard to Lot 2 DP 549112, NSW Office of Environment and Heritage did not object to the proposed SP1 Carparking zone providing an Aboriginal Cultural Heritage Assessment prepared in consultation with the local Aboriginal community. The Aboriginal community should be informed of any future works, and an Aboriginal Heritage Impact Permit under Section 90A of the National Parks and Wildlife Act 1974 sought for any Aboriginal objects identified on site, and future earthworks are supervised by a qualified archaeologist and member of the local Aboriginal community.

Figure 7: Proposed E2 and SP1 zones – Arthur Kaine Drive, Merimbula

Staff comment:

With regard to Lot 120 DP 847899, the environmental values of the land including the presence of a listed Endangered Ecological Community and the high likelihood of Aboriginal cultural heritage significance and threatened fauna are acknowledged. However, it is considered zoning the land as SP1 Special Activities will preserve future development potential for community facilities, car parking and the airport (as permitted in the SP1 zone under the State Environmental Planning Policy (Infrastructure) 2007).

Lot 120 DP 847899 is currently zoned as 5(a) Special Use 'Community Facilities' under BVLEP 2002, and the adjacent Lot 1 DP 1004805 is currently zoned SP2 Infrastructure under BVLEP 2013. Under the Planning Proposal Lot 1 DP 1004805 is proposed to be zoned as E2. However, due to the modification of a large portion of the vegetation on Lot 120 DP 847899, it is considered a SP2 zoning would be appropriate which would be the zoning equivalent from BVLEP 2002.

The requirement for ecological and Aboriginal Cultural Heritage Assessments and other environmental impacts such as the impact on the dune system will be addressed during the consideration of future development of the site in accordance with relevant planning legislation.

It is possible the development of Lot 120 DP 847899 will extend the existing urban footprint along Arthur Kaine Drive, however, any impact would be minor given the scale of likely development. The existing green space between Merimbula and Pambula will not be significantly compromised due to the large tract of land between Lot 120 DP 847899 and other land that could be developed further to the south.

With regard to Lot 2 DP 549112, it is considered the requirement for an Aboriginal Cultural Heritage Assessment can be appropriately addressed during the consideration of any future development on the land in accordance with relevant planning legislation. Should the need for the supervision of earthworks be identified in the environmental assessment process, Council will ensure this occurs. In accordance with the National Parks and Wildlife Act 1974 an AHIP will be sought for any Aboriginal objects identified which will be impacted upon by future works.

No change to the exhibited Planning Proposal is recommended in relation to Lot 120 DP 847899 or Lot 2 DP 549112. It is noted Council cannot proceed to finalise the plan in accordance with the delegations issued under Section 59 of the Environmental Planning and Assessment Act 1979 due to the objection from NSW Office of Environment and Heritage concerning Lot 120, therefore the Minister for Planning and Environment is required to finalise the plan.

Business Zones: Eden – Fishermen's Club, Flinders and Mitchell Streets and Princes Highway

This part of the planning proposal aims to change the zoning of Lot 11 DP 1166395 and Part Lot 12 DP 1166395 Mitchell Street, Eden from 2(e) Urban under BVLEP 2002 to B2 Local centre under BVLEP 2013; and amend the zoning of the Eden Fishermen's Club land and the land fronting either side of Imlay Street between Chandos Street and Cocora Street as well as Lot 10 DP 516613 and Lot 10 Sec 20 DP 758379 Flinders Street, Eden and Lot 21 DP 788099 Princes Highway, Eden from 2(e) Urban under BVLEP 2002 to B4 Mixed Use under BVLEP 2013.

Five public submissions requested amending the current B2 zone in Eden to B4 (or otherwise R3) to provide flexibility to permit complimentary development, encourage multi-unit development within walking distance to the town centre or to reinstate permissibility of residential development available under BVLEP 2002. Attachment 2 to this report contains land requested in the submissions for rezoning to B4.

Figure 8: Proposed Business Zones: Eden Fishermen's Club, Flinders & Mitchell Streets and Princes Highway (as exhibited in planning proposal)

□ Staff comment:

The commercial zone of Eden was expanded through the introduction of Development Control Plan (DCP) 40: Port of Eden Town Centre in May 2007 to accommodate additional demand for commercial land and projected increases in the residential population and shopping catchment in the next 20 years. The commercial area identified was then incorporated into BVLEP 2013 as a B2 Local Centre Zone.

At the time DCP 40 was adopted Council was not considering the use of the B4 Mixed Use zone in town centres for the Comprehensive Local Environmental Plan, although both DCP 40 and the planning report used to develop it (the Port of Eden: Urban Design – Blueprint and Design Principles) clearly envisaged mixed use development in the future development of the town.

Under BVLEP 2013 the B4 zone has been generally applied throughout the Shire where it is appropriate to encourage a wide range of land uses including commercial, residential, tourist and visitor and community uses. The zone has been applied selectively to land adjacent to commercially zoned areas in town centres to encourage uses that complement the core commercial functions and encourage a range of housing options close to CBDs.

Based on the submissions received to the Planning Proposal, Council planning staff and Business Growth Coordinator have reviewed the application of the B4 zone in Eden and it is considered the B4 zone could be applied more broadly to provide a balance of B2 and B4 zoning, and the proposed B5 Business Development Zone should also apply to some of the land (see Figure 9 for details). This will encourage residential development in some areas which can assist in

revitalising and sustaining the Eden Town Centre and increase housing diversity close to the commercial core in areas where currently only commercial development and shop top housing is permitted.

The introduction of the proposed B5 Business Development zone to Bega Valley Local Environmental Plan 2013 is discussed in this report in relation to land at Arthur Kaine Drive, Merimbula. Figure 9 identifies several allotments at the northern end of the Eden Town Centre now recommended for B5 zoning. These allotments are currently developed for vehicle sales and vehicle repairs which are not permitted within the current B2 zone and the application of the B5 zone to this land is in accordance with the objectives of the proposed zone and will complement the existing uses.

The land identified in Figure 9 recommended for zoning to B4, previously permitted residential development under BVLEP 2002 or contains existing commercial uses that are not permitted under the current B2 zone. The old St Joseph's Primary School site which is currently zoned R3 Medium Density Residential has also been included in the revised proposed B4 zone. The remainder of the area currently zoned B2 is recommended to remain as B2 to ensure commercial development on the ground floor with options for residential development above.

The Planning Proposal as exhibited includes two areas for zoning as B4. It is recommended the area proposed for B2 and B4 zoning on the corner of Flinders and Mitchell Streets (see Figure 8 for details) be withdrawn from this Planning Proposal and be included in a new Planning Proposal to extend the B4 zone around the town centre along with the properties identified in Figure 9. It is recommended the zoning of the land around the Eden Fishermen's Club proposed for B4 zoning remains in this Planning Proposal.

Figure 9: Eden Town Centre: B4 and B5 Zones proposed for future planning proposal

CONCLUSION

Public and government agency consultation regarding the Planning Proposal has been completed. The issues raised in relation to stormwater management, flood planning, traffic planning, Aboriginal Cultural Heritage Assessment, bushfire asset protection zones, threatened fauna, endangered ecological communities and potential damage to dune systems can be adequately addressed through the assessment of future development applications for any of the subject lands.

The public submissions to further increase CBD height limits, zone additional parts of Parker Street as B4 Mixed Use, amend the permitted uses in the proposed B5 Business Development zone and address the impact of future development on land between Merimbula and Pambula, have been discussed in this report and no change to the provisions exhibited in the Planning Proposal are recommended.

It is recommended Council support the proposed changes detailed in this report to the B4 Mixed Use zones in Sattler Street Bega and numerous properties in Eden. The rezoning of Lot 2 DP 571756 Sattler Street, Bega from B2 Local Centre to B4 Mixed Use is considered minor and does not require re-exhibition of the Planning Proposal. However, the recommendation to extend the B4 Mixed Use zone to multiple properties at Eden is not considered to be minor and the preparation of a separate Planning Proposal is required.

To ensure the majority of the Planning Proposal is finalised without undue delay, it is recommended 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 be withdrawn from this Planning Proposal and a separate Planning Proposal be prepared to zone these properties and the remainder of properties identified in Figure 9 as B4 Mixed Use or B5 Business Development.

ATTACHMENTS

1. Proposed Height Controls for Bega, Eden and Merimbula CBDs
2. Public submission requesting extension of B4 Zone

Recommendation

1. That Council resolves to adopt the amendments to Bega Valley Local Environmental Plan 2013 as exhibited in the Planning Proposal Business Zones with the exception of Lot 10 DP 516613 and Lot 11 DP 1166395 Flinders Street, Eden and Lot 10 Sec 20 DP 758379 and Part Lot 12 DP 1166395 Mitchell Street, Eden.
2. That Council resolves to rezone Lot 2 DP 571756 Sattler St, Bega to B4 Mixed Use.
3. That Council requests the Minister for Planning and Environment to finalise the plan with the variations proposed in points 1 and 2 above under section 59(2) of the Environmental Planning and Assessment Act 1979.
4. That Council resolves a Planning Proposal be prepared by Council staff and lodged with the NSW Department of Planning and Environment Gateway Panel to zone Lot 10 DP 516613, Lot 11 and Part Lot 12 DP 1166395 and Lot 10 Sec 20 DP 758379 and the area identified in Figure 9 of this report.
5. That those persons who have made submissions be advised of the above.

Council Minutes: Planning and Environment Committee No. 8.1 - 22 October 2014

8.1. Update in Planning Proposal: Zoning and Height Limits for Bega, Merimbula and Eden CBDs and zoning of land at Arthur Kaine Drive, Merimbula

1. That Council adopt the following amendments to Bega Valley Local Environmental Plan 2013:

- 1.1 The height limit for SP 73171, Lots 25-28 DP 208862 and Lots 31-34 DP 208862 Carolynne Street, Short Street and Ocean Avenue Merimbula be amended from 7.5m to 10m.

- 1.2 Lot 28 DP 208862 Carolynne Street Merimbula be zoned R3 Medium Density Housing.

- 1.3 Lots 1-4 DP 993, Lot 2 DP 571756 Sattler Street and Lots 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 be zoned B4 Mixed Use.

- 1.4 Lots 2 and 3 DP 948040 Peden Street Bega be zoned B4 Mixed Use.

- 1.5 Part Lot 912 DP 855433 Main Street Merimbula, as identified in Figure 4 to this report be zoned B4 Mixed Use.

- 1.6 Lots 1 & 2 DP 521571 and Lot 1 DP 1051587 Main Street Merimbula be zoned B4 Mixed Use.

- 1.7 Lots 398 and 339 DP 40361, Lots 325, 326, 327, 329, 331, 334, 335, 341, 345, 346, 371, 378, 379, 382, 383, 386 and Part Lot 340 DP 750227, Lots 385 and 386 DP 811258, Lot 10 DP 1057525, Lots 281 and 282 DP 1135670 and Lot 349 and 350 DP 1144511 Arthur Kaine Drive be zoned B5 Business Development.

- 1.8 That recommendation 1.8 be deferred and be the subject of a further report to Council on the zoning history of the subject land.

- 1.9 The height controls for Bega CBD be in accordance with Attachment 1, Figure 1 "Proposed Height Controls Bega CBD" to this report.

The height controls for Eden CBD be in accordance with Attachment 1, Figure 2 "Proposed Height Controls Eden CBD" to this report.

The height controls for Merimbula CBD be in accordance with Attachment 1, Figure 3 "Proposed Height Controls Merimbula CBD" to this report.

- 1.10 The Eden Fishermans Club land and land fronting either side of Imlay Street between Chandos Street and Cocora Street Eden, as identified in Figure 8 to this report be zoned B4 Mixed Use.

- 1.11 Lot 21 DP 788099 Princes Highway Eden be zoned B4 Mixed Use.

2. That Lot 10 DP 516613 and Lot 11 DP 1166395 Flinders Street and Lot 10 Section 20 DP 758379 and Part Lot 12 DP 1166395 Mitchell Street Eden be withdrawn from the Planning Proposal.

That Lot 1 DP 1004805, Lot 120 DP 847899, Lot 2 DP 549112 Arthur Kaine Drive Merimbula be withdrawn from the Planning Proposal.

3. That using the delegations issued by the Minister for Planning, Council proceeds to finalise the plan under Section 59(2) of the Environmental Planning and Assessment Act 1979.

4. That those persons who have made submissions be advised of the above.