



planning consultants

Review of Gateway Determination

Planning Proposal for

Lot 33 & 34, DP 243029, Corner Tura Beach Drive and

Sapphire Coast Drive, Tura Beach

September 2016

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Contents

1	Introduction	1
2	Background	3
3	Justification for Review of Gateway Determination	4
3.1	Compatibility with adjoining seniors housing development	4
3.2	Alternative Locations	5
3.3	S117 Direction 1.1 Business and Industrial Zones	7
3.4	Strategic Context	10
3.5	S117 Direction 5.1	11
3.5.1	Draft South East and Tablelands Regional Plan	11
3.5.2	A Guide to preparing Local Environmental Plans	13
4	Net Community Benefit Test	17
5	Conclusion	19

Appendices

1. Planning Proposal and supporting information submitted to the Gateway
2. Supplementary information submitted to Bega Valley Council during assessment of the Planning Proposal
3. Supplementary Economic Advice prepared by Essential Economics
4. Revised concept plan

1 Introduction

DFP Planning has been engaged by Bunnings Group Ltd (Bunnings) being the proponent for a Planning Proposal to rezone Lots 33 and 34 DP243029, corner Tura Beach Drive and Sapphire Coast Drive, Tura Beach.

The Planning Proposal seeks to rezone the site from 1(c) – Rural Small Holdings Zone under the Bega Valley Local Environmental Plan 2002 (Bega Valley LEP 2002) to B5 – Business Development under the Bega Valley Local Environmental Plan 2013 (Bega Valley LEP 2013) to facilitate the development of a Bunnings Warehouse on the site.

The Gateway Determination for the Planning Proposal was issued on 15 August 2016. The delegate of the Minister for Planning determined that the Planning Proposal should not proceed for the following reasons:

1. *The location of the proposed business zone adjoins a residential zone that contains an existing seniors living development. The planning proposal will allow a range of uses that are not compatible with adjoining uses and has the potential to introduce significant land use conflict.*
2. *Council has not adequately justified why the subject land is suitable for the proposed business and commercial land uses having regard to alternative sites, including sites not currently zoned for commercial use, elsewhere in Bega.*
3. *The proposal has not adequately justified the inconsistency with s117 Direction 1.1 Business and Industrial Zones. The objectives in this s117 Direction encourage employment growth in suitable locations and development that supports the viability of identified strategic centres. The use of the site for a major commercial development is inconsistent with the Bega Valley Shire centres hierarchy and does not support the growth of the Bega centre as a regional commercial hub.*
4. *The Planning Proposal is inconsistent with the current planning restrictions on retail development in Tura Beach and the adopted Bega Valley Shire Council Commercial Strategy 2006, the South Coast Regional Strategy and the Department commissioned study by Hill PDA in 2008, which establish the strategic role and function of the retail hierarchy in the Bega Valley, including protecting the character of Tura Beach and retaining Bega as the major regional centre.*
5. *The Planning Proposal has not adequately justified the inconsistency with s117 Direction 5.1 Implementation of Regional Strategies. The South Coast Regional Strategy requires Councils to introduce mechanisms to preserve and support the hierarchy of centres. Bega is identified as a major regional centre under the Strategy. The proposal will encourage “out-of-centre” large scale commercial development that does not preserve or support the hierarchy of centres identified in the South Coast Regional Strategy and Council’s adopted commercial strategy. The Department’s Draft South East and Tablelands Regional Plan maintains the Department’s policy position of promoting large scale commercial development in the regional centre of Bega.*

Pursuant to Section 5.4 of *A guide to preparing local environmental plans*, Bunnings has decided to lodge a request for a Gateway Review. In accordance with the requirements of Section 5.4, the following is provided:

- A completed application form;
- A copy of the Planning Proposal and supporting information as submitted to the Gateway; and
- Justification for why an alteration of the Gateway determination is warranted, including, where relevant, responses to issues raised by the original Gateway decision maker.

A disclosure of reportable political donations (as required under Section 147 of the Act) has not been included as Bunnings has made no such donations.

The completed form is attached to this report.

The Planning Proposal and supporting information as submitted to the Gateway is included at **Appendix 1** to this report. **Appendix 1** includes:

1 Introduction

- The Planning Proposal report prepared by Bega Valley Council;
- The Planning Proposal report prepared by DFP Planning and submitted with the Planning Proposal application to Bega Valley Council;
- The original concept plan which was Appendix 1 to the DFP Planning report; and
- Essential Economics February 2016 Economic Impact Assessment – Appendix 2 to the DFP Planning Report.

Appendix 2 to this report is supplementary information submitted to Bega Valley Council during their assessment of the Planning Proposal. This information addressed the draft South East and Tablelands Regional Plan which was placed on exhibition during assessment of the Planning Proposal, prior to its submission for a Gateway Determination.

Justification as to why a reconsideration of the Gateway determination is warranted is included in the report and in the supplementary economic advice (**Appendix 3**) and revised concept layout plan (**Appendix 4**).

We understand that, following a review of the submitted information to the Department of Planning and Environment (DPE), DPE will prepare a report for consideration by the Southern Joint Regional Planning Panel. The report to be prepared by DPE will:

- Outline the proposal
- Include reasons why the review request has been made
- Provide reasons as to why the original Gateway determination was made
- Detail the views of the Council and the proponent.

The remainder of this report provides further justification as to why a reconsideration of the Gateway Determination is warranted and addresses each of the reasons as to why the Department felt the Planning Proposal should not proceed.

2 Background

In December 2014, DPE issued a Gateway Determination in relation to an earlier Planning Proposal which also sought to zone the land B5 Business Development.

The Gateway Determination issued in relation to that Planning Proposal determined that the Planning Proposal should not proceed for a number of reasons including:

- Incompatibility with the existing adjoining use (seniors housing);
- Inconsistency with the strategic framework which seeks to protect the coastal village character of Tura Beach and to retain Bega as the major regional centre;
- Council did not provide sufficient justification to demonstrate that the proposal would not potentially undermine the existing neighbourhood business precinct;
- Justification as to why appropriately zoned land in South Bega and Pambula was unsuitable had not been provided;
- The proposal would allow for the consideration of a major 'out of centre' retail development in Tura Beach.

The planning report prepared by DPE in relation to that Planning Proposal recommended that *Council review its strategic planning framework for commercial uses, the Bega Valley hierarchy and existing land for retail and bulky goods development before pursuing a business zone on the subject land.*

Following issue of the Gateway Determination for the previous Planning Proposal in December 2014, discussions were held with DPE's Regional General Manager at the time to ascertain what additional information would be required to accompany a new Planning Proposal to allow a Bunnings Warehouse to be developed on the land. In the absence of any review of Council's strategic plans and retail hierarchy, it was recommended by DPE's Regional Manager that a comprehensive economic impact assessment which considers the potential impacts on the network of centres be prepared.

Discussions have been held with Council and Council has indicated that they are not proposing a review of their 2006 Commercial Strategy or the Bega Valley Land Use Planning Strategy 2008. Nevertheless, as demonstrated in their support of the Planning Proposal to zone the site B5 Business Development, Council is of the opinion that the Planning Proposal is not inconsistent with their adopted strategies and therefore a review of these is not required in order for the Planning Proposal the subject of this Gateway Review to proceed.

3 Justification for Review of Gateway Determination

The following subsections address each of the reasons as to why the Planning Proposal was not supported, as noted in the Gateway Determination issued on 15 August 2016.

3.1 Compatibility with adjoining seniors housing development

1. *The location of the proposed business zone adjoins a residential zone that contains an existing seniors living development. The planning proposal will allow a range of uses that are not compatible with adjoining uses and has the potential to introduce significant land use conflict.*

Justification

We note that the Gateway Determination indicates that the range of uses permitted in the B5 Business Development zone might not be compatible with adjoining uses (being the seniors housing development and associated residential care facility) and that there is the potential land use conflict as a result.

The Gateway Determination's reasoning regarding potential land use conflicts is based on those uses that the Department has considered have the potential to introduce a land use conflict. As set out below, we believe that a garden centre and hardware and building supplies development should not necessarily be regarded as being incompatible and there are means of addressing potential conflicts in terms of building form and operational matters. However, equally relevant is that in addition to hardware and building supplies, there is a range of other land uses permitted with development consent in the B5 zone that are potentially compatible with the adjoining R2 zoned land (e.g. child care centres; community facilities; educational establishments; hotel or motel accommodation; information and education facilities; public administration buildings; recreation facilities (indoor); research stations; respite day care centres; storage premises). The range of potentially permissible uses that are likely to be compatible with the adjoining seniors housing development does not appear to have been taken into consideration.

Further, it is a very common outcome for Land Use Zone Maps to have business zones (including B5 zones) adjoining residentially zoned land. If the Department's reasoning that a proposed business zone has the potential to introduce land use conflicts is applied consistently then it would radically change the outcome of land use planning to the extent that Land Use Zone Maps would not propose business zoned land adjoining residential zones. This is not an outcome that occurs in land use planning. Typically, the interface of two zones is managed by other planning controls such as building height (in a LEP) or setback controls (in a DCP) or by addressing interface issues on a site by site basis depending on the specific land use being proposed. The Department's assessment does not appear to have had regard to other planning control mechanisms that are readily available and successfully used to manage potential land use conflict concerns.

There are numerous examples of Bunnings developments proximate to similarly sensitive land uses, including:

- A recently approved DA for a new Bunnings development at Denison Street Hillsdale. This facility immediately adjoins low density residential development.
- A recently approved DA for a Bunnings at Gladesville. This site also adjoins low density residential development.

It has been Bunnings' experience that any potential conflicts with an adjoining land use are capable of being managed through considerate site planning and implementation of a variety of mitigation measures, including acoustic treatments, large setbacks and landscaping.

In order to address the Department's concerns in relation to the interface between the seniors housing site and the Bunnings Warehouse development, the concept plan showing how a

3 Justification for Review of Gateway Determination

Bunnings Warehouse might be able to be positioned on the site has been revised (from that submitted with the Planning Proposal) and a copy of this is included at **Appendix 4** to this report.

This revised concept plan demonstrates that:

- There will be ample separation between the activities associated with the functioning of the Bunnings Warehouse and the buildings on the adjoining property. This plan demonstrates that a setback of between 37.6m (at its closest point) to more than 50m to the existing seniors housing units located adjacent to the common property boundary can be provided. At its closest point, the setback to the site boundary on which the seniors housing is located is 11.7m, although this part of the seniors housing site is currently vacant.
- Any acoustic treatments are capable of being implemented in a manner which will present an appropriate aspect when viewed from the adjoining property.
- Appropriate landscape treatments can be provided within the setback to the adjoining property.
- Locating the majority of activities associated with the Bunnings Warehouse away from the seniors housing units.
- The Bunnings building will not impact on solar access to the adjoining property

It is acknowledged that some land uses which are permissible in the B5 zone, including highway service centres, restricted premises, service stations, sewerage systems, transport depots and vehicle body repair workshops might not be appropriate on this site, particularly having regard to the sensitivity of the adjoining seniors housing development. Any development proposal for this site would be subject to a future development application and that application would be assessed against the Matters for Consideration detailed in Section 79C(1)(c) of the *NSW Environmental Planning and Assessment Act 1979* (EP&A Act) - Suitability of the site for the development.

It is considered that potential conflicts that might arise as a result of the development of this site in accordance with land uses which are permissible in the B5 zone are capable of being managed to ensure the amenity of residents of the adjoining seniors housing development is not adversely affected. In this regard, therefore, it is considered that this is not a compelling reason as to why the Planning Proposal should not proceed.

3.2 Alternative Locations

2. *Council has not adequately justified why the subject land is suitable for the proposed business and commercial land uses having regard to alternative sites, including sites not currently zoned for commercial use, elsewhere in Bega.*

Justification

There is a subtle difference between the Gateway Determination issued in relation to the initial Planning Proposal and the Gateway Determination issued in relation to the Planning Proposal the subject of this review.

The December 2014 Gateway Determination identified that land in South Bega and Pambula that was already zoned to permit hardware and landscape supplies or similar businesses had not been adequately investigated, whereas Reason 2 of the Determination issued in relation to the current Planning Proposal references alternative sites, including sites not currently zoned for commercial use, elsewhere in Bega.

3 Justification for Review of Gateway Determination

As noted in the Planning Report prepared by DFP and submitted with the Planning Proposal application, existing zoned land adjacent to Kerrisons Land and on the Princes Highway/Newton Road in South Bega was investigated and found to be unsuitable due to a number of constraints including topography, lack of visibility and exposure and potentially unsafe traffic movements.

Appropriately zoned land in Pambula was also investigated and found to be unsuitable for the following reasons:

- In relation to the industrial area in Pambula South, adjacent to Mount Darragh Road, this land was unsuitable due to the following:
 - Too removed from the main catchment area.
 - Lack of exposure to a main road.
 - Site constraints (flooding) which would significantly increase construction costs.
- In relation to the industrial land adjacent to Arthur Kaine Drive and Sire William McKell Drive, there was a lack of sites of sufficient size with the exposure required.

Supplementary economic advice been prepared by Essential Economics to provide further justification to support this Gateway Review. A copy of this supplementary economic advice is included at **Appendix 3** to this report.

Section 4 of the supplementary economic advice provides an analysis of alternative locations for a Bunnings Warehouse development to service the far south coast of NSW and surrounding areas.

For the purposes of addressing Reason 2 in the Gateway Determination, the following alternative locations have been investigated:

Bega Town Centre

The supplementary economic advice found that:

Prevailing lot sizes and the density of retail and commercial development are not able to readily accommodate a hardware warehouse as per the proposed Bunnings Merimbula.

If a smaller format store (than that currently proposed) was developed, this would undermine the economic viability of the facility and reduce the catchment.

Three specific sites were identified for further testing. All three sites were found to be unsuitable for a variety of reasons including:

- Site constraints – flood impacts
- Lack of exposure
- Inadequate site area

Bega Balance

Five sites of industrially zoned land adjacent to Princes Highway and Kerrisons Lane to the south of Bega township and land to the north of Bega (and east of the Princes Highway) were also investigated.

All five sites were found to be unsuitable for a variety of reasons including:

- Steeply sloping topography which is unsuitable for large floorplate warehouse type uses
- Fragmented land ownership patterns resulting in reduced exposure to passing trade

3 Justification for Review of Gateway Determination

- Traffic safety issues associated with locating safe ingress/egress point(s) due to topography and traffic speeds.

Pambula

Land zoned for industrial, commercial and mixed uses in and adjacent to the Pambula Township and a large area of industrial zoned land is located on Denisons Road west of South Pambula, was also investigated for the purposes of addressing Reason 2 of the Gateway Determination.

In all cases, the land investigated was considered to be unsuitable for the development of a Bunnings Warehouse for a number of reasons including:

- Lack of exposure to passing trade
- Poorly located in relation to the main catchment area
- Site constraints – flooding, vegetation
- Insufficient land

Other lands not zoned for the proposed use

The supplementary economic analysis undertaken by Essential Economics (**Appendix 3**) has considered the reference in the Gateway Determination in relation to the fact that *sites not currently zoned for commercial use, elsewhere in Bega* had not been investigated. In this regard, Essential Economics considers that:

Applying a test in which alternative sites are to be considered which are neither zoned correctly, nor have strategic support for any such rezoning, is an extremely high and onerous planning test. In effect, the planning system is telling applicants that its own strategic policy framework is not sufficient guidance to indicate where development applications may be considered, and that all alternative sites must be considered irrelevant of their zoning or existing strategic merit.

Notwithstanding this, our own field work and investigations have not identified any alternative sites to the proposed Tura Beach location which are not zoned appropriately.

Conclusion

In view of the above analysis and having regard to other considerations previously addressed in the documentation submitted with the Planning Proposal and in the following sections of this justification for review, it is considered that the site on the corner of Tura Beach Road Drive and Sapphire Coast Drive represents the optimal location for the proposed Bunnings Warehouse development.

3.3 S117 Direction 1.1 Business and Industrial Zones

3. *The proposal has not adequately justified the inconsistency with s117 Direction 1.1 Business and Industrial Zones. The objectives in this s117 Direction encourage employment growth in suitable locations and development that supports the viability of identified strategic centres. The use of the site for a major commercial development is inconsistent with the Bega Valley Shire centres hierarchy and does not support the growth of the Bega centre as a regional commercial hub.*

Justification

In the Planning report prepared by DFP (Appendix 4 to the Council's Planning Report at **Appendix 1**) lodged with the original Planning Proposal application, the Planning Proposal was considered to be consistent with the objectives of Direction 1.1 in that it:

- Encourages employment growth in an area close to residential development;
- Will provide opportunities for the economic development of specific land in the Tura Beach area;

3 Justification for Review of Gateway Determination

- Increase the total potential floor space for employment uses in business zones;
- Is in a suitable location being adjacent to an existing commercial zone;
- Does not adversely impact established business and industrial zones within Bega Valley

Whilst these reasons are still considered to be relevant, further justification as to the consistency of the Planning Proposal with the objectives of Direction 1.1 are provided below.

In order to address the issues raised in Reason 3 of the Gateway Determination, Essential Economics reviewed the previous investigation they undertook in relation to the potential impacts the location of a Bunnings Warehouse in the proposed location might have on the role and function of the Tura Beach local centre and the capacity of Bega to fulfil its role as the regional commercial hub of the far south coast region.

The supplementary economic advice at **Appendix 3** notes that there is currently an estimated 45,000m² of retail floorspace within the Bega town centre, compared to 17,500m² in Merimbula and 7,500m² in Tura Beach¹.

In addition to this retail floorspace, Bega also performs the vital function as the civic, cultural and services centre of the region. Examples of community facilities and services represented in Bega include:

- Bega Valley Shire Council
- Bega Valley Private Hospital
- South East Regional Hospital (recently opened)
- Centrelink and Medicare Offices
- Bega Courthouse
- University of Wollongong, Bega Campus
- Illawarra TAFE Institute
- Bega High School
- Bega Valley Public School (K-6)
- St Patrick's Primary School (K-6)
- Mumbulla School for Rudolf Steiner Education (K-6)

The role of Bega should not be considered in the absence of these other services and facilities that collectively play a significant role in reinforcing Bega as a regional commercial hub.

We do not agree that the proposed Bunnings Warehouse is a *major commercial development*. And we do not agree that the development of a hardware and building supplies and garden centre development of less than 7,000m² in this location will threaten or challenge the primacy of Bega as the regional centre of the area and it is therefore appropriate to consider a B5 zone for the site.

We have also reviewed LEP Practice Note PN 07-001 to understand how a B5 zone was intended to be applied. The Practice Note provides guidance on the implementation of the standard instrument for LEPs and contains the following guidance on the B5 zone:

¹ Floorspace estimates by Essential Economics

3 Justification for Review of Gateway Determination

B5 Business Development zone and B6 Enterprise Corridor zone

Q: How can the B5 and B6 zones be applied so as to not impact on the viability of existing centres, e.g. by allowing major retail premises and office premises in out-of-centre locations?

A: It is not intended that retail hierarchies should be undermined by out-of-centre convenience retailing in the B5 and B6 zones. The Department is currently assessing how the Standard Instrument can be modified to allow more flexibility in these business zones.

The B5 zone was created to allow for the development of business and warehouse uses, including bulky goods developments that have very specific locational and floorspace requirements. It was not envisaged that out-of-centre convenience retailing would occur in either the B5 or B6 zones. The Planning Proposal is entirely consistent with this intent as the form of retail facility proposed is not one generally located in a local centre.

The Practice Note also states that it is not intended that retail hierarchies should be undermined by the use of B5 zones in out-of-centre locations. The Essential Economic assessments have demonstrated that the established centre hierarchy in the Bega Valley LGA will not be challenged by locating a B5 zone at Tura Beach in an edge-of-centre location.

Further, we have also considered the B5 zone objectives contained in the standard instrument and the objectives applied in Bega LEP 2013. There are 3 objectives as set out below and the first of these objectives is a mandated objective contained in the standard instrument.

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.

The mandatory objective (first objective listed above) does not suggest that a B5 zone (and by association, the uses able to be located in on B5 zoned land) needs to be in a centre, but must be close to, and support, a centre. Therefore, the standard instrument and its zone objective contemplate B5 zones in out-of-centre and edge-of-centre locations. In this regard, the Planning Proposal is consistent with this objective.

In our opinion, the Planning Proposal is consistent with the B5 zone objectives for the following reasons:

- It enables a mix of business and warehouse uses and bulky goods premises. Importantly, *garden centres* and *hardware and building supplies* (being the land use relevant to the Bunnings Warehouse development) are mandated land uses permitted with consent in the B5 zone.
- A Bunnings Warehouse requires large floor areas and the Planning Proposal is entirely consistent with this objective of the B5 zone; and
- The site is directly opposite the Tura Beach local centre and is therefore close to a centre as required by the objective and will also support the viability of that centre by reinforcing its role, without affecting the viability of other centres (as demonstrated in the Essential Economics assessments).

The Essential Economics supplementary economic advice at **Appendix 3** has considered the relationship between the site to which the Planning Proposal relates and the Tura Beach local centre and what, if any impacts the establishment of a Bunnings warehouse development on this site might have on the centres hierarchy of the Bega Valley LGA generally and the Bega Regional Centre specifically.

3 Justification for Review of Gateway Determination

In relation to the role of Bega as the principal commercial centre of the region and its ability to continue to grow and flourish, the supplementary economic advice notes that:

The sheer magnitude of Bega's retail offer and provision of community and civic infrastructure compared to Merimbula and Tura Beach means that its primacy as the regional centre will not be threatened by the development of the Bunnings Warehouse (small format) at Tura Beach.

The supplementary economic advice also found that the development of a Bunnings Warehouse in a location proximate to the existing Tura Beach local centre would not change the way in which that centre relates to the centres network within the Bega Valley LGA.

The Tura Beach local centre will maintain its core function as the main convenience retail facility for its local population whilst the Bunnings is a specific retail destination facility that will service a much wider catchment (as discussed in the February 2016 EIA).

Essential Economics has considered the impacts of a B5 zoning of the subject site in terms of its relationship with the Tura Beach local centre as part of their supplementary advice:

Although the proposed Bunnings will have some land use synergies with the adjacent Tura Beach local centre, in a practical sense for most customers the Bunnings will be a single-purpose shopping trip.

Our experience in retail-economic analysis undertaken for private clients and policy makers over 20 + years indicates that the presence of a Bunnings at Tura Beach would generate no more than a marginal increase in sales and visitation to the supermarket and specialty shops at Tura Beach. That is, residents of locations such as Bega and Merimbula would benefit from access to the Bunnings hardware retail format, without any significant change to their purchasing patterns for other goods and services such as supermarket and grocery shopping.

Therefore, the Planning Proposal is consistent with the objective and intended use of the B5 zone and we believe that the Gateway Determination is at odds with the intended use of the B5 zone under the standard instrument and the Department's Practice Note.

3.4 Strategic Context

4. *The Planning Proposal is inconsistent with the current planning restrictions on retail development in Tura Beach and the adopted Bega Valley Shire Council Commercial Strategy 2006, the South Coast Regional Strategy and the Department commissioned study by Hill PDA in 2008, which establish the strategic role and function of the retail hierarchy in the Bega Valley, including protecting the character of Tura Beach and retaining Bega as the major regional centre.*

Justification

The zoning of the site to allow for the development of a Bunnings Warehouse was considered having regard to the 2006 Bega Valley Commercial Strategy, the South Coast Regional Strategy and the Hill PDA study in 2008 (in relation to an amendment to the then LEP to allow for expansion of the Tura Beach local centre which has since occurred).

In relation to the Council's Commercial Strategy, the Council's report notes that:

...the proposed Business Development zone is not considered to be inconsistent with the Commercial Strategy. Permissible development within the B5 zone will complement the adjoining local centre without allowing for competing development or providing for a de facto expansion of the local centre.

Importantly, the EIA accompanying this Planning Proposal demonstrates that the proposed B5 zoning of the site (and the development of a Bunnings Warehouse) will not undermine the capacity of Bega to fulfil its role as the regional centre for the LGA and nor will it be inconsistent with the established centre hierarchy for the area.

The February 2016 EIA and supplementary commentary (included at **Appendix 3** to this report) demonstrate that the Bunnings, due to the specialised retail offering provided, can

3 Justification for Review of Gateway Determination

integrate with the existing network of centres without disrupting the established hierarchy. In particular, the EIA and supplementary advice, details that the role and function of Tura Beach will not alter with the establishment of a Bunnings Warehouse on this site.

Further discussion regarding the strategic merit of the proposal is provided in **Section 3.5** of this report.

3.5 S117 Direction 5.1

5. *The Planning Proposal has not adequately justified the inconsistency with s117 Direction 5.1 Implementation of Regional Strategies. The South Coast Regional Strategy requires Councils to introduce mechanisms to preserve and support the hierarchy of centres. Bega is identified as a major regional centre under the Strategy. The proposal will encourage “out-of-centre” large scale commercial development that does not preserve or support the hierarchy of centres identified in the South Coast Regional Strategy and Council’s adopted commercial strategy. The Department’s Draft South East and Tablelands Regional Plan maintains the Department’s policy position of promoting large scale commercial development in the regional centre of Bega.*

Justification

The primacy of Bega as the principal centre for the region has been previously discussed.

As noted in the Planning report prepared by DFP Planning:

The South Coast Regional Strategy (the Strategy) was prepared in 2007 and provides a high-level land use vision for the region, emphasising the need to balance population growth, economic development and environmental protection.

Discussion as to how the Planning Proposal is consistent with Direction 5.1 is provided below.

3.5.1 Draft South East and Tablelands Regional Plan

Subsequent to the submission of the Planning Proposal application with Bega Valley Shire Council, the *Draft South East and Tablelands Regional Plan* was placed on public exhibition. Under the document *A Guideline for Preparing Planning Proposals*, the consistency of a Planning Proposal with objectives and actions of the applicable regional or sub-regional strategy and exhibited draft strategies is required.

Additional information was provided to Council to address the consistency of the Planning Proposal with the draft Strategy, and to assist Council in the preparation of their documentation to DPE. A copy of this additional information is included at **Appendix 2** to this report.

The draft Strategy contains 4 Goals:

- Goal 1 – Sustainably manage growth opportunities arising from the ACT
- Goal 2 – Protect and enhance the region’s natural environment
- Goal 3 – Strengthen the economic opportunities of the region
- Goal 4 – Build communities that are strong, healthy and well-connected

Goal 1 is not relevant to the location of the site or the Planning Proposal. Goals 2, 3 and 4 are addressed below.

Goal 2 – Protect and enhance the regions natural environment

The Directions of this Goal relate to:

- Direction 2.1 Protect the region’s diverse environmental values
- Direction 2.2 Manage development to protect the Far South Coast environment

3 Justification for Review of Gateway Determination

- Direction 2.3 Build the region's resilience to natural hazards and climate change
- Direction 2.4 Protect and secure the region's water resources
- Direction 2.5 Protect the region's cultural heritage

Not all of the Directions or Actions are relevant to the site or the Planning Proposal. In terms of the vegetation and watercourse affecting the site, the Bega Valley LEP 2013 already provides mapping to protect biodiversity and riparian areas through the Terrestrial Biodiversity and Riparian Lands and Watercourses Maps.

A more detailed assessment at a site specific level as to how a development will address and manage those constraints in best managed through the DA process.

Goal 3 – Strengthen the economic opportunities of the region

The Directions of this Goal relate to:

- Direction 3.1 Support and promote the growth of the tourism industry
- Direction 3.2 Enhance the productivity of primary industries
- Direction 3.3 Support the productivity and capacity of the region's mineral and energy resource lands
- Direction 3.4 Grow regional strategic assets to support economic growth across the region
- Direction 3.5 Strengthen the economic self-determination of Aboriginal communities

Directions 3.1, 3.2, 3.3 and 3.5 are not relevant to the site or the Planning Proposal. The Actions listed in Direction 3.4 are very specific and relate to the Port of Eden and Canberra Airport and therefore are not relevant to the site or the Planning Proposal.

Goal 4 – Build communities that are strong, healthy and well-connected

The Directions of this Goal relate to:

- Direction 4.1 Provide sufficient housing to suit the changing demands of the region
- Direction 4.2 Plan for facilities, including health and education, to service the region's growing and changing population
- Direction 4.3 Strengthen the commercial function of the region's centres
- Direction 4.4 Build socially inclusive, safe and healthy communities
- Direction 4.5 Enhance community access to jobs, goods and services by improving connections.

The only Direction of relevance to the Planning Proposal is Direction 4.3 - Strengthen the commercial function of the region's centres.

The draft Strategy states that the NSW Government is particularly interested in focusing growth, service delivery and investment in the higher-order regional centres. Bega is identified as a regional centre.

The draft Strategy states that proposals for new retail centres and major new retail developments will be assessed against the region's hierarchy of centres. Clearly therefore the draft Strategy envisage a situation similar to that being considered as part of this Gateway Review. In such circumstances, the draft Strategy indicates that *these proposals should demonstrate how they:*

- *respond to retail supply and demand;*

3 Justification for Review of Gateway Determination

- *respond to innovations in the retail sector;*
- *maximise the use of existing infrastructure (including public transport and community facilities) commensurate with the scale of the proposal; and*
- *enhance the value of the public realm.*

The net community benefit should be a factor when assessing these proposals.

Discussion regarding net community benefit is provided in **Section 4** of this report.

Discussion as to how this Planning Proposal responds to the above assessment criteria is provided below.

The February 2016 Economic Impact Assessment (EIA) prepared by Essential Economics and included at Appendix 2 to DFP's Planning Proposal report, considered the potential catchment and competitive environment including the demand for a Bunnings Warehouse. The EIA found that there is sufficient expenditure available to support the proposed Bunnings as well as existing facilities. Importantly, the EIA also found that the role and competitiveness of Bega as the primary regional centre for the area will not be undermined by the establishment of a Bunnings Warehouse on the site.

The Planning Proposal responds to the needs of retailing in the form of large format buildings such as a Bunnings Warehouse. In particular, the EIA also investigated the option of alternative sites within the Bega Valley LGA (being the areas at South Bega and Pambula as nominated by Council). Section 5.6.2 of the Planning Proposal report examined a number of alternative sites and locations for the proposed Bunnings Warehouse which were rejected for a variety of reasons including topography, lack of land, exposure to passing traffic and access issues.

In addition, the supplementary economic advice attached at **Appendix 3** to this report considered additional sites within the Bega Valley LGA. The suitability (or, as it transpired, inappropriateness) of these sites for the development of a Bunnings Warehouse has been addressed in Section 3.2 of this report.

The site's location takes advantage of, and relates well to, the existing Tura Beach shopping centre (which is anchored by a Woolworths supermarket) on the opposite side of Tura Beach Drive. The co-location maximises use of existing infrastructure.

3.5.2 A Guide to preparing Local Environmental Plans

The recent amendments in the *Guide to preparing local environmental plans* (August 2016), particularly in relation to the information required to be provided as part of a Rezoning Review are considered relevant to this Gateway Review.

Whilst this review is not a Rezoning Review (which occurs where a relevant planning authority (RPA) does not support a proponent's Planning Proposal or where the RPA fails to make a decision in relation to the Planning Proposal within 90 days of its lodgement), it is considered that the strategic merit test and site specific merit test are equally as relevant to a Gateway Review and to this particular Planning Proposal.

In this regard, as part of any Rezoning Review, the Planning Panel or Commission (depending on the location of the Planning Proposal) is required to undertake an assessment to determine whether the proposal has strategic merit having regard to whether the Planning Proposal is:

- *Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or*
- *consistent with a relevant local strategy that has been endorsed by the Department; or*

3 Justification for Review of Gateway Determination

- *responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognized by existing planning controls.*

Notwithstanding that the 'test' as to whether a Planning Proposal has strategic merit does not require all three criteria to be satisfied (we note the use of 'or' in relation to the criteria, rather than 'and'), it is considered that the Planning Proposal the subject of this Gateway Review can satisfy **all criteria** in terms of having strategic merit. Each criterion is addressed in more detail below.

Criteria 1 Consistency with Regional Plans

With respect to **Criteria 1**, this Planning Proposal is considered to be consistent with the relevant regional plan, including the exhibited draft regional plan for the following reasons:

- The South Coast Regional Strategy highlights the importance of concentrating commercial development in Bega, being the regional centre. Whilst on face value the Planning Proposal could be viewed as being inconsistent with this criteria, the Strategy also recognises that the majority of population growth in the South Coast Region will occur in Merimbula, Tura Beach, Bermagui and Eden.

The preceding discussion in this report has demonstrated that the development of a Bunnings Warehouse at Tura Beach will not impact on the primacy of Bega as the principal commercial, retail, cultural, civic and service centre of the region. The Essential Economics supplementary advice notes that:

The sheer magnitude of Bega's retail offer and provision of community and civic infrastructure compared to Merimbula and Tura Beach means that its primacy as the regional centre will not be threatened by the development of the small-format Bunnings Warehouse at Tura Beach.

Importantly, the role of Bega as the regional centre is defined more by the range of services provided in that centre than the quantum and type of retail offering provided. Having said that, however, it generally follows that where a wide range of services is provided in a centre, the amount of retail floorspace and variety of retail outlets in that centre is larger and more varied than it would be in a smaller centre offering fewer or no services other than retailing.

From a retail perspective, whilst a regional centre such as Bega will provide for the convenience retail needs of its local population (in much the same way that the Tura Beach local centre services its local population), Bega also includes a range of outlets such as fashion, furnishings and electrical goods, that have the ability to attract trade from a wider catchment for the purposes of comparison and leisure shopping.

A Bunnings Warehouse facility functions in a different manner to convenience shopping facilities and comparison or leisure shopping outlets. The majority of trips to a Bunnings Warehouse are targeted destination trips; they are made for the purposes of visiting that store for particular hardware and related items.

- The Strategy also notes that *consideration will be given to zoning changes that address concerns regarding tenure, location, constraints and specific opportunities.*

In this regard, Bunnings has identified that the south coast area is not well serviced in terms of comprehensive hardware and building supplies outlets. Essential Economics has estimated that the primary catchment area for a Bunnings development is the area comprising the urban areas of Tura Beach and Merimbula being the areas experiencing and likely to experience the highest population growth in the region within the next 10 – 15 years. Essential Economics has also considered the suitability of a number of alternative locations, including locations in and around Bega and these sites were

3 Justification for Review of Gateway Determination

found to be unsuitable for the proposed Bunnings Warehouse for a variety of reasons as detailed in the Essential Economics supplementary advice at **Appendix 3** and in **Section 3.2** of this report.

Therefore, it is considered that the option of zoning land at Tura Beach to accommodate a Bunnings Warehouse development satisfies Criteria 1 in terms of strategic merit.

Criteria 2 – Consistency with Council Strategies

With respect to **Criteria 2**, the Planning Proposal has been considered having regard to Council's 2006 Commercial Strategy. Although this Strategy has not strictly been endorsed by the Department, it is the current Strategy of relevance to the network of centres throughout the Bega Valley LGA.

The first issue to consider in relation to Council's Commercial Strategy is that it is 10 years old and has not been updated or amended in any way during the intervening period. This means it has not taken into account population growth which has occurred in the region during this 10-year period, nor does it take into consideration the significant changes in the nature of retailing (including the growth of on line retailing) which has occurred in the past decade.

The supplementary advice provided by Essential Economics notes that:

Neither the Bega Valley Commercial Strategy (2006) nor Hill PDA report (2008) provide small area population forecasts upon which the subsequent conclusions and policy settings are based.

Although the Commercial Strategy (2006) provides some guidance on future population growth this is for two high-level 'catchments' defined separately for Bega and Merimbula/Pambula/Tura (combined) for the year 2025.

Furthermore, the Hill PDA report provides the 2006 population for individual towns, with no indication of future population growth at each location provided at all.

As a result, despite the relevant policies having highly detailed expectations of future development patterns for the retail sector by centre, no suitably detailed small area analysis is provided to support these expectations.

The supplementary economic advice also notes *that at the time of the writing of these strategies and the Hill PDA report, retail outlets such as the small format Bunnings stores (which were developed specifically to service smaller catchment areas of between 25,000 to 30,000 persons) had not been refined.*

For this reason, the relevant policies have not anticipated the commercial success and demand for the Bunnings warehouse format in regional areas. This reflects a shortcoming of these policies in the current context of contemporary retail industry and consumer expectations.

We have reviewed the Hill PDA February 2008 report prepared for the then NSW Department of Planning to consider proposed amendments to Bega Valley LEP 2002 in relation to limiting the floor area of any one retail premise in Merimbula to 1,000sqm and enabling the expansion of the Tura Beach commercial area with a cap of 5,000sqm retail floor area.

The Hill PDA report recommended, among other things, that:

The first preference for bulky goods should be in Bega, preferably as close as possible to the town centre.

Other than a vague reference to protecting and promoting the role of Bega as the regional centre, there is no justification for this statement in the Hill PDA report or any assessment as to the suitability or otherwise of concentrating bulky goods development in Bega.

We do not consider that the Hill PDA report is of relevance to this Planning Proposal, particularly given that a Bunnings Warehouse is a *hardware and building supplies* outlet and

3 Justification for Review of Gateway Determination

not a bulky goods outlet as defined in the Standard Instrument LEP. In this regard, there is no discussion in the Hill PDA report to *garden centres* or *hardware and building supply* outlets.

The discussion in **Section 3.3** of this report has demonstrated that a B5 zoning of the subject site to accommodate a Bunnings Warehouse development:

- Will not undermine the primacy of Bega as the principal retail, commercial, cultural, civic and service centre of the region.
- Will not alter the role and function of Tura Beach local centre. The site represents an edge-of-centre location to the Tura Beach local centre. Bunnings and the adjacent local centre will have a clear distinction in their role and function, although will share some land use synergies of the type broadly supported by the Draft Centre's Policy. No long-term scope exists for the Tura Beach centre to physically expand to a level likely to undermine the directions of regional land use policies that emphasise the regional role of Bega.
- Will provide a future injection of 70 direct jobs into the local economy as well as the potential indirect (or 'flow-on') jobs that will be created as a result of this development, including a potential 34 jobs to be created during the construction phase.

The supplementary economic advice also notes that:

It is appropriate for an appropriate degree of policy discretion to be applied to the Bunnings Merimbula in view of the age of the policies which currently apply, and that, when considered in the current context, the proposal does not undermine the key directions of those policies. Considerable change has occurred in the development patterns of the Sapphire Coast since the implementation of those policies, as well as evolving retail industry and consumer expectations.

Criteria 3 – Responding to a change in circumstances

This criterion has been addressed to certain extent in the discussion relating to Criteria 2. However, in addition to the matters discussed above, and as detailed in Section 3.2 of this report, a thorough investigation of alternative locations has failed to identify any sites which are appropriate and available for the development of a Bunnings to serve the Sapphire Coast.

This factor, combined with the considerable change in the development patterns of the Sapphire Coast which has occurred since the implementation of Council's policies, as well as evolving retail industry and consumer expectations, indicates that, in the circumstances of this case, the Planning Proposal has significant strategic merit.

4 Net Community Benefit Test

As part of the additional information provided to Council following submission of the Planning Proposal to assist Council in their consideration and assessment of the Planning Proposal, and in response to the draft Regional Strategy, a net community benefit test was undertaken. The net community benefit test followed the heads of consideration detailed in the Draft Centres Policy (May 2010) which included a set of evaluation criteria for rezoning proposals for commercial and retail developments. It is not clear if this supplementary information formed part of the Council's submission of the Planning Proposal to DPE and therefore it has been included as part of this Gateway Review submission for the sake of completeness.

The following table is an assessment against the evaluation criteria detailed in the Draft Centres Policy.

Net community benefit test evaluation criteria	
Criteria	Comment
Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)?	The draft LEP is not within an area identified in a regional strategy such as a land release area, strategic corridor, or within 800 metres of a transit node. If Planning Proposals in the Bega Valley LGA were to meet the strict criteria of the regional strategy, then it would preclude a wide range of potential opportunities.
Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?	
Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?	The site is a corner position opposite Tura Beach shopping centre and close to other developed lands such as service station, garden centre, neighbourhood centre which are zoned B1 Neighbourhood Centre. There is no need for further rezoning of that land at this point in time. There is also an established seniors housing that also adjoins, which is developed land. Other adjoining sites that are not developed are along Sapphire Coast Drive. They are heavily vegetated thus constraining their future potential. The site represents an opportunity given its immediate context that is unlikely to set a precedent for other adjoining landowners.
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	We are not aware of other spot rezonings involving Business zoned land.
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	The Bunnings Warehouse will provide permanent employment in the order of 70 people in full-time, part-time and casual positions (as per the February 2016 Economic Impact Assessment prepared by Essential Economics).
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	The land is a deferred matter. The rezoning of the land will not affect the supply of residential land.
Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?	Services are already located nearby and, subject to investigations, should readily be capable of being extended and augmented to service the site.
Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?	The proposal will provide a hardware and building supply facility and garden centre in the Tura Beach region which will offer an alternative to customers within the primary trade area driving to Bega for a similar (but narrower) range of services.
Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?	The most significant government infrastructure planned for the region is the Eden Port upgrade. However, the Planning Proposal and future Bunnings Warehouse would not impact that proposal, either negatively or

4 Net Community Benefit Test

	positively.
Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	The site contains stands of vegetation and a watercourse which are mapped in the Bega Valley LEP 2013. The biodiversity and riparian provisions of the LEP would be addressed as part of a future DA.
Will the LEP be compatible/complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?	The site is located opposite a B1 Neighbourhood Centre and would complement that adjoining zoning, both in terms of retail activity and building form. The adjoining seniors housing development will need to be considered in relation to site planning at DA stage to minimise impacts such as noise from delivery vehicles, setbacks and visual impacts. These are readily capable of being addressed at DA stage.
Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	The proposal will increase choice, but not to the detriment of other hardware outlets in the main trade area as set out in the Economic Impact Assessment prepared by Essential Economics
If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?	The site is opposite an existing centre – Tura Beach – and is therefore considered to be a edge-of-centre proposal
What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?	If the Planning Proposal does not proceed, then the land will remain a deferred matter and retain its 1(c) Rural Small Holding zone which is inconsistent with the surrounding business zoning and established retail development and seniors housing development. The land is not being well utilised given its corner location opposite a shopping centre, and not proceeding will simply delay when this land could be put to a useful purpose given its surrounding context. Not proceeding with the Planning Proposal will also result in the local jobs not being realised. A future injection of 70 direct jobs into the local economy is a significant impact on not proceeding with the Planning Proposal. This does not take into consideration the potential indirect (or 'flow-on') jobs that will be created as a result of this development, including a potential 34 jobs to be created during the construction phase.

5 Conclusion

This request for Gateway Review is provided in relation to a Gateway Determination issued by DPE on 15 August 2016 for a Planning Proposal to rezone land on the corner of Tura Beach Drive and Sapphire Coast Drive, Tura Beach to B5 Business Development to allow for the development of a Bunnings Warehouse on the site.

The delegate of the Minister for Planning determined that the Planning Proposal should not proceed. This report addresses each of the reasons detailed in the Gateway Determination as to why the Planning Proposal should not proceed and has been prepared in accordance with Section 5.4 of *A guide to preparing local environmental plans*.

There appear to be two main factors of the Gateway Determination.

The first relates to the compatibility of development that can be undertaken within a B5 zone with the adjoining seniors housing development. Compatibility of adjoining land uses would be required to be considered irrespective of the zoning of the land. Any development proposal for this site would be subject to a future development application and that application would be assessed against the Matters for Consideration detailed in Section 79C(1)(c) of the *NSW Environmental Planning and Assessment Act 1979* (EP&A Act) - Suitability of the site for the development.

It is considered that potential conflicts that might arise as a result of the development of this site in accordance with land uses which are permissible in the B5 zone are capable of being managed to ensure the amenity of residents of the adjoining seniors housing development is not adversely affected. In this regard, therefore, it is considered that this is not a compelling reason as to why the Planning Proposal should not proceed.

The second factor relating to this Planning Proposal appears to be that it involves a 'major commercial development' in a location other than the Bega regional centre. In this regard, areas adjoining the Bega town centre, as well as industrially zoned land to the north and south of Bega were investigated to ascertain if a suitable location was available. As detailed in Section 3.2 of this report, no suitable sites were found due to a number of constraints including topography, lack of visibility and exposure and potentially unsafe traffic movements.

Many of the land uses that are permissible in the B5 zone utilise a large floor plate and, as a consequence, require sites that are relatively flat, or have gentle topography. This feature (i.e. – large floor plates) is also recognised in the mandated objective for the B5 zone as noted in the Standard Instrument LEP:

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.

It is acknowledged that as the regional centre, major development proposals should seek to locate in Bega, where appropriate. However, where there are no sites that are suitable for a particular activity and where it can be demonstrated that accommodating a use in an alternative location can be undertaken without disrupting the network of centres in the LGA or undermining the primacy of Bega as the principal centre of the region, the option of zoning land to accommodate those uses, which will make a significant contribution to the local economy in terms of job creation, should be considered favourably.

As discussed in Section 3.5 of this report (and Section 4 of the supplementary economic advice at **Appendix 3**), there are no suitable sites available in Bega with the appropriate attributes suitable for the location of a Bunnings. Furthermore, no strategic policy framework exists that provides Bunnings with a reasonable expectation that such a site would be made available.

As noted in the Essential Economics supplementary advice:

In effect, the interpretation of the policy identified in the Gateway Determination provides the contradictory position that:

- *Bunnings should preferably be located at the Bega regional centre*

5 Conclusion

- *No Bunnings can actually be accommodated by existing land use policy applying in Bega.*

For this reason, the relevant policies did not anticipate the commercial success and demand for the Bunnings warehouse retail format in regional areas. This reflects a shortcoming of those policies in the current context of contemporary retail industry and consumer expectations.

This report has provided detailed discussion as to how a B5 zoning of the subject site would relate to the Tura Beach local centre and the network of centres in the Bega Valley LGA and has demonstrated that, rezoning of the subject site to B5 would not undermine the established network of centres in the LGA and would be entirely consistent with the objectives of the B5 zone.

Further, Council is of the opinion that this Planning Proposal is not inconsistent with their adopted strategies and therefore a review of these is not required in order for this Planning Proposal to proceed.

For the reasons detailed in the report and the attached supporting documentation, it is considered that a reconsideration of the Gateway Determination issued in relation to the rezoning of Lots 33 and 34 DP243029 is unreservedly justified.