

PLANNING PROPOSAL TO AMEND BOMBALA LOCAL ENVIRONMENTAL PLAN 2012

To permit a water storage facility along sections of the
Bombala River, Bombala

Prepared for and on behalf of Snowy Monaro Regional Council

by Zenith Town Planning,

6 March 2017

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INTRODUCTION

This planning proposal has been prepared in accordance with section 55(2) of the *Environmental Planning and Assessment Act 1979*.

The purpose of the planning proposal is to amend *Bombala Local Environmental Plan (LEP) 2012* to permit the expansion of a water storage facility on the Bombala River.

The scope of this planning proposal is to describe relevant attributes of the land and watercourse and to respond to matters for consideration outlined in *A guide to preparing planning proposals* issued by the Department of Planning & Environment in August 2016.

Proposed development

The settlement of Bombala is located 485km south of Sydney and 80km south of the town of Cooma. The water supply for the town of Bombala is sourced from an impoundment on the Coolumbooka River to the north of Bombala township which has a capacity of 245 megalitres.

It is proposed to expand this water storage facility by extending the impoundment for a length of approximately 2.7 to 2.8 kilometres from the existing impoundment of the Coolumbooka River into the Bombala River and extending to a new weir to be constructed between Caveat and Young Streets adjacent the town centre. The impoundment would raise the depth of the existing waterway by a variable amount but estimated to average about 2 metres and provide an additional 50 to 60 megalitres of storage capacity. The proposed impoundment would form a single storage area.

The properties that are affected by the existing impoundment are described in Table 1 below.

Table 1: Properties subject to the existing impoundment

Lot	Section	Deposited Plan
1		1122951
7		1161886
47		264454
2		1122951
46		264454
3		1161886

48		264454
5		1161886
45		264454
44		264454
3		1122951
49		264454
2		1161886
4		1122951
6		1161886
5		1122951
1		1161886
43		264454
42		264454
41		264454
Part 1		863574
Part 6		112091
50		264454
6		1122951
4		1161886

The properties that would be affected by the additional impoundment are described in Table 2 below.

Table 2: Properties subject to the proposed impoundment

Lot	Section	Deposited Plan
7017		94005
7018		94005
7024		1024462
7016		94006
7013		1026178
7		1161886
Part 53		264454
Part 511		1152280
Part 1		756819
Part 80		756819
Part 154		756819
Part 155		756819

Lot	Section	Deposited Plan
Part 352		756819
7009		94007
Part 1	56	758129
7	56	758129
8	56	758129
Part 790		1150989
7303		1148011
Part 132		1166322
7501		1145394
701		1028120
Part 6		749463
Part 5		749463

The new weir is proposed to be constructed on Lot 7018 DP 94005 Bombala River which is in the ownership of the Crown.

Images of the existing impoundment and the proposed new impoundment are shown in figures below.

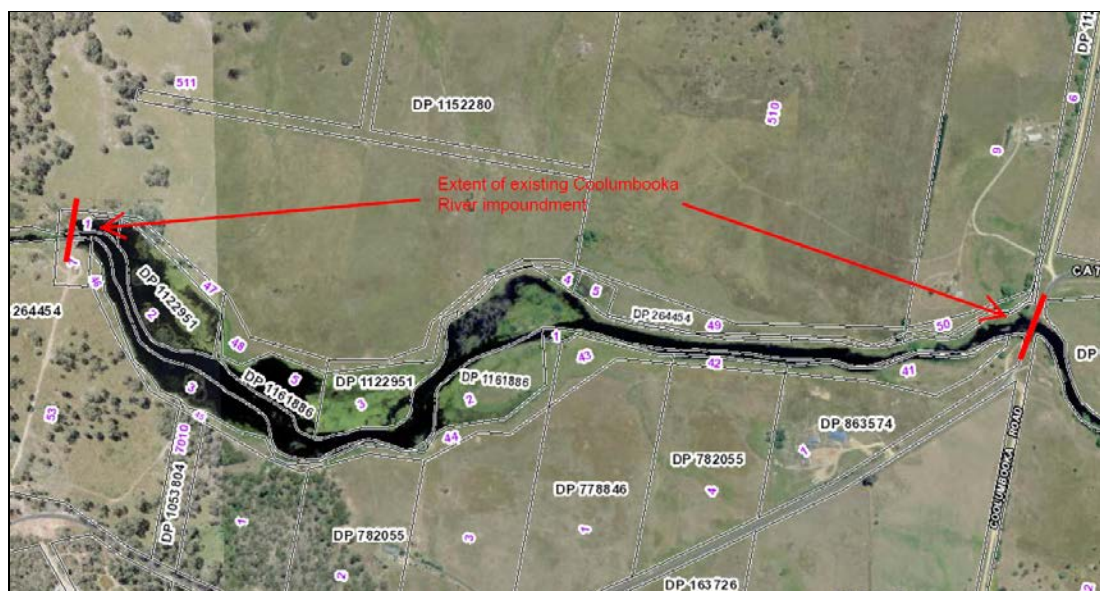


Figure 1: The existing impoundment. Source: SIX Maps

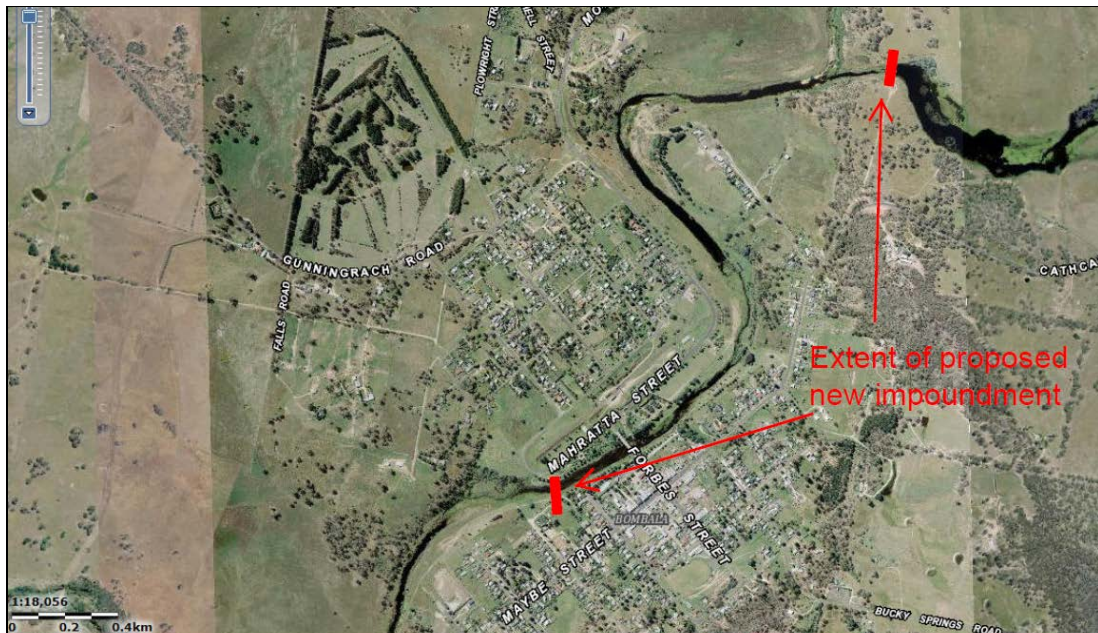


Figure 2: The proposed impoundment. Source: SIX Maps

Figures 3 and 4 below show the location of the proposed weir on the Bombala River adjacent the urban area as an image and the cadastral boundaries.

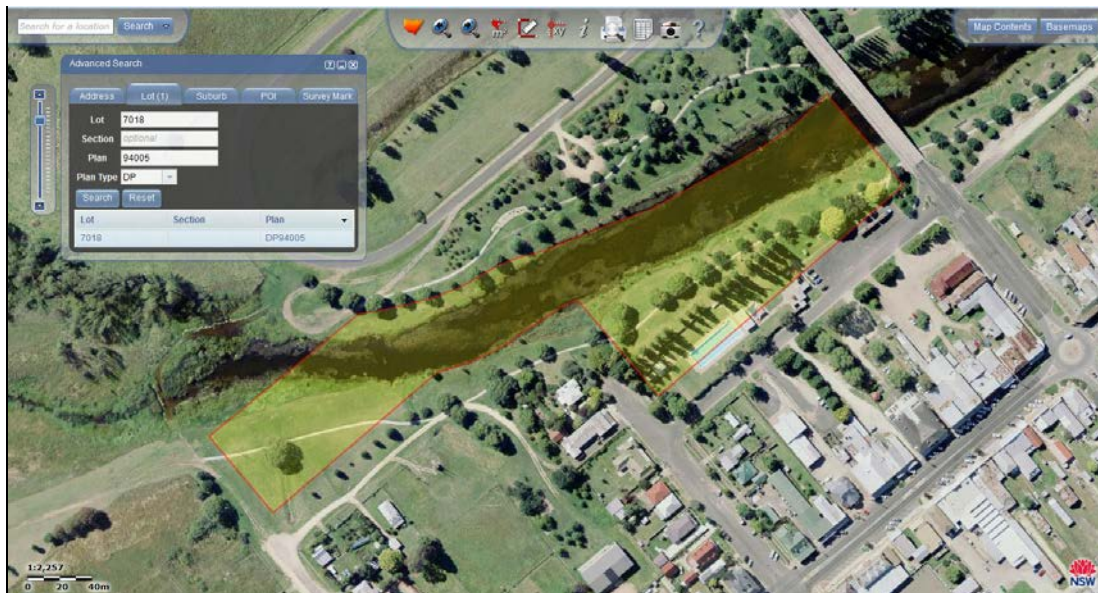


Figure 3: Image of Lot 7018 DP 94005 Bombala River. Source: SIX Maps

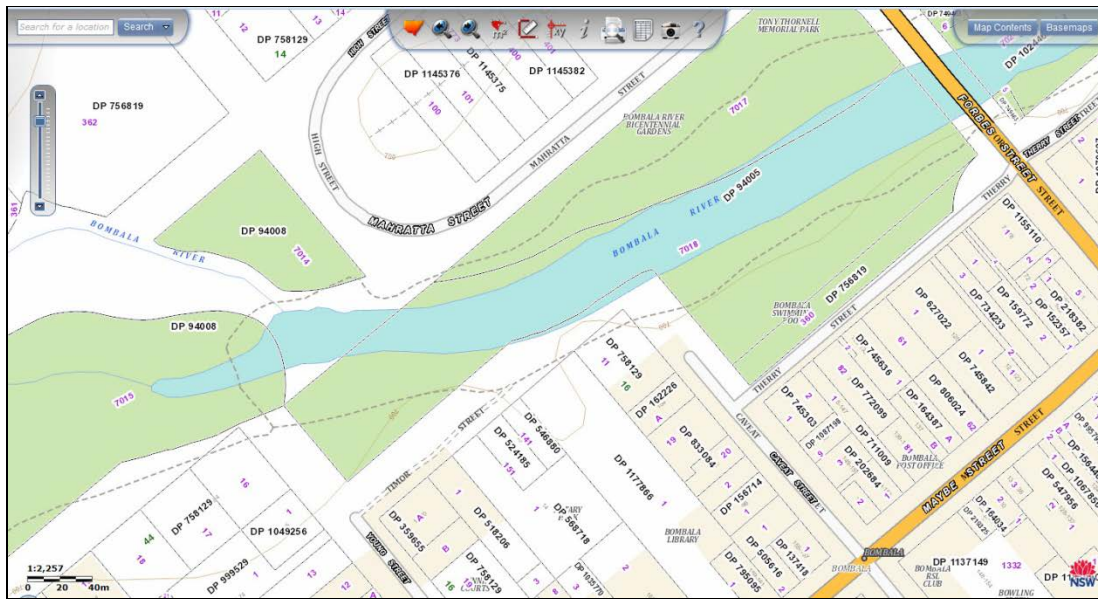


Figure 4: SIX Maps cadastral image of Lot 7018 DP 94005 Bombala River

The existing impoundment and the proposed impoundment are defined as water storage facilities. A water storage facility is defined in *Bombala LEP 2012* as a *dam, weir or reservoir for the collection and storage of water, and includes associated monitoring or gauging equipment.*

Water storage facilities are a type of *water supply system* which means any of the following:

- (a) a water reticulation system,
- (b) a water storage facility,
- (c) a water treatment facility,
- (d) a building or place that is a combination of any of the things referred to in paragraphs (a)–(c)

The existing impoundment covers a section of the Coolumbooka River that is zoned RU1 Primary Production. The Coolumbooka River weir is currently zoned RU1 Primary Production and water supply systems are not permitted in that zone.

The section of the Coolumbooka River and Bombala River proposed to be impounded is variously zoned R1 General Residential, RE1 Public Recreation and R5 Large Lot Residential under *Bombala LEP 2012*. Water supply systems and hence water storage facilities are prohibited uses in each of the R1, RE1 and R5 zones.

State Environmental Planning Policy (Infrastructure) 2007 prevails over *Bombala LEP 2012* and permits water supply systems without consent in zone RU1 where carried out by or on behalf of a public authority.

SEPP (Infrastructure) 2007 does not list zones R1, RE1 and R5 as prescribed zones and, therefore, does not prevail over *Bombala LEP 2012* to permit water supply systems or any subordinate uses (water reticulation systems, water storage facilities or water treatment facilities) as permitted without consent.

It is proposed to apply zone SP2 Infrastructure to the properties affected by the proposed new impoundment so that a water supply system is a use that is permitted without consent.

It is also proposed to apply zone SP2 Infrastructure to the existing impoundment so that the zoning of the properties affected by the existing Coolumbooka River weir is consistent with the proposed zoning of the new impoundment area. Permitting the use within the zone will also serve to avoid any ambiguity.

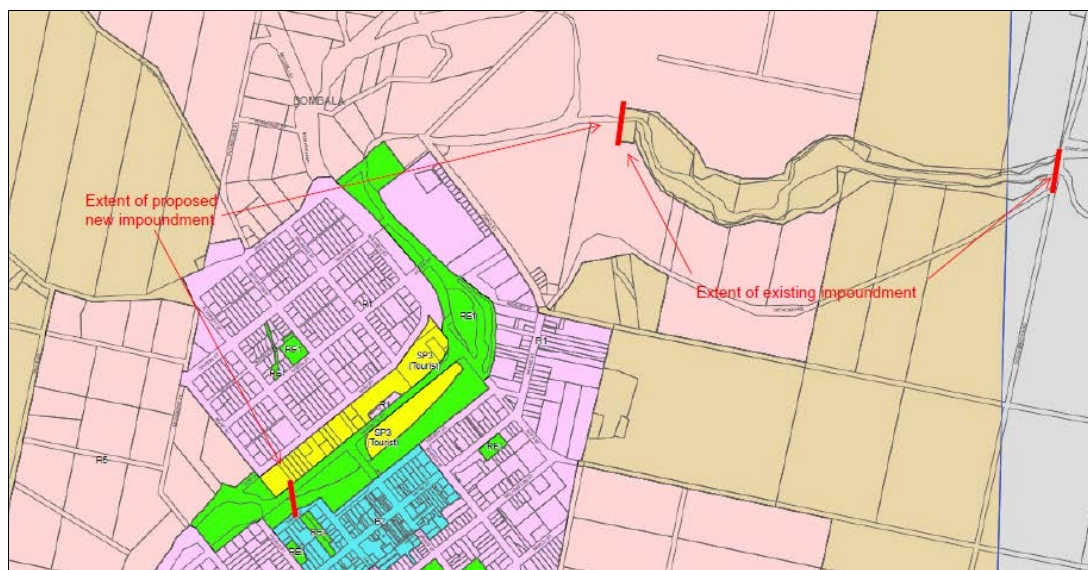


Figure 5: Extract from the Bombala LEP 2012 Land Zone Map Sheet LZN_004G

To effect the rezoning, this planning proposal has been prepared to amend *Bombala LEP 2012* to alter the Land Zoning Map to apply zone SP2 Infrastructure to the affected land – the properties affected by the existing impoundment and the properties affected by the proposed extension of the impoundment. Provisions of

Bombala LEP 2012 relevant to land zoned SP2, including the land use table, would then apply.

PART 1: OBJECTIVES OR INTENDED OUTCOMES

The objective of the planning proposal to amend *Bombala Local Environmental Plan (LEP) 2012* is to permit water supply systems on the affected land described above to facilitate the extension of the impoundment that supplies the settlement of Bombala with potable town water.

PART 2: EXPLANATION OF PROVISIONS

The proposed outcomes will be achieved by an amendment to *Bombala Local Environmental Plan (LEP) 2012* to rezone the affected land described above, being properties affected by the existing impoundment and properties affected by the proposed extension of the impoundment, to SP2 Infrastructure through an amendment to the *Land Zoning Map Sheet LZN_004G*.

PART 3: JUSTIFICATION FOR THE PLANNING PROPOSAL

Justification for the proposed amendment to *Bombala LEP 2012* is presented as a response to each of the questions posed in *A guide to preparing planning proposals*.

SECTION A- NEED FOR THE PLANNING PROPOSAL

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

The planning proposal has not resulted from a strategic study or report. However, Council resolved on the 18th March 2015 to commence the planning approval process for a new low level weir and road crossing on the Bombala River in the vicinity of Young Street. The purpose of this resolution is to expand the town water supply to ensure that potable water is available to the inhabitants of Bombala during drought events and to ensure that adequate potable water is available to support future expansion of the population.

Council resolved on 13 November 2016 to include the *proposed new weir to increase the standing water level by 2 metres across the Bombala River immediately upstream of the proposed truck route crossing* in the final version of the Bombala Masterplan. This plan specifies improvements to the public domain of Bombala township.

Council resolved on 22 February 2017 to forward the planning proposal to the Department of Planning and Environment with a request for a Gateway Determination.

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

There are three possible methods to achieve an amendment to *Bombala LEP 2012* to permit the proposed works. These are:

1. Insert a clause in Schedule 1 Additional permitted uses to permit a water supply system on the subject section of the river
2. Rezone the subject section of the river as SP2 Infrastructure and show the subject section of the river as a water supply system
3. Amend the land use tables for zones R1, RE1 and R5 to permit water supply systems in these zones

Option 2 has been selected as rezoning to SP2 indicates the precise intended purpose of the zone. The sections of the waterway already used to collect and supply town water may also be zoned SP2.

Option 1 may also secure the waterway for the same purpose, however, Option 3 may have unintended consequences by permitting water supply systems on other areas of land zoned RU1, R1, RE1 or R5 which are not suited to such development.

SECTION B- RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

There is no adopted regional, sub-regional or district plan or strategy that applies to Bombala local government area.

The *draft South East and Tablelands Regional Plan* was released for public exhibition by the Department of Planning and Environment in May 2016. Direction 2.4 of the draft plan is to *protect and secure the region's water resources*. It is noted that the future growth and development of the region, coupled with the uncertainties of drought and climate change, mean that long term planning for water supply must be an integral part of strategic planning.

Action 2.4.1 is to finalise water sharing plans. This has been achieved for the Snowy Genoa Unregulated and Alluvial Water Sources water sharing plan was made by the Minister for Primary Industries on 29 June 2016.

Action 2.2.2 is to *prepare integrated water cycle management strategies* that ascertain infrastructure needs over the next 30 years to accommodate population growth. The state government is committed to supporting councils prepare these strategies.

The planning proposal is consistent with the directions and actions of the *draft South East and Tablelands Regional Plan*.

Q4. Is the planning proposal consistent with council's local strategy or other local strategic plan?

Bombala Land Use Strategy

The *Bombala Land Use Strategy* was adopted by Bombala Council on 17 March 2010. It is noted in the strategy that reticulated potable water for the town of Bombala is sourced from the Coolumbooka River Weir.

There are no directions or actions in the strategy relating to the supply of town water, therefore the proposal is not inconsistent with the strategy.

Water Sharing Plan for the Snowy Genoa Unregulated and Alluvial Water Sources 2016

The *Water Sharing Plan for the Snowy Genoa Unregulated and Alluvial Water Sources 2016* was made on 29 June 2016 by the NSW Minister for Lands and Water. The plan contains the following section:

46 Granting or amending water supply work approvals

- (1) *A water supply work must not be granted or amended to authorise an in-river dam on a third order or higher stream within the following water sources:*
 - (a) *the Upper Snowy River Water Source,*
 - (b) *the Thredbo River Water Source,*
 - (c) *the Lower Snowy River Water Source,*
 - (d) *the Delegate River Water Source,*
 - (e) *the Bombala River Water Source,*
 - (f) *the Tombong Creek to Little River Water Source,*
 - (g) *the Matong Creek to Stony Creek Water Source,*

- (h) the Pinch River Water Source,
(i) the Genoa River Water Source.

Note. Water supply work approvals may be granted or amended for in-river dams on third order or higher streams within all water sources and management zones to which this Plan applies, other than those specified in subclause (1), consistent with the NSW Weirs Policy, the principles of the Act, the Fisheries Management Act 1994 and any other relevant legislation

- (2) Subclause (1) does not apply where the in-river dam will be nominated by a local water utility access licence or an unregulated river (town water supply) access licence and the Minister is satisfied that the in-river dam is being constructed for the purpose of town water supply.

Note. This subclause permits local water utility access licence holders and unregulated river (town water supply) access licence holders to apply for a water supply work approval for an in-river dam on any order of stream, however the provisions of the Act still apply and an application for a water supply work approval may be refused under section 95 of the Act.

Section 46(2) of the *Water Sharing Plan* as printed above permits Council to amend the current license that is issued for the Coolumbooka River weir to increase extraction of water to augment town water supplies by way of a new weir to be constructed on the Bombala River.

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

An assessment of the planning proposal against relevant SEPPs is provided below.

SEPP	Intent	Comment
SEPP (Infrastructure) 2007	To provide certainty and flexibility in the provision of public infrastructure	Section 125 (2) of <i>State Environmental Planning Policy (Infrastructure) 2007</i> (2) permits the following development without consent when carried out by or on behalf of a public authority: • water reticulation systems

SEPP	Intent	Comment
		without consent on any land, • water storage facilities without consent on land in zones RU1 Primary Production, RU2 Rural Landscape, SP1 Special Activities, SP2 Infrastructure or an equivalent land use zone, • water treatment facilities without on land in zones RU1 Primary Production, RU2 Rural Landscape, RU4 Rural Small Holdings, IN1 General Industrial, IN3 Heavy Industrial, SP1 Special Activities, SP2 Infrastructure Such development includes catchment management works and accessways associated with the water storage facility. The SEPP prevails over <i>Bombala LEP 2012</i> however only where the works are proposed in a prescribed zone. In this case, the existing impoundment is in zone RU1 and therefore permitted without consent by way of the SEPP. However, water supply systems are not permitted by <i>Bombala LEP 2012</i> or <i>SEPP (Infrastructure)</i> on the properties affected by the proposed impoundment

SEPP	Intent	Comment
		which are zoned R1, RE1 and R5. An amendment to <i>Bombala LEP 2012</i> is required to permit water supply systems in these zones. Following an amendment the works will be permitted without consent and subject to Part 5 of the <i>Environmental Planning and Assessment Act 1979</i>
SEPP (Rural Lands) 2008	The relevant aims of this Policy are: (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State (c) to implement measures designed to reduce land use conflicts	The planning proposal is satisfactory to the Rural Planning Principles of this policy. The proposal is to facilitate an extension to the impoundment that provides potable town water to Bombala. It is proposed to zone the land to be occupied by the new impoundment and the rural property occupied by the existing impoundment as SP2 Infrastructure. This will secure that land for the social and economic benefit of the community of Bombala by enabling the water resource to be protected by way of a special use zone. In doing so, the social, economic and environmental interests of the community are balanced

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

An assessment of the planning proposal against relevant Ministerial Directions is provided below.

Ministerial Direction	Objectives & application	Comment
1.2 Rural Zones	The objective of this direction is to protect the agricultural production value of rural land. A planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.	This planning proposal will amend Bombala LEP 2012 to allow a water storage facility to be carried out by rezoning the relevant section of the Bombala River as SP2 Infrastructure. The existing impoundment of the Bombala River occupies land zoned RU1 Primary Production. The existing impoundment, defined as a water storage facility, is permitted in zone RU1, however it is proposed to also rezone that property as SP2 for the sake of consistency. It is not proposed to rezone the property to a residential, industrial, village or tourist zone. The planning proposal is not inconsistent with this direction
1.5 Rural Lands	The objectives of this direction are to protect the agricultural production value of rural land, and facilitate the orderly and economic development of rural lands for rural and related purposes	This direction is relevant as the planning proposal seeks to alter the zone boundary of rural land, i.e. to rezone rural land that is occupied by the existing impoundment to SP2 Infrastructure. As

Ministerial Direction	Objectives & application	Comment
		demonstrated in the response to question 5 above, the proposal is consistent with the Rural Planning Principles of SEPP (Rural Lands) 2008 and is therefore consistent with this direction
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development	The planning proposal is consistent with this direction as it does not contain provisions requiring the concurrence, consultation or referral of a Minister or public authority and does not identify development as designated development
6.3 Site specific provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls. It applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out	This planning proposal will amend Bombala LEP 2012 to allow a water storage facility to be carried out. By rezoning the relevant section of the Bombala River as SP2 Infrastructure, the planning proposal allows that use to be carried out in the zone without imposing any development standards or requirements. The planning proposal 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?

A Terrestrial and Aquatic Biodiversity Assessment has been carried out by Envirokey Pty Ltd. The assessment found that the area of investigation (that area that is proposed to be impounded to extend the existing Coolumbooka River weir) is mostly dominated by non-native vegetation including four species of noxious weed. Two native vegetation communities were found to occur within the vicinity of the proposal which corresponded with the NSW Vegetation Types Database. These were *Snow Gum - Candle Bark woodland on broad valley flats of the tablelands and slopes, South Eastern Highlands (SR637)* and *Tea-tree tall riparian shrubland, South Eastern Highlands, South East Corner and Australian Alps (SR657)*. The biometric vegetation type SR637 meets with the identification guidelines for the threatened ecological community known as *Tablelands Snow Gum, Black Sallee, Candlebark and Ribbon Gum Grassy Woodland in the South Eastern Highlands, Sydney Basin, South East Corner and NSW South Western Slopes Bioregions - Southern Rivers (Tablelands Snow Gum Grassy Woodland)* listed as endangered under the *NSW Threatened Species Conservation Act 1995 (TSC Act)*. No threatened flora species were found within the vicinity of the proposal, nor are any expected to occur given the previous disturbance that has occurred. The Bombala River also forms part of the Endangered Ecological Community of the Snowy River Catchment listed under the *Fisheries Management Act 1994 (FM Act)* as the *Aquatic Ecological Community in the Catchment of the Snowy River in NSW*.

Three general habitats were found to occur: woodland/shrubland, aquatic habitat and introduced grassland/trees. The fauna species detected during the assessment are typical of those occurring in woodlands and adjacent to waterways in the South East Corner bioregion. No threatened fauna species listed under the schedules of the FM Act, TSC Act or the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* were detected within the vicinity of the proposal. One migratory species listed under the EPBC Act was observed. A total of five threatened and migratory biota have a moderate to high potential or are known to occur in the vicinity of the proposal based on detailed habitat assessment.

It is anticipated that some introduced grassland/trees would be removed during the construction of the weir adjacent the urban area and some of the 0.845 hectares of native vegetation (not including planted natives) would be impacted by the elevated water levels associated with the weir should the proposal proceed.

Based on the concept design for the weir, the proposal is '*unlikely*' to have a significant effect on any listed threatened flora and fauna species, communities, populations and their habitats in accordance with the TSC Act and FM Act. However, once the weir design is finalised and if the planning proposal proceeds, detailed assessment would be required as part of the Review of Environmental Factors of the proposed works. Additional assessment would also be required to determine whether the proposal is '*likely*' to have a significant effect on any EPBC Act listed threatened and migratory biota and their habitats or other matters of national environmental significance. A series of mitigation measures are proposed to minimise potential impact to biodiversity.

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

The proposed weir that will result in an extension of the existing impounded area to a location adjacent the urban area will cause ground disturbance during construction. The weir is proposed to be located on Lot 7018 DP 94005 Bombala River.

A search of the Aboriginal Heritage Information Management Service (AHIMS) database that is maintained by the Office of Environment & Heritage was carried out on 15 July 2016. The search of the site and immediate surrounding area was performed on 29 April 2016 and found that:

- There are no Aboriginal sites recorded in or near the selected location, and
- There are no Aboriginal places that have been declared in or near the selected location.

It is noted that surveys for Aboriginal objects have not been carried out in all parts of NSW and Aboriginal objects may exist on a parcel of land even though they have not been recorded in AHIMS. Further, not all known Aboriginal sites are registered on the AHIMS database and not all sites consist of physical evidence or remains, e.g. dreaming and ceremonial sites.

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

The extension of the impoundment through the construction of a new weir is expected to bring positive social and economic effects by the securing of an additional 50 to 60 megalitres of town water supply. This would support population growth and any consequent increases in commercial and industrial activity.

In accordance with the commitment of the NSW Government to support the preparation of an integrated water cycle management strategy, Snowy Monaro

Regional Council intends to prepare such a strategy that will demonstrate water demand and establish an efficient water use framework. Council introduced water efficiency measures to new development through the *Bombala Development Control Plan 2012* as a first step towards demand management of potable water.

SECTION D- STATE AND COMMONWEALTH INTERESTS

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

The planning proposal aims to permit the construction of public infrastructure. There is no infrastructure required to facilitate the planning proposal.

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

Council submitted an application in April 2016 with the NSW Department of Primary Industries – Water for a surface water license under section 10 of the *Water Act 1912* to expand the existing impoundment to enable the collection of an additional 50 to 60 megalitres per annum on Lot 7018 DP 94005 Bombala River. A response dated 13 May 2016 was received by Council advising that the application is incomplete and cannot be registered without the following additional information:

- Owners consent. Lot 7018 DP 94005 is understood to be crown reserve managed by council. DPI Lands have advised that the proposed works would be subject to “crown” consent. Consequently, acceptance of the subject application requires crown consent.
- It is noted that the current land zoning of the site is RE1 Public Recreation. It is understood that the proposed works would not be permitted within zone under the current zoning. Land zoning would need to be consistent with the proposed development to warrant/justify any assessment of the water licence application.
- The proposed works are noted as requiring development consent, or an assessment and determination under the EP&A Act, Part V. DPI Water would not complete an assessment and make a determination on this water licence application prior to the broader determination under the EP&A Act.
- Further to this it is strongly recommended that the development assessment process include an integrated referral which would enable a comprehensive assessment of water licencing requirements and the provision of General terms of Approval for the required Water Licence.

DPI – Water also noted that *the application proposes an additional water entitlement for Bombala town water supply purposes. This needs to be justified in terms of demonstrated water demand within the provision of an efficient water supply system consistent with Best-Practice Management of Water Supply and Sewerage. Integrated Water Cycle Management Planning is considered a key element in demonstrating water requirements within an efficient water use framework.*

DPI Water advised that they *cannot hold an application as “pending” with matters such as owners consent, zoning changes and other approvals undetermined.*

Consultation with other public authorities and stakeholders will be carried out as specified in the Gateway determination.

PART 4: MAPPING

Bombala LEP 2012 Land Zone Map LZN_004G is to be amended to apply zone SP2 Infrastructure to the watercourse and land that is the subject of this planning proposal. The zone should be labelled ‘SP2 Water supply system’.

Maps of affected land and the current zoning map are included in the description of the proposed development in the Introduction (Figures 1 to 5). The proposed alternative zone is shown in Figure 6 below. It is proposed that a split zoning be applied to some allotments.

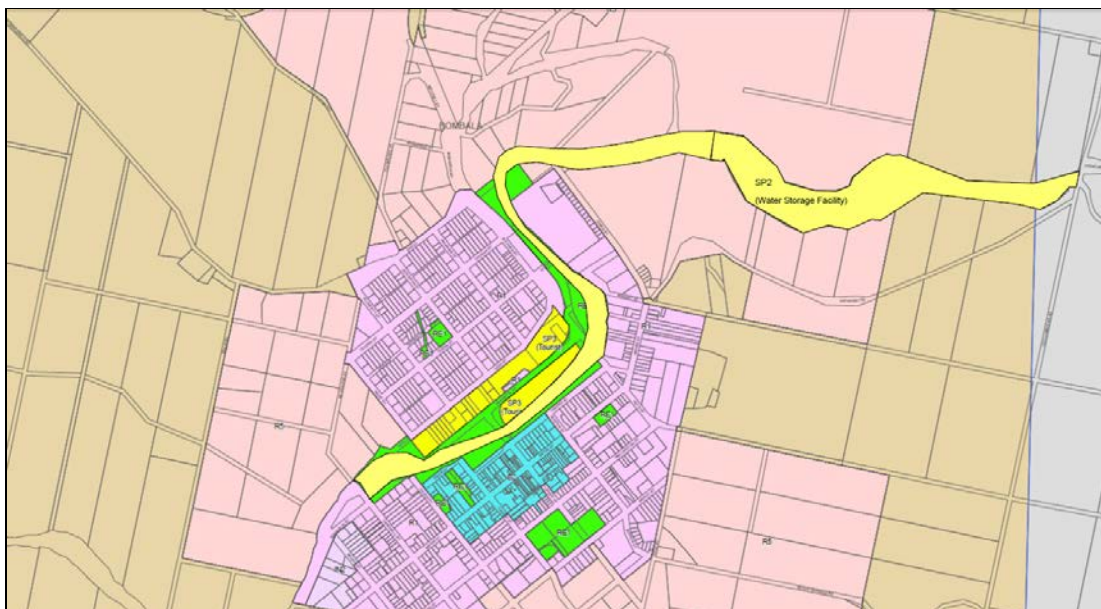


Figure 6: Indicative proposed land zoning of SP2 Water Storage Facility (extract from Land Zoning Map Sheet LZN_004G)

PART 5: COMMUNITY CONSULTATION

Consultation will be carried out in accordance with section 57 of the *Environmental Planning and Assessment Act 1979* and the Gateway determination.

Council intends to exhibit the planning proposal for a 28 day period following the issue of a Gateway determination and the following activities will be carried out:

- A notice is to be placed in local print media,
- Exhibition material and relevant documents are to be made available at public libraries and Council's Administration Building in Bega,
- Exhibition material and relevant documents are to be displayed on Council's website, and
- Letters are to be issued to adjoining landowners and other relevant stakeholders advising of the proposed amendments.

Any further consultation tasks as specified in the gateway determination would be carried out by Council.

After exhibition, all submissions are to be considered and reported to Council for endorsement before proceeding to finalisation of the planning proposal.

Relevant to this planning proposal, Council has undertaken substantial community consultation in relation to the preparation of the draft Bombala Masterplan. This has included public meetings and forums during which proposals to upgrade the public domain of Bombala township have been presented.

PART 6: PROJECT TIMELINE

Action	Indicative month & year
Anticipated gateway determination	February 2017
Agency consultation	March-April 2017
Community consultation exhibition period	March-April 2017
Consideration of submissions	May 2017

Council endorsement	June 2017
Provision to Department of Planning & Environment prepare instrument	June 2017
Date of notification	September 2017
