

Bega, Tathra, Jellat Jellat and Kalaru rezoning of deferred sites

Proposal Title : Bega, Tathra, Jellat Jellat and Kalaru rezoning of deferred sites

Proposal Summary : To rezone and remove the deferred matter status from sites in Bega, Tathra, Jellat Jellat and Kalaru as follows:

Site 1: Lot 10 DP 1162109, Finucane Lane, Bega from 2(f) Future Urban (BVLEP 2002) to R5 Large Lot Residential Zone with a 2ha minimum lot size;

Site 2: Part Lot 4 DP 1077434, Part Lot 2432 DP 793758 and Lot 1510 DP 1077898, Princes Hwy, Bega from 2(f) Future Urban (BVLEP 2002) to R5 Large Lot Residential Zone with 1ha and 3ha minimum lot sizes,

Site 3: Lot 5210 DP 807872, D'Arcy Lane, Jellat Jellat from 1(a) General Rural (BVLEP 2002) to E4 Environmental Living Zone with a 2ha minimum lot size,

Site 4: Lot 2 DP 582074, Tathra River Estate, Thompsons Dr, Tathra from 1(a) General Rural, 2(a) Residential Low Density Zone, 2(c) Residential Tourist Zone, 6(a) Existing Open Space Zone and 7(b) Environment Protection Foreshore Zone (BVLEP 2002) to R5 Large Lot Residential Zone with a 1ha minimum lot size, RE1 Public Recreation Zone and E2 Environmental Conservation Zone, and

Site 5: Lot 22 DP 816824 and Lots 2 & 3 DP 249834, Sapphire Coast Dr, Kalaru from 1(a) General Rural Zone (BVLEP 2002) to E4 Environmental Living Zone with a 2ha minimum lot size; and Lot 21 DP 816824 Sapphire Coast Dr, Kalaru from E3 Environmental Management Zone to E4 Environmental Living Zone with a 2ha minimum lot size.

Sites 1 - 3 are not proposed to yield any further development opportunities.

Site 4 is likely to yield around 30 additional dwellings.

Site 5 is likely to yield 4 additional dwellings.

PP Number : PP_2017_BEGAV_001_00 Dop File No : 16/09392

Proposal Details

Date Planning Proposal Received :	09-Jan-2017	LGA covered :	Bega Valley
Region :	Southern	RPA :	Bega Valley Shire Council
State Electorate :	BEGA	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	Finucane Lane		
Suburb :	Bega	City :	Postcode :
Land Parcel :	Lot 10 DP 1162109		

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Street :	Princes Hwy		
Suburb :	Bega	City :	Postcode :
Land Parcel :	Part Lot 4, DP 1077434, Part Lot 2432 DP 793758 and Lot 15 DP 1077898		
Street :	D'Arcy Lane		
Suburb :	Jellat Jellat	City :	Postcode :
Land Parcel :	Lot 5210 DP 807872		
Street :	Thompsons Dr		
Suburb :	Tathra	City :	Postcode :
Land Parcel :	Lot 2 DP 582074, Tathra River Estate		
Street :	Sapphire Coast Dr		
Suburb :	Kalaru	City :	Postcode :
Land Parcel :	Lots 21 & 22 DP 816824 and Lots 2 & 3 DP 249834		

DoP Planning Officer Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	South Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :	48.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	66
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Yes Lobbyists Code of Conduct has been complied with : If No, comment :			

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : Council initially lodged a request for a Gateway determination for this proposal in June 2016, however the Department had a number of concerns about the drafting of the planning proposal and questions about the policy outcomes for the Finucane Lane and the Tathra River Estate proposals.

Council decided a new Council resolution was required to clarify the policy concerns and also redrafted the planning proposal to address identified issues. This was obtained on 14 December 2016.

Three of the sites are proposed to be rezoned to match the approved development applications and current land uses of the sites. The other two sites will have further development opportunities and will be assessed further in this report.

Adequacy Assessment

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

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

Comment : The objective is to apply zonings and lot size controls to certain land to recognise the existing use of the land or enable further subdivision for new rural living opportunities.

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

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

Comment : The explanation of provisions is adequate.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

2.3 Heritage Conservation

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.3 Site Specific Provisions

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

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 14—Coastal Wetlands

SEPP No 55—Remediation of Land

SEPP No 71—Coastal Protection

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

SEPP (Rural Lands) 2008

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

Have inconsistencies with items a), b) and d) being adequately justified? Yes

If No, explain :

SECTION 117 DIRECTIONS:

1.2 RURAL ZONES: This Direction does apply to the planning proposal as it will affect land within an existing or proposed rural zone (Sites 3, 4 & 5).

The proposal is considered to be **INCONSISTENT** with this direction as it proposes to rezone land from a rural zone to a residential zone and it contains provisions that will increase the permissible density of land within a rural zone.

RECOMMENDATION: The Secretary can be satisfied that the inconsistency is of minor significance.

1.3 MINING, PETROLEUM PRODUCTION AND EXTRACTIVE INDUSTRIES: Council has identified that this Direction applies to the planning proposal, however it does not apply as it does not prohibit mining, nor does it restrict the potential development of resources of mining materials.

1.5 RURAL LANDS: This Direction does apply to the planning proposal as it will affect land within an existing or proposed rural or environmental protection zone and it proposes to change the existing minimum lot size on land within a rural zone (Sites 3, 4 & 5).

Council has identified that it believes the proposal is inconsistent with this Direction, however upon closer consideration, the Department feels the proposal is **CONSISTENT** with this direction as it supports a number of the Rural Planning Principles and it is also consistent with the majority of the Rural Subdivision Principles.

2.1 ENVIRONMENT PROTECTION ZONES: This Direction does apply to the planning proposal as it will affect land within a proposed environment protection zone or land otherwise identified for environment protection purposes (Sites 3, 4 & 5).
The proposal is considered to be **CONSISTENT** with this direction.

2.2 COASTAL PROTECTION: This Direction does apply to the planning proposal as the subject land is within the coastal zone (Site 4).
The proposal is considered to be **CONSISTENT** with this direction.

2.3 HERITAGE CONSERVATION: This Direction does apply to the planning proposal as it affects items, places, buildings, works, relics moveable objects or precincts of environmental heritage significance (Site 4).
The proposal is considered to be **CONSISTENT** with this direction.

3.1 RESIDENTIAL ZONES: Council has not identified that this Direction applies to the planning proposal, however it does apply as it 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 (Site 1, 2 and 4).
The proposal is considered to be **CONSISTENT** with this direction.

4.1 ACID SULPHATE SOILS: This Direction does apply to the planning proposal as it will affect land having a probability of containing acid sulphate soils, as shown on the Acid Sulphate Soils Planning Maps held by the Department of Planning (Site 4).
The proposal is considered to be **INCONSISTENT** with this direction as it proposes an intensification of land uses on land identified as having a probability of containing acid sulphate soils, as shown on the Acid Sulphate Soils Planning Maps held by the Department of Planning and did not consider an acid sulphate soils study assessing the appropriateness of the change of land use given the presence of acid sulphate soils.

RECOMMENDATION: The Secretary can be satisfied that the inconsistency is of minor significance and the issue of acid sulfate soils management will be adequately addressed at the development application stage.

4.4 PLANNING FOR BUSHFIRE PROTECTION: This Direction does apply to the planning proposal as it will affect/is in close proximity to land mapped as bushfire prone land.

RECOMMENDATION: The Secretary can need to be satisfied that the requirements of the Direction have been met. A condition should be included in the Gateway determination that consultation should be undertaken with the Rural Fire Service in accordance with the Direction.

5.1 IMPLEMENTATION OF REGIONAL STRATEGIES: This Direction does apply to the planning proposal as the South Coast Regional Strategy applies to the land.

The proposal is considered to be **CONSISTENT** with this direction.

6.2 RESERVING LAND FOR PUBLIC PURPOSES: Council has not identified that this Direction applies to the planning proposal, however it does apply as it will create zonings or reservations of land for public purposes and requires the approval of the relevant public authority and the Secretary of the Department (Site 4).

The proposal is considered to be **CONSISTENT** with this direction as the Gateway determination will issue the necessary approval.

RECOMMENDATION: The Secretary of the Department approves of the proposal to alter the zonings of land for public purposes.

6.3 SITE SPECIFIC PROVISIONS: Council has identified that this Direction applies to the planning proposal, however it does not apply as it does not allow a particular development to be carried out.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : Mapping is suitable for public exhibition. Final maps will need to be in accordance with Technical Mapping Requirements.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council considers this matter to be low impact and proposed a 14 day exhibition. However, given the development opportunities to be afforded to Sites 4 and 5, it is considered that a 28 day exhibition is more suitable.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : Bega Valley LEP 2013

Assessment Criteria

Need for planning proposal : As the 5 sites were deferred from the Bega Valley LEP 2013, a planning proposal to rezone the sites is the most appropriate course of action.

Consistency with strategic planning framework :

Council has adequately demonstrated consistency with the strategic planning framework including the Council's Community Strategic Plan and the South Coast Regional Strategy.

SOUTH COAST REGIONAL STRATEGY:

Sites 1-3 reflect approved development applications and therefore are not inconsistent with the Regional Strategy.

Site 4 (relating to the Tathra River Estate) is identified in the Regional Strategy on page 46 and 47 as being within a sensitive coastal location but is suitable for limited urban development with a number of provisos, including that the development be limited to 300 dwellings and that riparian corridors and foreshore areas should be zoned E2 Environmental Conservation.

The planning proposal identifies that the provision of an additional 34 dwellings (Sites 4 and 5) is consistent with the future demand for rural residential dwellings identified by the Regional Strategy. It is important to note that the Regional Strategy states that "limited areas for additional rural residential areas must be located on cleared land unsuitable for urban or agricultural uses and will only be agreed to by the Department as part of an endorsed growth management strategy or structure plan".

The proposal is somewhat inconsistent with this requirement as the Council does not have an endorsed growth management strategy or structure plan identifying the future provision of rural residential development. However, the Strategy does identify that the Tathra River Estate is potentially capable of additional residential development of up to 300 lots, thereby endorsing in principle, additional development on this site.

SOUTH EAST AND TABLELANDS REGIONAL PLAN:

The draft South East and Tablelands Regional Plan does not specifically mention the subject land or sensitive coastal environments like its predecessor, however it does require that councils and development proponents protect the high environmental value lands in rezoning decisions.

The proposal is not inconsistent with this requirement.

SEPP 71 - COASTAL PROTECTION

Site 4 is located within a "sensitive coastal location" as prescribed by the the State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71). Under the SEPP, the consent authority must not grant consent for residential subdivision in a sensitive coastal location unless the Minister has adopted a master plan for the land or has waived the need for a master plan.

In 2013, the Minister adopted a master plan under SEPP 71 for Site 4 for a 32 lot subdivision with lots ranging in size from around 4,000sqm to just over 7ha in size. It also included a 72.5ha residue area which was proposed to be retained as predominantly general rural, apart from the foreshore areas that were proposed to be zoned as open space.

Site 4 adjoins the Stage 1 Tathra River Estate that consists of 53 residential lots and is zoned R2 Low Density Residential.

The adopted master plan recognised that whilst the site was zoned residential, the proposed 32 lot subdivision was a significant reduction in the intensity of proposed development of the site as permitted by the Bega Valley LEP 2002 zoning. It also noted that if the residue land was to be subject to future subdivision, it would need additional studies that should be undertaken as part of the planning proposal process. It stated that any change to the zone and/or intensity of land use may require a master plan under SEPP 71.

The planning proposal does not include a subdivision plan for the master plan residue area of the site. It does not identify any additional studies that should be undertaken to justify further development of that part of the site.

The planning proposal identifies that the Minister may require that a master plan be prepared for the future development of this land.

The planning proposal states that the development, particularly outside the master plan adopted area, is consistent with SEPP 71 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 foreshore, 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.

Part 2 of SEPP 71 sets out the matters for consideration that council must take into account when preparing a draft local environmental plan. Whilst the planning proposal does not specifically address these matters, it does state that the proposal is consistent with the SEPP and based on the information provided, the Department agrees.

DEPARTMENT AGREED STRATEGIC POLICY:

- SITE 1:

In early 2015, the Council and the Department agreed in principle to a number of proposed development and rezoning sites progressing to assessment by the Department for a Gateway determination, including Finucane Lane (Site 1).

In relation to Site 1, the Department and Council agreed that a 2ha MLS would be appropriate for this site to reflect the approved development application, however Council's planning proposal of July 2016 proposed a 1ha MLS, effectively doubling the proposed dwelling opportunities. The planning proposal did not provide any justification for the increased dwelling opportunities and Council was asked to clarify if the 1ha was an error or to provide further justification for the increased dwellings.

Council staff clarified that it was an error and the planning proposal has now been corrected to apply a 2ha MLS to the site, which would not permit any further dwelling opportunities.

- SITE 4 CURRENT PROPOSAL:

In 2015, the Council and the Department agreed that a 2ha minimum lot size (MLS) would be appropriate for the whole site, however 1ha would be considered if Council could provide further justification. Council's planning proposal submitted in July 2016 proposed a 1ha MLS but suggested that Council only supported an additional 15-20 dwelling lots on the site. This was confusing as a 1ha MLS would result in many more additional dwelling lots than identified. The Department asked Council to clarify the proposed outcome and review the planning proposal accordingly.

An additional report was resolved by Council on 14 December 2016 clarifying that the proposal was to apply a 1ha MLS to the whole site with support for an additional 30 dwelling lots on the residue portion of the site. This is in addition to the 32 lots approved by the SEPP 71 master plan process resulting in a total of 62 dwellings on the site. Council has now amended its planning proposal to reflect this.

Environmental social
economic impacts :

SITES 1-3:

Sites 1-3 propose rezonings that reflect existing approved land uses and would not enable any further dwelling opportunities. Therefore, these proposals will not have any impacts beyond those approved and conditioned by Council.

SITE 4:

Site 4 (Tathra River Estate) is located on the Bega River Estuary. It is 130ha of mostly cleared grazing land and adjoins the Tathra River Estate Stage 1 (a development of 53 residential lots that are zoned R2 Low Density Residential).

The Site contains and is adjacent to a large area of SEPP 14 Wetlands. The proposal would zone the SEPP 14 Wetlands as E2 Environmental Conservation in conjunction with the foreshore area to the Bega River and will be dedicated to Council as a public reserve. It is also proposed that all dwellings and effluent areas will be setback by at least 100m

from SEPP 14 Wetlands areas.

The proposed R5 area to be subdivided into 1ha rural residential lots is largely cleared, it's above the 1:100 ARI Flood Planning Level, not subject to Acid Sulfate Soils and is outside the Coastal Risk Area. It is intended that lot averaging provisions would be utilised to ensure that appropriate lot sizes are applied to the land and that no more than 30 additional lots would be achieved in this area. Council is confident that on-site effluent can be managed effectively, particularly in relation to the requirements of SEPP 71 about impacts on water quality of coastal waterbodies.

The planning proposal states that there is a strong demand for rural residential development in the Tathra-Kalaru area and a current shortage of available land with no further supply projected to be available. The proposed 62 lots will be the only coastal rural residential development available in the Bega Valley Shire.

Given that the South Coast Regional Strategy identified that this site was suitable for up to 300 lots, the 62 proposed lots combined with the 53 existing residential lots already zoned R2 Low Density provide a significantly lower development yield and potential impact than that previously envisaged for the site.

There is a probability that this site could contain acid sulfate soils (ASS). However, the majority of the development site is unaffected by ASS and the area potentially affected is a very small area adjoining a SEPP 14 wetland. Council has also advised that ASS is routinely addressed at the development application stage requiring soil samples and an ASS Management Plan if ASS is present. This assessment is adequate for the purposes of rezoning the site.

The site is identified as containing land at risk of bushfire and as such, consultation with the Rural Fire Service will be required.

The planning proposal identifies that the site contains a number of areas that retain native vegetation communities. Three endangered ecological communities have been identified on the site. There are no threatened flora or fauna species likely on the site. There are a number of fauna habitats of value (including hollow-bearing trees) and a variety of water habitats. However, the proposal is considered unlikely to have a significant impact on the ecological values of the site.

Site 4 is subject to heritage impacts. As part of the SEPP 71 master planning process, a preliminary Aboriginal heritage assessment was undertaken and it concluded that there are Aboriginal objects present across the site. However, it also concluded that there are no Aboriginal constraints that would preclude a subdivision development on the site. A Heritage Impact Permit will be required for the majority of the subject land and must be sought from the Office of Environment and Heritage.

SITE 5:

The planning proposal identifies that the Site has been largely cleared of native vegetation. There are no known threatened species, populations or ecological communities likely to occur on this site.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 months	Delegation :	RPA
Public Authority Consultation - 56(2)(d) :	Office of Environment and Heritage - NSW National Parks and Wildlife Service NSW Rural Fire Service		

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

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

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Email from Council submitting revised Planning Proposal for Bega and Tathra deferred sites PP 20122016.pdf	Proposal Covering Letter	Yes
Bega Tathra deferred sites Planning Proposal FINAL (amended) Dec16.pdf	Proposal	Yes
Bega & Tathra Planning Proposal - Council Report - June 2016.pdf	Proposal	Yes
Bega & Tathra - Ordinary Meeting Minutes 29 June 2016.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones
- 1.3 Mining, Petroleum Production and Extractive Industries
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.3 Site Specific Provisions

Additional Information : **RECOMMENDATIONS.**
It is **RECOMMENDED** that the Acting Director, Regions, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the Bega Valley Local Environmental Plan 2013 to rezone and amend the minimum lot sizes for 5 deferred sites in Bega, Tathra, Jellat Jellat and Kalaru should proceed subject to the following conditions:

1. CHANGE THE DESCRIPTION OF THE PLANNING PROPOSAL
From "Bega and Tathra Deferred Sites"

To "Bega, Tathra, Jellat Jellat and Kalaru Deferred Sites".

2. Prior to undertaking community consultation Council is to provide the Director Regions, Southern, with a copy of the amended planning proposal.

3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal must be made publicly available for 28 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of 'A guide to preparing local environmental plans (Planning and Infrastructure, 2013)'.

4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant Section 117 Directions:

- * NSW Rural Fire Service
- * Office of Environment and Heritage

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

7. The final LEP maps shall be prepared in accordance with the requirements of the Department's "Standard Technical Requirements for Spatial Datasets and Maps" Vers: 1.0 November 2015.

DELEGATIONS

Council be authorised to use the Minister's plan making functions under sections 59(2),(3)&(4) of the Environmental Planning and Assessment Act 1979.

SECTION 117 DIRECTIONS

It is recommended that:

- (a) The Secretary's delegate can be satisfied that the planning proposal is consistent with s117 Directions (1.5 Rural Land, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.1 Residential Zones, 4.1 Acid Sulfate Soils, 5.1 Implementation of Regional Strategies, 6.2 Reserving Land for Public Purposes)
- b) The Secretary's delegate can be satisfied that the planning proposal will be consistent with s117 Direction 4.4 Planning for Bushfire Protection, when Council has consulted with the Rural Fire Service prior to undertaking community consultation;
- c) The Secretary's delegate can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are of minor significance; and
- d) No further consultation or referral is required in relation to s117 Directions while the planning proposal remains in its current form.

SEPPS

The planning proposal is considered to be consistent with all relevant SEPPs.

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Supporting Reasons :

Signature:



Printed Name:

Deanne Frankel

Date:

27/1/17.