



Our ref: DOC19/266681-5

Your ref: PP_2017BEGAV_003_00 DOC19/

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Attention: Sthomson@begavalley.nsw.gov.au

Dear Sophie

Planning Proposal PP_2017BEGAV_003_00 Zone and minimum lot size standards at Boydtown

We have reviewed the draft planning proposal you recently sent to us. We have provided comments on Biodiversity, Flooding and Aboriginal cultural heritage only.

Recent NSW Government public service changes mean that we are no longer referred to as the Office of Environment and Heritage. We are now the Biodiversity and Conservation Division (BCD) within the Department of Planning, Industry and Environment

In essence BCD supports the Planning Proposal in particular the application of the E2 Environmental Conservation and E3 Environment management zones. BCD considers this zoning to be the most appropriate zoning to protect the various environmental and Cultural heritage values across the site.


The site provides habitat for a range of threatened species and also has several areas of endangered ecological community. There are some areas which may be flood prone and therefore should be protected as per the E2 zoning proposed. There are also areas of coastal floodplains that should be protected.

The Boydtown area is known to contain archaeologically sensitive landforms, archaeological sites and cultural values. BCD advises that several Aboriginal sites have already been recorded within close proximity to the current proposal. Oral history recordings undertaken by Donaldson (2010) for Stage 3 of the Bega Valley Shire Aboriginal Cultural Heritage Study have also identified Boydtown as an area of significance to the local Aboriginal community.

Large areas around Towamba River are mapped as Coastal Wetlands and Coastal Wetlands Proximity Area. A smaller area of Coastal Wetlands and Coastal Wetlands Proximity Area is mapped around Nullica River. We support these areas, as well as other identified riparian corridors being afforded the highest levels of protection through E2 zoning.

Further detailed information on the above mentioned values can be found in Attachment A. If you would like to discuss further, please do not hesitate to contact me on 6229 7082.

Yours Sincerely,


ALLISON TREWEEK 26/7/19.
Senior Team Leader – South East
Biodiversity and Conservation

Attachment A Detailed Comments.

Biodiversity:

Most of the area covered by the planning proposal is mapped as High Environmental Value land in the South Eastern and Tablelands Regional Plan (SETRP). The SETRP indicates that the avoid minimise and offset hierarchy be applied to areas for new or more intensive development, the hierarchy requires that development avoid areas of validated High Environmental Value.

The SETRP also indicates that groundwater dependent ecosystems and aquatic habitat associated with rivers and stream should also be protected from development. Boydtown creek which runs through the centre of the site is listed as a sensitive estuary so BCD support the E3 zoning to protect this sensitive area.

The BCD databases indicate the areas which are proposed for E2 and E3 zoning support habitat for several threatened fauna species including yellow bellied gliders, several species of microbat, masked owls, powerful owls and Gang Gang's. It also provides a movement corridor for koalas and other species which have been recorded outside the boundary of the planning proposal. There are currently significant areas of Endangered ecological community across the Planning proposal area these include.

- Lowland grassy woodland
- Swamp Oak Floodplain woodland,
- Bangalay Sand Forest and
- River Flat Eucalypt Forest
- Swamp Sclerophyll Forest
- Coastal Salt Marsh
- Freshwater wet ands
- Littoral rainforest

BCD supports these areas of EEC being protected under the E2 and E3 zoning.

Zoning the areas as E2 and E3 will protect High Environmental value areas which are found over most of the site. BCD have identified some cleared areas which are also mapped as E3 it may be beneficial to rezone these areas to a more suitable zoning. If these areas are zoned to protect other values such as cultural heritage values this should be clearly explained in the documentation. Map1 indicates the areas in question.

Floodplain Risk Management:

The Planning Proposal (PP) indicates that the Section 9.1 (formerly s117) Planning Direction 4.3 Flood Prone Land is not applicable. However, the land identified in the PP is traversed by watercourse and is likely to contain flood prone land and as such it is understood from clause 2 of the section 9.1 direction 4.3 is applicable. It would therefore be appropriate for the PP to clarify this matter to demonstrate consistency with the provisions of the direction and that the planning proposal will not lead to the intensification of development of land affected by flood hazards.

Bega Valley Shire Council is currently undertaking the Towamba River, Lake Curalo and Two-fold Bay Flood Study at Towamba and Eden which incorporates the area in the PP. Flood information from the relevant flood studies may provide flood related information, including potential impacts of climate change on flooding, relevant to this planning proposal and to support strategic land use planning in the area.

Should council require any further advice on floodplain risk management matters, it should not hesitate to contact the specialist flood staff in BCD.

Coast and Estuary Management:

We understand that this will be a new Planning Proposal to be lodged with Department of Planning and Environment and therefore Planning Direction 2.2 Coastal Management that came into effect on 3 April 2018 will apply. However, Council should confirm this with Department of Planning and Environment as if it is an amendment to the previous 2017 PP, transitional arrangements may apply.

The Planning Proposal requires updating to consider the new coastal management framework including the State Environmental Planning Policy (Coastal Management) 2018 and Local Planning Direction – 2.2 Coastal Management. The PP draft attachment 2 refers to the repealed SEPP No. 14 Coastal Wetlands and SEPP No. 71 Coastal Protection and attachment 3 refers to the previous Ministerial Direction, 2.2 Coastal Protection.

The PP should outline whether it is consistent with the Planning Direction 2.2 Coastal Management. The PP covers land that is mapped under the Coastal Management SEPP as Coastal Wetlands, Coastal Wetlands Proximity Area and Coastal Environment Area. We note that coastal hazard mapping undertaken as part of Bega Valley Shire Coastal Processes and Hazards Definition Study (2015) also covers this area and is being used to inform a Coastal Management Program. The coastal hazard information should also be incorporated into the PP and ensure that appropriate consideration has been made to prevent intensification of land impacted by coastal hazards and climate change through any rezoning.

Large areas around Towamba River are mapped as Coastal Wetlands and Coastal Wetlands Proximity Area. A smaller area of Coastal Wetlands and Coastal Wetlands Proximity Area is mapped around Nullica River. We support these areas, as well as other identified riparian corridors being afforded the highest levels of protection through E2 zoning.

Under Direction 2.2 land mapped as coastal wetlands or identified as affected by coastal hazards must not be rezoned to enable increased development of more intensive land use. Council should confirm the rezoning boundaries have considered the areas mapped under the CM SEPP and areas identified as at risk of coastal hazards. The PP would benefit with a map that depicts this information against proposed land use zones.

Council should feel free to contact BCD specialist coastal staff should it require any clarification of the above, or the DPE with regard to the Coastal Management SEPP or applicability of section 9.1 directions.

Aboriginal Cultural Heritage:

An Aboriginal cultural heritage assessment is needed to inform the planning proposal.

The current PP is not consistent with Ministerial Directions issued under Section 9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), specifically direction 2.3 Heritage Conservation (former section 117(2) directions). Direction 2.3 states that planning authorities must ensure that a PP contains provisions that facilitate the conservation of Aboriginal objects and places protected under the *National Parks and Wildlife Act 1974* (NPW Act) (Direction 2.3(4)(b)), and Aboriginal areas, objects, places or landscapes identified as being of heritage significance to Aboriginal culture and people (Direction 2.3(4)(c)).

While the PP references a 2011 survey (page 18) undertaken for a proposed sand extraction activity this survey did not assess the entire PP area being considered. The Boydtown area is known to contain archaeologically sensitive landforms, archaeological sites and cultural values. BCD advises that several Aboriginal sites have already been recorded to occur within close proximity to the current proposal. Oral history recordings undertaken by Donaldson (2010) for Stage 3 of the Bega Valley Shire Aboriginal Cultural Heritage Study have also identified Boydtown as an area of significance to the local Aboriginal community. BCD recommends that an Aboriginal cultural heritage assessment be undertaken, in consultation with relevant Aboriginal parties, to adequately capture the information required to inform the PP and identify any constraints to future land-use.

Identifying Aboriginal cultural heritage values and consultation with Aboriginal people should be guided by the following BCD documents:

- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (DECCW, 2011) available at www.environment.nsw.gov.au/licences/investassessreport.htm
- Aboriginal cultural heritage consultation requirements for proponents 2010 (DECCW, 2010) available at www.environment.nsw.gov.au/licences/consultation.htm
- Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales (BCD, 2010) www.environment.nsw.gov.au/licences/archinvestigations.htm

BCD recommend that these assessments, and consultation with the Aboriginal community, happen early on in the planning process to identify what Aboriginal cultural heritage values may occur within the proposal area. Assessments undertaken as part of the planning process give more certainty to any future development applications and provide up front measures which could be taken to avoid or mitigate impacts if Aboriginal objects are located. The outcomes of this assessment should inform the PP, to ensure consistency with the requirements of Section 9.1 (Direction 2.3 - Heritage Conservation) of the EP&A Act. This would also complement the actions outlined in Direction 23 of the South-East and Tablelands Regional Plan which requires councils and other planning authorities to undertake these studies and consult with both the Aboriginal and broader community so as to identify heritage values, at the strategic planning stage.

