
**PSR16/023 PLANNING PROPOSAL TO IMPLEMENT THE RURAL LANDS
STRATEGY AND OTHER MATTERS**

E13.7173

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments: 1. Under Separate Cover - Planning Proposal for Rural Lands Strategy
Volume 1
2. Under Separate Cover - Planning Proposal for Rural Lands Strategy
Volume 2

Focus Area: Sustainable Communities

Delivery Program Link: S5.1 Review and prepare planning strategies, policies and studies

Operational Plan Link: S5.1.1 Rural Lands Strategy

EXECUTIVE SUMMARY

On 23 February 2016 Council adopted a Rural Lands Strategy for the Eurobodalla Shire. The Rural Lands Strategy made a number of recommendations that require the Eurobodalla Local Environmental Plan 2012 (ELEP 2012) to be amended, including changes to zoning and minimum lot sizes for rural land across Eurobodalla. The recommended zoning includes land that was deferred from ELEP 2012 and this will enable the repeal of the Rural LEP 1987. The recommendations of the Rural Lands Strategy also relate to a number of clauses and map overlays in ELEP 2012. The adopted Rural Lands Strategy was consistent with all recommendations of the former Rural Lands Strategy (RLS) Steering Committee.

In accordance with section 55 of the Environmental Planning and Assessment Act 1979, Council is required to prepare a planning proposal to outline proposed changes to an LEP and to justify those changes in accordance with the Ministerial Directions under section 117 of the Act, amongst other matters. Section 56 of the Act requires Council to forward the planning proposal to the Minister for Planning to seek a gateway determination, before the planning proposal can be placed on public exhibition for community input.

A planning proposal has been prepared for Council to endorse and forward to the Minister for Planning to seek a gateway determination. The planning proposal implements the recommendations of the adopted Rural Lands Strategy and seeks to make amendments in relation to a number of other matters.

For the most part, the planning proposal is consistent with the Rural Lands Strategy. Any variations are outlined in this report and in the planning proposal. The variations respond to feedback from councillors, more detailed assessment, the biodiversity reforms and consultation with property owners. The following table contains a summary of the LEP amendments that are proposed.

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Item No.	Name of item	Intended Outcomes
1	Amend Land Use Table and Schedule 2	To facilitate additional land uses as permissible with consent in the R5 and E4 zones, introduce open land use tables in RU1 and RU4 zones and to make grazing of livestock exempt development in the E2 zone. It is also proposed to make boatsheds permissible with consent in the E2 zone and to introduce open land use tables to the business and industrial zones.
2	Amend Clause 4.1E	To include the RU4 zone as a zone where minimum averaging provisions will apply and to ensure no lot resulting from a subdivision of land zoned RU4 using the minimum averaging clause is less than 2ha.
3	Amend Clause 4.2A	To delete the sunset clause to ensure existing dwelling entitlements do not lapse and to delete the 'sealed road' provision due to the introduction of new minimum lot sizes in rural areas.
4	Introduce a new boundary adjustment clause	To increase the opportunities for boundary adjustments on certain lands.
5	Amend Zoning and Minimum Lot Size Maps	To establish appropriate zoning and minimum lot sizes for certain rural land in accordance with the Rural Lands Strategy.
6	Amend Minimum Lot Size Maps	To delete the 1000ha minimum lot size from all land not addressed in item 5.
7	Remove Terrestrial Biodiversity Maps and delete Clause 6.6	To remove the existing Terrestrial Biodiversity Map and delete the associated clause 6.6.
8	Amend Dwelling Entitlement Maps	To identify additional properties that have dwelling entitlements, including those that would have been removed due to the deletion of the "sealed road" provision in clause 4.2A, those in the deferred matter and at the request of the land owner. In addition, it is proposed to amend the maps to more clearly identify properties that have dwelling entitlement.
9	Amend Height of Buildings Maps	To apply a maximum height of buildings to land proposed to be zoned E4 and RU4.
10	Amend Heritage Maps	To transfer items of environmental heritage on land in the deferred matter from the Rural Local Environmental Plan 1987 to the ELEP 2012.
11	Amend Wetlands, Watercourses and Riparian Lands Maps	To identify in ELEP 2012 waterways, wetlands and riparian lands in the deferred matter.
12	Amend Acid Sulfate Soils Maps	To identify in ELEP 2012 acid sulfate soils in the deferred matter.
13	Amend Land Application Map	To remove reference to deferred matter and identify the ELEP 2012 as applying to the whole of Eurobodalla.
14	Amend Public Infrastructure Maps	To identify areas within public infrastructure buffers in the deferred matter.

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Item No.	Name of item	Intended Outcomes
15	Amend Schedule 1	To make "Advertising signs, being a notice directing the travelling public to tourist facilities or activities or to places of scientific, historical or scenic interest (such as town signs)" permissible with consent in the RU1 and RU4 zone.
16	Introduce a new Airspace Operations clause	To ensure development in the vicinity of the Moruya Airport does not have a detrimental impact on the airport operations.
17	Amend Schedule 1 and Additional Permitted Uses Map	Add Lot 1 DP 118963 to clause 4(1) and the Additional Permitted Uses Map.
18	Amend Schedule 1	Add Recreation facility (indoor) to the list of additional permitted uses for the land at Narooma identified as '5' on the Additional Permitted Uses Map.
19	Amend Land Zoning Map and Minimum Lot Size Map	To rezone Lots 101 and 183 DP 755904, at the corner of Durras Drive and Durras Lake Road, South Durras, from the B2 Local Centre Zone to the R2 Low Density Residential Zone and to introduce a 1500m ² minimum lot size.
20	Amend Land Zoning Map, Minimum Lot Size and Height of Buildings Maps	To rezone part of Lot 1 DP 1036103, Beach Road, Catalina (Catalina Country Club), from the R2 Low Density Residential Zone to the RE2 Private Recreation Zone and to make consequential changes to the Minimum Lot Size and Height of Buildings Maps.
21	Amend clause 6.2	To ensure a DCP is required for urban release areas in appropriate circumstances.
22	Amend Minimum Lot Size Map	To increase the minimum lot size for land at Lots 1 to 5 DP 1056650, Lots 10 and 11 DP 1189589 and Lot 3 DP 1011462, Old Highway, Narooma from 1500m ² to 2500m ² .
23	Amend Minimum Lot Size Map	To decrease the minimum lot size for certain lands from 600m ² to 550m ² . This applies to certain lands that were included in Amendment No. 7 to ELEM 2012, and will result in a lot size that is consistent with adjoining lands.
24	Amend Land Zoning Map, Minimum Lot Size Map and Height of Buildings Map	To correct the boundary between the R2 and RU1 zones for land that been subdivided for residential purposes at East Moruya (Braemar Estate) and to make consequential changes to the Minimum Lot Size and Height of Buildings Maps.
25	Amend Schedule 4 and Height of Buildings Map	Reclassify a laneway in Batemans Bay to operational and provide for an 18m maximum building height.
26	Amend Schedule 4, Land Zoning Map, Lot Size Map and Height of Buildings Map	Reclassify land at George Bass Drive, Malua Bay to operational, rezone the land R2 Low Density Residential, provide for a minimum lot size of 550m ² and a maximum building height of 8.5m.
27	Rename ELEM 2012 to ELEM 2016 and repeal RLEM 1987	RLEM 1987 is no longer required as all LEP provisions applying to the whole of Eurobodalla will be contained in one LEP, to be renamed ELEM 2016.

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The effect of the zoning and minimum lot size amendments in the planning proposal is to facilitate up to an additional 122 lots and 255 dwellings in rural areas across Eurobodalla. This will enable more small-lot agriculture and rural lifestyle opportunities in Eurobodalla.

The removal of the Terrestrial Biodiversity Map and associated clause from ELEP 2012 is accompanied by a new Native Vegetation Map being included in a Council Code and referenced in relevant Development Control Plans, as recommended by the former RLS Steering Committee.

In the preparation of this planning proposal, Council consulted with the Department of Planning and Environment, the Office of Environment and Heritage and the Rural Fire Service.

A draft planning proposal is included as an attachment to this report. Due to unforeseen circumstances the draft LEP maps are still being processed. We will endeavor to table the draft LEP maps at the Council meeting.

Since adopting the RLS Strategy, Council has received two briefings on the planning proposal.

RECOMMENDATION

THAT Council

1. Endorse the attached Planning Proposal to implement the Rural Lands Strategy and make other amendments to the Eurobodalla Local Environmental Plan 2012 and Repeal the Rural Local Environmental Plan 1987.
2. Forward the Planning Proposal to the Minister for Planning for a Gateway Determination pursuant to Section 56 of the Environmental Planning and Assessment Act 1979.
3. Following receipt of a Gateway Determination, consult with the community and relevant government agencies as required by the Gateway Determination.
4. Receive a report back on the Planning Proposal following community consultation.

BACKGROUND

Council commenced the development of a Rural Lands Strategy in 2012 with the establishment of a Rural Lands Strategy Steering Committee made up of land owners and representatives of Council and NSW Government Agencies. Following a detailed process that involved several periods of community engagement, a final strategy was adopted by Council on 23 February 2016. The adopted Strategy was consistent with the recommendations of the RLS Steering Committee.

The adopted Rural Lands Strategy makes a number of recommendations for changes to ELEP 2012 in relation to zoning, minimum lot size, dwelling entitlements, boundary adjustments amongst other matters. These changes need to be implemented through a planning proposal to amend the LEP.

Councillors were briefed on the details in the planning proposal on two occasions, on 17 May 2016 and 21 June 2016. A briefing of the members of the former Rural Lands Strategy Steering Committee was undertaken on 19 May 2016 and preliminary consultation has taken place with

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relevant NSW Government agencies including the Department of Planning and Environment, the Rural Fires Service and the Office of Environment and Heritage.

CONSIDERATIONS

Proposed LEP Amendments – Implementing Rural Lands Strategy Recommendations

Each item in the planning proposal is summarised below:

Item 1 – Amend Land Use Table and Schedule 2

This amendment responds to Action 13 of the Rural Lands Strategy and to the following statement in section 3.11.1 of the Strategy:

“Council could also give consideration, in the development of the planning proposal to the use of ‘open’ land use tables for some zones such as RU1, where all uses are permissible with consent except for those specifically listed as prohibited”.

The planning proposal includes the redrafting of the land use tables for the RU1, RU4, B1, B2, B4, B5 and IN1 zones in the ‘open’ format, where only the most inappropriate uses in each zone are listed as prohibited and all other uses are permitted with or without consent. This is a more flexible approach in those zones where a relatively wide mix of land uses could be appropriate.

Item 2 – Allow minimum averaging in the RU4 zone

This amendment implements Action 12 of the Rural Lands Strategy.

Minimum averaging allows for an alternative subdivision layout that respond to the natural features of the land, while maintaining the same density of lots that could be achieved from a subdivision that complies with the mapped minimum lot size.

By providing for minimum averaging in the RU4 zone, subject to no lot being smaller than 2ha, greater flexibility is provided while ensuring all lots remain capable of small lot agricultural activity.

Item 3 – Deletion of ‘sunset’ and ‘sealed road’ clause in relation to dwelling entitlements

This amendment implements Actions 10 and 15 of the Rural Lands Strategy.

Deletion of the ‘sunset’ clause ensures that existing dwelling entitlements on ‘holdings’ are retained.

Deletion of the ‘sealed road’ clause removes an additional opportunity for dwellings on certain lots over 40ha in size. This clause is superseded by the new minimum lot sizes for dwelling entitlement (see item 5). Lots that benefited from this clause but do not meet the new minimum lot size have been identified and are proposed to be included on the Dwelling Entitlement Map.

Item 4 – Introduce a new boundary adjustment clause

This amendment implements Action 14 of the Rural Lands Strategy.

The proposed additional clause will provide greater flexibility for boundary adjustments on rural land. It is proposed to be applied to the RU1, RU3, RU4, E1 and E2 zones.

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Item 5 – Amend Zoning and Minimum Lot Size Maps

This amendment implements Actions 3 and 5 and the mapping included in the Rural Lands Strategy.

The Rural Lands Strategy applied a ‘landscape approach’ to zoning and minimum lot size across Eurobodalla’s rural lands, where the most important agricultural land and the most remote rural land were recommended to have an RU1 zone with a relatively large minimum lot size. For other areas, the zone and minimum lot size was based upon the prevailing land use and lot size in the locality. Recommended minimum lot sizes for land to be zoned RU1 range from 20ha to 500ha and for land to be zoned RU4, range from 2ha to 40ha. Importantly, no land zoned RU1 is proposed to retain the existing 1000ha minimum lot size.

In the development of the planning proposal, more detailed assessment of each area was undertaken to address the relevant State Environmental Planning Policies (SEPPs) and Section 117 Ministerial Directions and further consultation was undertaken with relevant NSW Government Agencies. In addition, the Draft Bills for the biodiversity and local land services legislation changes released by the NSW Government on 3 May 2016 were reviewed with regard to their potential impact on the Rural Lands Strategy recommendations. As a result, some minor variations to the Rural Lands Strategy recommendations for zoning are proposed. Each variation is identified later in this report.

In relation to the SEPPs, the planning proposal demonstrates that all matters are consistent with the objectives and requirements of each relevant SEPP.

In relation to the S117 Directions, the proposed zoning and minimum lot size for a number of areas (where additional lots and/or dwellings are facilitated) results in an inconsistency with Direction 1.2 (Rural Zones). For a small number of areas, the proposed zoning results in an inconsistency with Direction 2.1 (Environmental Zones). For these areas, the planning proposal provides a justification for each inconsistency.

Item 6 – Remove the 1000ha minimum lot size standard

This amendment is consequential to Actions 3 and 5 of the Rural Lands Strategy.

As noted above, no land zoned RU1 is proposed to retain the 1000ha minimum lot size. However, there is other land in the Eurobodalla Shire that currently has the 1000ha minimum lot size, including some land zoned E2 Environmental Conservation, SP2 Infrastructure, RE1 Public Recreation and RE2 Private Recreation.

There is no requirement to apply a minimum lot size to these zones and it is considered unnecessary and overly restrictive to apply a minimum lot size. Any future development application for subdivision that includes land in these zones should be considered on the individual merits of each proposal.

Item 7 – Remove the Terrestrial Biodiversity Map and clause 6.6

This amendment implements Action 7 of the Rural Lands Strategy.

The removal of the map and clause from ELEG 2012 will be accompanied by the inclusion of a Native Vegetation Map in a Council Code with reference to that map being included in relevant Development Control Plans. This approach is considered appropriate as it enables the map to

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be updated more regularly and more simply but ensures this important information remains publicly available for land owners to consider when preparing development applications.

However, this approach is partly inconsistent with S117 Ministerial Direction 2.1 (Environmental Zones). The planning proposal provides a justification for this inconsistency.

Item 8 – Amend the Dwelling Entitlement Maps

This amendment responds to land owner requests and is also consequential to Actions 3 and 15 of the Rural Lands Strategy.

The current Dwelling Entitlement Map is incomplete as ELEM 2012 does not apply to the Deferred Matter (land that is not zoned under ELEM 2012). As the land that is currently deferred is proposed to be zoned under ELEM 2012, the Dwelling Entitlement Map can be updated to identify additional land with a dwelling entitlement. The Map is also being updated to clearly distinguish between individual lots and holdings with dwelling entitlements.

It is important to note that the Dwelling Entitlement Map is not a comprehensive map of dwelling entitlements and that land not mapped may have a dwelling entitlement if it complies with clause 4.2A of ELEM 2012. Over time, the Dwelling Entitlement Map will be updated to add additional lots or holdings with dwelling entitlement (at the request of land owners) and to remove lots or holdings from the Map as dwelling entitlements are taken up or as properties cease to be defined as a holding (usually when parts of holdings are sold).

Item 9 – Amend Height of Buildings Maps

This amendment is consequential to Action 5 of the Rural Lands Strategy.

Some land that is currently deferred from ELEM 2012 is proposed to be zoned E4 Environmental Living or RU4 Primary Production Small Lots. For these lands a maximum building height standard is required to be applied, consistent with all other land currently zoned E4 or RU4. The height standard is proposed to be 8.5m.

Item 10 – Amend Schedule 5 and Heritage Maps

This amendment is consequential to Action 3 of the Rural Lands Strategy and provides for other minor updates to the heritage list and maps.

The current Heritage Schedule and Map is incomplete as ELEM 2012 does not apply to the Deferred Matter (land that is not zoned under ELEM 2012). As the land that is currently deferred is proposed to be zoned under ELEM 2012, the Heritage Schedule and Map can be updated to identify land with a heritage item listed in the Rural LEP 1987 and to complete the mapping for lots with a heritage item on land that is partly deferred. The Schedule and Map is also being updated to correct heritage item descriptions and property details.

Item 11 – Amend Wetlands, Riparian Lands and Watercourses Maps

This amendment is consequential to Actions 3 and 5 of the Rural Lands Strategy.

The current Wetlands, Riparian Lands and Watercourses Map is incomplete as ELEM 2012 does not apply to the Deferred Matter (land that is not zoned under ELEM 2012). As the land that is currently deferred is proposed to be zoned under ELEM 2012, the Wetlands, Riparian Lands and Watercourses Map can be updated to identify any wetlands and the riparian category of

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watercourses in the deferred areas. The information to be included on the maps is identical to the information that was proposed to be included on the maps prior to the subject areas being deferred.

Item 12 – Amend Acid Sulfate Soils Maps

This amendment is consequential to Actions 3 and 5 of the Rural Lands Strategy.

The current Acid Sulfate Soils Map is incomplete as ELEM 2012 does not apply to the Deferred Matter (land that is not zoned under ELEM 2012). As the land that is currently deferred is proposed to be zoned under ELEM 2012, the Acid Sulfate Soils Map can be updated to identify any potential acid sulfate soils in the deferred areas. The information to be included on the maps is identical to the information that was proposed to be included on the maps prior to the subject areas being deferred.

Item 13 – Amend Land Application Map

This amendment is consequential to Actions 3 and 5 of the Rural Lands Strategy.

The current Land Application Map is incomplete as ELEM 2012 does not apply to the Deferred Matter (land that is not zoned under ELEM 2012). Removing the deferred matter from this map will ensure that ELEM 2012 applies to all land in Eurobodalla.

Item 14 – Amend Public Infrastructure Buffer Maps

This amendment is consequential to Actions 3 and 5 of the Rural Lands Strategy.

The current Public Infrastructure Buffer Map is incomplete as ELEM 2012 does not apply to the Deferred Matter (land that is not zoned under ELEM 2012). As the land that is currently deferred is proposed to be zoned under ELEM 2012, the Public Infrastructure Buffer Map can be updated to identify any buffers to public infrastructure in the deferred areas. The information to be included on the maps is identical to the information that was proposed to be included on the maps prior to the subject areas being deferred.

Proposed LEP Amendments – Other Matters

The following matters, with the exception of the last item (item 27), do not relate to the Rural Lands Strategy recommendations, but are other minor matters that have arisen and require an amendment to ELEM 2012.

Item 15 – Make ‘town signs’ permitted with consent in the RU1 and RU4 zones

From time to time, Council received requests from communities for town signs. However, where the best location for the sign is on private land adjoining the road reserve and the land has a rural zoning, Council is unable to grant consent because advertising structures are prohibited in the RU1 and RU4 zones.

This proposal is to make ‘town signs’ an additional permitted use in the RU1 and RU4 zones, so that Council can accept development applications for town sign and consider each application on its merits.

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Item 16 – Introduce a new Airspace Operations Clause

The Civil Aviation Safety Authority has requested that Council demonstrate how it ensures that the Moruya Airport operations are not compromised by development that might cause an obstruction, hazard or potential hazard to aircraft flying in the vicinity.

Currently, in assessing development applications in the vicinity of Moruya Airport, Council reviews the Airport Obstacle Limitation Surface mapping to ensure that building heights will not cause an obstruction or hazard.

A standard LEP clause relating to airspace operations was developed by the Department of Planning and Environment following the making of ELEM 2012 and this clause has been included in the Bega Valley Local Environmental Plan 2013. A similar clause is now proposed to be included in ELEM 2012.

Item 17 – Add one lot to the area to which additional permitted uses apply to certain land at Batemans Bay

Land along the Old Princes Highway at Batemans Bay is subject to an additional permitted uses clause in ELEM 2012. The lots described in the clause and the area mapped inadvertently omitted one lot that was the intended to be included. This amendment corrects that omission.

Item 18 – Add recreation facility (indoor) to the list of additional permitted uses applying to certain land at Narooma

Land along Campbell Street at Narooma is subject to an additional permitted uses clause in ELEM 2012 (upon the making of ELEM 2012 Amendment No. 8). One more additional permitted use, being Recreation facility (indoor), is now proposed to be added to the clause.

Item 19 – Rezone land at South Durras from B2 Local Business to R2 General Residential

Land at the corner of Durras Drive and Durras Lake Road at South Durras is currently zoned B1 Neighbourhood Centre and the land owners have requested the land be rezoned to R2 Low Density Residential. The land is not currently required for commercial development and there is unlikely to be demand for such development in the future. Given the R2 zone permits a neighbourhood centre with consent, the land could still be developed for a neighbourhood centre in the future should the demand arise. In the meantime, the R2 zone enables the land owners to develop the land for residential purposes. A minimum lot size of 1500m² will also be applied to the land to minimise potential impacts of residential development on the environment.

Item 20 – Rezone land at Catalina from R2 Low Density Residential to RE2 Private Recreation

A small portion of the Catalina Country Club golf course land is zoned R2 Low Density Residential, with the remainder of the site zoned RE2 Private Recreation. The land owners have requested the R2 area be rezoned to RE2 so that the whole of the property has consistent zoning and as there is no intention to develop this part of the land for residential purposes. Consequential amendments to the minimum lot size and height of buildings standards are also proposed.

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Item 21 – Amend clause 6.2 to ensure a DCP is required for urban release areas

Clause 6.2 of ELEM 2012 provides for a DCP to be prepared for urban release areas to address a range of matters, including infrastructure servicing, accessibility, community facilities and environmental matters. The clause also enables an existing DCP to apply, but does not require that DCP to address the relevant matters in the clause. The clause is to be amended to ensure that a DCP that addresses the relevant matters is required before the development of urban release areas.

Item 22 – Increase minimum lot size for certain land zoned E4 Environmental Living at Narooma from 1500m² to 2500m²

The subject land currently has a minimum lot size of 1500m². However, in order to develop lots of this size, a reticulated sewerage system and sewerage pump station would be required given the land immediately adjoins and drains to Wagonga Inlet. Without such infrastructure, the maximum permissible density of the land is limited by the need for on-site sewerage management systems which require larger lot sizes. The proposed minimum lot size of 2500m² will facilitate a more suitable residential density for the land to avoid impacts on the water quality of Wagonga Inlet. This proposal has resulted from ongoing discussions with the land owners.

Item 23 – Decrease minimum lot size for various parcels of land zoned R2 General Residential from 600m² to 550m²

Council rezoned and reclassified a number of parcels of land in 2013. When in 2015, a minimum lot size standard was applied to the subject lots, it was intended that the minimum lot size for the subject lots be consistent with adjoining residential land, which is predominantly 550m². However, an incorrect minimum lot size of 600m² was applied and this planning proposal will change the minimum lot size to 550m² to ensure a consistent minimum lot size across residential areas.

Item 24 – Correct the boundary between land zoned R2 General Residential and RU1 Primary Production for certain land at Moruya

Land along South Head Road in Moruya is currently being subdivided in accordance with a development consent. Some of the new lots being created in the new development, known as Braemar Estate, currently have a split zoning of R2 Low Density Residential and RU1 Primary Production. The whole of the subject lots have been approved for residential purposes and should be zoned as such. The planning proposal seeks to relocate the zone boundary to the approved lot boundary. This proposal has been developed in consultation with the land owner.

Item 25 – Reclassify certain land at Batemans Bay

This proposal seeks to reclassify an existing laneway in Batemans Bay that connects North Street to the Bridge Plaza shopping centre. The lane is no longer required as improved access arrangements have been provided for through the issue of development consent for the redesign of car parking and vehicular and pedestrian access into the site.

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Item 26 – Rezone and reclassify certain land at Malua Bay

This proposal seeks to rezone and reclassify a small portion of a public reserve at Malua Bay, at the request of an adjoining land owner. As the subject area contains no native vegetation, the proposal will have no detrimental impacts on the natural environment. The subject area is approximately 127m² in size, representing less than 1% of the area of the public reserve and therefore will not have a significant impact on the availability of open space in the area.

Item 27 – Repeal RLEP 1987 and rename ELEP 2012 to ELEP 2016

This amendment is consequential to Actions 3 and 5 of the Rural Lands Strategy.

By zoning all deferred land under ELEP 2012, the RLEP 1987 is no longer required and can be repealed.

Consultation with NSW Government Agencies

A draft planning proposal was provided to the Department of Planning, the Office of Environment and Heritage and the Rural Fire Service for preliminary comment. The comments from each of these agencies are outlined below.

Department of Planning and Environment

The Department of Planning and Environment have provided Council with the following preliminary advice in relation to the drafting of the planning proposal:

- Proposed zoning and permissible land uses should be appropriate for the subject land.
- The planning proposal must not reduce the environmental protection standards that apply to land without suitable justification.
- Department staff support retention of the vegetation mapping in the LEP.
- Council will need to formally consult with the Rural Fire Service prior to submitting the planning proposal for a Gateway Determination.
- Department staff support the RFS opinion that additional residential development in highly constrained bushfire prone areas should be dealt with at a strategic stage, rather than at a DA stage.
- The non-rural lands strategy matters in the planning proposal should be included in a separate planning proposal.

Response

In the preparation of the planning proposal, more detailed analysis of the Rural Lands Strategy recommendations relating to zoning of land has been undertaken and a number of minor changes have been made (outlined below). Subject to these changes, the proposed zoning of rural land across the Eurobodalla Shire is considered appropriate.

In relation to permissible land uses, Item 1 of the planning proposal provides a detailed justification of the proposal to redraft a number of land use tables to open zones.

The view of Department staff in relation to vegetation mapping is noted. However, the Rural Lands Strategy provides solid justification for the removal of the vegetation mapping from the LEP and inclusion of such mapping in a Council Code referenced in Development Control Plans. The planning proposal is consistent with the recommendation of the Rural Lands Strategy.

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Council has undertaken formal consultation with the Rural Fire Service (see below).

The Department's position with regard to the non-rural lands strategy matters is noted.

Office of Environment and Heritage

The Office of Environment and Heritage made a detailed submission to the draft Rural Lands Strategy when it was placed on public exhibition. A draft planning proposal was forwarded to the Office of Environment and Heritage on 23 May 2016 seeking comments. No response has been received to date.

Rural Fire Service

The Rural Fire Service made a detailed submission to the draft Rural Lands Strategy when it was placed on public exhibition. A draft planning proposal was forwarded to the Rural Fire Service on 23 May 2016 seeking comments. No response has been received to date.

Proposed variations from the Rural Lands Strategy

In the preparation of the planning proposal, a more detailed analysis of the strategy recommendations for zoning of land across the rural areas of Eurobodalla has led to the need for some minor changes. In addition, a review of the draft biodiversity legislation released by the NSW Government has warranted further changes to the Rural Lands Strategy recommendations relating to zoning. Each of those changes are outlined below.

Change of proposed zoning due to flooding considerations

In area 6, around Mogo, much of the land was proposed in the Rural Lands Strategy to be rezoned from RU1 Primary Production to RU4 Primary Production Small Lots. Following the completion of the Rural Lands Strategy, a draft flood study looking at the Tomaga River and its tributaries, including Mogo Creek, was completed. The study confirms the extent of a significant floodway along Mogo Creek. For land that is significantly affected by the floodway, the RU4 zoning which provides for dwellings to be permissible with consent, is not appropriate. Given the flooding constraint and concerns relating to access and on-site sewerage management, these lands are no longer proposed to be rezoned to RU4 Primary Production Small Lots and will retain the current RU1 Primary Production zone. A small area of currently deferred land, zoned Rural 1(a) under the Rural LEP 1987 is also now proposed to be zoned RU1 Primary Production. It is considered more appropriate that a site specific planning proposal be submitted by the land owners for consideration.

Change of proposed zoning from E4 Environmental Living to RU4 Primary Production Small Lots

The Rural Lands Strategy proposed an E4 Environmental Living for land in areas 3, 3a, 17a, 18b and 41. In the draft Local Land Services Amendment Bill 2016 released by the NSW Government as part of their biodiversity legislation reforms, the E4 zone is proposed to be considered an urban zone and therefore not a zone in which the clearing provisions of the new legislation and codes of practice will be able to be used. Under the current Native Vegetation Act 2003, the E4 zone is considered a rural zone to which the existing rural land clearing provisions apply. Given this change, it is now proposed to zone these lands RU4 Primary Production Small Lots, a rural zone for the purposes of the proposed land clearing provisions of

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the draft Local Lands Services Amendment Bill 2016. This change has no impact on the potential lot or dwelling outcomes for the land provided for in the Rural Lands Strategy.

Change of proposed zoning from RU1 Primary Production to E4 Environmental Living

A number of small, residential sized blocks, which were recommended to be zoned RU1 Primary Production in the Rural Lands Strategy are now proposed to be zoned E4 Environmental Living as the subject lands, by their size, are not rural lands. The subject lands are:

- Two lots fronting Bridge View Road, Nelligen (in area that adjoin existing E4 zoned land;
- Three lots at Thule Road, Nelligen; and
- Fourteen lots on Meringo Road, Meringo.

Change of proposed zoning to E2 Environmental Conservation

The two small areas of privately owned lands identified below are now proposed to be zoned E2 Environmental Conservation.

- Part of a lot at Sherringham Lane, Central Tilba is currently zoned 7(f1) Environmental Protection (Coastal Lands Protection) under the Rural LEP 1987. With the agreement of the land owner, that part of this lot that contains sand dunes and beachfront is now proposed to be zoned E2 Environmental Conservation.
- Part of a lot north of Candaglan Drive, Broulee is currently zoned 7(a) Wetlands under the Rural LEP 1987. The majority of the remainder of the lot is currently zoned E2 Environmental Conservation and a small part is zoned R2 Low Density Residential. The small area that retains the 7(a) zoning is proposed to be zoned E2 Environmental Conservation.

Change of zoning of certain Crown Lands

Following advice from the Office of Environment and Heritage and the Department of Primary Industries – Lands, certain Crown Land lots are proposed to be zoned E2 Environmental Conservation. These lots were proposed to be zoned RU1 Primary Production in the Rural Lands Strategy. The subject lands are:

- Crown Land to the north of Durras Drive at South Durras;
- Crown Land adjoining Malabar Lagoon at Moruya, with the exception of the granite quarry resource area which will be zoned RU1 Primary Production as recommended in the Rural Lands Strategy; and
- Crown Land south of Little Lake, Central Tilba.

Change of zoning of certain Council owned lands

A review of the zoning of Council lands in preparing the planning proposal has resulted in the following changes to the recommendations of the Rural Lands Strategy:

- One landlocked parcel of land north of George Bass Drive, Tomakin was recommended in the Rural Lands Strategy to be zoned RU1 Primary Production, and is now proposed to

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be zoned E2 Environmental Conservation. This lot adjoins another Council lot zoned E2 Environmental Conservation.

- Part of a Council lot along George Bass Drive, Broulee was recommended in the Rural Lands Strategy to be zoned RU1 Primary Production, and is now proposed to be zoned E2 Environmental Conservation. This site is included in a biobank site and part of the site is already zoned E2 Environmental Conservation.
- One Council lot adjoining the Moruya Racecourse was recommended in the Rural Lands Strategy to be zoned RU1 Primary Production, and is now proposed to be zoned E2 Environmental Conservation. This site is included in a biobank site.
- Part of a Council lot adjoining Kyla Park at Tuross Head was recommended in the Rural Lands Strategy to be zoned RU1 Primary Production and is now proposed to be zoned RE1 Public Recreation. This is consistent with the Kyla Park Sporting Precinct Masterplan adopted by Council in 2011 and the current use of the site.
- The Council owned campground site at Mystery Bay was recommended in the Rural Lands Strategy to be zoned RU1 Primary Production and is now proposed to be zoned RE1 Public Recreation. This is equivalent to the current 6(a) Public Open Space zone under the Rural LEP 1987.

Legal

The Environmental Planning and Assessment Act 1979 outlines the process for making amendments to an LEP. The first stage of the process requires Council to resolve to forward a planning proposal to the Minister for Planning for a Gateway Determination.

In preparing a planning proposal, Council is required to demonstrate how the proposal is consistent with the Ministerial Directions under Section 117 of the Environmental Planning and Assessment Act. Where an element of a planning proposal is inconsistent with a S117 Direction, the inconsistency must be justified.

The Minister for Planning will determine if any inconsistencies with S117 Directions have been satisfactorily justified and if so, the Minister may issue a Gateway Determination which will enable Council to commence public exhibition of the planning proposal. The Gateway Determination may require Council to further justify any element of the planning proposal or amend the planning proposal before commencing community consultation. Council is required to comply with the terms of the Gateway Determination if the planning proposal is to proceed to the next stages.

Policy

The planning proposal has been prepared in accordance with Department of Planning and Environment Guidelines for preparing planning proposals and Local Environmental Plans.

The planning proposal is substantially consistent with the Rural Lands Strategy adopted by Council on 23 February 2016. The non-rural lands matters contained in the planning proposal are minor in nature and are all consistent with relevant Council policies and strategies.

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Environmental

For each item in the planning proposal, consideration has been given to any potential environmental impacts and the results are outlined in the planning proposal.

Asset

For each item in the planning proposal, consideration has been given to any potential impacts on Council assets and the results are outlined in the planning proposal.

Social Impact

For each item in the planning proposal, consideration has been given to any social impacts and the results are outlined in the planning proposal.

Economic Development Employment Potential

For each item in the planning proposal, consideration has been given to any economic impacts and the results are outlined in the planning proposal.

Community Engagement

Extensive community engagement was undertaken in the development of the Rural Lands Strategy. Community consultation on the planning proposal will be undertaken should Council endorse sending it to the Department of Planning and Environment for a Gateway Determination and should a Gateway Determination be received allowing the planning proposal to proceed to the consultation phase.

Given the extensive engagement during development of the Rural Lands Strategy, the fact that the planning proposal is substantially consistent with the Strategy recommendations and as the other matters in this Planning Proposal are relatively minor in nature, it is proposed to exhibit the planning proposal for a period of 28 days.

We will inform the community of the public exhibition through letters to land owners and through the use of Council's Online News and the Rural Lands Strategy mailing list and through the distribution of a media release. Copies of the planning proposal and all other relevant material will be available for viewing on Council's website, at the Batemans Bay, Moruya and Narooma libraries and Moruya customer service centre.

CONCLUSION

Following the adoption of the Rural Lands Strategy by Council on 23 February 2016, work commenced on the preparation of a planning proposal to implement the recommendations of the Strategy that relate to ELEP 2012.

Every proposed amendment to ELEP 2012 has been assessed in accordance with the Department of Planning's Guidelines for Preparing Planning Proposals. This includes, amongst other matters, as assessment of consistency with relevant State Environmental Planning Policies (SEPPs) and S117 Ministerial Directions. In the main, the planning proposal is consistent with relevant SEPPs and Ministerial Directions. Where there are inconsistencies, a justification for the inconsistency has been provided.

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Consultation with the Department of Planning and Environment, the Office of Environment and Heritage and the Rural Fire Service has been undertaken in the preparation of the planning proposal and comments from those agencies have been taken into consideration.

The key amendments to ELEP 2012 in the planning proposal relating to the Rural Lands Strategy are:

- The inclusion of land that was deferred from the LEP when it was made in 2012.
- A reduction in the minimum lot size for all land zoned RU1 to facilitate some additional subdivision and dwelling opportunities in appropriate locations. This has resulted in up to 122 potential additional lots and 255 potential additional dwellings in rural areas.
- The removal of the Terrestrial Biodiversity Map and associated clause.
- Changes to the land use tables to facilitate additional land uses as permissible with consent in various zones.
- Allowing subdivision using “minimum averaging” in the RU4 zone.
- Increasing the opportunities for boundary adjustments on rural lands.
- Deletion of the “sunset” and “sealed road” clauses in relation to dwelling entitlements; and
- The identification of additional properties that have dwelling entitlements on the Dwelling Entitlements Map.

A number of other amendments have also been included in this planning proposal in relation to a range of relatively minor matters.

If Council endorses the planning proposal, it will be forwarded to the Department of Planning and Environment for a Gateway Determination. Public exhibition of the planning proposal will follow the receipt of a Gateway Determination.