

## 6.2 PLANNING PROPOSAL - ADMINISTRATIVE AMENDMENT: 82 LAIDLAW STREET, YASS

### SUMMARY

To present the outcomes of public exhibition of the Planning Proposal seeking an amendment to the *Yass Valley Local Environmental Plan (LEP) 2013* to amend the Land Zoning, Lot Size, Floor Space Ratio and Height of Buildings maps for 82 Laidlaw Street, Yass to reflect the updated cadastral map and the extent of Yass River flooding as shown in the *Yass Flood Study*.

It is recommended that the Planning Proposal be adopted and the amendment to the *Yass Valley LEP 2013* be made by Council as a local plan-making authority.

### RECOMMENDATION

*That:*

1. *The Planning Proposal - Administrative Amendment: 82 Laidlaw Street, Yass (PP.2019.04) be adopted*
2. *The amendment to Yass Valley LEP 2013 be forwarded to the Parliamentary Counsel's Office (PCO) to request a formal legal opinion that the amendment can be made*
3. *The amendment to Yass Valley LEP 2013 be made by Council as a local plan-making authority under s3.36 Environmental Planning & Assessment Act 1979*

### FINANCIAL IMPLICATIONS

Nil.

### POLICY & LEGISLATION

- *Environmental Planning & Assessment Act 1979*
- South East and Tablelands Regional Plan
- *Yass Valley Local Environmental Plan 2013*
- Yass Flood Study 2016

### REPORT

#### 1. Background

In June 2018, a Development Application No DA180013 was lodged for a 62 lot residential subdivision at 82 Laidlaw Street, Yass. During the assessment some discrepancies were noted in the land zoning, lot size, floor space ratio and height of buildings maps of the *Yass Valley LEP 2013* for the site (i.e. Lot 1 DP660006) and the adjoining land (i.e. Lot 2 DP853358). The discrepancies arose in part due to an incorrect alignment of Yass River on the cadastral map, and also the transfer of previous zoning extent from the previous *Yass LEP 1987*.

#### 2. Planning Proposal

Land Registry Services (LRS) has updated the cadastre boundaries of the site, to be consistent with the Yass River alignment following the detail survey of land as requested by the landowner. It was then necessary to remove the LEP anomalies in the land zoning, lot size, floor space ratio and height of buildings map relating to the site.

It was proposed to make the following amendments to the Land Zoning, Lot Size, Floor Space Ratio and Height of Buildings maps of *Yass Valley LEP 2013* for the site:

- The W1 Natural Waterways zone be applied to the Yass River only (bank to bank)

- The RE1 Public Recreation Zone follow the extent of the 1% AEP flood level as identified in the *Yass Flood Study 2016* rather than the previous arbitrary average width of 60m
- The area abutting the proposed RE1 Public Recreation zone to be zoned R1 General Residential
- The lot size for the residential area to be updated according to the proposed land zoning identified i.e. W1 Natural Waterways and RE1 Public Recreation will not have any lot size provisions, whereas the land that will be zoned R1 General Residential will have a 700m<sup>2</sup> minimum lot size
- The floor space ratio provision will not be applied to land to be zoned W1 Natural Waterways and RE1 Public Recreation, however, a floor space ratio of 0.5:1 will be applied to land proposed to be zoned R1 General Residential
- The height of buildings for the R1 General Residential zone will be 8m and no height control will be applied to land zoned W1 Natural Waterways and RE1 Public Recreation

The Planning Proposal was endorsed by Council in December 2019 and the Department of Planning, Industry & Environment (DPIE) were requested to issue a Gateway determination. The Gateway determination was issued in February 2020.

### 3. Public Exhibition

The Planning Proposal was placed on public exhibition in February and March 2020 through Council's website, e-newsletter, Facebook page and the Council notices in the Yass Tribune.

No submissions were received from the community, however the landowner made a submission (refer **Attachment A**) seeking amendment to the Planning Proposal. The issues raised in the landowner's submission are discussed below.

#### 3.1 Impact on anticipated development using 1%AEP

The landowner has stated that rezoning the land that abuts the Yass River and impacted by 1%AEP to RE1 Public Recreation is not an efficient and effective way of delineating RE1 Public Recreation and R1 General Residential zone boundaries. They also state that rezoning the land that is impacted by 1%AEP flooding to RE1 Public Recreation, impacts their masterplan development footprint and will require ongoing modifications over the life of development.

##### Response:

The *Yass Valley LEP 2013* requires that the 1%AEP should be considered as the flood planning level for development. The proposal to rezone land impacted by 1%AEP flood to RE1 Public Recreation is consistent with *Yass Valley LEP 2013*.

However, Development Consent No DA180013 allowed development on some land highlighted in the following diagram as impacted by 1%AEP.



**Figure 1** Consent for development issued for land shown red but impacted by 1%AEP

Therefore, it is recommended the land highlighted be rezoned to R1 General Residential to be consistent with the Consent issued for stage one of the development.

### 3.2 Recreational land to be rezoned RE2 Private Recreation

The landowner raised concerns about the transparency of decision making when land was zoned RE1 Public Recreation which was transferred over from the previous 6(a) Open Space Zone within former *Yass LEP 1987*. The landowner claims that the previous owner has told them that Council has neither consulted, nor enter into a Volunteer Planning Agreement or a sale agreement with the previous owner and therefore the land should not have been zoned RE1 Public Recreation.

The landowner has requested to change the zoning from RE1 Public Recreation to RE2 Private Recreation until such time the land is dedicated to Council.

The landowner has also indicated that they are intending to use this land as an open space according to zone objectives. The open space will be delivered in stages wherein the ownership will transfer from the current landowner to a Trust at the completion of every stage. The Trust will oversee and manage the open space.

#### Response:

The current RE1 Public Recreation zoning was transferred over from the existing 6(a) Open Space zone within former *Yass LEP 1987* as shown in the Figure 2 below.



**Figure 2** Zoning former Yass LEP 1987

At that time, the northern part of the site was owned by Council and was zoned RE1 Public Recreation. Furthermore, *Yass Valley LEP 2013* was placed on public exhibition as a requirement of the process to prepare a standard instrument and the community was given a chance to raise their concerns. No submissions were received in relation to this matter.

It is important to note, the intent of this Planning Proposal is to remove anomalies and errors, identified due to discrepancies in Yass River alignment, after consultation with the landowner's consultants. Considering the administrative nature of the Planning Proposal, the zoning for recreational land should be retained as RE1 Public Recreation and should the proponent intend to transfer and managed the land through a Trust they can lodge a separate Planning Proposal seeking to rezone land from RE1 Public Recreation to RE2 Private Recreation.

### **3.3 The eastern boundary of RE1 Public Recreation Zone**

The landowner does not agree with the mechanism introduced to define the eastern boundary of the RE1 Public Recreation zone. The landowner has proposed that any boundary between RE1 Public Recreation and R1 General Residential zones should be determined using a combination of:

- The lots and roads in the approved (stage one) of the development
- The 40m buffer line from Yass River (north and west of the approved stage one)
- 10m buffer line off either side of the northern creek

The landowner claims that 8.23ha land will be set aside for recreation instead of 8.21ha as proposed.

#### Response:

The land to be rezoned RE1 Public Recreation is impacted by 1%AEP at the eastern edge of the Yass River. This will not only restrict residential development in area impacted by 1%AEP flood levels but will also reduce the flood impact to residential development by not hindering the floodway and flood storage areas as identified in hazard categorisation map of *Yass Flood Study*. The use of the buffer mechanism suggested by the landowner would leave land identified as flood affected within an R1 General Residential zone implying development potential that would impact the flood behaviour upstream and downstream.

#### 4. Consultation with DPIE (Biodiversity & Conservation)

DPIE (Biodiversity & Conservation) was consulted on the Planning Proposal (refer **Attachment B**). The issues raised are discussed below in detail.

##### 4.1 Rezoning inconsistent with the Minister's Direction

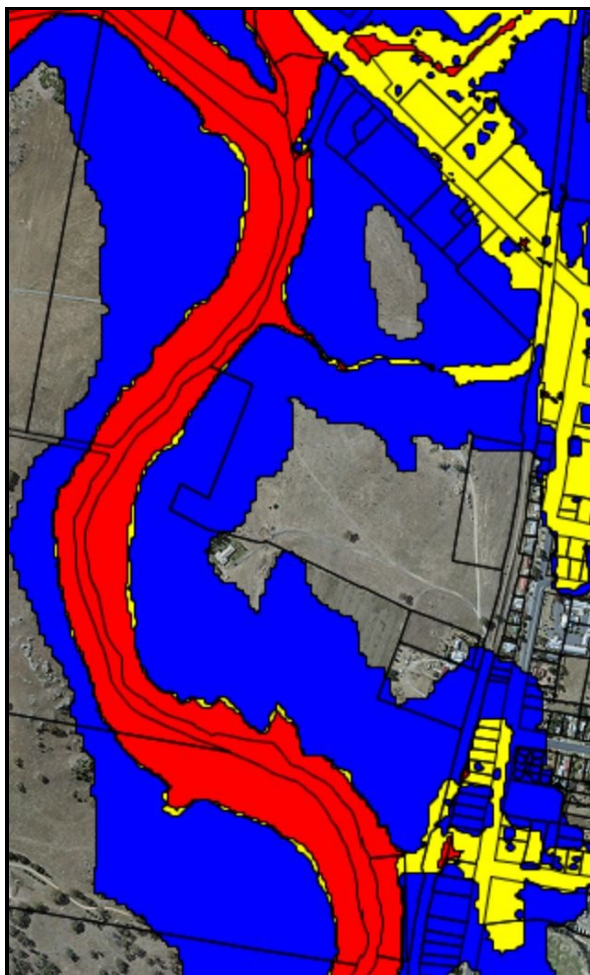
DPIE (Biodiversity & Conservation) is of the opinion that the Planning Proposal includes rezoning of land in high hazard flood prone land from RE1 Public Recreation, E3 Environmental Protection and W1 Natural Waterways to R1 General Residential that is inconsistent with the objectives of the Minister's Direction 4.3 Flood Prone Land, *Yass Valley LEP 2013* and the principles of the *Floodplain Development Manual* due to the flood hazard, impacts of climate change and significant risk to life and property on this land as identified in the *Yass Flood Study 2016*.

Similar concerns were raised during the assessment of the application of stage one of the subdivision and it is again emphasised that risk to life and properties at full range of flood should be considered for any planning and development proposal.

##### Response:

The Planning Proposal is intended to remove the anomalies and error those were identified during the assessment of the application for stage one of the subdivision arising from discrepancy in the Yass River alignment in cadastre. The Planning Proposal is only aligning the land zoning of the site with the updated alignment of Yass River and revising the minimum lot size, floor space ratio and height of building controls accordingly to streamline the implementation of *Yass Valley LEP 2013* by removing discrepancies rather than rezoning land. As such, the Planning Proposal is administrative in nature.

The Planning Proposal includes rezoning of land from W1 Natural Waterways and R1 General Residential zones to RE1 Public recreation zone which is identified as high and medium flood risk (shown as red and yellow) on the *Yass Flood Risk Precinct Map* (refer **Figure 3**) and the land that is proposed to be rezoned from W1 Natural Waterways and RE1 Public Recreation to a R1 General Residential zone is of low flood risk (shown as blue) as shown below.



**Figure 3** Yass Flood Study -Flood Risk

The rezoning does not guarantee that any development would be permissible on the land rather further flood management measures and control would be considered at the Development Application stage to ensure development of the flood prone land is consistent with the *NSW Flood Prone Land Policy* and the principles of the *Floodplain Development Manual 2005* and the current Flood Planning package being considered by the DPIE should it be adopted as exhibited.

As such, the Planning Proposal is not inconsistent with the Minister's Direction and *Yass Valley LEP 2013*.

#### **4.2 PMF level instead of 1%AEP**

DPIE (Biodiversity & Conservation) consider the 1%AEP design flood event for the Planning Proposal is not appropriate due to the impact of climate change, design flood estimate uncertainty and risks investigated in the Floodplain Risk Management Planning process are not considered.

DPIE (Biodiversity & Conservation) recommended the Probable Maximum Flood (PMF) Level be considered to manage the significant risk to life and property.

They also refer to the new draft Flood Prone Land Package, proposed amendments to *cl7A Environmental Planning & Assessment Regulation 2000* and additional guidance to Councils, recognising the importance of managing floods greater than the 1%AEP design flood up to the Probable Maximum Flood.

#### Response:

The flood levels currently applicable to land under the provision of *Yass Valley LEP 2013* have been considered. A *Yass Floodplain Risk Management Study and Plan (FRMS&P)* is currently being prepared to assist in providing consistency in the development controls suggested in the FRMS&P and the draft Flood Prone Land package once adopted.

Should Council apply the PMF Levels it would also impact the validity of the existing Consent issued for stage one of the subdivision.

## 5. Conclusion

The Planning Proposal does not include any significant change to *Yass Valley LEP 2013* and the amendments proposed are administrative in nature.

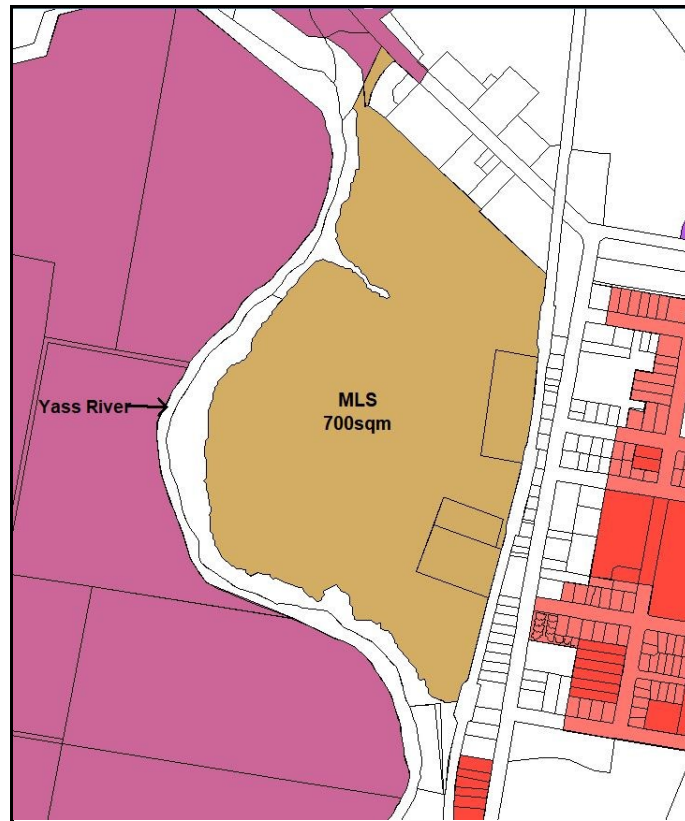
The issues raised by the landowner have been addressed in the above discussion. No amendment is suggested to the Planning Proposal other than the adjustment of the zone boundary to reflect the stage one residential approval (refer Figure 1). The lot size, flood space ratio and height of building controls should also be revised for consistency.

It is recommended that the amendment to the land zoning, lot size, floor space ratio and height of buildings maps as shown in Figures 4-7 should be adopted.

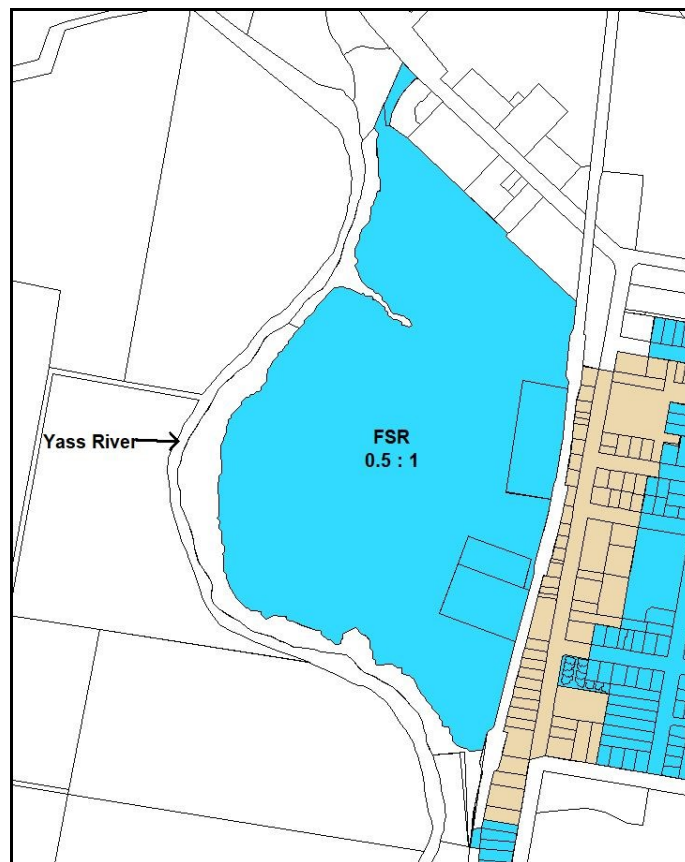


**Figure 4** Proposed Land Use Zone



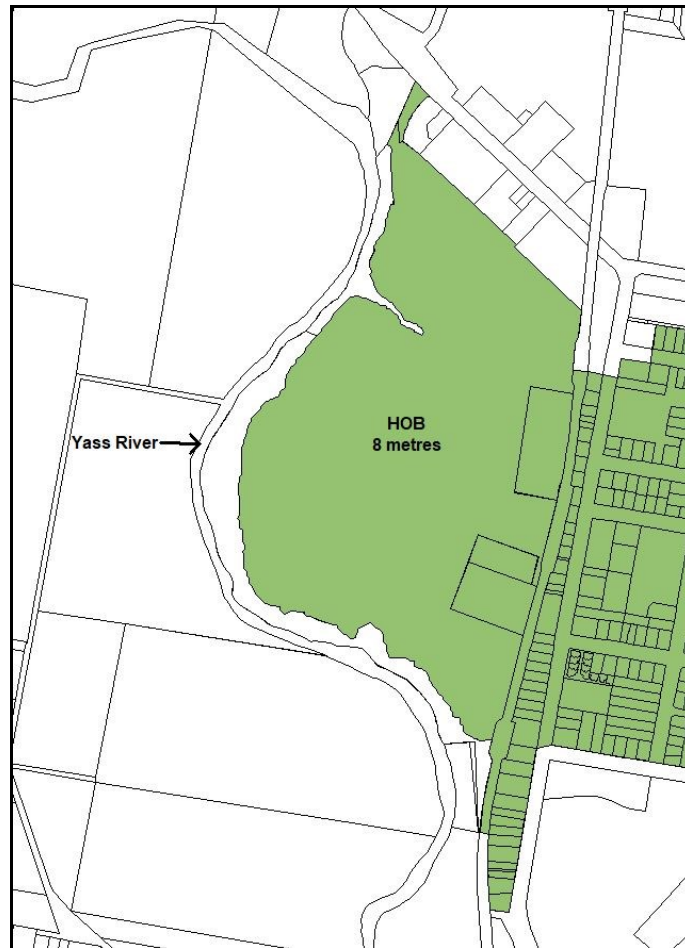


**Figure 5** Proposed Lot Size



**Figure 6** Proposed Floor Space Ratio





**Figure 7 Proposed Height of Buildings**

Accordingly, a formal legal opinion of the Parliamentary Council Office (PCO) should be requested that the amendment to *Yass Valley LEP 2103* can be made. Following that Council should make the amendment to *Yass Valley LEP 2013* as a local plan-making authority.

## STRATEGIC DIRECTION

Key Pillar	1.	Our Environment
CSP Strategy	EN4 -	Maintain a balance between growth, development and environmental protection through sensible planning
Delivery Program Action	EN4.1 -	Ensure Council's statutory planning instruments are up to date and reflective of the community needs
Operational Plan Activity	EN4.1.1 –	Undertake ongoing strategic land use planning and reviews of existing instruments

**ATTACHMENTS:** A. Submission by Landowner [↓](#)  
B. DPIE Referral Response [↓](#)