

### 8.3. Endorsement of planning proposal for minor amendments to Bega Valley Shire Local Environmental Plan 2013

This report seeks a resolution of Council to support a planning proposal for minor amendments to *Bega Valley Local Environmental Plan 2013*.

Director Community Environment and Planning

#### Officer's Recommendation

That Council:

1. Support a planning proposal to implement several minor amendments to *Bega Valley Local Environmental Plan 2013*.
2. Authorise Council officers to submit the planning proposal (Attachment 1) and supporting information to the Department of Planning, Industry and Environment requesting a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*.
3. Authorise Council officers, subject to the conditions of the Gateway Determination and providing no substantial changes to the planning proposal are required, to progress the planning proposal to finalisation and gazettal without a further report to Council.

#### Executive Summary

Council officers and property owners have identified several minor errors and omissions in the maps and wording of *Bega Valley Local Environmental Plan 2013* (BVLEP 2013). In response, Council officers have prepared a planning proposal (Attachment 1) to make several minor amendments to BVLEP 2013 regarding:

- zoning, height of buildings, lot size and original holdings maps,
- heritage map and schedule amendments, and
- BVLEP clause amendment.

These proposed amendments have no strategic impact and are considered suitable for inclusion in a 'minor amendments' planning proposal.

#### Background

The implementation and application of BVLEP 2013 has inadvertently resulted in several minor mapping errors and anomalies. Several heritage items require their status to be updated in Schedule 5 of BVLEP 2013, while staff have identified the need to update BVLEP 2013 Clause 4.6 to restore provisions that were inadvertently altered through NSW Government changes that applied to all LEPs in NSW.

In order to make these minor amendments to BVLEP 2013, a planning proposal is required (Attachment 1). This planning proposal is the fifth minor amendments (or housekeeping) planning proposal prepared by Council since the gazettal of BVLEP 2013.

#### **BVLEP 2013 Map Amendments**

Thirty-eight parcels of land have been found to require changes to the zoning, height of buildings, lot size or original holdings maps to reflect current zonings or correct errors. These

amendments are considered minor in nature and do not have any significant economic, environmental or social impacts. Table 1 details the proposed mapping amendments.

**Table 1: Proposed map amendments**

Map type	Property	Proposed amendment	Purpose
Height of Buildings	Lots 1 – 32 DP 1249961 Thompson Drive, Riverine Drive, Wheeler Avenue, Woolybutt Way, Mahogany Close, Tathra	Amend the Height of Buildings Map HOB_019B from 10m to 7.5m	Create consistency with a restriction on titles resulting from a development consent
	Lot 1 DP 583103 & Lot 22 DP 1013450, Barrabaroo Road, Cobargo	Amend the Height of Buildings Map HOB_011A from 14m TO 10m	Correct a mapping error created at the time of gazettal of BVLEP 2013, which incorrectly applied the height limit for industrial land as was exhibited in the draft LEP instead of the 10m for the village zone
Land Zoning	Lot 46 DP 1054833 2 Corakai Drive, Pambula Beach	Amend the Land Zoning Map LZN_020A to add section of E2 Environmental Conservation zone	Reflect the Land Acquisition Map and correct a mapping error created at the time of gazettal of BVLEP 2013 where the E2 zone was left off the portion of the lot that is earmarked for acquisition
Lot Size	Lot 26 DP 850443 75 Green Point Road, Millingandi	Amend the Lot Size Maps LSZ_020A and LSZ_020B from 3ha to 5ha	Correct a mapping error created through mapping amendments to BVLEP 2013 since adoption
Original Holdings	Lot 244 DP 750220, Glen Oaks Road, Brogo	Add a new holding to the Original Holdings Map OLH_011 over lot	Preserve one dwelling entitlement identified since gazettal of BVLEP 2013 Amendment 30
	Lots 15, 16, & 19 DP 750239 and Lot 1 DP 34520, Wonboyn Road, Narrabarba	Add a new holding to the Original Holdings Map OLH_014 over lots	Preserve one dwelling entitlement identified since gazettal of BVLEP 2013 Amendment 30

### **BVLEP 2013 Heritage Map and Schedule Amendments**

Three heritage items have been identified as requiring amendment on the Heritage Map and Schedule 5 of BVLEP 2013. These are inclusion of the State Heritage Listed Bundian Way, deletion of an item that has been demolished, clarification of the location of the graves at Nungatta Station and an updated property description for the Mirador Tramway. The proposed amendments are detailed in Tables 2 and 3.

**Table 2: Proposed heritage map amendments**

Map type	Property	Proposed amendment	Purpose
Heritage	No freehold land, Bundian Way Heritage Route	Add item to Schedule 5 and Heritage Maps HER_006, HER_013 and HER_021	Update the Heritage Schedule and map to reflect a State Heritage listed item
	Lot 3 DP 1102868 & Lot 1 DP 1158027, Nungatta Road, Nungatta	Update property description in Schedule 5 and Heritage Map HER_007 from Lot 3 DP 1102868 to Lot 1 DP 1158027	Update the Heritage Schedule and map to reflect correct location of listed item
	Lots 21 & 22 DP 1182768 (previously Lot 2 DP 1072294), Princes Highway, Cobargo	Remove item from to Schedule 5 and Heritage Map HER_018	Update the Heritage Schedule and map to reflect the demolition of a heritage item
	Lots 1050 - 1086 DP 1240676, Mirador Drive & Jacaranda Place Mirador	Update Schedule 5 and Heritage Map HER_020B	Update the Heritage Schedule and map to reflect recent subdivision of the land

**Table 3: Proposed heritage schedule amendments**

Suburb	Item name	Address	Property description	Significance	Item number
Various	Bundian Way	Various	No freehold title	State	01906
Nungatta	Nungatta Station grave site	1551 Nungatta Road, Nungatta NSW 2551	<u>Lot 3, DP 1102868</u> <u>Lot 1, DP 1158027</u>	Local	1261
Cobargo	Residence	50 Princes Highway	<u>Lot 2, DP 1072294</u>	Local	1169
Merimbula	Trolley way, Mirador tramway, Pages Creek dam	off Mirador Drive	<u>Lot 388, DP 1124839</u> <u>Lot 1087 DP 1240676</u>	Local	1734

**BVLEP 2013 Clause Amendment**

On 18 December 2020, changes were made by the NSW Government that included amendments to the provisions for secondary dwellings in rural zones. As a result of these changes there is now an inconsistency in BVLEP 2013 between the provisions for secondary dwellings in rural and urban zones. This inconsistency means that the development standards for secondary dwellings in rural zones can now be varied through the development assessment process, which is not the case for secondary dwellings in urban zones.

To reinstate the provisions that existed prior to December 2020 that applied equally to all secondary dwellings throughout the Shire, the following change is recommended to BVLEP 2013 Clause 4.6(8)(caa) 'Exceptions to development standards':

- *Inserting Clause 5.5 to prevent consideration of exceptions to development standards for secondary dwellings in rural zones.*

## Options

This report recommends that Council amend BVLEP 2013 to make minor, but important amendments to BVLEP 2013. These changes are important to ensure that BVLEP 2013 remains contemporary and meets the requirements of the landowners, the wider community and Council's strategic direction. Council could choose not to make these changes and the anomalies would remain as there is no other avenue to make the proposed changes other than through the planning proposal process.

## Community and Stakeholder Engagement

### Engagement undertaken

No community consultation has yet been undertaken.

### Engagement planned

The Gateway Determination will confirm community consultation requirements. It is likely that the planning proposal will be exhibited as a 'low' impact proposal for a period of not less than 14 days in accordance with Section 5.5.2 of *A Guide to Preparing Local Environmental Plans*.

Council will engage with the local community and agencies as per the Gateway Determination and Council's *Community Engagement Strategy*. This will include notification on Council's website and in writing to affected owners.

Should agency or community feedback to the planning proposal be received that warrant substantial changes to the planning proposal, a further report will be prepared for Council outlining the submissions received and any changes to the planning proposal recommended in response to those submissions prior to resolving whether to proceed with amending BVLEP 2013.

In the event that no objections to the planning proposal are received from landowners and no changes are required to the planning proposal, it is recommended that Council resolve to authorise staff to proceed to finalise the proposed amendment to BVLEP 2013.

## Financial and Resource Considerations

The processing of the planning proposal and its public exhibition will be undertaken as part of Council's regular work program and within the adopted 2021-22 budget.

## Legal /Policy

This planning proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the NSW Department of Planning, Industry and Environment's *A Guide to Preparing Planning Proposals (December 2018)*.

## Impacts on Strategic/Operational/Asset Management Plan/Risk

### Strategic Alignment

The planning proposal is consistent with the *Bega Valley Community Strategic Plan 2040*, the *Bega Valley Shire Local Strategic Planning Statement* or the *South East and Tablelands Regional Plan 2036*.

**Environment and Climate Change**

The planning proposal is largely administrative in nature and will not materially increase the risks associated with climate change or result in any significant impacts on the environment.

**Economic**

The planning proposal is largely administrative in nature and will not result in any significant positive or negative economic impacts except for the amendments to the Original Holdings Map, which will reinstate dwelling entitlements for the two affected properties.

**Risk**

Implementation of this planning proposal will address the risk of delays in the development assessment process through removal of anomalies that may create confusion for landowners and Council staff in the future. It will also reduce the risk for the owners of the original holdings who would otherwise have to rely on providing sufficient justification through the application of BVLEP 2013 Clause 4.6 to gain development consent for dwellings on the land.

**Social / Cultural**

The planning proposal is largely administrative in nature and will not result in any material positive or negative social or cultural impacts.

## Attachments

1. Draft Minor Amendments Planning Proposal July 2021