

OUT21/6959

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Dear Ms Barnes

**Planning Proposal – Deemed Concessional lots, 2ha to 10ha, Bega Valley Shire Local Environmental Plan 2013**

Thank you for your correspondence dated 4 May 2021 requesting NSW Department of Primary Industries – Agriculture (DPI) comments on the proposed reinstatement of dwelling entitlements on deemed concessional lots (crown portions) by amending the Bega Valley Local Environmental Plan 2013 (BVS LEP 2013).

It is understood that the deemed concessional lots were previously enabled by the Bega Valley Shire Local Environmental Plan 2002 (BVS LEP 2002) and removed with the making of the State Environmental Planning Policy (Rural Lands) 2008 (Rural SEPP).

NSW Department of Primary Industries (DPI) considers that the proposal has a number of ramifications for agricultural planning in the Shire. Principally, it is noted that the 123 lots of 2ha to 10ha in size are scattered across the Shire in rural zones creating a very high potential to cause land use conflicts with neighbouring and nearby farms. Dust, noise and odour from farms may impact on the residential lifestyle expectations usual for lots of sizes 2ha to 10ha. Dairying, as the principal agricultural industry in the Bega Valley Shire has a high potential to generate dust, odour and noise and there has been instances of conflicts between residential lifestyle blocks and dairy farms in the Shire. The proposal risks reduced farm investment and disruption to farming operations.

In that sense the proposal does not align with many of the state, regional and local strategic planning policies. It is inconsistent, for instance, with the Right to Farm Policy 2015 that supports farmers in undertaking lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users and with DPI's Maintaining Land for Agricultural Industries Policy, 2011 that works to provide certainty and security for agricultural enterprises over the long term.

The proposal is also inconsistent with

- the agricultural directions within the South East and Tablelands Regional Plan (SETRP) (Directions 8 and 28) that aim to protect important agricultural land and provide rural residential development in a strategic manner;

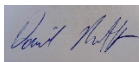
- directions within the Bega Valley Shire Local Strategic Planning Statement that promotes and prioritises the 'right to farm' over residential purposes in rural areas (p42), and
- the residential housing strategy and rural residential strategy prepared by Council which are silent on deemed concessional lots.

DPI would like to draw Councils attention to a recent Land and Environment Court Case. In the case of Pocket Herbs and Produce Pty Ltd v Tweed Shire Council [2021] NSWLEC 1253, determined in May 2021, the commissioner considered the rural zoned farmland to be rural residential in nature based on the houses on concessional and similar sized allotments. In this case the RU2 Rural Landscape zone included the compulsory objective to provide for a range of compatible uses. The commissioner determined the agricultural use was incompatible with the rural residential use prevalent in the landscape. Bega Valley includes the same objective in its RU2 zone, and a compatible use objective in the RU1 zone. The introduction of dispersed sensitive receptors through the landscape will change the categorisation of the landscape in the courts eyes, resulting in either farming practices being abandoned or expensive mitigation works needing to be applied impacting commercial viability.

Given the inconsistencies highlighted above, NSW DPI Agriculture is objecting to reinstating dwelling entitlements on deemed concessional lots (Crown land portions) that were included in the Bega Valley Shire LEP 2002 due to the inconsistencies with state, regional and local planning strategies.

Should you require clarification on any of the information contained in this response, please contact Wendy Goodburn, Agricultural Land Use Planning Officer, on 0402 069 605 or by email at [landuse.ag@dpi.nsw.gov.au](mailto:landuse.ag@dpi.nsw.gov.au)

Yours sincerely



**Dr David Mitchell**  
**Acting Group Director**  
**Agricultural Resources**

9 June 2021