



# Planning Proposal

Minor Amendments

August 2021



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# Part 1 – Objectives and intended outcomes

The intention of this planning proposal is to make the following minor amendments to Bega Valley Local Environmental Plan (BVLEP 2013):

- Insert secondary dwellings on land in rural zones into Clause 4.6 'Exceptions to development standards'
- Update Schedule 5 'Heritage' to correct errors and an omission
- Change zoning, height of buildings, lot size, original holdings and heritage maps to reflect current zonings, height controls and lot size standards and correct errors.

The assessment completed as part of this planning proposal found that the proposal is consistent with:

- State Environmental Planning Policies (SEPPs)
- Section 9.1 Ministerial Directions

This Planning Proposal has been prepared by Bega Valley Shire Council in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the NSW Department of Planning, Industry and Environment's (DPIE) *A Guide to Preparing Planning Proposals* (December 2018).

# Part 2 – Explanation of provisions

## Background

Council staff and property owners have identified several minor errors in the maps and wording BVLEP 2013. These errors have no strategic impacts and are considered suitable for inclusion in this ‘minor amendments’ planning proposal.

## Site description and context

The following properties are the subject of mapping amendments in this planning proposal:

Map type	Site	Property	Proposed amendment	Purpose
Height of Buildings	1	Lots 1 – 32 DP 1249961 Thompson Drive, Riverine Drive, Wheeler Avenue, Woollybutt 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 assessment approval.
	2	Lot 1 DP 583103 & Lot 22 DP 1013450, Barrabaroo Road, Cobargo	Amend the Height of Buildings Map HOB_011A from 14m	Correct a mapping error
Land Zoning	3	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
Lot Size	4	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
Original Holdings	5	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
	6	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
Heritage	7	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
	8	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

	9	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
	10	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

## Existing planning controls

The planning controls applying to properties subject to this planning proposal are shown in the table below:

Site	Property	Zoning	Max. height	Floor space ratio	Minimum lot size	Proposed change
1	Lots 1 – 32 DP 1249961 Thompson Drive, Riverine Drive, Wheeler Avenue, Woollybutt Way, Mahogany Close Tathra	R5	10m	NA	1 Ha	Maximum height 7.5m
2	Lot 1 DP 583103 & Lot 22 DP 1013450 Barrabaroo Road, Cobargo	RU5	14m	NA	1,000sqm	Maximum height 10m
3	Lot 46 DP 1054833 2 Corakai Drive Pambula Beach	R2	7.5m	0.5	550sqm	Zoning R2/E2
4	Lot 26 DP 850443 75 Green Point Road, Millingandi	E3/E2	10m	NA	3ha	Minimum lot size 5ha
5	Lot 244 DP 750220 Glen Oaks Road Brogo	E3	10m	NA	120Ha	Nil
6	Lots 15, 16, & 19 DP 750239 and Lot 1 DP 34520 Wonboyn Road Narrabarba	E3	10m	NA	120 Ha	Nil
7	No freehold land Bundian Way Heritage Route	Various	10m	NA	N/A	Nil
8	Lot 1 DP 1158027, Nungatta Road, Nungatta	RU1	10m	NA	120ha	Nil
9	Lots 21 & 22 DP 1182768 (previously Lot 2 DP 1072294) Princes Highway, Cobargo	RU5	10m	NA	1,000sqm	Nil
10	Lots 1050 - 1086 DP 1240676, Mirador Drive & Jacaranda Place Mirador	R2	10m	0.5	550sqm	Nil

## Height of Buildings

### ***SITE 1: Lots 1 – 32 DP 1249961, Thompson Drive, Riverine Drive, Wheeler Avenue, Woollybutt Way, Mahogany Close, Tathra***

Currently the land known as Tathra River Estate is mapped as having a 10m height of buildings limit. However, the consent for 34 recently created lots has resulted in a restrictive covenant being placed on 32 of the new lots limiting the height of building to 7.5m. This has created a conflict between the BVLEP 2013 height of buildings map, and the planning control applied through the development assessment process.

This planning proposal seeks to amend map sheet HOB\_ 019B to reflect the 7.5m height of buildings control to Lots 1 – 32 DP 1249961 and create consistency and clarity regarding the maximum permissible height of buildings in this area.

The Development Application for the 34-lot subdivision was referred to the NSW Office of Environment and Heritage, NSW Rural Fire Service, NSW Southern Rivers Catchment Management Authority, NSW Roads and Maritime Service, NSW Office of Water Department of Primary Industries – Fisheries. As this amendment is administrative in nature and will not increase the development potential of the land, consultation with government agencies is not recommended for this aspect of the planning proposal.



*Figure 1: Extract from current BVLEP 2013 Height of Buildings Map – Site 1 indicated in red outline*

**SITE 2: Lot 1 DP 583103 & Lot 22 DP 1013450, Barrabaroo Road, Cobargo**

In 2010 Council exhibited a comprehensive Standard Instrument BVLEP 2013 which covered the whole Shire (and which later became BVLEP 2013). Lot 1 DP 583103 and Lot 22 DP 1013450 were exhibited with an industrial zone with the associated 14m height limit in line with the standard height for all industrial land in the Shire. Following the exhibition, Council resolved to apply a village zone to the land, however, applying the corresponding reduction in height limit of 10m which is the standard height for all village zoned land was overlooked.

This planning proposal seeks to amend map sheet HOB\_011A to apply a 10m maximum height of buildings limit to Lot 1 DP 583103 and Lot 22 DP 1013450 to be consistent with the standard for all RU5 village zones in the Bega Valley Shire.

As this amendment will not increase the development potential of the land, consultation with government agencies is not recommended for this aspect of the planning proposal.



Figure 2: Extract from current BVLEP 2013 Height of Buildings Map – Site 2 indicated in red outline

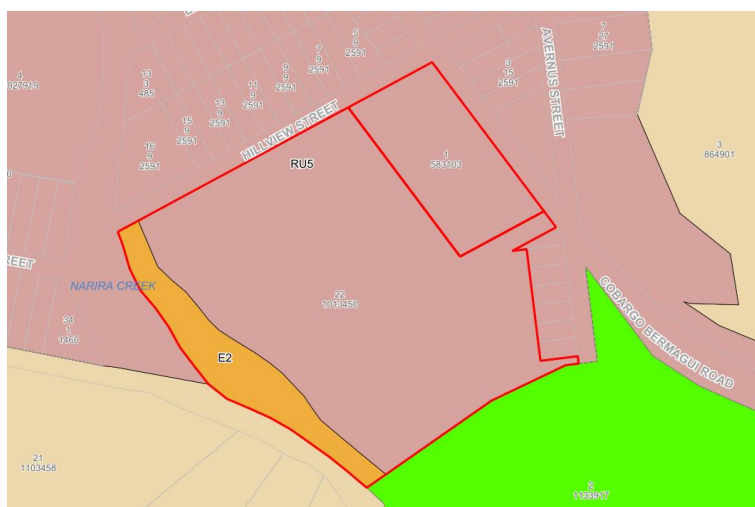


Figure 3: Extract from current BVLEP 2013 Land Zoning Map – Site 2 indicated in red outline

## Land Zoning

### **SITE 3: Lot 46 DP 1054833, 2 Corakai Drive, Pambula Beach**

The whole of Lot 46 DP 1054833 appears on LZN 020\_A Map as R2 Low Density. However, a portion of the land (consisting of a dynamic coastal environment) is zoned E2 on the Land Reservation Acquisition Map LRA\_020A (see extract below).

This planning proposal seeks to apply the E2 zone to map sheet LZN 020\_A as per LRA\_020A to ensure consistency between the two map sets and ensure that public access can be re-established along the foreshore when an acquisition program is funded.

As this amendment is administrative in nature and will not increase the development potential of the land, consultation with government agencies is not recommended for this aspect of the planning proposal.

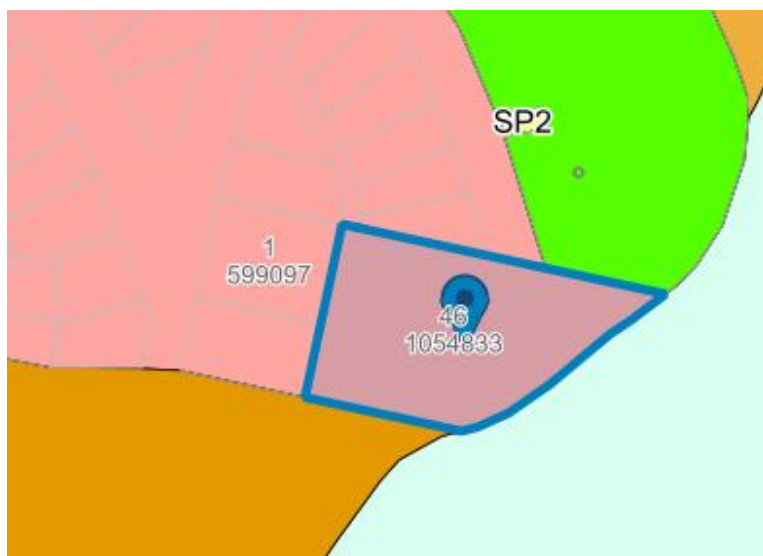


Figure 4: Extract from current BVLEP 2013 Land Zoning Map – Site 3 indicated in blue outline



Figure 5: Extract from current BVLEP 2013 Land Reservation Acquisition Map

## Lot Size

### ***SITE 4: Lot 26 DP 850443, Green Point Road, Millingandi***

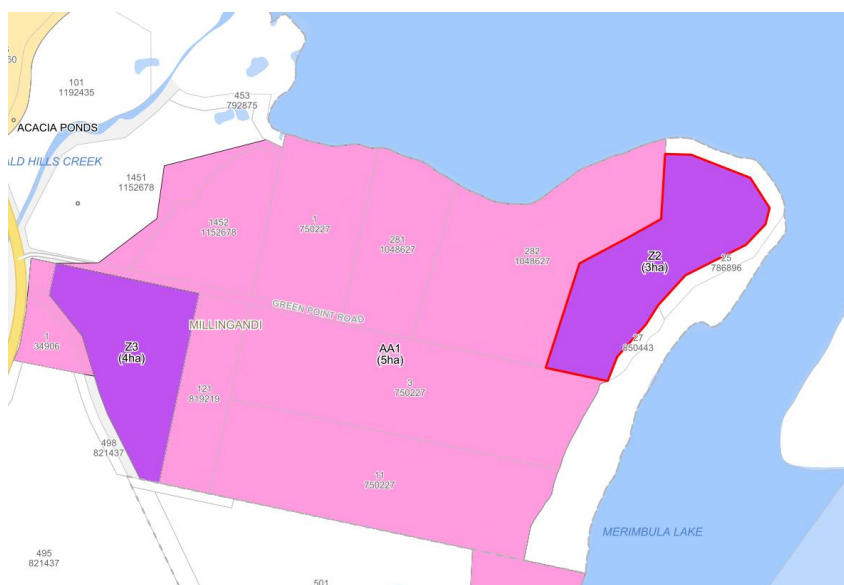
Amendment 7 to BVLEP 2013 was gazetted on 10 July 2015 which included amendments to:

- map sheet LSZ\_020A by applying AA1 5 hectares to Lot 26 DP 850443, and
- map sheet LSZ\_020B by applying AA1 5 hectares to Lot 26 DP 850443

However, subsequent amendments to map sheets LSZ\_020A and LSZ\_020B unintentionally changed the lot size for this property to show 3 hectares on the maps. This error was caused by Council in the map drafting process and was overlooked in the map checking process in several subsequent mapping amendments.

This planning proposal seeks to rectify the error in map sheets LSZ\_020A and LSZ\_020B for Lot 26 DP 850443 to reapply the 5-hectare lot size standard as gazetted on 10 July 2015.

Appendix X contains a copy of the Gazettal notice and Determination letter for Amendment 7. Amendment 7 was made by the Deputy Secretary, Planning Services as delegate of the Minister following consultation with the Office of Environment and Heritage, Southern Rivers Catchment Management Authority, NSW Trade and Investment – Crown Lands, NSW Rural Fire Service and Department of Primary Industries – Fishing and Aquaculture. As such, consultation with these agencies or their current equivalent is not recommended for this aspect of the planning proposal.



*Figure 6: Extract from current BVLEP 2013 Lot Size Map – Site 4 indicated in red outline*

## Original Holdings

Amendment 30 to BVLEP 2013 introduced the Original Holdings map set and amended Clause 4.2A to preserve a dwelling entitlement on land identified as a vacant intact existing holding. Since the gazettal of Amendment 30 on 13 July 2018 two additional existing holdings have been identified through documentary evidence which confirms that the properties are vacant intact existing holdings. As such, this planning proposal seeks to rectify these two omissions by adding the properties to the Original Holdings Map.

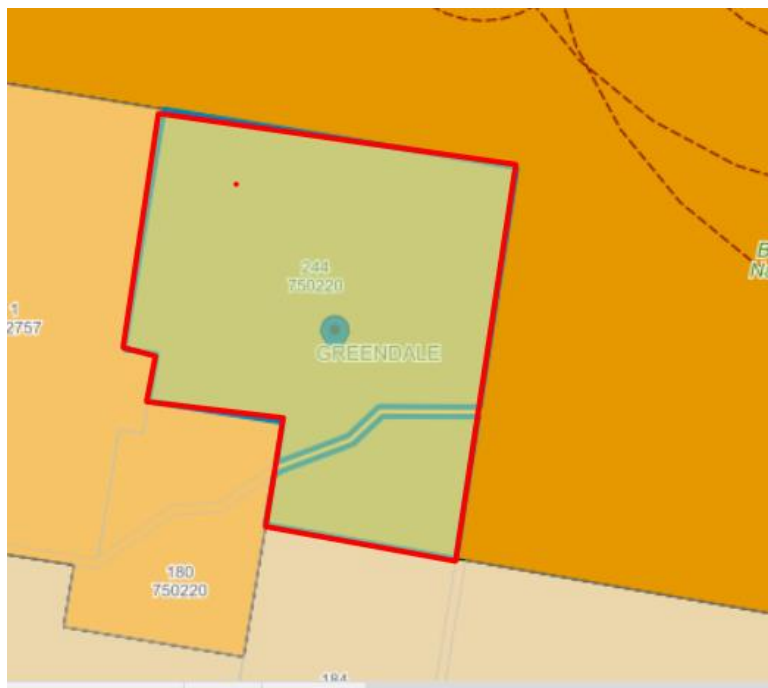
The Gateway Determination for Amendment 30 (PP\_2018\_BEGAV\_001\_00) required consultation with NSW Office of Environment and Heritage and Department of Primary Industries – Agriculture under section 3.34(2)(d) of the Act. Neither of these agencies objected to the planning proposal. As such, no consultation with these agencies is recommended for this aspect of the planning proposal.

Development consent will be required to erect a dwelling house or dual occupancy on sites 5 and 6 despite being included on the Original Holdings Map. Any development application will require further detailed assessment to determine the suitability of the sites to contain a dwelling, including consideration of environmental constraints and provision of essential services.

### **SITE 5: Lot 244 DP 750220, Glen Oaks Road, Brogo**

Documentary evidence has been located by Council staff which confirms that Lot 244 DP 750220, Glen Oaks Road, Brogo was an original holding as at 6 January 1966 and should have been added to the Original Holdings Map that was gazetted on 13 July 2018.

This planning proposal seeks to add Lot 244 DP 750220 to the Original Holdings Map OLH\_011.



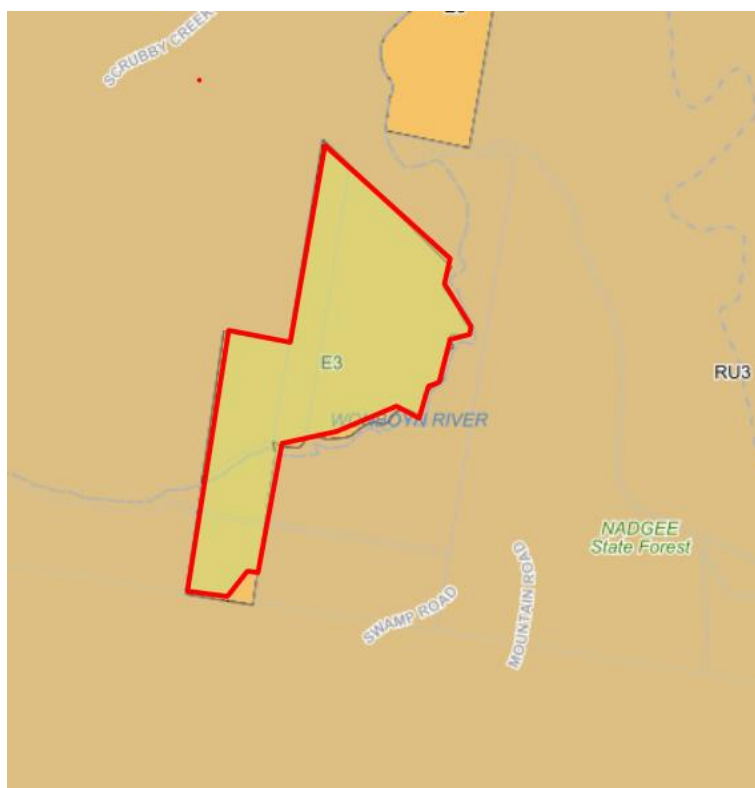
*Figure 7: Extract from current BVLEP 2013 Land Zoning Map – Site 5 indicated in red outline*

***SITE 6: Lots 15,16, & 19 DP750239 and Lot 1 DP 34520, Wonboyn Road, Narrabarba***

Documentary evidence has been located by Council staff which confirms that the group of parcels being Lots 15,16, & 19 DP750239 and Lot 1 DP 34520, Wonboyn Road, Narrabarba were an original holding as at 6 January 1966 and as they are still held in one ownership, they should have been added to the Original Holdings Map that was gazetted on 13 July 2018.

This planning proposal seeks to add Lots 15,16, & 19 DP750239 and Lot 1 DP 34520 to the Original Holdings Map OLH\_014 as one original holding.

Development consent will be required to erect a dwelling house or dual occupancy on sites 5 and 6 despite being included on the Original Holdings Map. Any development application will require further detailed assessment to determine the suitability of the sites to contain a dwelling, including consideration of environmental constraints and provision of essential services.



*Figure 8: Extract from current BVLEP 2013 Land Zoning Map – Site 6 indicated in red outline*

## Heritage

### ***SITE 7: Bundian Way - Mount Kosciuszko to Eden (no freehold title)***

The Bundian Way, a 265km Aboriginal path, was listed on the NSW State Heritage Register on 18 January 2013. At the time of listing mapping was not available to Council to enable the inclusion of the Bundian Way in Schedule 5 'Environmental Heritage' of BVLEP 2013. All items of State Heritage are intended to be included in Schedule 5 of BVLEP 2013 and shown on the associated Heritage Maps.

This planning proposal seeks to amend map sheets HER\_006, HER\_013, HER\_021 to illustrate the Bundian Way as per the NSW State Heritage Register and add the following to Schedule 5 'Environmental Heritage' to be consistent with the standard for all state heritage items located in the Bega Valley Shire:

Suburb	Item name	Address	Property description	Significance	Item number
Various	Bundian Way	Various	No freehold title	State	01906

As this amendment is administrative in nature and will not impose any additional restrictions on land, consultation with government agencies is not recommended for this aspect of the planning proposal.



Figure 9: Extract from current BVLEP 2013 Heritage Map – Site 7 indicated in red line

**SITE 8: 1 DP 1158027, Nungatta Road, Nungatta**

Amendment 34 to BVLEP 2013 was gazetted on 22 May 2020 which amended the property description of item number I261 of Schedule 5 Environmental Heritage of the BVLEP 2013 for Nungatta Station from Lot 10 DP 750206 to Lot 3 DP 1102868.

The purpose of the amendment was to remove the part of the listing related to the homestead at Nungatta Station which was destroyed by bushfire in January 2020 but to ensure the graves associated with the homestead were heritage listed.

Following the gazettal of Amendment 34, Council has confirmed that the graves are located on Lot 1 DP 1158027 and not Lot 3 DP 1102868. Lot 1 DP 1158027 is a small parcel of approximately 1,000 sqm located within Lot 3 DP 1102868 and the exact location of the graves was not known to the new owner of Nungatta Station at the time of Amendment 34.

This planning proposal seeks to amend map sheet HER\_007 to indicate that Item number I261 is located on Lot 1, DP 1158027 and amend Schedule 5 Environmental Heritage as indicated in red below:

Suburb	Item name	Address	Property description	Significance	Item number
Nungatta	Nungatta Station grave site	1551 Nungatta Road, Nungatta NSW 2551	Lot 1, DP 1158027; <del>Lot 3, DP 1102868</del>	Local	I261

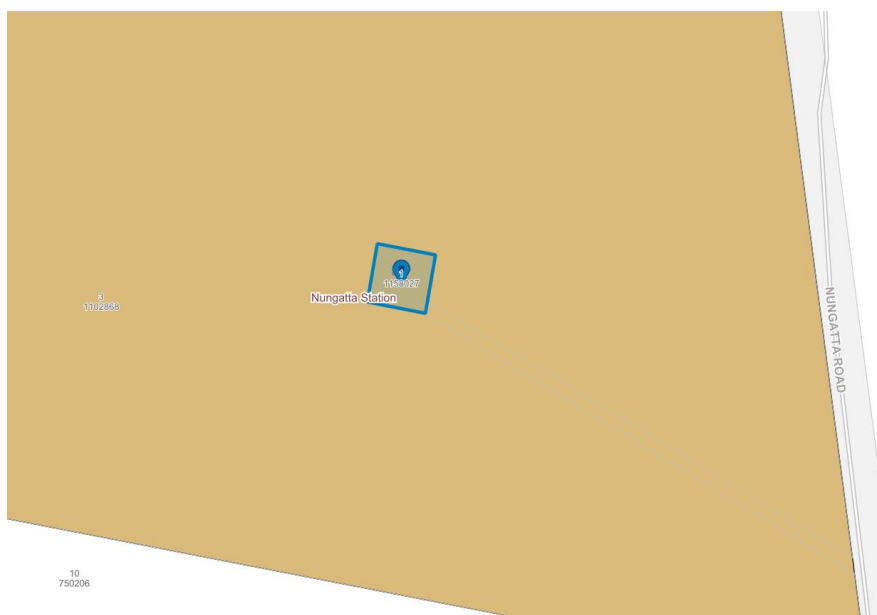


Figure 10: Extract from current BVLEP 2013 Heritage Map – Site 8 indicated in blue outline

**SITE 9: Lots 21 & 22 DP 1182768 (previously Lot 2 DP 1072294) Princes Highway, Cobargo**

Lot 2 DP 1072294 contained a heritage listed residence that was demolished in accordance with a consent issued by Council for the demolition of the item in 2008 following the development assessment process. Lot 2 DP 1072294 was subdivided to create Lots 21 & 22 DP 1182768 in 2009. A new structure was erected on the site with consent in 2014.

This planning proposal seeks to amend map sheet HER\_018 to remove item number 1261 and amend Schedule 5 Environmental Heritage as indicated in red below:

Suburb	Item name	Address	Property description	Significance	Item number
Cobargo	Residence	50 Princes Highway	Lot 2, DP 1072294	Local	1261



Figure 11: Extract from current BVLEP 2013 Heritage Map – Site 9 indicated in red outline

**SITE 10: Lots 1050 - 1086 DP 1240676, Mirador Drive & Jacaranda Place, Mirador**

The heritage listed 'Trolley way, Mirador tramway, Pages Creek dam' was located on Lot 388, DP 1124839 which has subsequently been subdivided. The subdivision created 37 residential lots and one large residue lot and the heritage items are now located on this residue, being Lot 1087 DP 1240676.

This planning proposal seeks to amend map sheet HER\_020B to indicate that Item number I734 is located on Lot 1087 DP 1240676 and amend Schedule 5 Environmental Heritage as indicated in red below:

Suburb	Item name	Address	Property description	Significance	Item number
Merimbula	Trolley way, Mirador tramway, Pages Creek dam	off Mirador Drive	<u>Lot 1087 DP 1240676 Lot 388, DP 1124839</u>	Local	I734

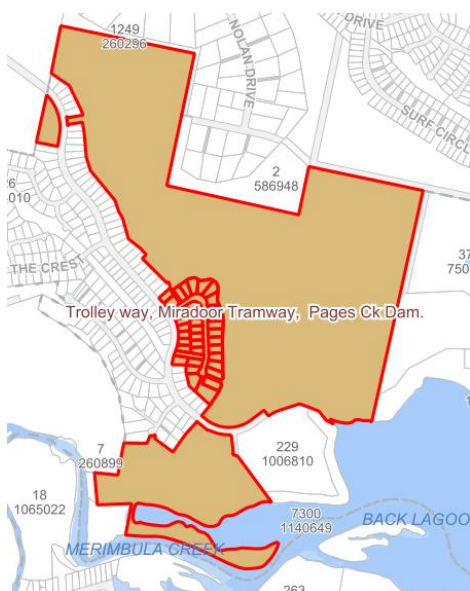


Figure 12: Extract from current BVLEP 2013 Heritage Map – Site 10 current lots indicated in red outline

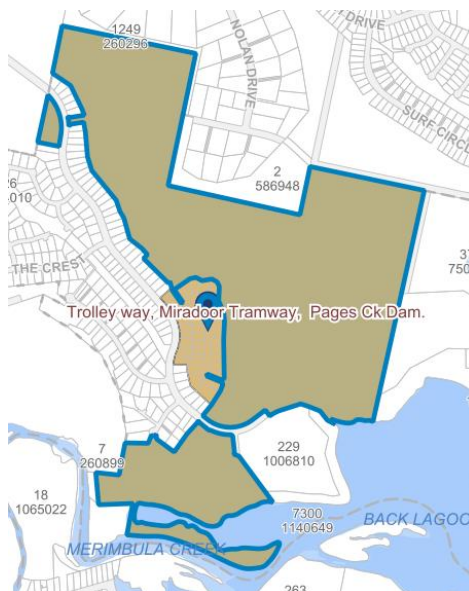


Figure 13: Extracts from current BVLEP 2013 Heritage Map – Site 10 proposed lot indicated in blue outline

## Clause 4.6 Exceptions to development standards

On 18 December 2020, changes to housing policies were made by the NSW Government which included amendments to the provisions for secondary dwellings in rural zones. As a result of these changes, BVLEP 2013 size standards for secondary dwellings only applied to development on land in non-rural zones. Council subsequently adopted the *new Standard Instrument – Principle Local Environmental Plan 2006* Clause 5.5 ‘Controls relating to secondary dwellings on land in a rural zone’ to reintroduce size standards for secondary dwellings in rural zones through Amendment 36 to BVLEP 2013.

Clause 4.6 ‘Exceptions to development standards’ enables Council’s to nominate which standards within BVLEP 2013 cannot be varied through the development application process. The changes made by the NSW Government in 2020 have resulted in only secondary dwellings in non-rural zones being included in Clause 4.6. This planning proposal seeks to reinstate the provisions that existed prior to December 2020 that applied equally to all secondary dwellings throughout the Shire, the following change to BVLEP 2013 Clause 4.6(8)(caa) ‘Exceptions to development standards’ is proposed:

### **4.6 Exceptions to development standards**

.....

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following—*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (ca) clause 5.3(2)*
- (caa) clause 5.5*

# Part 3 – Justification

## A. Need for the planning proposal

### 1. Is the planning proposal a result of a strategic study or report?

No. The planning proposal is the result of the identification of several minor errors in maps within BVLEP 2013, Schedule 5 and the inadvertent result of an amendment to BVLEP 2013.

### 2. 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 only available means of achieving the above stated objectives and intended outcomes for all sites except for Lot 26 DP 850443, 75 Green Point Road, Millingandi which could be amended via the erratum amendment process, however this option is administratively burdensome and the planning proposal pathway presents a less resource intensive means to achieve the same result.

## B. Relationship to the strategic planning framework

### 3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The provisions in this planning proposal correct minor anomalies and are not inconsistent with the objectives and actions of the *South East and Tablelands Regional Plan 2036*, the *Bega Valley Shire Community Strategic Plan 2040* or the *Bega Valley Shire Local Strategic Planning Statement 2040*.

### 4. Is the planning proposal consistent with the applicable State Environmental Planning Policies?

The following table identifies the applicable State Environmental Planning Policies and outlines this planning proposal's consistency with these.

Relevant SEPP	Consistency
<i>State Environmental Planning Policy 64 – Advertising and Signage</i>	Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP. This SEPP may apply to signage associated with future development.
<i>State Environmental Planning Policy (Building Sustainability Index: BASIX 2004)</i>	Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP. This SEPP may apply to future residential development on these sites and will be considered at the detailed development consent stage.
<i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>	Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP.
<i>State Environmental Planning Policy (Coastal Management) 2018</i>	Consistent – the introduction of this planning proposal will not impact on the objectives of the SEPP as it will not increase coastal risk. The coastal environment will remain unaltered as the changes are largely administrative.

<b><i>State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007</i></b>	Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP.
<b><i>State Environmental Planning Policy 55 Remediation of Land</i></b>	Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP.

**5. Is the planning proposal consistent with applicable Ministerial Directions (Section 9.1 directions)?**

Yes. The following table identifies the applicable Section 9.1 Directions by the Minister and outlines this planning proposal's consistency with these:

No.	Direction	Comment
<b>1.1 Employment and Resources</b>		
<b>2.1</b>	<b>Environment Protection Zones</b>	Consistent. This planning proposal is consistent with this Direction as will not increase the development potential on any environmental zoned land
<b>2.2</b>	<b>Coastal Management</b>	Consistent. The subject properties are within the Coastal environment area and Coastal use area as defined by <i>State Environmental Planning Policy (Coastal Management) 2018</i> .
<b>2.3</b>	<b>Heritage Conservation</b>	Consistent. The inclusion of Bundian Way within the Schedule 5 of the BVLEP 2013 will reflect the state heritage listing which has been declared since 2013. The other two aspects of the planning proposal that relate to heritage items are administrative in nature and will not have any material impact on existing heritage values.
<b>3. Housing infrastructure and urban development</b>		
<b>3.1</b>	<b>Residential zones</b>	Consistent. The R2 zone at Pambula Beach will be adjusted to reflect the Lands Acquisition Map.  The maximum height of buildings for 32 lots within the R5 zone at Tathra River Estate is proposed to be reduced from 10 m to 7.5 m to reflect a restrictive covenant initiated by Bega Valley Shire Council.  The planning proposal will not result in any substantial changes to zoning and will not significantly affect the ability of future development to create a variety of housing choice within the urban areas.
<b>3.3</b>	<b>Home occupations</b>	Consistent. The planning proposal will not result in any changes that will affect home occupations being carried out in dwelling houses without the need for development consent.
<b>4. Hazard and risk</b>		
<b>4.1</b>	<b>Acid sulfate soils</b>	Consistent. 2 Coraki Drive, Pambula Beach has approximately 40% of the land area being Class 2 Acid Sulfate Soils. The correction of the zoning map to reflect the Coastal Acquisition will not increase development potential over Acid Sulfate Soil.
<b>4.3</b>	<b>Flood prone land</b>	Consistent. None of the properties that are the subject of this planning proposal are affected by flooding.
<b>4.4</b>	<b>Planning for bushfire protection</b>	Consistent. Several properties in this planning proposal are categorised as bushfire prone land under the Bega Valley LGA Bushfire Prone Land Map. None of the proposed amendments in this planning proposal will intensify the development potential of the land beyond that which already exists.

5. Regional planning		
5.10	Implementation of Regional Plans	Consistent. The planning proposal's consistency with The South East and Tablelands Regional Plan 2036 is addressed previously under Question 3.
6. Local plan making		
6.1	Approval and referral requirements	Consistent. The planning proposal intends to add heritage items to Schedule 5 and correct other errors and omissions in the BVLEP 2013. These actions will not increase the need for concurrence with the Minister or public authorities over and above the existing concurrence requirements.

## C. Environmental, social and economic impact

### 6. *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?*

The impacts of the planning proposal are administrative in nature and it is not anticipated that the amendments to BVLEP 2013 will adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats.

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

It is not anticipated that there will be any adverse environmental effects as a result of this planning proposal. Future development will consider environmental impacts as part of the development application process.

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

It is anticipated that the planning proposal will have positive social effects for the local community by protecting Aboriginal and European Heritage assets.

The planning proposal is expected to have minimal impact upon economic factors in the local economy, however it will provide certainty to landholders who are in possession of original holdings, and certainty to the community regarding protection of coastal lands from inappropriate development at the Pambula River mouth coastal environs.

## D. State and Commonwealth interests

### 9. *Is there adequate public infrastructure for the planning proposal?*

Yes. The public infrastructure servicing the properties subject to this planning proposal is adequate. The planning proposal will not increase demand on public infrastructure in the area.

### 10. *What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?*

Council will consult with the relevant State and Commonwealth authorities in accordance with the conditioning of the Gateway Determination.

## Part 4 – Mapping

The Planning Proposal will require the amendment to the following BVLEP 2013 map sheets:

- Bega Valley Local Environmental Plan 2013 – HER\_006
- Bega Valley Local Environmental Plan 2013 – HER\_007
- Bega Valley Local Environmental Plan 2013 – HER\_013
- Bega Valley Local Environmental Plan 2013 – HER\_018
- Bega Valley Local Environmental Plan 2013 – HER\_020B
- Bega Valley Local Environmental Plan 2013 – HER\_021
- Bega Valley Local Environmental Plan 2013 – HOB\_011A
- Bega Valley Local Environmental Plan 2013 – HOB\_019B
- Bega Valley Local Environmental Plan 2013 – LSZ\_020A
- Bega Valley Local Environmental Plan 2013 – LSZ\_020B
- Bega Valley Local Environmental Plan 2013 – LZN\_020A
- Bega Valley Local Environmental Plan 2013 – OLH\_011
- Bega Valley Local Environmental Plan 2013 – OLH\_014

## Part 5 – Community Consultation

Community consultation for this planning proposal will be consistent with the requirements of the Gateway Determination and the consultation guidelines contained in DPIE's *A Guide to Preparing Local Environmental Plans* (December 2018). Public exhibition of the planning proposal will include notification on the Bega Valley Shire Council website and in writing to affected 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 the amendments to BVLEP 2013 will be completed by August 2022.

Council requests delegation to carry out certain plan-making functions in relation to this proposal. Delegation would be exercised by Council's General Manager or Director of Planning and Environmental Services.

The approximate project timeline is outlined in the following table:

Key stages of consultation and approval	Estimated timeframe
STAGE 1 – Submit planning proposal to the Department	July 2021
STAGE 2 – Receive Gateway Determination	August 2021

STAGE 3 – Preparation of documentation for public exhibition	September 2021
STAGE 4 – Public exhibition of the planning proposal	October 2021
STAGE 5 – Review/consideration of submissions received	November 2021
STAGE 6 – Council Report	February 2022
STAGE 7 – Meetings	March 2022
STAGE 8 – Forward planning proposal to Department of Planning, Infrastructure and Environment requesting the amendment is made	May 2022
STAGE 9 – Date Council will make the plan (if delegated), including any required consultation with Parliamentary Counsel	June 2022
STAGE 10 – Anticipated date Council will forward plan to the Department for notification	July 2022

# Appendix 1:

**BVLEP Amendment 7 Gazettal notice and Determination letter**



qA361860  
15/07512

Department Generated Correspondence (Y)

**DEPARTMENT OF PLANNING AND ENVIRONMENT**  
*Planning Services*

**BEGA VALLEY LOCAL ENVIRONMENTAL PLAN 2013 (AMENDMENT NO 7)**  
**PP 2013 BEGAV 002 00**

**PURPOSE**

- To request the Deputy Secretary, Planning Services, as the Minister's delegate, make Bega Valley Local Environmental Plan 2013 (Amendment No 7) (draft LEP).

**RECOMMENDATION**

- It is recommended that the Deputy Secretary, as delegate of the Minister:
  - **notes** the Planning Proposal Report (Tab A), the Planning Proposal (Tab B), and the Gateway determination (Tab C);
  - **notes** Parliamentary Counsel's Opinion that the draft LEP can be legally made and that no changes have been made to the draft LEP since obtaining this Opinion (Tab PC);
  - **makes** the draft LEP under section 59(2)(a) of *Environmental Planning and Assessment Act 1979* (the Act), by **signing** the instrument (Tab LEP) and supporting Map Cover Sheet (Tab Map) respectively; and
  - **signs** the letter to Bega Valley Shire Council, (Tab Council), advising of this decision.

**CURRENT POSITION**

Summary

- The exhibited Planning Proposal aimed to provide additional rural residential development at 6 sites. Part of Site 1 and all of Sites 5-6 are areas that are identified as *deferred matters* to achieve 41 dwellings under *Bega Valley Local Environmental Plan 2013* (Bega Valley LEP 2013).
- Both Council and the Department are recommending changes post exhibition to address the concerns of State agencies raised during the consultation process.
- The original planning proposal and Gateway determination for the 6 sites proposed the following:
  - Site 1 - Zone land at Coolagolite (Bermagui-Cobargo Road) to E4 Environmental Living with a 2 hectare minimum lot size (MLS), effectively reducing the subdivision capacity of the Site from 80 potential lots to 28 additional lots due to its sensitive environment and Koala habitat values;
  - Site 2 - Green Point Road, Millingandi - Rezone to E2 Environmental Conservation and E3 Environmental Management, reduce the minimum lot size from 5 hectares to 3 hectares to provide an additional 2 dwellings;
  - Site 3 - Princess Highway, Millingandi - Rezone to E2 Environmental Conservation and E3 Environmental Management, reduce minimum lot size from 10 hectares to 5 hectares to provide an additional 2 dwellings;
  - Site 4 - Nutleys Creek Road Bermagui - Rezone a single lot to E3 Environmental Management and apply a 4 hectare MLS that would give a dwelling entitlement;
  - Site 5 - Ivor Jones Drive, Wonboyn - Rezone to E3 Environment Conservation, apply a 40 hectare MLS, to provide for 3 additional dwellings;
  - Site 6 - Bega Street, Tathra - Zone the site a mix of E2 Environmental Conservation, E3 Environmental Management, R2 Low Density Residential and apply a 40 hectare MLS to the E3 and E4 Zones, and 550m2 MLS to the R2 Zone.

- Following exhibition and consultation with State agencies, Council proposed amendments to 5 of the 6 sites, primarily to reduce development potential while better managing environmental values. These changes resolved the majority of State agency concerns for all sites except Site 1.
- The Department is recommending a post exhibition change to the MLS adopted by Council for Site 1 which resolves the outstanding objection from Office of Environment and Heritage (OEH) by reverting to the underlying 5 hectare MLS adopted when Bega Valley LEP 2013 was made.
- A full assessment and recommendations on Council's and the Department's post exhibition changes are outlined in the 'LEP Assessment' in the Planning Proposal Report (Tab A).
- The post exhibition changes by Council and the Department do not require re-exhibition because they are;
  - generally consistent with the intent and purpose of the Planning Proposal and Gateway Determination; and
  - reflect the environmental constraints on future development highlighted by the submissions from State agencies.

#### Exhibition and consultation

- The Planning Proposal was exhibited between 25 April 2014 and 8 June 2014, satisfying the requirements of the Gateway determination.
- 21 public submissions were received, with a variety of comments or queries about aspects of the exhibited proposal, and others supporting specific sites in the proposal.
- Four State agencies provided comments on the Planning Proposal (Tab Agencies).

#### State Agency submissions

- The Office of Environment and Heritage (OEH) objected to the proposed change in MLS being applied to Site 1, Site 2, Site 3 and Site 5 and raised concerns with the siting of a future dwelling on Site 4 because of the potential impact of future development on significant environmental areas. OEH raised a specific objection to the density of development at Site 1 because of the potential impact on adjacent Koala habitat.
- The Department of Primary Industries - Fisheries NSW raised issues with the proximity of sites, particularly Sites 3 and 4, to Priority Oyster Aquaculture Areas.
- The NSW Rural Fire Service (NSW RFS) recognized that all sites are within bush fire prone land and raised concerns/issues with additional development within these areas. The NSW RFS was particularly concerned with potential for constructing isolated dwellings located in Site 5 because of the presence of significant bush fire hazard and a single access/egress.
- NSW Trade and Investment responded with reference to updated Mineral and Resources Audit data and the application of transition "buffer" areas, noting this was for Council information only.

#### Post Exhibition changes by Council

- Council made the following post exhibition changes to Sites 1 - 5 in response to objections and concerns raised by State agencies (Tab Agencies):
  - Site 1 (Area 1.6 km<sup>2</sup>) – Majority of the site withdrawn from the proposal, with the withdrawn area to remain as E4 Environmental Living Zone and current 5 ha MLS. Council changed the Lot Size Map for the remaining deferred land (Lot 91 DP 580933, Lot 5 DP 250487 and Lot 6 DP 250487- 32 ha) from a proposed 2 ha MLS to 3 ha MLS.
  - Site 2 (Area 9.5 ha) - Change the Lot Size Map from a proposed 2 ha MLS to 5 ha MLS in response to the OEH submission objecting to the reduced MLS.
  - Site 3 (33 ha) – Withdraw the site from the proposal. The land will remain as a *deferred matter* under Bega Valley LEP 2013 to pursue additional information to enable further consideration.

- Site 4 (4.5 ha) – Change the Land Zoning Map to replace part of the proposed E3 Environmental Management Zone (2 ha) with an E2 Environmental Conservation Zone to prohibit dwellings and protect that part of the land with high conservation value mapping in response to the submission made by OEH.
- Site 5 – (157 ha) – Change the Lot Size Map from a proposed 40 ha MLS to 120 ha MLS which retains the current controls and no potential for additional lots.
- Council made no changes to Site 6.


Post exhibition changes recommended by the Department

- The Department is recommending that Council's proposed 3 ha MLS for Site 1 be changed to a 5 ha MLS because;
  - A 5 ha MLS retains the intent of the planning proposal to reduce the development potential in this locality but still retains some subdivision potential for rural residential development;
  - A 5 ha MLS is consistent with the minimum lot size applied to surrounding land zoned E4 Environmental Living Zone and reflects the environmental values of the area, and
  - A 5 ha MLS addresses an objection by OEH by minimizing the potential for environmental impact of future residential development.

**BACKGROUND**

- Council has satisfied all conditions of the Gateway determination (Tab C).
- Gateway extensions were granted on 3 October 2014 and 2 April 2015 for a total period of 12 months.
- There are no outstanding unresolved objections.
- There are no unresolved section 117 Directions.
- There have been no meetings with lobbyists.
- Under s59 (1) of the *Environmental Planning and Assessment Act 1979* (the Act) Council was consulted on the terms of the draft instrument. Council's response to the draft LEP was received on the 5 May 2015 supporting the LEP be made (Tab D).
- An Opinion from Parliamentary Counsel (Tab PC) was issued on the 4 May 2015.

 25/6/15  
**Tim Hurst**  
 Executive Director  
 Regions

 16.06.15  
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 General Manager, Southern Region,  
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**Marcus Ray**  
 Deputy Secretary  
 Planning Services  
 03/07/2015

(Noted and actioned Legal Services Branch)



## Planning & Environment

Ms Leanne Barnes  
General Manager  
Bega Valley Shire Council  
PO Box 492  
Bega NSW 2550

Our ref: 15/07512

Dear Ms Barnes

### **Bega Valley Local Environmental Plan 2013 (Amendment No 7)**

I refer to Council's submission under the *Environmental Planning and Assessment Act 1979* (the Act), requesting the Minister make Bega Valley Local Environmental Plan 2013 (Amendment No 7) (LEP).

I am pleased to advise that as the Minister's delegate, I have made the LEP under section 59(2) of the Act, and under section 34(5) it will take effect when published on the NSW Legislation website.

In considering the Planning Proposal, I have made an amendment to the proposal submitted by Council to vary the Lot Size Map for Site 1 (Lots 91 DP 580933, Lots 5 DP 250487 and Lot 6 DP 250487 Bermagui-Cobargo Road, Coolagolite) from a proposed 3 hectare minimum lot size to 5 hectare minimum lot size. I have made this amendment to ensure that a consistent minimum lot size is applied to land zoned E4 Environmental Living Zone within the Coolagolite site and after considering an objection to Council's proposed minimum lot size by the NSW Office of Environment and Heritage.

As a result of Council's resolution to withdraw Site 3 (Lots 721 and 722 DP 826975 Princes Highway, Millingandi) the land remains a deferred matter under Bega Valley LEP 2013. I encourage Council to prepare a planning proposal for this site that takes into consideration the submissions made by the Office of Environment and Heritage, the NSW Rural Fire Service and the Department of Primary Industries (NSW Fisheries).

Should Council have any questions regarding this matter, I have arranged for Mr Brett Whitworth, General Manager of the Department's Southern Region Office to assist. Mr Whitworth may be contacted on telephone number (02) 4224 9450.

Yours sincerely

Marcus Ray  
Deputy Secretary  
Planning Services

03/07/2015

Department of Planning & Environment

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