



Planning Proposal

Boydton 2021



PO Box 492, Bega NSW 2550

P. (02) 6499 2222

F. (02) 6499 2200

E. council@begavalley.nsw.gov.au

W. begavalley.nsw.gov.au

ABN. 26 987 935 332

DX. 4904 Bega

Contents

Background	1
Part 1 – Objectives or Intended Outcomes	1
Part 2 – Explanation of the Provisions.....	1
Part 3 – Justification.....	2
Section A – Need for the Planning Proposal	6
Section B – Relationship to Strategic Planning Framework.....	6
Section C – Environmental, Social and Economic Impact	15
Section D – State and Commonwealth Interests	16
Part 4 – Mapping	17
Part 5 – Community Consultation	18
Part 6 – Timeline.....	18
Attachment 1 – Minutes of Council Meeting	19
Attachment 2 – Southern Joint Regional Planning Panel Review of pre-gateway application.....	27
Attachment 3 – Consultation with NSW Biodiversity Conservation Division.....	34

Background

The purpose of this Planning Proposal is to amend the BVLEP 2013 by deleting reference to “Deferred Matters” and recommending re-zonings and revised minimum lot sizes (MLS) within the Bega Valley Shire Local Environmental Plan 2013 (BVLEP 2013).

Part 1 – Objectives or Intended Outcomes

The outcome of this Planning Proposal is that the land west and east of Princes Highway at Boydtown be zoned and lots sized E4, E3, E2, RU2, RE1 with a minimum lot size of 10 Ha for E4, 40 Ha for E3 and 120 Ha for RU2.

Part 2 – Explanation of the Provisions

This Planning Proposal seeks to amend the BVLEP 2013 to re-zone lands considered a deferred matter (DM) under the BVLEP 2013. The proposal will delete the Deferred Matters and then amend the BVLEP 2013 by applying zonings in the following manner:

Explanation of Provisions	
Property	Proposed Zone/s
West of Princes Highway	
Lots 1 – 147, 157 – 178, 382 – 383, 386 – 391 DP 12883	RU2
Lots 11 – 14 DP 1199147	RU2
Lots 21-37 DP 239404	RU2
Lots 1 – 2 DP 127299	RU2
Lot 1 and 2 DP 572983	part E2, part E3, part RU2
Part Lot 13 DP 716162	E3 – in 3 island sections west of highway
Lots 2 and 36 DP 750223	part E2, part E3
Lot 10 DP 811856	part E2, part E3
Lots 2 – 4 DP 624612	part E2, part E3
East of Princes Highway	
Part Lot 13 DP 716162	E3 - in one section east of highway excluding deferred land north of the main ridge
Lot 3 DP750223	E3 and E2 - far eastern section adjoining river estuary
Lot 5 DP 259742, Lot 32 560891, Lot 44 DP 716162	RE1 - foreshore land

The planning proposal will amend the LEP in the following way:

- Amend map sheet LAP_001 by deleting DM Deferred Matter.
- Amend map sheet LZN_013 by applying E2 Environmental Conservation (no MLS), RU2 Rural Landscape and E4 Environmental Living.

- Amend map sheet LSZ_013 by applying AD 120 Ha to RU2 Rural Landscape, AB4 40Ha to E3 Environmental Management and AB4 10 Ha to E4 Environmental Living.
- Amend map sheet LZN_021 by applying E2 Environmental Conservation (no MLS), RU2 Rural Landscape, E4 Environmental Living and RE1 Public Recreation (no MLS).
- Amend map sheet LSZ_021 by applying AD 120 Ha to RU2 Rural Landscape, AB4 40Ha to E3 Environmental Management and AB1 10 Ha to E4 Environmental Living.

Part 3 – Justification

Subject Land: Boydtown – Various Lots - 504 Ha (see Figure 1)

Key Outcomes:

- Implementation of JRPP recommendations
- Retention of exhibited zonings for the majority of property
- Zoning land for appropriate uses:
 1. Extractive industry – sand/topsoil (RU2 – Rural Landscape and E3 Environmental Management)
 2. Agriculture (RU2 Rural Landscape)
 3. Environmental Protection and Management (E2 & E3)

Current Zoning LEP 2002:

1(a), 1(c), 6(a), 7(d), 7(f1) – see Figure 2

Proposed Zoning and Lot Size LEP 2013:

E2, E3, RU2, RE1 – see Figures 3 and 4

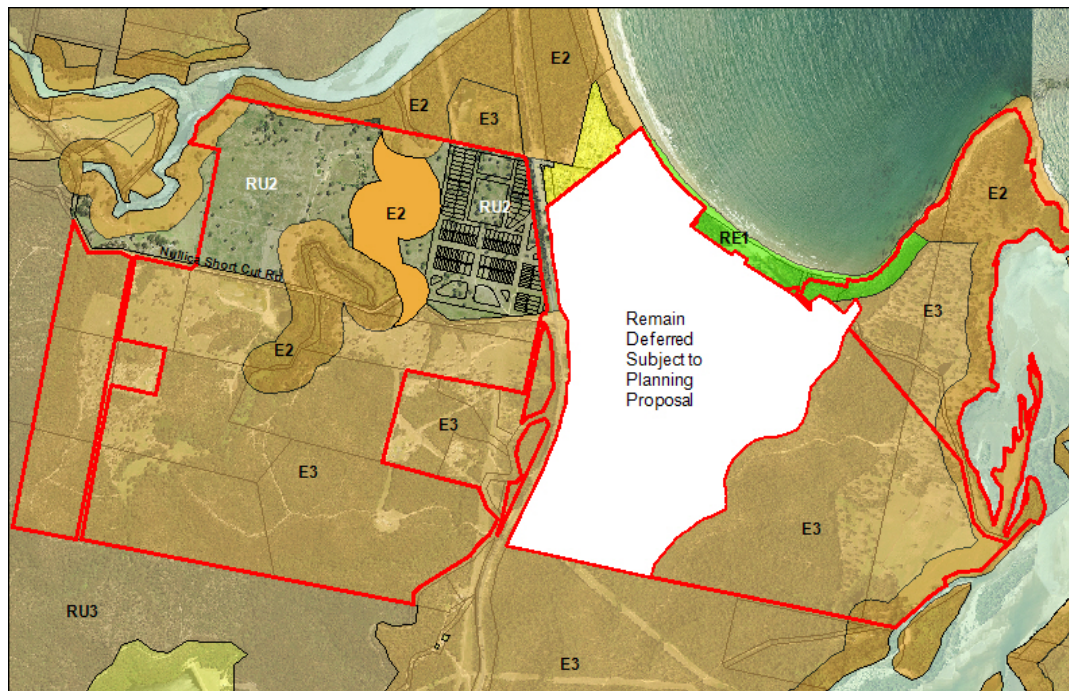


Figure 1: Subject land denoted by red line.



Figure 2 LEP 2002 Zoning

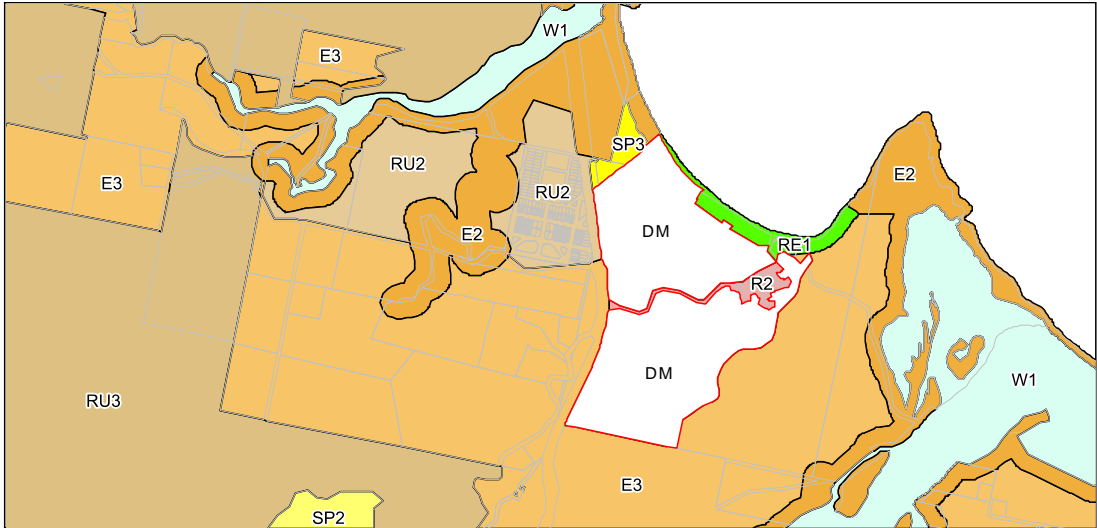


Figure 3: Proposed Zoning

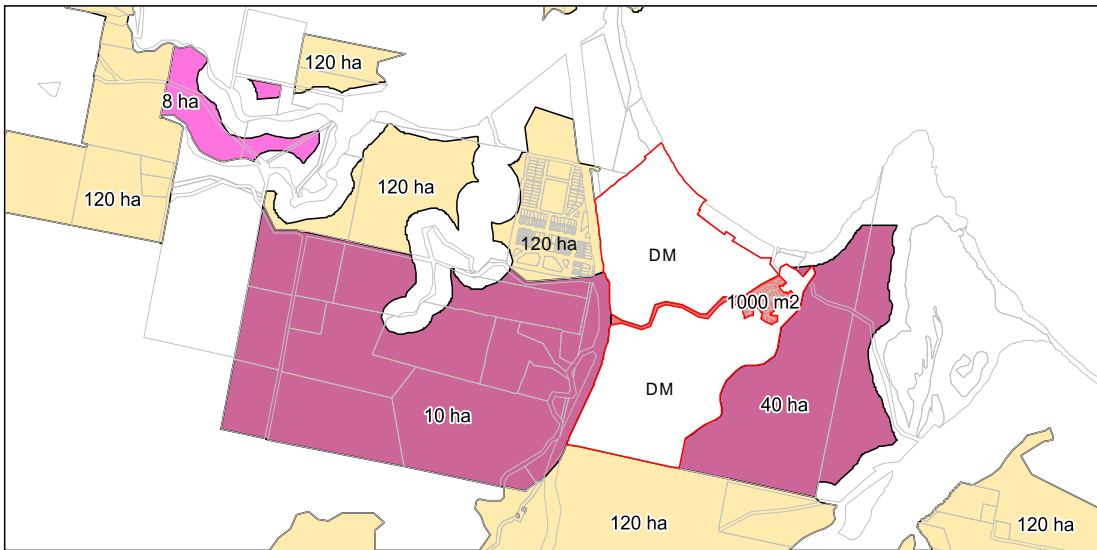


Figure 4: Proposed Minimum Lot Sizes

Background and History

- The proposed zonings for Boydtown as exhibited in Draft BVLEP 2010 were based on Council's overall zoning strategy for the coastal catchments, the 2008 Masterplan provided by the owner, the Eden structure report and rolling over of residential zones from the 2002 LEP.
- In response to the public exhibition of draft CLEP 2010, the owner of Boydtown, submitted a new Masterplan in 2012. The new Masterplan represented a significant departure from previous planning for the Boydtown site.
- The Boydtown property was deferred from the CLEP
- The 2012 Masterplan proposed to introduce a large area of B4 Mixed use zone (70ha) on the eastern side of the highway, north of Boydtown Creek, significant areas of residentially zoned land in the sensitive southern portion of the property adjoining the Towamba River Estuary and also in areas west of the highway. The Masterplan also proposed extensive areas of Tourist zonings on the cleared flat lands surrounding the current sand mining approvals.
- Council staff prepared a report in 2013 in which they recommended that a Planning Proposal be prepared based on the exhibited zonings of 2010 with the addition of further E2 zoned along a creek on the western side of the highway. The report was deferred.
- Further discussions and workshops were held through 2013 and 2014.
- In August 2014 the owner's consultants lodged a request for Pre-Gateway Review due to Council not complying with the 90 day assessment requirement.
- In December 2014 Council was advised by DPE that the request for a pre-gateway review had merit and that the review request be forwarded to the Southern JRPP.
- Following a hearing of the JRPP in February 2015, Council was advised in August 2015 that the Planning Proposal as considered by the JRPP, not proceed to Gateway.
- Following the JRPP staff had meetings with representatives from the Lyons Group and encouraged them to provide a Planning Proposal for the area east of the highway and north of the main ridge in accord with JRPP recommendations.
- This Planning Proposal has been received. The area which it covers is proposed to remain deferred until Council considers the Planning Proposal for this area.
- In 2016 staff prepared a Council report recommending a Planning Proposal be prepared for 6 sites still Deferred from BVSC CLEP 2013 – this planning proposal.
- The remainder of the Boydtown property not covered by the Planning Proposal was proposed to be un-deferred with the majority of the site reverting to the exhibited zonings in accord with JRPP recommendations.
- The only change to the exhibited zoning was the application of an RU2 zone to the cleared flats adjoining the sand mining operation, north of Nullica Short Cut Rd. A small extension of the E2 zone along the creek which bisects the flats is also proposed.

2016 Proposal

Boydton Property (excluding the area around the Seahorse Inn)

The Southern Joint Regional Planning Panel (JRPP) examined the Boydton property in detail, following the submission of a Masterplan and Planning Proposal by the property owner. The JRPP made explicit recommendations with regard the zoning of the majority of the Boydton property. These recommendations were endorsed by the Minister for Planning and Environment.

See Attachment 2 in this Planning Proposal.

Following the JRPP decision, officers have been in ongoing discussions with representatives of the site's owner. The owner has been strongly encouraged to focus on the area east of the Princes Highway, around the Seahorse Inn and proposed marina. Council has recently received a Planning Proposal covering this area, which will be the subject of a future report to Council.

Officers recommend the remainder of the site revert to the 2010 exhibited zonings of E2 and E3 in accordance with Council Policy applied across the Shire for sensitive coastal and forested lands, with the exception of the cleared paddocks north of the Nullica Short Cut Road, subject to the existing sand mining development approvals. It is recommended this land be zoned RU2 Rural Landscape and the north – south drainage line be protected by an E2 Environmental Conservation zoning.

Further it is advised a Planning Proposal from the property owner has recently been received for this land. The Planning Proposal requests zonings and lot yields that are inconsistent with the Decision of the JRPP, inconsistent with the position of the Minister for Planning and Environment, inconsistent with Council Policy applied across the Shire for sensitive coastal and forested lands and is therefore not supported by Council officers.

Recommendation: That the land north of Nullica Short Cut Road be zoned RU2 (120ha) and E2 (no lot size); the remainder of the land west of the Princes Highway be zoned E3 (10ha) and E2 (no lot size); and the south eastern section of the property adjoining the Towamba River estuary be zoned E3 (40ha) and E2 (no lot size).

	Draft BVLEP 2010	Recommendation for 2016 Planning Proposal
Zones	E2, E3	E2, E3, RU2
Lot Sizes	10ha, 40ha, 120ha	10ha, 40ha, 120ha

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No. The site has been the subject of various proposals over three decades, many of which have not been supported by planning authorities to lack of justified need for major urban land releases in the catchment.

The purpose of this Planning Proposal is to amend the BVLEP 2013 by deleting reference to “Deferred Matters” and recommending re-zonings and revised minimum lot sizes (MLS) within the BVLEP 2013.

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

Yes. It is considered that this Planning Proposal is the most appropriate and available means of achieving the objective.

Section B – Relationship to Strategic Planning Framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

Yes. The planning proposal aims to achieve the following directions of the NSW Department of Planning, Industry and Environment’s South East and Tablelands Regional Plan:

- Direction 14: Protect important environmental assets
- Direction 13: Manage the ongoing use of mineral resources.

The planning proposal is consistent with the Strategy’s priorities for the Bega Valley Shire to:

- Protect and enhance Bega Valley’s environmental values, underpinning the smart growth of towns and the tourism industry, and
- Consolidate rural residential growth in high demand catchments near existing developments and infrastructure.

This re-zoning will have the effect of limiting a proliferation of rural residential dwellings by way of the RU2 zoning (MLS 120 Ha) and the E3 zoning over the more heavily forested lands (MLS 10 and 40 Hectares).

This planning proposal minimises the potential for land use conflict between any future urban uses and the current extractive industry on the site by not zoning any land for more intensive residential purposes (no E4, R5 and R2 / R3 zones are proposed).

Q4. Will the planning proposal give effect to a council’s endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

The planning proposal is consistent with the following goals of the Bega Valley Shire Community Strategic Plan 2040:

- Goal 5: Our air and water is pristine and our natural environment and rural landscapes are protected as future development in rural areas resulting from the planning proposal will be appropriate

- Goal 8: Our places retain their character and scale, development is well planned, and a range of goods and services are available with our Shire that meet local needs as future development resulting from this planning proposal will be in keeping with the existing character and scale of existing development in rural areas

The planning proposal is consistent with the following directions of the Bega Valley Shire Local Strategic Planning Statement 2040:

- Continue to protect major estuary foreshores and sensitive water catchments to maintain and improve water quality.
- Protect catchments of sensitive receiving waters including water supply storages and priority estuaries used for aquaculture, tourism and recreation.

Q5. Is the Planning Proposal consistent with applicable State Environment Planning Policies?

The following section identifies the applicable SEPPs and outlines this planning proposal's consistency with these:

SEPP (Primary Production and Rural Development) 2019

This planning proposal is consistent with the Primary Production and Rural Development SEPP as it The planning proposal does not contain provisions that would hinder the application of this SEPP and zones land which is currently used for grazing livestock as Rural Landscape (RU2), Environmental Protection (E2) and Environmental Management E3. It is considered that the proposed re-zoning does not fragment or remove any grazing lands.

According to the Agricultural Land Classification Map – Lower South Coast Region, the agricultural suitability of the site is considered to be low and as such is classified as Class 3 and /or Class 4.

Class 3 – Land suited to pasture improvement

Class 4 – land suitable for grazing, but not for cultivation.

This planning proposal severely limits the loss of land to intensive rural residential development.

SEPP (Koala Habitat Protection) 2020

The consultant Ecobiological conducted a thorough flora and fauna assessment in mid-2011, including assessment of the land for potential koala habitat.

‘The subject site has been mapped as supporting Preferred Koala Habitat, where stands of Manna Gum (*E. viminalis*) occur, particularly along the sides of Reedy Creek and along the boundary with the Princes Highway.

Four SAT tests were undertaken to determine the current usage of the subject site by koalas. The minimum recommended 20 trees sampled for each site was achieved within the Coastal Sands forest and adjoining riparian forest communities. A total of 80 trees were investigated. No faecal pellets were found, returning a result from the SAT test sites of 0% to 10% activity level.’ (p. 54 of Ecological assessment, Nullica Short Cut Road, Boydtown NSW August 2011)

It is considered that the re-zoning for the areas containing Manna Gums along Reedy Creek (E2) and along the Princes Highway (RU2) is unlikely to produce adverse feed tree outcomes for the koala.

SEPP (Coastal Management) 2018

Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP. Small portions of the subject land adjacent to the Towamba River contain mapped wetland, these areas are proposed to be zoned E2. Portions of the subject land are also included in the Coastal Use and Coastal Environment areas and this SEPP will apply to any future residential development within these areas at the detailed development consent stage.

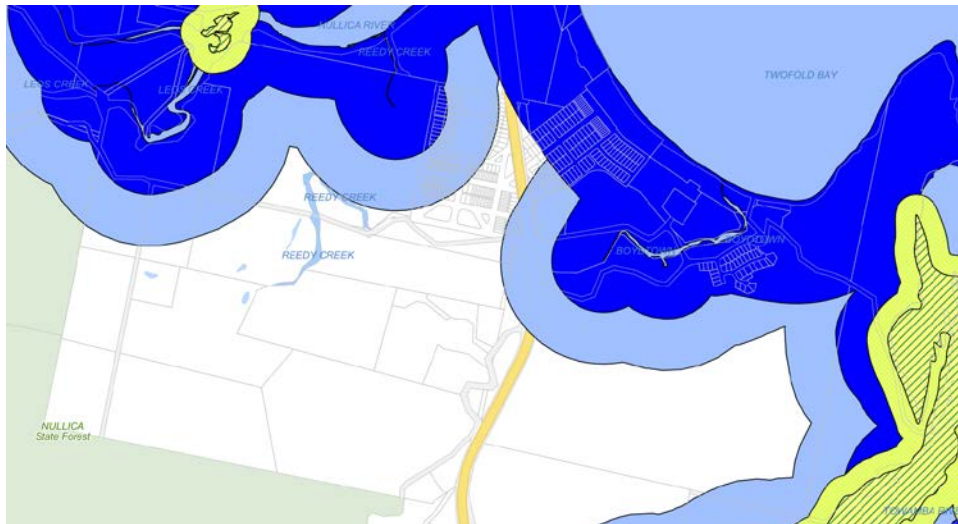


Figure 7: Coastal Management SEPP categories: Wetlands (yellow stripe), Wetlands 100m buffer (yellow dot), Coastal Use (dark blue) and Coastal Environment (light blue).

SEPP (Building Sustainability Index: BASIX) 2004

Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP. This SEPP may apply to future residential development and will be considered at the detailed development consent stage.

Q6. Is the Planning Proposal consistent with applicable Ministerial Directions?

This Section addresses consistency with applicable Ministerial Directions.

1.2 Rural Zones

This planning proposal is consistent with this direction as it zones land which is currently used for grazing livestock as Rural Landscape (RU2). It is considered that the proposed re-zoning does not fragment or remove any grazing lands.

According to the Agricultural Land Classification Map – Lower South Coast Region, the agricultural suitability of the site is considered to be low and as such is classified as Class 3 and /or Class 4.

Class 3 – Land suited to pasture improvement

Class 4 – land suitable for grazing, but not for cultivation.

1.3 Mining, Petroleum Production and Extractive Industries

This planning proposal is considered consistent with this direction as the proposed re-zonings to RU2 and E3 both permit agriculture and/or industry which aligns with section 7 of the SEPP – Extractive Industries.

There is a current sand extraction and top soil extraction operation being conducted on the land (DA2011.500). This operation was approved under the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 which states that;

7) Development permissible with consent

(1) Mining

Development for any of the following purposes may be carried out only with development consent:

(a) underground mining carried out on any land,

(b) mining carried out:

- (i) on land where development for the purposes of agriculture or industry may be carried out (with or without development consent), or
- (ii) on land that is, immediately before the commencement of this clause, the subject of a mining lease under the *Mining Act 1992* or a mining licence under the *Offshore Minerals Act 1999*

Extractive Industry at Nullica Short Cut Road, Boydtown

Extractive Industry (Sand and Topsoil) was approved on 6 Dec 2013 (DA 2011.500) in the area of Nullica Short Cut Road and to the west of the Princes Highway under the LEP 2002 1 (a) Rural General Zone. 78 mature paddock trees will be gradually removed over the 28 year life cycle of the consent to access the material. A noise bund was to be constructed adjacent to the eastern boundary to provide amenity protection for residents of the caravan park to the east.

The limits on the approval are;

- Approval to lapse after 1,100,000 cubic metres of sand material and 105,000 cubic metres of topsoil have been extracted from the site, or 28 years after the date it commences, whichever comes first;
- No more than 40,000 tonnes of sand per year;
- 10,000 tonnes of topsoil may be extracted in any one year.

The lots approved for the extraction are to be re-zoned RU2 (the majority), E3 (part of Pit 2 south of Nullica Short Cut Rd) and E2 (following Reedy Creek). See Figure 6 below.

The lots to which this Extractive Industry consent apply:

Lots 1 to 131, 133 to 147, 157 to 178, 382, 383, 386 to 391 DP 12883;
Lots 4 & 5 DP239401;
Lots 21 to 37 DP 239404;
Lot 1 DP 879786;
Lot 1 DP 572983;
Lots 1 & 2 DP 127299 and
Lot 2 DP 750223



Figure 6: Google Earth image 2016 showing Pit One under commencement. Princes Highway runs north-south to the east of the picture. The Boydtown Caravan Park can be seen in the north east corner. This land is to be zoned RU2 Rural Landscape.



Figure 7: Map showing Pit 1 to the east and Pit 2 to the west (from EIS).

1.5 Rural Lands

This planning proposal is consistent with this Direction as it affects rural zoned land and proposes to not to alter the area currently used for grazing.

The planning proposal conforms to the Rural Planning and Rural Subdivision Principles listed in State Environmental Planning Policy (Primary Production and Rural Development) 2019. The proposed re-zonings do not significantly compromise the production value or development of rural land in a Shire wide context.

No intensive agricultural pursuits are removed or compromised by these re-zonings. Grazing activities have already been disrupted on the site by recent approval of sand and topsoil extraction (DA2011.500).

In particular, this planning proposal will:

- Not fragment high quality agricultural land;
- Not cause additional rural land use conflicts, particularly between residential land uses and other rural land uses;
- Provide rural residential opportunities compatible with the natural and physical characteristics of the land and that will integrate with surrounding and existing rural residential developments.

2.1 Environment Protection Zone

This planning proposal is consistent with this Direction as all lands will not result in any alienation or destruction of environmentally sensitive areas. As previously stated DA2011.500 authorises the staged destruction of 78 mature paddock trees to win sand and topsoil. A reafforestation plan using Manna Gums has been approved as part of the DA.

The proposed E2 zones (the most stringent zoning for environmental protection) will be applied to Reedy Creek and the riparian buffer zone (potential koala habitat) along with an E2 zone protecting the coastal estuary and headland associated with the Towamba River to the east of the subject site.

2.2 Coastal Management

Consistent. This planning proposal would not prevent any future development application for a dwelling from being assessed under the relevant provisions of State Environmental Planning Policy (Coastal Management) 2018.

2.3 Heritage Conservation

This planning proposal is justifiably inconsistent with this Direction as, although it does not include specific provisions to protect and conserve places or items of significant heritage value, the general outcome of the planning proposal will be very limited development of a type that is likely to harm Aboriginal objects or places. The Boydtown area is known to contain archaeologically sensitive landforms, archaeological sites and cultural values, there are registered AHIMS sites adjacent to the subject land and the area is identified on the Bega Valley Aboriginal Cultural Landscape Map.

An Aboriginal Cultural Heritage Assessment has not been conducted to support this planning proposal because the provisions of this planning proposal will not result in a significant level of development and do not increase the development potential of the land from that which currently exists. All Development Applications have to demonstrate compliance with the Due Diligence Guidelines and the smallest lot size proposed is 10ha which will enable future development to avoid any significant impact on any Aboriginal cultural values that are identified in the assessment process.

A review of Council's BVLEP 2002 and BVLEP 2013 identified there are five items of European heritage significance within proximity of the subject land being: the Seahorse Inn, Boydtown's Church (ruin), salting works, boiling-down works and the wool store site. This planning proposal will not impact on the heritage values of these items or their curtilage.

2.6 Remediation of Contaminated Land

Consistent. Bega Valley Shire Council's records indicate that none of the subject land is contaminated.

3.1 Residential Zones

This Planning Proposal is consistent with this direction as it does not propose any significant urban development in a residential zone or future urban residential zone.

4.1 Acid Sulphate Soils

This planning proposal is inconsistent with this Direction as it applies to land that has a probability of containing acid sulphate soils.

Boydton is identified on the BVLEP 2013 Acid Sulphate Soils Map as containing Class 1 and Class 2 Acid Sulphate Soils (see Figures 8 and 9). The inconsistency with this Direction is justified given the minor scale of development likely to result from the zoning outcomes and because this issue is routinely addressed by Council in the development assessment process.

Under Clause 6.1 of BVLEP 2013 studies are required for land that is within an area identified as having a probability of containing acid sulphate soils. Soil samples are assessed for content of acid sulphate material by a suitably qualified person and the results lodged with Council. If acid sulphate soils are identified, no excavation can take place until an Acid Sulphate Soil Management Plan has been lodged with Council and approved and any required measures to minimise adverse environmental impacts have been implemented.

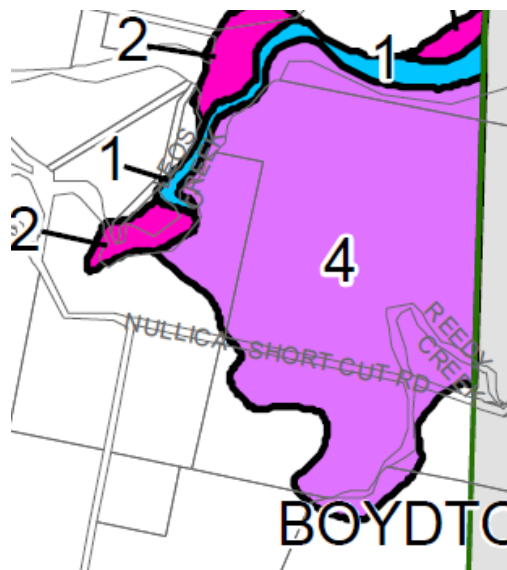


Figure 8: Acid Sulphate Soils extent at Boydton - Far Western Portion – to be zoned RU2 and E2

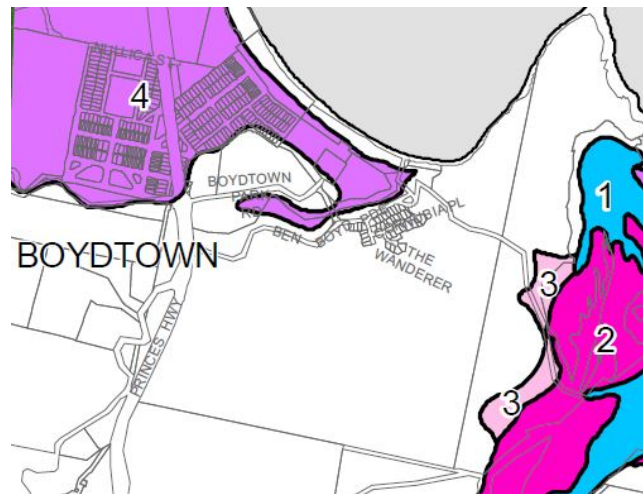


Figure 9: Acid Sulphate Soils Boydton Class 4 soils are located west of the Princes Highway in this PP. This PP also re-zones land classed as Class 2 and 3 Acid Sulphate Soils at the far east of the subject land to E3 and E2 zones.

4.3 Flood prone land

Consistent. The planning proposal does not seek to vary any of the flood control provisions currently contained in the LEP and will not result in development of flood prone land that is inconsistent with the Floodplain Development Manual 2005, nor will it result in changes to the LEP that would undermine clause 6.3 Flood Planning. The application of Clause 6.3 of BVLEP 2013 prevents inappropriate development in flood prone areas.

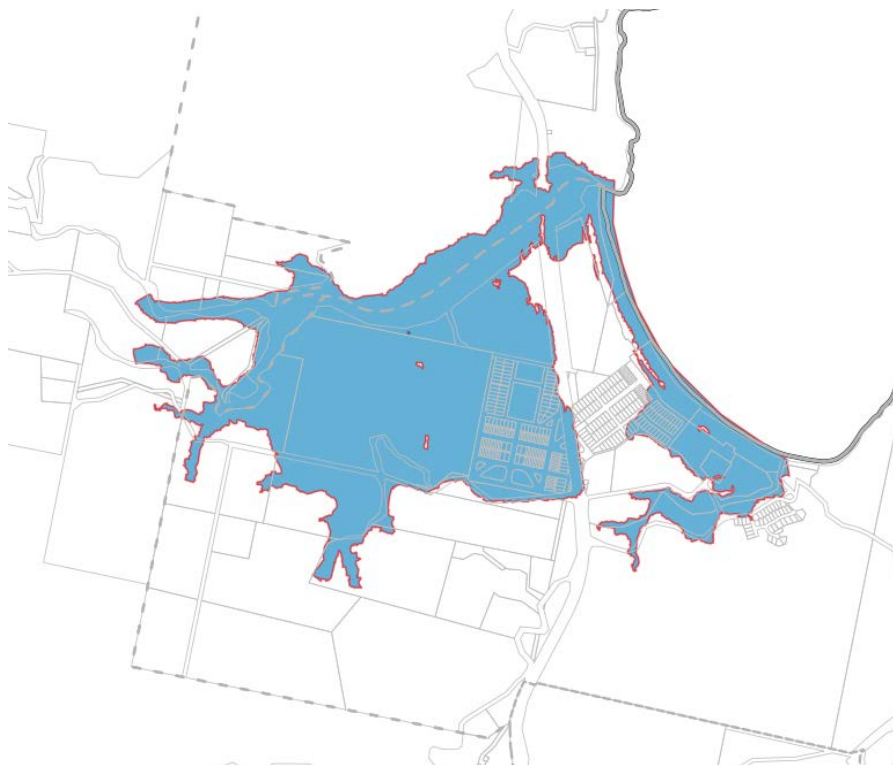


Figure 10: Flood Planning Area Map (one in 100 flood level plus 0.5m freeboard)

4.4 Planning for Bushfire Protection

This planning proposal is consistent with the objectives of the ministerial direction. As shown in Figure 11, all of the subject land is mapped as bushfire prone. Any subsequent development will be required to demonstrate compliance with Chapter 7 and clause 8.2.1 of Planning for Bushfire Protection 2019.

In accordance with the Direction, Council will consult with the Commissioner of the NSW Rural Fire Service during the preparation of a draft Local Environmental Plan and take into account any comments made.

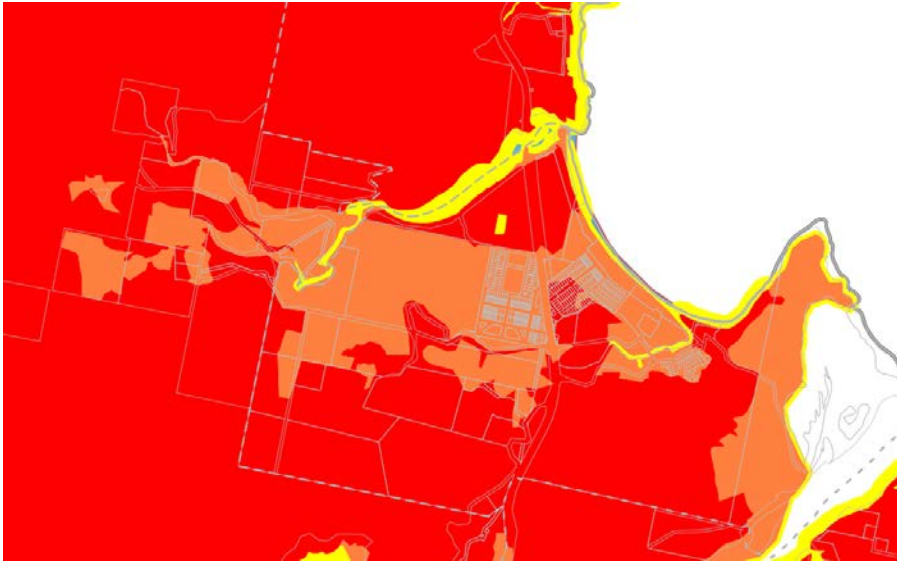


Figure 11: Bushfire Prone Land Map - the more heavily vegetated country is Vegetation Category 1 (red) and the open grazing land to the north is Vegetation Category 2 (orange), Bushfire Buffer (yellow).

5.10 Implementation of Regional Plans

This Planning Proposal is consistent with the *South East Tablelands Regional Plan* as detailed at Q3 on page 6.

6.1 Approval and referral requirements

Consistent. The planning proposal does not identify development as designated development.

6.3 Site Specific Provisions

This Planning Proposal does not seek to include additional uses beyond what is permitted within the land use table.

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?*

There is no critical habitat in the Bega Valley Shire. With regard to threatened species, populations or ecological communities, all the proposed sites will continue existing land uses. Therefore, it is unlikely that this rezoning, in itself, will cause harm to threatened species or habitats.

The Bioecological Consultants field surveys of mid 2011 for the area covered by the RU2 and partial E2 and E3 zoning to the west of the highway identified six (6) fauna species which are listed as significant (Vulnerable) under the NSW TSC Act. Note that the current subject site of this planning proposal actually extends in more heavily forested lands to the south of the survey area, so the following list may not be complete.

1. Powerful Owl (forested areas)
2. Eastern Bentwing Bat (Reedy Creek)
3. East-coast Freetail Bat (Reedy Creek)
4. Large-footed Myotis (Reedy Creek)
5. Yellow-bellied Glider (near Reedy Creek and Nullica River)
6. Greater Broad-nosed Bat (Reedy Creek)

It is noted that the E2 zone will apply to Reedy Creek. The heavily forested areas of the subject site will be zoned E3.

Note that the sand extraction DA2011.500 has several onerous environmental and land restoration conditions which are designed to protect the sensitive habit of Reedy Creek.

Consultation with the NSW Biodiversity Conservation Division was conducted prior to exhibition of this planning proposal as a requirement of the Gateway Determination. Additional information regarding biodiversity values is contained in their response in Attachment 3.

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

Nil. The E2 zone will protect the most sensitive areas of Reedy Creek and the sensitive headland / estuary strip of land (formerly 7 (b) land) to the far east of the site.

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

Yes. The effect of this planning proposal will be to protect environmental sensitive lands close to the Towamba and Nullica River mouths and to protect existing grazing lands (sand extraction excepted) and forested areas.

Section D – State and Commonwealth Interests

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

No additional public infrastructure requirements for the subject areas are required.

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

Consultation with State and Commonwealth public authorities has been partially undertaken (see JRPP decision August 2015).

The Gateway Determination for this planning proposal (Department Ref: PP_2017 BEGA V_003_OO) stated that “prior to undertaking community consultation Council, is to:

- *update the Planning Proposal to apply environmental and rural zones and associated development standards to land based on its ecological significance and primary use;*
- *confirm what criteria has been used for applying an environmental zone, such as the presence of native vegetation communities, and confirm how the presence of these ecological attributes have been verified;*
- *consult with the Office of Environment and Heritage and the Department of Planning and Environment regarding the proposed zones and development standards.*

The amended Planning Proposal and any supporting maps and studies are to be referred to the Department for endorsement prior to the commencement of community consultation.”

Consultation with the then NSW Biodiversity Conservation Division was conducted in 2019 to fulfil these requirements of the Gateway Determination. The agency’s response stated that “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”. A copy of the agency’s full response is contained in Attachment 3.

Part 4 – Mapping

Changes to the proposed map sheets will be undertaken in a suitable format for public exhibition once the Gateway Determination is issued. This Planning Proposal will result in changes the following properties on the following BVLEP 2013 maps:

LAP_001

Amend map sheet LAP_001 by deleting DM Deferred Matters for:

- Lots 1 – 147, 157 – 178, 382 – 383, 386 – 391 DP 12883
- Lots 11 – 14 DP 1199147
- Lots 21-37 DP 239404
- Lots 1 – 2 DP 127299
- Lot 1 and 2 DP 572983
- Part Lot 13 DP 716162
- Lots 2 and 36 DP 750223
- Lot 10 DP 811856
- Lots 2 – 4 DP 624612
- Part Lot 13 DP 716162
- Lot 3 DP 750223
- Lot 5 DP 259742, Lot 32 560891, Lot 44 DP 716162

LZN_013

Amend map sheet LZN_013 by applying:

- E2 Environmental Conservation (no MLS), RU2 Rural Landscape and E4 Environmental Living to various lots listed under LAP_001 as Lyons Group Landholdings, Boydtown.

LSZ_013

Amend map sheet LSZ_013 by applying:

- AD 120 Ha to RU2 Rural Landscape, AB4 40Ha to E3 Environmental Management and AB4 10 Ha to E4 Environmental Living to various lots listed under LAP_001 as Lyons Group Landholdings, Boydtown.

LZN_021

Amend map sheet LZN_021 by applying:

- Amend map sheet LZN_021 by applying E2 Environmental Conservation (no MLS), RU2 Rural Landscape, E4 Environmental Living and RE1 Public Recreation (no MLS) to various lots listed under LAP_001 as 'Boydtown'.

LSZ_021

Amend map sheet LSZ_021 by applying:

- AD 120 Ha to RU2 Rural Landscape, AB4 40Ha to E3 Environmental Management and AB1 10 Ha to E4 Environmental Living to various lots listed under LAP_001 'Boydtown'.

Part 5 – Community Consultation

The Gateway Determination for this planning proposal (Department Ref: PP_2017 BEGA V_003_OO) stated that: “2. Community consultation is required under Sections 56(2)(c) and 57 of the Act as follows:

- (a) the Planning Proposal must be made publicly available for a minimum of 28 days;
- (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 (Department of Planning and Environment 2016); and
- (c) written notice of the public exhibition of the Planning Proposal is to be sent to all land owners whose land is the subject of this Planning Proposal.”

Public exhibition of the planning proposal will include notification on the Bega Valley Shire Council website, in the Eden Magnet newspaper and in writing to affected and adjoining landowners.

Part 6 – Timeline

The Project Timeline will assist with tracking the progress of the Planning Proposal through the various stages of consultation and approval. It is estimated that this amendment to *Bega Valley Local Environmental Plan 2013* will be completed by December 2021

The Minister for planning and Open Spaces is authorised as the local plan-making authority to exercise the functions for this planning proposal

Anticipated commencement date (date of Gateway determination)	August 2017
Anticipated timeframe for the completion of required technical information	NA
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	March-July 2019 May-June 2021
Commencement and completion dates for public exhibition period	May-June 2021
Dates for public hearing (if required)	NA
Timeframe for consideration of submissions	July 2021
Timeframe for the consideration of a proposal post exhibition	August-October 2021
Date of submission to the Department to finalise the LEP	November 2021
Anticipated date the local plan-making authority will make the plan (if authorised)	NA
Anticipated date the local plan-making authority will forward to the PCO for publication	December 2021

Attachment 1 – Minutes of Council Meeting

8.2. Strategic Direction for nine Deferred Sites in Bega Valley Local Environmental Plan 2013

This report seeks Council's resolution of a strategic direction for nine sites currently deferred in Bega Valley Local Environmental Plan 2013 and to proceed with the preparation of Planning Proposals for six of those sites.

Director Planning and Environment

Background

The gazettal of Bega Valley Local Environmental Plan (BVLEP 2013) left a number of sites throughout the Shire as 'Deferred Matters' as the zonings and/or lot sizes proposed by landowners represented a significant departure from the exhibited draft Bega Valley Local Environmental Plan (draft BVLEP 2010) or required more detailed investigations.

Council is requested to resolve a strategic direction for each of the following nine (9) sites and for planning proposals to be prepared for Sites 1 to 6 .

Site #	Subject Site
1	Boydton Property (excluding the area around the Seahorse Inn)
2	Summerhill Rd, South Pambula
3	Princes Highway, South Pambula
4	Old Mill Road, Wolumla
5	Princes Highway, Millingandi
6	Mandeni, Sapphire Coast Drive
7	Wolumla - Candelo Road, Wolumla
8	Clarke Street, Wolumla
9	Scott Street, Wolumla

Proposed Strategic Direction

Site 1 – Boydton Property (excluding the area around the Seahorse Inn)

The Southern Joint Regional Planning Panel (JRPP) examined the Boydton property in detail, following the submission of a Masterplan and Planning Proposal by the property owner. The JRPP made explicit recommendations with regard the zoning of the majority of the Boydton

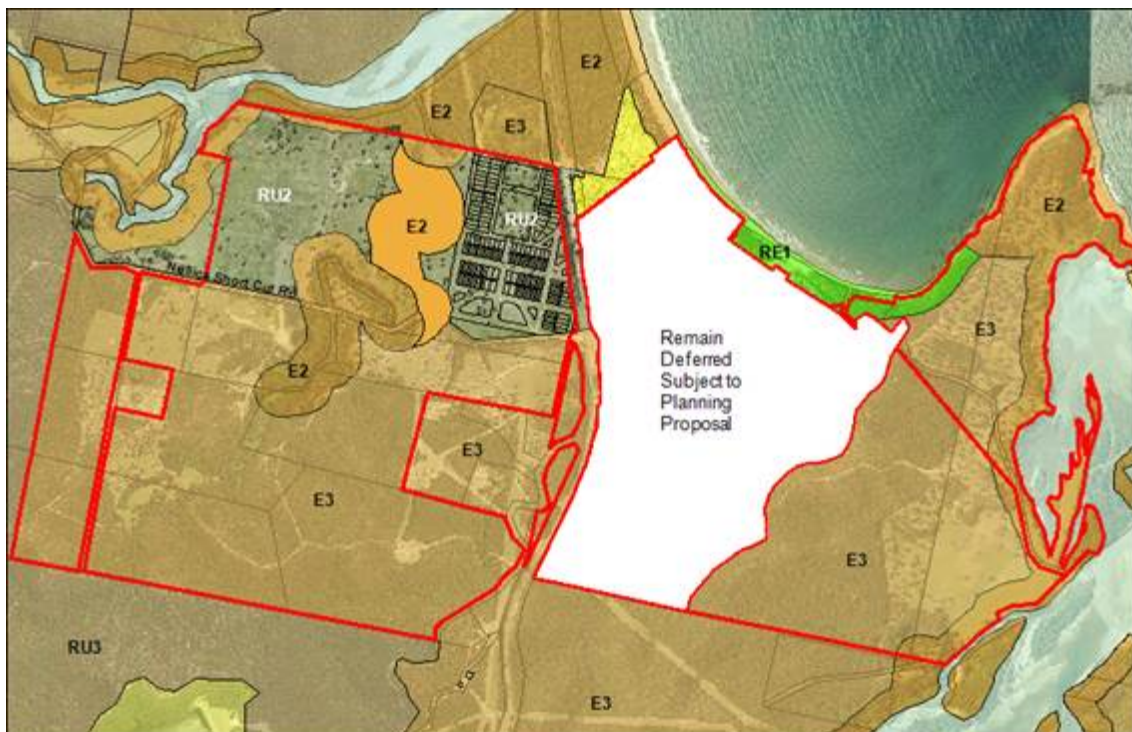
property. These recommendations were endorsed by the Minister for Planning and Environment.

Following the JRPP decision, officers have been in ongoing discussions with representatives of the site's owner. The owner has been strongly encouraged to focus on the area east of the Princes Highway, around the Seahorse Inn and proposed marina. Council has recently received a Planning Proposal covering this area, which will be the subject of a future report to Council.

Officers recommend the remainder of the site revert to the 2010 exhibited zonings of E2 and E3 in accordance with Council Policy applied across the Shire for sensitive coastal and forested lands, with the exception of the cleared paddocks north of the Nullica Short Cut Road, subject to the existing sand mining development approvals. It is recommended this land be zoned RU2 Rural Landscape and the north – south drainage line be protected by an E2 Environmental Conservation zoning.

Further it is advised a Planning Proposal from the property owner has recently been received for this land. The Planning Proposal requests zonings and lot yields that are inconsistent with the Decision of the JRPP, inconsistent with the position of the Minister for Planning and Environment, inconsistent with Council Policy applied across the Shire for sensitive coastal and forested lands and is therefore not supported by Council officers.

A copy of the owner's Planning Proposal is included as Attachments 1 to this report. Five appendices have been lodged with the main report covering the subjects of Water Management Investigation; Economic Impact Assessment; Plans; Visual Impact Assessment; and Constraints Analysis. The appendices will be tabled at the Council Meeting.



Recommendation: That the land north of Nullica Short Cut Road be zoned RU2 (120ha) and E2 (no lot size); the remainder of the land west of the Princes Highway be zoned E3 (10ha) and E2

(no lot size); and the south eastern section of the property adjoining the Towamba River estuary be zoned E3 (40ha) and E2 (no lot size).

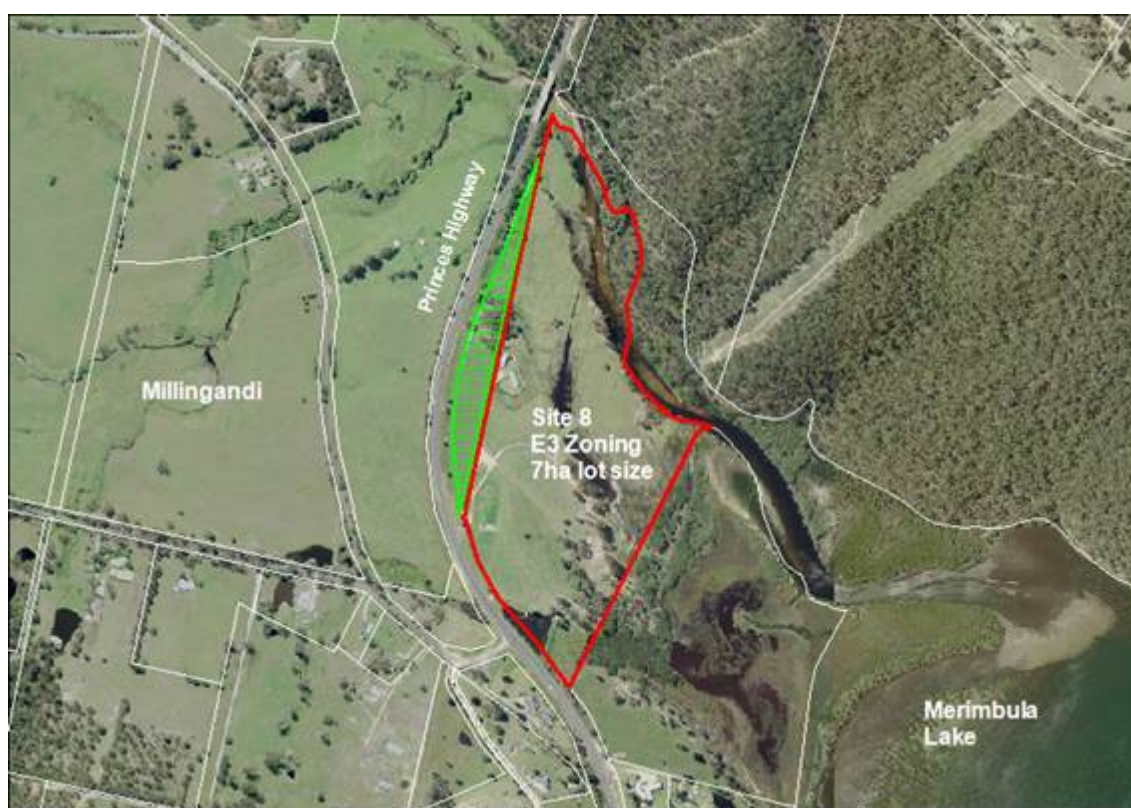
	Draft BVLEP 2010	Recommendation for 2016 Planning Proposal
Zones	E2, E3	E2, E3, RU2
Lot Sizes	10ha, 40ha, 120ha	10ha, 40ha, 120ha

Site 5 - Princes Highway, Millingandi

Site 5 covers an area of 18ha on the western side of Merimbula Lake adjacent to Millingandi Creek. The site was exhibited with an E3 zoning and a 120ha minimum lot size, which would prevent any further subdivision. The site was deferred following an address to Council in which a 5ha minimum lot size was requested. The 5ha minimum lot size was supported by Council, provided an On-site Sewage Management (OSSM) report was prepared to confirm the site's suitability for further subdivision.

The OSSM report has recently been completed and indicates that Site 5 is only suitable for one (1) additional lot, unless adjoining land (shaded green on the figure below) can be acquired to provide for further effluent treatment capacity. The owner of the site is currently negotiating to purchase the neighbouring land. Should this purchase be achieved, the OSSM report indicates the newly expanded property has the capacity for a maximum of three (3) lots (including the existing dwelling).

Council officers recommend the land retain its E3 zoning with a 7ha minimum lot size, providing for one (1) additional lot. Should the neighbouring land be purchased and incorporated into Site 5, the 7ha lot size would result in a total of two (2) additional lots.



Recommendation: That the land be zoned E3 with a 7ha minimum lot size.

	Draft BVLEP 2010	Recommendation for 2016 Planning Proposal
Zones	E3	E3
Lot Sizes	120ha	7ha

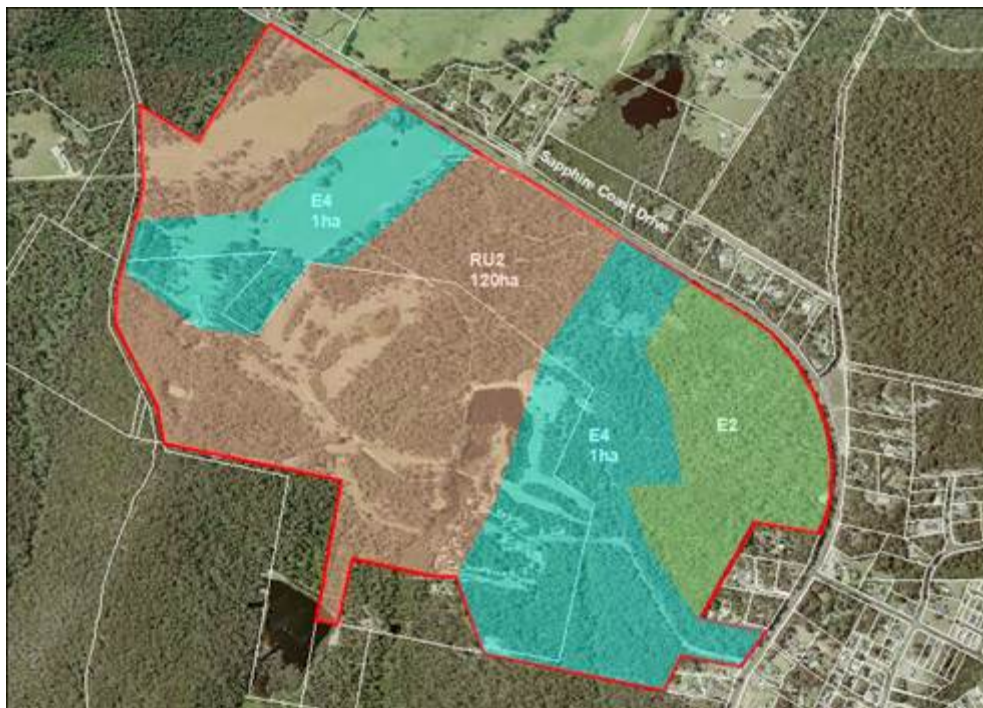
Site 6 - Mandeni, Sapphire Coast Drive

Site 6 was deferred from BVLEP 2013 to allow for the owner to prepare a comprehensive masterplan for the property. Council requested that key aspects to be covered in the masterplan were to include the relocation of existing approved lots away from high conservation value forest and a detailed socio-economic and servicing strategy, to enable consideration to be given for the subdivision of the existing tourist cabin development. Council has yet to receive an updated masterplan for the site.

Council has previously considered the relocation of the existing development entitlements and subdivision of the cabins through a workshop and site visit. The relocation of the existing development entitlements to the 'racecourse paddock' was supported on the proviso that the relocated lots would not be located within the forest fringe. The relocation of the development entitlements will require an amendment of the exhibited zoning from RU2 to E4 for this part of the property. The high conservation value forest currently zoned E4 in the eastern section of the property would be changed to E2.

Due to the lack of a socio-economic and servicing strategy being received to support the cabin subdivision, it is proposed to "un-defer" this section of the property to the exhibited E4 zoning. Should the owner wish to continue to pursue the subdivision of the cabins, they are able to

submit a planning proposal in the future based on the requested socio-economic and servicing studies.



8.2 Strategic Direction for nine Deferred Sites in Bega Valley Local Environmental Plan 2013

The Chairperson asked the Acting Director, Planning and Environment if any new matters had been raised in the address to Council. The Acting Director advised that in his opinion no new matters had been raised. Further the Acting Director provided advice and clarification to Councillors relating to the matters raised.

RESOLVED on the motion of Crs Britten and Fitzpatrick

That Council the matters be dealt with today, and that Item a) Site 1, be dealt with separately.

IN FAVOUR: Crs McBain, Tapscott, Seckold, Britten, Mawhinney, Taylor, Fitzpatrick and Allen

AGAINST: Cr Hughes

109/16 RESOLVED on the motion of Crs Britten and McBain

That in relation to :

a) **Site 1 – Boydtown Property (excluding the area around the Seahorse Inn)**

That the land north of Nullica Short Cut Rd be zoned RU2 (120ha) and E2 (no lot size); the remainder of the land west of the Princes Hwy be zoned E3 (10ha) and E2 (no lot size); and the south eastern section of the property adjoining the Towamba River estuary be zoned E3 (40ha) and E2 (no lot size).

Council adopts the recommendation and defer implementation until 8 August, 2016 to allow the Developer to gain written advice from the Department of Planning that the Department will revisit the E-zones for Boydtown. If such advice is received the matter to be relisted for the

meeting to be held on 10 August 2016.

IN FAVOUR: Crs McBain, Tapscott, Seckold, Britten, Mawhinney, Taylor and Allen

AGAINST: Crs Hughes and Fitzpatrick.

Recommendation

Crs Fitzpatrick and Mawhinney

1. That the zoning and lot sizes for Site 1 be as per the previous resolution number 109/16.

- a) **Site 1 – Boydtown Property (excluding the area around the Seahorse Inn)**

That the zoning and lot sizes for Sites 2 - 6 be as follows:

- b) **Site 2 - Summerhill Rd, South Pambula**

That the land be zoned E4 with a 1ha lot size applied to the substantially cleared, eastern section of the property and a 5ha minimum be applied to the western, more heavily vegetated section of the property.

- c) **Site 3 - Princes Highway, South Pambula**

That the site be zoned E4 with a 5ha minimum lot size and the consultant acting for the owner be advised and encouraged to submit a revised Planning Proposal based on this zoning and lot size.

- d) **Site 4 - Old Mill Road, Wolumla**

That the land fronting Old Mill Road be zoned E4 with a 2ha lot size. The remainder of the property be zoned E3 with a 30ha lot size.

- e) **Site 5 - Princes Highway, Millingandi**

That the land be zoned E3 with a 7ha minimum lot size.

- f) **Site 6 - Mandeni, Sapphire Coast Drive**

That the land be zoned and lot sized E4 (1ha), RU2 (120ha) and E2 (no lot size).

2. That staff be authorised to forward Planning Proposals to the Department of Planning for Gateway determination for Sites 1 - 6 as per the zoning and lot sizes resolved above.
3. That following Gateway determination the Planning Proposals be placed on public exhibition and, following the exhibition period, a further report be submitted to Council for incorporation of the subject land into Bega Valley Local Environmental Plan 2013.

Confirmation of E2 and E3 zoning for the Millingandi Site 26 April 2017 to correct the error in the above resolution which excluded the E2 Zoning from the text.

9.3 Confirmation of Land Use Zonings - Millingandi

71/17 RESOLVED on the motion of Crs Tapscott and Dodds
That Council advise the Department of Planning and Environment that it confirms the following zonings be applied to the Millingandi site as follows:

a) **Lot 721 DP 826975, Millingandi**; apply E3 and E2 zones.

IN FAVOUR: Crs Bain, Nadin, Griff, McBain, Seckold, Tapscott, Dodds and Allen

AGAINST: Nil

ABSENT: Cr Fitzpatrick

Council Resolution Follow up Boydtown resolution

Ordinary

Meeting Notice and Agenda

An Ordinary Meeting of the Bega Valley Shire Council will be held at Council Chambers, Biamanga Room Bega Commemorative Civic Centre on Wednesday, 10 August 2016 commencing at 2.00 pm to consider and resolve on the matters set out in the attached Agenda.

3 August 2016

Confirmation of Minutes

Recommendation

That the Minutes of the Ordinary Meeting and Closed session held on 20 July 2016 as circulated, be taken as read and confirmed.

Staff Reports –Planning And Environment (Sustainability)

8.1. Planning matters from Council meeting 20 July 2016

Council considered two matters at its meeting on 20 July 2016. Late reports on these matters may be considered if all material requested is received prior to the meeting.

General Manager

Background

At its meeting on 20 July 2016 Council considered reports relating to:

8.2 Item 8.2 Strategic Directions for nine deferred sites under the Bega Valley LEP 2013

Council resolved that in relation to:

a) **Site 1 – Boydtown Property (excluding the area around the Seahorse Inn)**

That the land north of Nullica Short Cut Rd be zoned RU2 (120ha) and E2 (no lot size);
the remainder of the land west of the Princes Hwy be zoned E3 (10ha) and E2 (no lot

size); and the south eastern section of the property adjoining the Towamba River estuary be zoned E3 (40ha) and E2 (no lot size).

Council adopts the recommendation and defer implementation until 8 August, 2016 to allow the Developer to gain written advice from the Department of Planning that the Department will revisit the E-zones for Boydtown. If such advice is received the matter to be relisted for the meeting to be held on 10 August 2016.

Recommendation

That Council note the report and consider late items received.

Item 8.2 Strategic Directions for nine deferred sites in the Bega Valley LEP 2013

(Item 8.2 Planning matters from Council meeting 20 July 2016)

- The Chair noted that this item in the report was not considered as no written advice from the Department of Planning had been received.

2. Confirmation of Minutes

RESOLVED on the motion of Crs Mawhinney and Seckold

That the Minutes of the Ordinary Meeting and Closed session held on 20 July 2016 as circulated, be taken as read and confirmed.

IN FAVOUR: Crs McBain, Hughes, Tapscott, Seckold, Britten, Mawhinney, Taylor, Fitzpatrick and Allen

AGAINST: Nil

Attachment 2 – Southern Joint Regional Planning Panel Review of pre-gateway application

(PGR_2014_BEGAV_001) submitted by Inspire Urban Design & Planning (the proponent) on behalf of Boydtown Pty Ltd and Boydtown Pastoral Pty Ltd.

The Southern Joint Regional Planning Panel (JRPP) examined the Boydtown property in detail, following the submission of a Masterplan and Planning Proposal by the property owner. The JRPP made explicit recommendations with regard the zoning of the majority of the Boydtown property. These recommendations were endorsed by the Minister for Planning and Environment.

**Joint Regional Planning Panel
Pre-Gateway Review & Planning Proposal Review**

The Southern Joint Regional Planning Panel has considered the request for a review of the proposed instruments as detailed below.

The Pre-Gateway & Planning Proposal Review:

Date of Review:	15-16 February 2015
Dept. Ref. No:	2015STH003 PGR
LGA:	Bega Valley Shire Council
LEP to be Amended:	Bega Valley Local Environmental Plan 2009
Address / Location:	Lot 1 Boydtown Park Road, Eden
Proposed Instrument:	PGR_2014_BEGAV_001
Panel Chair:	The Hon. Pamela Allan
Panel Members:	Alison McCabe, Allen Grimwood, Bill Taylor, Michael Britten

Executive Summary

The Southern Joint Regional Planning Panel (the Regional Panel) has been requested by the Minister for Planning on 1 December 2014 to carry out a review of a pre-gateway application (PGR_2014_BEGAV_001) submitted by Inspire Urban Design & Planning (the proponent) on behalf of Boydtown Pty Ltd and Boydtown Pastoral Pty Ltd.

The planning proposal submitted to Bega Valley Shire Council seeks to rezone land at Boydtown for mixed use, residential development, tourist development, environmental conservation and public recreation to facilitate the development of a 'new town' approximately 6 kilometres south of the settlement of Eden. Council deferred the application of Standard Instrument zones to the land which remains subject to the Bega Valley Local Environmental Plan 2002.

The Regional Panel has consulted with the proponent and landowner, the Department of Planning and Environment and local government through meetings held on 15 and 16 February 2015 on site at Boydtown. The Regional Panel has inspected the site and has reviewed all relevant information.

The Regional Panel recommends that planning proposal 2015STH003 PGR not proceed to a gateway determination but that a range of baseline studies, including plans for the provision of water and sewer services to any future development, be carried out to inform opportunities and constraints of land currently zoned for residential and tourist uses. This work would then form the basis of a revised planning proposal over lands currently zoned for residential and tourist uses.

Recommendations

The Southern JRPP recommends that:

1. Planning proposal 2015STH003 PGR dated 24 February 2012 and as amended in March 2014 and presented to the Panel on 15 February 2015, not proceed to a Gateway determination.
2. Baseline studies be prepared by the proponent addressing the impact of any proposed development at Boydtown on:

- the economy of Eden, and land and housing availability in Eden,
 - the natural environment, waterways, threatened species and endangered ecological communities on and adjoining the site,
 - flooding and coastal processes including potential sea level rise that affect the site,
 - management of acid sulfate soils, and
 - the scenic and visual qualities of the site and Twofold Bay.
3. The results of these baseline studies be used to inform mapping and presentation of opportunities, constraints and the development capability of the land, conceptual built form and a revised planning proposal for land currently zoned 2b Residential Medium Density, 2c Residential Tourist and 6a Public Open Space under Bega Valley LEP 2002 and deferred from inclusion in Bega Valley LEP 2013. The revised planning proposal may comprise a mix of tourism and permanent residential accommodation supported by appropriate services and with public access to foreshore open space.
 4. The residue land subject to planning proposal 2015STH003 PGR be excluded from the revised planning proposal and zoned in accordance with draft Bega Valley LEP 2010 as exhibited as E2 Environmental Conservation and E3 Environmental Management with applicable development standards, other than land occupied by the approved extractive industry along Nullica Short Cut Road which is to be zoned RU2 Landscape and E2 Environmental Conservation.
 5. Infrastructure requirements, in particular the provision of reticulated water and sewerage services, and access arrangements on to the Princes Highway, should be investigated and details provided in any revised planning proposal. The planning proposal is to include a staging plan that indicates the provision of water and sewer services of adequate capacity for each stage of development with full costs to be borne by the proponent.

Composition of Recommendation: For – Pam Allan, Alison McCabe, Allen Grimwood, Bill Taylor, Michael Britten Against – nil	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Not unanimous	Comments: The Regional Panel unanimously supports the recommendation to the Minister for Planning as provided in this report
--	---	---

Review Request

The Acting Deputy Secretary, Planning Services, as delegate of the Minister for Planning, requested on 1 December 2014 that the Southern Joint Regional Planning Panel (Regional Panel) undertake a pre-gateway review of a Planning Proposal prepared by Inspire Urban Design and Planning dated 24 November 2012 to rezone certain land at Boydtown in Bega Valley local government area to permit residential, tourist and mixed use development.

The Acting Deputy Secretary's terms of reference to the Regional Panel are to review the planning proposal and to prepare advice concerning the merits of the proposal. The advice should include a recommendation as to whether, in the opinion of the Regional Panel, a planning proposal should be submitted for a gateway determination under section 56 of the *Environment Planning and Assessment Act 1979*.

The Regional Panel constituted for this review comprised the Hon. Pamela Allan (Chair), Alison McCabe and Allen Grimwood as state appointed members, and Councillor Michael Britten (Mayor) and Councillor Bill Taylor appointed by Council to represent the community.

Declarations of interest

Nil

Consultation

The Regional Panel inspected the site on 15 February 2015. The Regional Panel met with representatives of Bega Valley Shire Council, the proponent and landowner, and the General Manager, Southern Region Department of Planning and Environment on the same day and on 16 February 2015.

Background

Boydton comprises a 670 hectare rectangular parcel of land bisected by the Princes Highway located approximately 6 kilometres south of Eden. The site fronts Twofold Bay, comprises cleared grazing land in the north, and forested and partly cleared land on elevated ground along its southern boundary.

The site has a number of current and approved uses, namely:

- the remains of the Boydton township, including the Seahorse Inn and church ruins, listed as local heritage items in the Bega Valley LEP 2013,
- an operating caravan park, comprising 350 caravan sites and 180 campsites, which obtained development consent in 1978,
- an operating package sewerage treatment plant,
- a small residential subdivision, with 10 existing dwellings and buildings, located on the southern side of Boydton Creek,
- a consent granted in 1990, following a Commission of Inquiry, for the development of a boat harbour and 250 berth marina at the mouth of Boydton Creek and a 43 lot marina village that is understood to have been lawfully commenced but not completed, and
- an operating extractive industry that was approved by the Panel in 2013 located on rural land west of the Princes Highway.

The portion of the site west of the Princes Highway is currently zoned 1(a) Rural General and 1(c) Rural Small Holdings. Land east of the highway is zoned 2(c) Residential Tourist, 6(a) Public Open Space, 2(b) Residential Medium Density, 1(a) Rural General, and 7(f1) Coastal Lands Protection under Bega Valley LEP 2002. Permanent accommodation is not permitted in zone 2(c). The Rural 1(c) Zone in the southern part of the site provides for rural residential lots with a minimum lot size of 5,000m².

Bega Valley Shire Council sought to apply Standard Instrument zones by way of the draft Bega Valley LEP 2010. The exhibited version indicated zones E2 Environmental Conservation and E3 Environmental Management west of the Princes Highway and across the eastern part of the site, and R2 Low Density Residential, SP3 Tourist, B4 Mixed Use, RE1 Public Recreation and RE2 Private Recreation in the area currently occupied by tourist uses and residential development. In response to a submission from the landowner, Council deferred zoning the site under the Standard Instrument LEP and consequently the site remains subject to Bega Valley LEP 2002.

The initial planning proposal prepared by Inspire Urban Design & Planning and dated 24 February 2012 seeks to zone the site to provide up to 5,000 permanent residential dwellings, significant areas for tourist accommodation and 70 hectares of mixed use zoned land on the eastern portion of the site. The development concept is for a 'new town' development around the approved but unconstructed marina. It is proposed to apply the following zones:

- SP3 Tourist, R2 Low Density Housing and R5 Large Lot Residential on land west of the highway, with a minimum lot size from 550m² to 4,000m², a maximum building height of between 10m and 16.5m and a floor space ratio of 0.6:1
- B4 Mixed Use (70ha), RE1 Public Recreation, E2 Environmental Conservation and R2 Low Density Residential on land east of the highway, with a minimum lot size ranging from 550m², 1,200m² and 7,000m², a maximum building height to 16.5 metres, minimum lot size from with a floor space ratio of 0.6:1 in some locations

Additionally, it is proposed to insert the following clause in Part 6 Additional Local Provisions of Bega Valley LEP 2013 to provide for a proportion of permanent residential accommodation within an approved tourist and visitor accommodation facility:

"This clause applies to land shown on the Local Clauses Map and marked Clause xx.

Consent may be granted for the development of land described in Subclause (1) and zoned SP3 for the purposes of permanent residential accommodation if:

- I. The development is an integral part of an approved tourist and visitor accommodation facility;*
- II. No more than 60% of the units within the facility are to be used for the purposes of permanent residential accommodation.*

Consent may be granted for the purposes of permanent residential accommodation of a maximum of one unit under subclause (20) where the development comprises less than four units"

Council proposed amendments to the exhibited version of draft Bega Valley LEP 2010 in November 2013 to indicate an extension of the E2 Environmental Conservation zone on land west of the Princes Highway between Nullica Creek and Nullica Short Cut Road. It was proposed to apply the E2 zone to the watercourse and riparian land that runs through the approved extractive industry.

A revised planning proposal prepared by the proponent in March 2014 was presented to the Panel on 15 February 2015. This planning proposal altered that dated February 2012 by replacing the proposed SP3 Tourist zone west of the highway with zone R1 General Residential. Zones proposed for land east of the highway have been altered to show additional land zoned RE1 Public Recreation, replacing the R2 Low Density Residential zone with R1 General Residential, applying zone SP3 Tourist to the area occupied by the Seahorse Inn and applying zone W3 Recreational Waterway to Towamba Creek and the approved marina. The proposal also reduced the extent of B4 Mixed Use zoned land. The overall development vision for Boydtown remains similar albeit with a reduced mixed use precinct and expanded residential areas.

Assessment

Strategic Context

Key strategies of relevance to the planning proposal are the South Coast Regional Strategy, the Bega Valley Shire Commercial Strategy and the Eden Structure Report.

The regional strategy supports the growth and development of existing urban settlements including those that are identified in the Eden Structure Report. The strategy includes as an action '*infill housing and new residential subdivisions located adjacent to existing well serviced centres and towns will be given priority in land release planning*'. New towns are not supported unless there are compelling reasons to do so and the Sustainability Criteria provided in the regional strategy are satisfactorily addressed.

The regional strategy describes the hierarchy of commercial centres and nominates Eden as a 'town' that services the Eden-Boydtown district catchment. The Bega Valley Shire Commercial Strategy identifies themes for Eden which includes promoting the town as the southern tourist centre of Bega Valley Shire and providing support for significant industries relating to fishing, forestry and port activities. Several significant developments have been approved or are proposed in Eden that will

contribute to tourism and commercial sustainability. These include aquaculture, whale-watching, cruise ship visits, a marina and accommodation at Cattle Bay, and expansion of the Snug Cove port facility.

Boydton is described in the Eden Structure Report as having long term potential as an urban area and as a tourist precinct. The structure report envisages that land east of the highway may be used for mixed uses, and permanent residential accommodation incorporating affordable housing and holiday accommodation. The vegetation and open space network should be maintained with access to beaches and the foreshore of the Towamba River, and development limited to low impact eco-tourism in environmentally sensitive areas such as east of the ridge between existing development and the Towamba River.

For land west of the highway, the structure report acknowledges the potential for an industrial precinct with residential accommodation and business uses. Buffers to the river system should be maintained and impacts on the arterial road network minimised. The land zoning and development standards recommended in the structure report were exhibited in draft Bega Valley LEP 2010.

Land availability

Figures presented by Council to the Regional Panel indicate the current population of Eden is 3,758 persons with a projected growth rate of 0.75% out to 2036, or about another 800 persons. There are estimated to be 1,004 vacant housing lots within the R2 Low Density Residential and R3 Medium Density Residential zones of Eden comprising two unsubdivided release areas and potential infill development. This supply of vacant residential land is estimated to cater for more than 20 years growth in population.

The Regional Panel considers that there may be some additional demand for residential land released east of the highway in the near term but that demand for residential land west of the highway would be very low over the short and medium term. Urban development of land west of the highway is not supported.

Infrastructure

There is limited information provided in the planning proposal concerning provision of water and sewer services. Council's advice is that water can be supplied to new development by increasing the sizing of trunk mains to distribute water from existing sources.

The Seahorse Inn, caravan and camping area, and existing residences are serviced by way of a private sewer treatment plant. There are no details in the planning proposal about whether new development would be serviced by augmentation of the private system or whether there is the potential to connect to Council's reticulated system. Council's advice is that any spare capacity in the Eden sewer system will be utilised by growth in Eden's population as acknowledged in Council's development servicing plans (which do not include Boydton). Connection to Council's system is preferred, however, considerations include whether to treat effluent on site or pump to Eden's treatment plant, dispose of treated effluent on site or via an ocean outfall, and the costs of and future ownership of infrastructure assets, need to be considered and understood.

The Regional Panel seeks to ensure that full costs of infrastructure provision are borne by the developer of Boydton and that new assets comply with guidelines to protect environmentally sensitive areas.

In summary, the planning proposal seeks to establish a 'new town' rather than an urban and tourism precinct that is complementary to Eden. Justification for commercial development in economic terms is lacking and servicing with water and sewer has not been investigated.

Development Capability and Adequacy of Information

The site is in a visually and environmentally sensitive location. The capability of the site to reasonably accommodate the level of development proposed has not been demonstrated having regards to an understanding of the constraints of the land. This needs to be the starting point.

In documentation provided with the planning proposal, there is a lack of detail regarding site analysis, particularly relating to environmental constraints such as slope and vegetation, visual values, land capability and infrastructure servicing. The planning proposal does not contain relevant demographic information or justification for a new town in the locality.

The Regional Panel understands the need to ensure that the site is capable of accommodating the level of development that would be enabled by the proposed instrument before it proceeds to a favourable Gateway determination.

The proponent has not provided the basic level of information to assure panel members that the site is suitable for the proposed uses.

Conclusion

The Regional Panel has carried out the review of the pre-gateway application by Inspire Urban Design & Planning (PGR_2014_BEGAV_001) in accordance with the Terms of Reference.

The Regional Panel supports 'in principle' the development of tourism and permanent residential uses on that portion of the site located east of the highway. Ecotourism and allotments to the proposed minimum lot size that are designed to respect the visual and heritage qualities of Twofold Bay and the remains of the former settlement at Boydtown are appropriate.

However, the Regional Panel does not support urban development on that portion of the site located west of the Princes Highway due to the approved and operating extractive industry and the presence of steep slopes and vegetation, or on land east of the ridge that runs between the existing tourist development east of the highway and the Towamba River due to the environmental and visual sensitivity of this land. The Regional Panel does not support the development of a new town that is planned to compete with the commercial and residential functions of Eden.

The Regional Panel recommends that the planning proposal not proceed to a gateway determination. However a range of baseline studies, including plans for the provision of water and sewer services to any future development be carried out to inform a revised planning proposal that is limited to an exploration of the opportunities and constraint of land currently zoned for residential and tourist uses as 2b Residential Medium Density and 2c Residential Tourist under Bega Valley LEP 2002.

Endorsed by:



The Hon. Pamela Allan
Chair
Southern Joint Regional Planning Panel

10 March 2015

Attachment 3 – Consultation with NSW Biodiversity Conservation Division



Planning,
Industry &
Environment

Our ref: DOC19/266681-5

Your ref: PP_2017BEGAV_003_00 DOC19/

Sophie Thomson
Strategic Planning Coordinator
Bega Valley Shire Council
PO Box 492
Bega NSW 2550
council@begavalley.nsw.gov.au

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.