

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Bega Valley
<b>PPA</b>	Bega Valley Shire Council
<b>NAME</b>	Environmental Zones rezoning for 5 sites (0 dwellings; 0 jobs)
<b>NUMBER</b>	PP 2018_BEGAV_003_00
<b>LEP TO BE AMENDED</b>	Bega Valley LEP 2013
<b>ADDRESS</b>	Site 1 – Head of Cuttagee Road, Cuttagee Site 2 – Princes Highway, Broadwater Site 3 – Government Road, Eden Site 4 – Princes Highway, Millingandi Site 5 – Hillview Street, Cobargo
<b>DESCRIPTION</b>	Site 1 – Lot 531 DP 875511 Site 2 – Lots 25 and 43 DP 750242 and Lot 243 DP 1112013 Site 3 – Lot 35 DP 843393 Site 4 – Lot 722 DP 826975 Site 5 – Lot 22 DP 1013450
<b>RECEIVED</b>	09/04/2018
<b>FILE NO.</b>	IRF 18/2173
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## SITE 1 CUTTAGEE LAKE

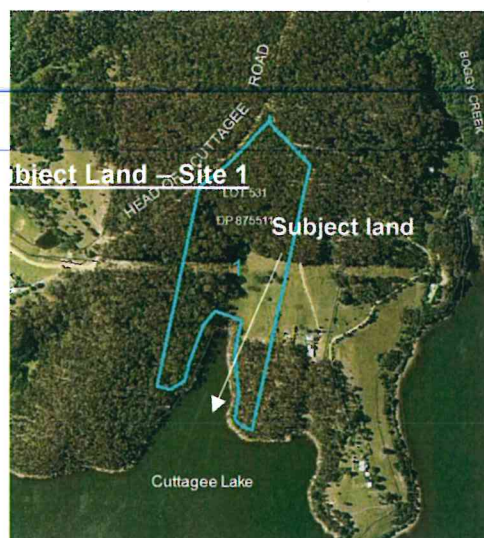
### INTRODUCTION

#### Description of planning proposal

The proposal for Site 1 is to amend the boundary of the existing E2 Environmental Conservation/E3 Environmental Management zones on the site to reduce the E2 buffer to a 50m width from the foreshore.

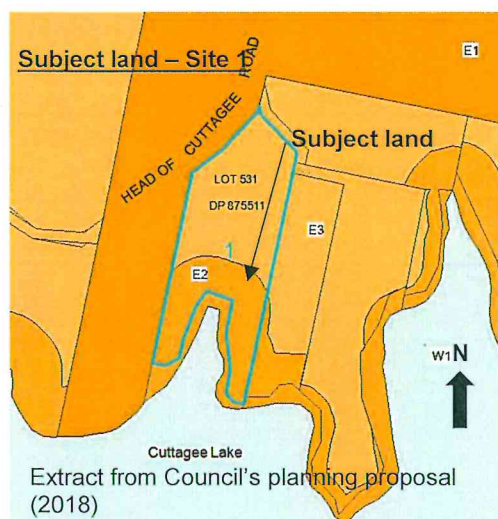
#### Site description

Site 1 is an 8.22ha parcel of land adjoining the coastal Cuttagee Lake approximately 8km south of Bermagui and 45km north east of Bega. The site is located on the northern side of Cuttagee Lake which is a tidal estuary and includes wetlands. The site is forested apart from a cleared area in the centre and an electricity line dissecting the site.



#### Existing planning controls

Site 1 is currently part zoned E2 Environmental Conservation Zone (E2) and part zoned E3 Environmental Management Zone (E3). The E2 zone is a buffer zone extending a variable distance (of between 100m-260m) from Cuttagee Lake.



The lot was created as part of a 2 lot subdivision prior to the Bega Valley LEP 2013 (BVLEP 20132). Restrictions were placed on the title for an electricity easement, a reserve and a riparian buffer around the lake frontage. The reserve adjoins Cuttagee Lake and is owned and managed by the Council.

The original development consent for the development of a dwelling on the site required a minimum of 50m setback from Cuttagee Lake, which equates to the riparian buffer identified on the title.

In the BVLEP 2013, a standard E2 buffer with a setback of 100m was applied to this area. It did

not take account of the 50m setback requirement of the development consent and the riparian buffer restriction on the title.

#### Surrounding area

The following extract of the BVLEP 2013 shows that Council's policy for E2 buffers around environmentally sensitive areas was consistently applied to coastal estuaries and lakes.





The majority of areas adjoining the coastal zone or coastal lakes are zoned E2 or E3 to protect and manage environmental outcomes.

The "Cuttagee Lake Rapid Catchment Assessment – Catchment Management Plan (15 July 2015)" states, *Cuttagee Lake has significant ecological, recreational and socio-economic values all of which are reliant on good water quality.*

### Summary of recommendation

Proceed as per submitted – The proposal is considered suitable to proceed. The proposed changes are considered minor, have been adequately justified and are appropriate to the proposed outcomes.

## PROPOSAL

### Objectives or intended outcomes

The proposed outcomes for Site 1 are to *provide a reduction in the width of the E2 Zone to align with the existing approval and restriction on title to enable the construction of a future dwelling on the most suitable portion of E3 land that is already cleared.*

This objective does not require amendment prior to community consultation.

### Explanation of provisions

The planning proposal indicates the Land Zoning Map for Site 1 under BVLEP 2013 will be amended as follows:

*Lot 531 DP 875511 - Amend map sheet LZN\_018 by applying a minor reduction to the width of the existing E2 Environmental Conservation Zone and an increase in the size of the remaining E3 Environmental Management Zone to Lot 531 DP 875511.*

The proposed amendment, in conjunction with the planning proposal maps are considered clear and do not require amendment prior to community consultation.

### Mapping

The planning proposal includes an amendment to Map Sheet LZN\_018 for Site 1.





The maps are considered suitable for community consultation – they are clear and at an appropriate scale. Maps will need to be prepared in accordance with the Technical Guidelines to enable the draft LEP to be made.

## NEED FOR THE PLANNING PROPOSAL

Council has identified that the need for the planning proposal stems from the Council resolution of December 2005 to prepare a Comprehensive LEP to replace the Bega Valley LEP 2002. Part of the resolution was *“the protection of sensitive foreshore areas and bushland public reserves through the use of the E2 Environmental Conservation Zone”*.

In December 2017, Council resolved to amend the BVLEP 2013 in accordance with the planning proposal.

Council's need for the planning proposal for Site 1 relates to the desire to achieve a suitable location for a future dwelling to be erected on the subject land. Without the amendment to the width of the E2 zone buffer area, a future dwelling on the site would be required to extensively clear vegetation, rather than locate the dwelling on the existing cleared land on the site.

It is agreed there are no other options for achieving this outcome and amending the zoning is considered the most appropriate means to achieving the desired outcome.

It is also important to note that the foreshore buffer is formally protected through a restriction on the title. Council is not proposing to undermine that restriction, it is proposing to align the zoning to that restriction. Council also considers the 50m buffer adequate in this location.

There is no obvious reason why this proposal should not be supported.

## SITE 2 JIGAMY FARM, PAMBULA LAKE

### INTRODUCTION

#### Description of planning proposal

The proposal for Site 2 is to amend the boundary between the existing E2/E3 zones by reducing the E2 buffer to a 20m width from the foreshore.

#### Site description

Site 2 is a 57.4ha site over 3 parcels of land adjoining the coastal Pambula Lake approximately 12km south of Pambula and 12km north of Eden. The site is located on the southern side of Pambula Lake which is a tidal estuary and includes wetlands. The site is partially forested and partially cleared. The Pacific Highway dissects two parcels and runs along the southern edge of the site.

Jigamy Farm is Aboriginal-owned land that has a number of developments approved for tourist facilities. The Twofold Aboriginal Corporation has prepared a masterplan for the site that includes a camping ground and eco-tourism facility, accommodating approximately 136 sites for camping and cabins.

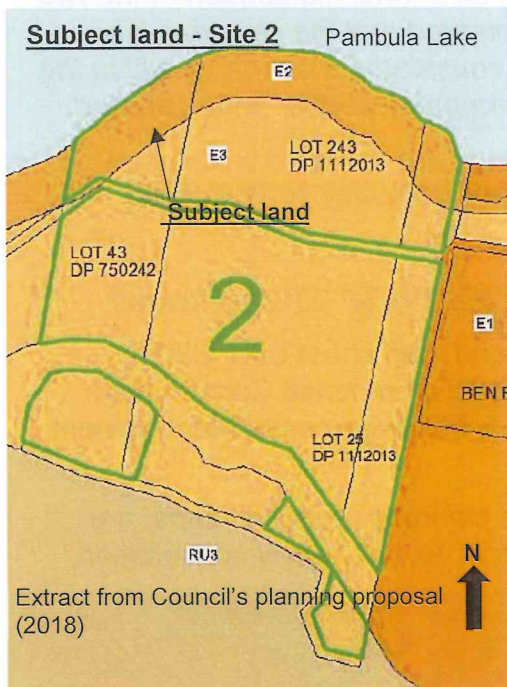
**Subject land – Site 2**





Site 2 includes land already cleared and informally used as open space as part of Jigamy Farm. It includes 7 proposed lakeside cabins to the south and communal land to the north as part of the masterplan.

### Existing planning controls

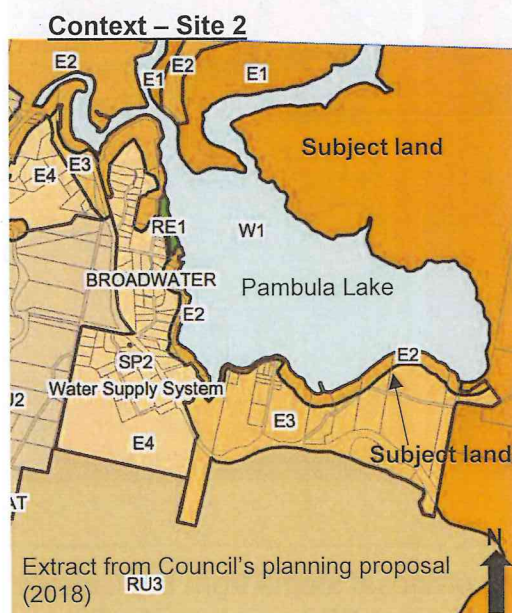


Site 2 is currently part zoned E2 Environmental Conservation and part zoned E3 Environmental Management. The E2 zone is a buffer zone extending approximately 100m from Pambula Lake.

In the BVLEP 2013, a standard E2 buffer with a setback of 100m was applied to this area. Around Pambula Lake, Council has advised that the width of the E2 buffer zone varies between 20m and 100m to take into account existing development and known landscape features.

### Surrounding area

The following extract of the BVLEP 2013 illustrates that Council's policy for E2 buffers around environmentally sensitive areas is consistently applied to coastal estuaries and lakes.



The surrounding area is considered a sensitive coastal environment with the majority of areas adjoining the coastal zone or coastal lakes being zoned E2 or E3 to protect and manage environmental outcomes. Around Pambula Lake, much of the foreshore is zoned E1 National Parks and Nature Reserves.

The "Coastal Zone Management Plan for Pambula Lake Estuary - Final Report (August 2015)" states *The Pambula Lake estuary has many values including those described above, e.g. very good water quality, relatively intact catchments, high ecological values, high visual amenity, unique cultural heritage values and ability to support commercial and recreational pursuits, amongst others.*

### Summary of recommendation

Proceed as per submitted – The proposal is considered suitable to proceed. The proposed changes are considered minor, have been adequately justified and are appropriate to the proposed outcomes.



## PROPOSAL

### Objectives or intended outcomes

The proposed outcomes for Site 2 are to provide “a reduction in the existing E2 buffer to enable flexibility with the consideration of an overall masterplan of the site. This land has been chosen because it is already cleared and the sensitive future development of this land as part of an E3 zone is considered reasonable within the context of the site and existing distribution of environmental buffer zones around Pambula Lake.”

This objective does not require amendment prior to community consultation.

### Explanation of provisions

The planning proposal identifies Site 2 will amend the BVLEP 2013 as follows:

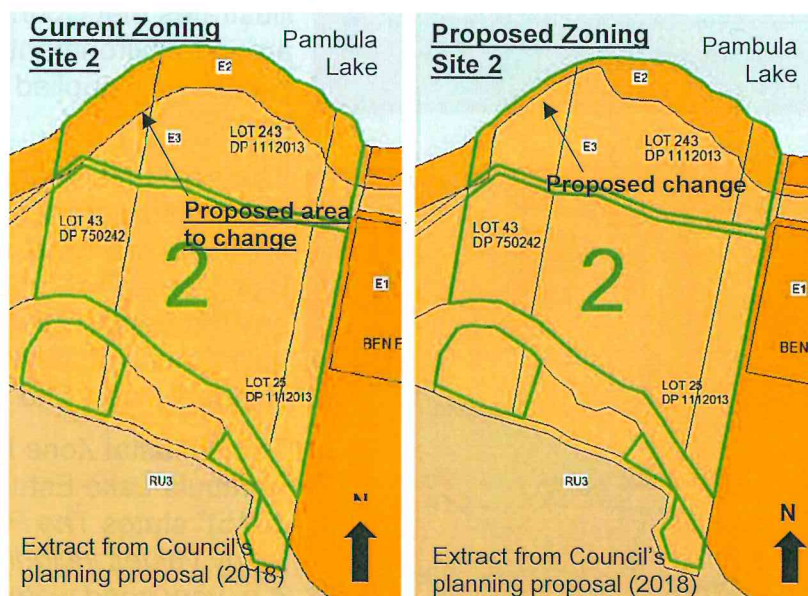
Lot 43 DP 750242 and Lot 243 DP 1112013 - Amend map sheet LZN\_020 by applying a reduction to the width of the existing E2 Environmental Conservation Zone and an increase in the size of the remaining E3 Environmental Management Zone along the Pambula Lake foreshore.

The proposed amendment, in conjunction with the planning proposal maps, are considered clear and do not require amendment prior to community consultation.

### Mapping

The planning proposal includes an amendment to Map Sheet LZN\_020 for Site 2.

The maps are considered suitable for community consultation – they are clear and an appropriate scale. Maps will need to be prepared in accordance with the Technical Guidelines to enable the draft LEP to be made.



### NEED FOR THE PLANNING PROPOSAL

Council has identified that the need for the planning proposal stems from the Council resolution of December 2005 to prepare a Comprehensive LEP to replace the Bega Valley LEP 2002. Part of the resolution was “the protection of sensitive foreshore areas and bushland public reserves through the use of the E2 Environmental Conservation Zone”.

In December 2017, Council resolved to amend the BVLEP 2013 in accordance with the planning proposal.

Council's need for the planning proposal for Site 2 relates to the ability to realise the future development of existing cleared land as part of the Jigamy Farm masterplan.



Without the amendment to the E2 zone buffer, the masterplan proposed cabins would not be able to be realised over the existing cleared land.

There are no other options for achieving this outcome and amending the zoning is considered the most appropriate means to achieving the desired outcome.

## **SITE 3 LAKE CURALO**

### **INTRODUCTION**

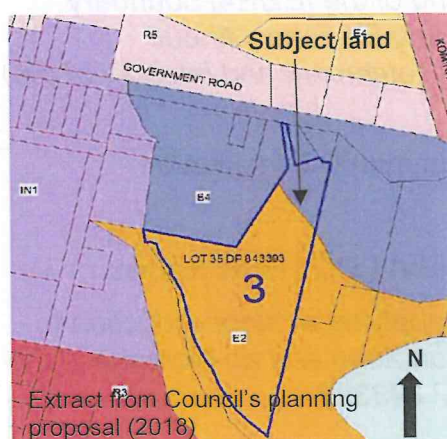
#### **Description of planning proposal**

The proposal for Site 3 is to amend the boundary of the existing E2 Environmental Conservation/E4 Mixed Use zones on the site to provide opportunity for expansion of an existing business without compromising the protection of the site's environmental values.

#### **Site description**

Site 3 is a 4.6ha parcel of land located in the town of Eden. The site is located on the northern western side of Curalo Lake which is a tidal estuary containing coastal wetlands. The site is also dissected by Palestine Creek.

The site contains an existing business involving the manufacture, storage and distribution of chilli produces known as 'Disaster Bay Chillies'.



#### **Existing planning controls**

Site 3 is currently zoned Part B4 Mixed Use and Part E2 Environmental Conservation. The surrounding area is a mix of commercial, industrial and residential uses as well as the environmental protection areas of the creek and lagoon.

The E2 zone is applied to protect the environmental values on the site, including the coastal wetlands and riparian vegetation.

The existing E2/E4 zone boundary follows the contours of the site. The existing B4 zoned part of the site contains the existing business and manager's residence with little room for expansion.

In the BVLEP 2013, a standard E2 buffer was applied to sensitive environments, including the adjacent lagoon creek.



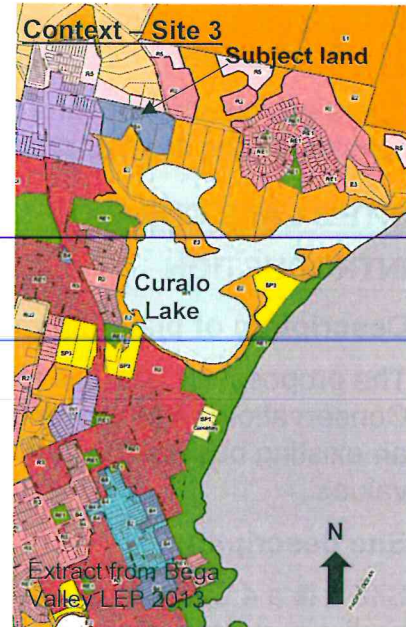
## Surrounding area

The following extract of the BVLEP 2013 identifies that Council's policy for E2 buffers around environmentally sensitive areas is consistently applied to coastal estuaries and lakes.

The surrounding area is considered a sensitive coastal environment with the majority of areas adjoining the coastal zone or coastal lakes being zoned E2 or E3 to protect and manage environmental outcomes.

## Summary of recommendation

Proceed as per submitted – The proposal is considered suitable to proceed. The proposed changes are considered minor, have been adequately justified and are appropriate to the proposed outcomes.



## PROPOSAL

### Objectives or intended outcomes

The proposed outcomes for Site 3 are that *straightening of the [E2/E4] boundary would result in a minor increase to the size of the existing B4 zone without compromising the future protection of the Lake Curalo catchment and integrity of the E2 Zone.*

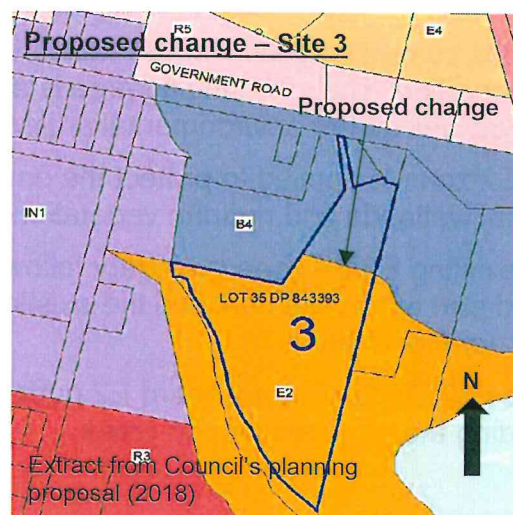
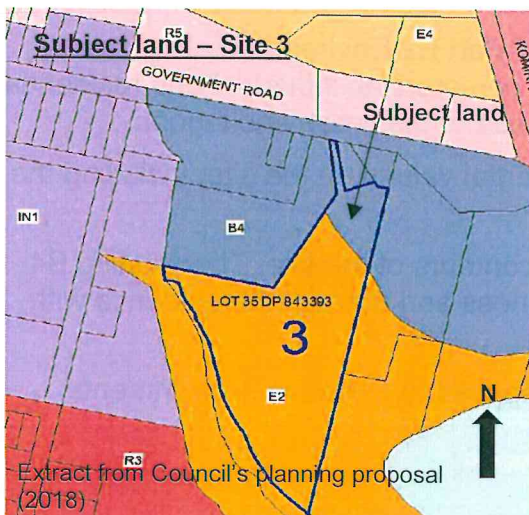
This objective does not require amendment prior to community consultation.

### Explanation of provisions

The planning proposal identifies Site 3 will amend the BVLEP 2013 as follows:

*Lot 35 DP 843393 - Amend map sheet LZN\_021A by applying a minor reduction to the width of the existing E2 Environmental Conservation Zone and an increase in the size of the remaining E4 Mixed Use Zone to Lot 35 DP 843393.*

The proposed amendment, in conjunction with the planning proposal maps are considered clear and do not require amendment prior to community consultation.





## Mapping

The planning proposal includes an amendment to Map Sheet LZN\_021A for Site 3.

The maps are considered suitable for community consultation – they are clear and an appropriate scale. Maps will need to be prepared in accordance with the Technical Guidelines to enable the draft LEP to be made.

## NEED FOR THE PLANNING PROPOSAL

Council has identified that the need for the planning proposal stems from the Council resolution of December 2005 to prepare a Comprehensive LEP to replace the Bega Valley LEP 2002. Part of the resolution was *“the protection of sensitive foreshore areas and bushland public reserves through the use of the E2 Environmental Conservation Zone”*.

In December 2017, Council resolved to amend the BVLEP 2013 in accordance with the planning proposal.

Council’s need for the planning proposal for Site 3 relates to the desire to achieve a suitable outcome for the expansion of the existing business on the subject land. Without the amendment to the E2 zone buffer, expansion of the business on the site would not be possible.

It is agreed, there are no other options for achieving this outcome and amending the zoning is considered the most appropriate means to achieving the desired outcome.

## SITE 4 MERIMBULA LAKE

### INTRODUCTION

#### Description of planning proposal

The proposal for Site 4 is to zone a deferred matter from the Bega Valley LEP 2013 to part E2 zone and part E3 zone with a 120ha minimum lot size.

#### Site description

Site 4 is almost 15ha and adjoins the coastal Merimbula Lake approximately 3km west of Merimbula township. The site is located on the north-western side of Merimbula Lake which is a tidal estuary and includes coastal wetlands.

The site is mainly covered in coastal wetland with a cleared area to the west adjoining the Princes Highway.

#### Existing planning controls

Site 4 is currently zoned part 1(a) Rural General and part 7(b) Environment Protection Foreshore Zone under the Bega Valley LEP 2002. The lot is vacant but retains a building opportunity.



Council has advised that the current split zoning into 1(a) and 7(b) is not consistent with the characteristics of the land given the majority of the land is covered by a coastal wetland.

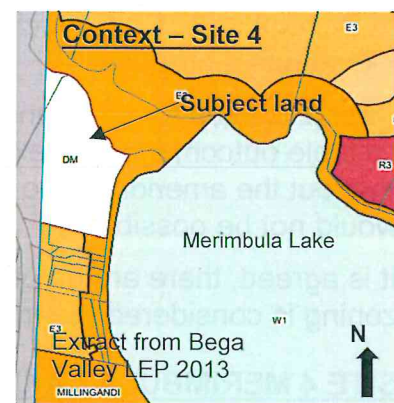
Council has also advised that the fragmentation of land into dwelling lots in the immediate area of the subject land has been problematic, particularly in relation to on-site effluent disposal and the proximity to Merimbula Lake.

In the BVLEP 2013, a standard E2 buffer with a setback of 100m was generally applied to all coastal estuaries (including Merimbula Lake). Council also zones coastal wetlands as E2 to provide protection from incompatible land uses, such as dwellings.

### Surrounding area

The following extract of the BVLEP 2013 identifies that Council's policy for E2 buffers around environmentally sensitive areas is consistently applied to coastal estuaries and lakes.

The surrounding area is considered a sensitive coastal environment with the majority of areas adjoining the coastal zone or coastal lakes being zoned E2 to protect and manage environmental outcomes.



## PROPOSAL

### Objectives or intended outcomes

The proposed outcomes for Site 4 are stated by Council as: *the proposed split zoning is consistent with the environmental attributes of the land, with a smaller section of E3 zoned land providing an envelope for a future dwelling house over the more elevated cleared land and the remainder of the site being zoned E2 over the existing wetland.*

This objective does not require amendment prior to community consultation.

### Explanation of provisions

The planning proposal identifies Site 4 will amend the BVLEP 2013 as follows:

*Lot 722 DP 826975 - Amend map sheets as follows:*

- LAP\_001 to remove the Deferred Matter status; and
- LZN\_020 and LZN\_020B by applying E2 Environmental Conservation Zone and E3 Environmental Management Zone.

Note. Council's planning proposal has identified that Map Sheet LSZ\_020 and LSZ\_020B are also to be changed to apply a 120ha minimum lot size to the subject land. However, Council's current BVLEP 2013 map sheets already show 120ha applying to the subject land, therefore no change is required.

Council should be reminded to update the planning proposal to note the 120ha minimum lot size is already identified on the subject land under the BVLEP 2013.

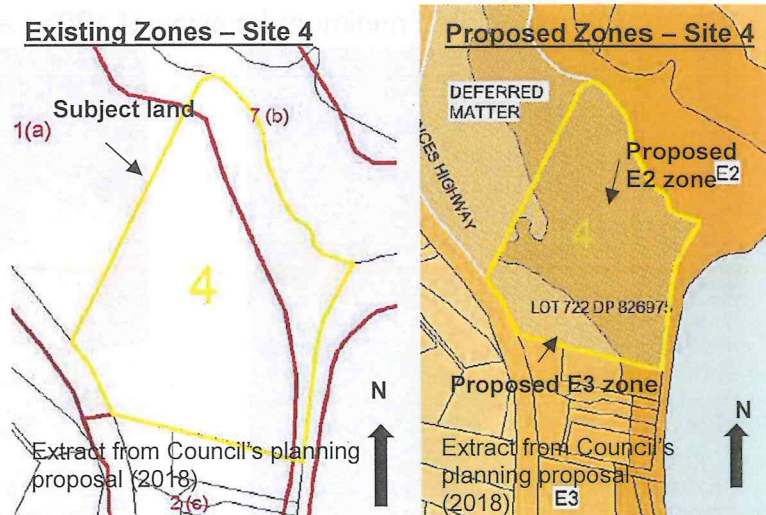


The proposed amendment, in conjunction with the planning proposal maps are considered clear and do not require amendment prior to community consultation.

## Mapping

The planning proposal includes an amendment to Map Sheet LZN\_020 and LZN\_020B for Site 4.

The maps are considered suitable for community consultation – they are clear and an appropriate scale. Maps will need to be prepared in accordance with the Technical Guidelines to enable the draft LEP to be made.



## NEED FOR THE PLANNING PROPOSAL

Council has identified that the need for the planning proposal stems from the Council resolution of December 2005 to prepare a Comprehensive LEP to replace the Bega Valley LEP 2002. Part of the resolution was *“the protection of sensitive foreshore areas and bushland public reserves through the use of the E2 Environmental Conservation Zone”*.

In December 2017, Council resolved to amend the BVLEP 2013 in accordance with the planning proposal.

Council’s need for the planning proposal for Site 4 relates to the desire to protecting the coastal wetland on the site whilst allowing for the erection of a dwelling. The subject land is currently deferred from the BVLEP 2013, therefore rezoning is required.

It is agreed, there are no other options for achieving this outcome and amending the zoning is considered the most appropriate means to achieving the desired outcome.

## SITE 5 COBARGO

### INTRODUCTION

#### Description of planning proposal

The proposal for Site 5 is to remove the existing E2 zone on the site and replace it with an extension to the existing RU5 Village zone.

#### Site description

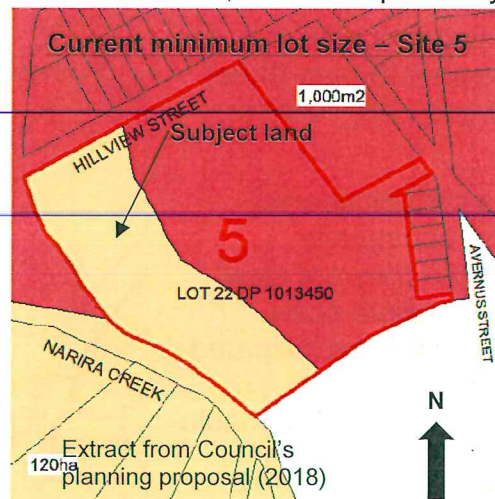
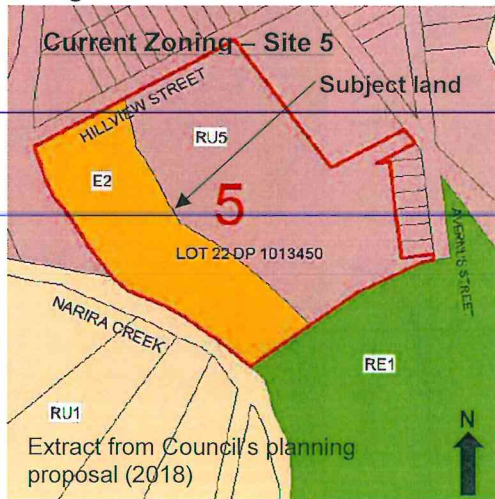
Site 5 is a 10.7ha parcel of land adjoining the village of Cobargo approximately 44km north of Bega and 35km south west of Narooma. The site is located on the south-western side of Cobargo which is a village of approximately 776 people. The site is cleared apart from a small amount of riparian vegetation along the western boundary with Narira Creek.





## Existing planning controls

Site 5 is currently part zoned E2 Environmental Conservation and part zoned RU5 Village with associated minimum lot sizes of 120ha and 1,000m<sup>2</sup> respectively.



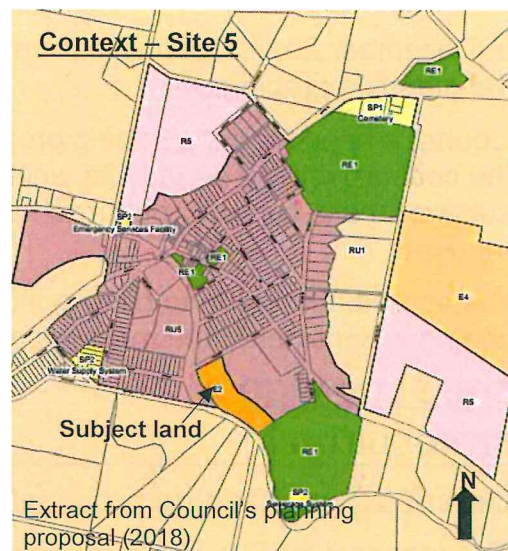
As part of the BVLEP 2013, an IN1 General Industrial Zone was proposed for the site. As such, the current E2 Zone was provided as a buffer from the industrial uses to the Narira Creek. However, the industrial zone was not applied under the BVLEP 2013.

## Surrounding area

The site is on the edge of the small village of Cobargo where much of the village is zoned RU5 Village (see context map). The majority of Narira Creek is zoned RU1 Primary Production. The subject land is the only land identified as E2 zoned land in the village. It does not represent environmental values as the site is mostly cleared with some remaining riparian vegetation along the western boundary.

## Summary of recommendation

Proceed as per submitted – The proposal is considered suitable to proceed. The proposed changes are considered minor, have been adequately justified and are appropriate to the proposed outcomes.



## PROPOSAL

### Objectives or intended outcomes

Council has identified that the proposed outcomes for Site 5 are to delete the E2 zoned area and associated 120ha minimum lot size as it is no longer necessary. It is recommended that an RU5 zone with a 1,000m<sup>2</sup> lot size is established which is consistent with the rest of the site and approach to the zoning of land within the Cobargo catchment.

This objective does not require amendment prior to community consultation.



## Explanation of provisions

The planning proposal identifies Site 5 will amend the BVLEP 2013 as follows for Lot 22 DP 1013450:

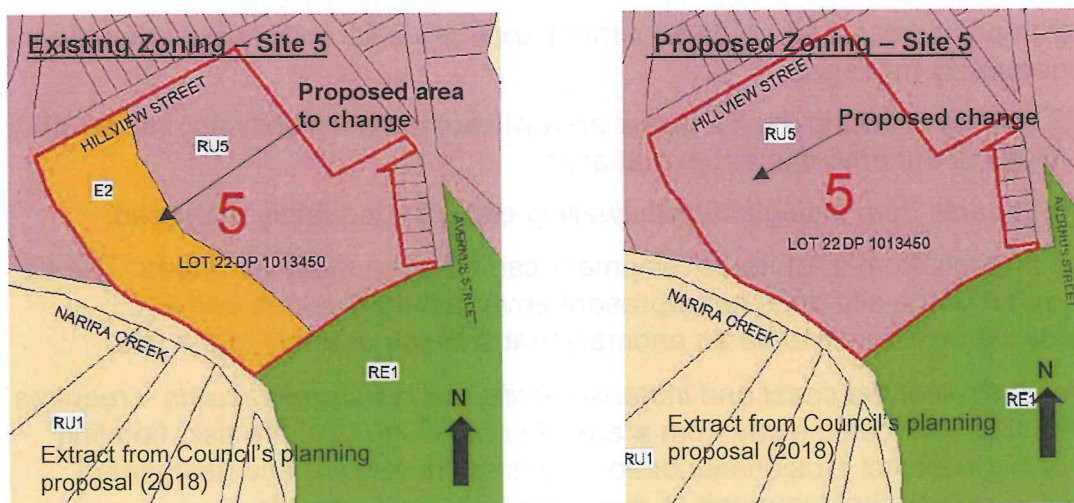
- Amend map sheet LZN\_017A by removing the E2 Environmental Conservation Zone and applying a RU5 Village Zone instead; and
- Amend map sheet LSZ\_017A by removing the 120ha lot size and applying 1,000m<sup>2</sup> lot size instead.

The proposed amendment, in conjunction with the planning proposal maps are considered clear and do not require amendment prior to community consultation.

## Mapping

The planning proposal includes an amendment to Map Sheet LZN\_017A for Site 5.

The maps are considered suitable for community consultation – they are clear and an appropriate scale. Maps will need to be prepared in accordance with the Technical Guidelines to enable the draft LEP to be made.



## NEED FOR THE PLANNING PROPOSAL

Council has identified that the need for the planning proposal stems from the Council resolution of December 2005 to prepare a Comprehensive LEP to replace the Bega Valley LEP 2002. In December 2017, Council resolved to amend the BVLEP 2013 in accordance with the planning proposal.

Council's need for the planning proposal for Site 5 relates to the desire to achieve a suitable outcome for the urban development of the subject land. Without the amendment to remove the E2 zone, a future development on the site would be unnecessarily restricted.

It is agreed, there are no other options for achieving this outcome and amending the zoning is considered the most appropriate means to achieving the desired outcome.

## STRATEGIC ASSESSMENT (Sites 1-5)

### State

There are no state related frameworks that require assessment.

## Regional

Bega Valley is subject to the South East and Tablelands Regional Plan.

The proposed amendments to the 5 sites are considered consistent with the following directions in the Regional Plan:

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• *Direction 10: Strengthen the economic self-determination of Aboriginal communities.* The proposal for Site 2 is consistent with the Direction. Impacts from a future development application for the camping ground can be adequately managed.

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• *Direction 12: Promote business activities in urban centres.* The proposal for Site 3 is considered consistent with the Direction.

• *Direction 14: Protect important environmental assets.* Impacts from urban development and activities must avoid impacts on important terrestrial and aquatic habitats and on water quality.

The proposal for Sites 1-5 will not be inconsistent with this Direction.

- Site 1 Impacts from a future dwelling can be adequately managed.
  - Site 2 Impacts from a future development application for a camping ground can be adequately managed.
  - Site 3 Slightly reducing the E2 buffer area will not have a significant impact on the values of the environment in that area.
  - Site 4 Impacts from a single future dwelling can be adequately managed.
  - Site 5 Impacts from a future development can be adequately managed. The E2 zoned part of the site does not represent environmental values and is considered by Council to be an anomaly that should not apply to the site.
- *Direction 16: Protect the coast and increase resilience to natural hazards* – requires development to be located away from areas of known high bushfire risk, flooding hazards or high coastal erosion/inundation; contaminated land; and designated waterways to reduce the community's exposure to natural hazards.
- Site 1 By allowing a future dwelling to be located on the existing cleared land on Site 1, areas of high bushfire risk on the site will be avoided.
  - Site 2 By allowing future development (for tourism) for Site 2 to be located on the existing cleared land on the site, areas of high bushfire risk, acid sulfate soils, biodiversity values and coastal risk on the site will be avoided.
  - Site 3 While Site 3 is identified as having potential for acid sulfate soils and is identified as vegetation buffer in relation to bushfire risk, the proposed rezoning does not include a specific development outcome. Any future development of the proposed B4 zoned area would be subject to full assessment which will consider these issues.
  - Site 4 Identified as having Class acid sulfate soils over the majority of the site and is identified as Veg Category 2 in relation to bushfire risk. However, the proposed rezoning does not include a specific development outcome. Any future development of the proposed E3 zoned area would be subject to full environmental assessment and is likely to be adequately addressed as it is located on existing cleared land outside the natural hazard constraints.



- *Direction 28: Manage rural lifestyles* – requires rural residential development to be located on land free from natural hazards. By allowing a future dwelling to be located on the existing cleared land on Site 1, areas of high bushfire risk on the site will be avoided.

## Local

Council has advised the proposed amendments for Site 1, 2, 3, 4 and 5 are consistent with the Bega Valley 2030 Community Strategic Plan, specifically the aim to ensure the unique environment is protected to maintain biodiversity and water quality and managed for our community, to provide growth and economic opportunity. There are no local land use strategic frameworks applicable to Sites 1, 2, 3 and 5.

The Merimbula District Structure Report (July 2008, as amended) identifies Site 4 as Area 40. It recommends that *Council propose that part of the areas within 150 metres of the Lake foreshore plus all coastal wetlands be zoned E2 Environmental Conservation. Further that the remainder of these areas be proposed for zone E4 Environmental Living with a 10ha minimum lot size for new subdivision. This would prevent further subdivision of this foreshore area.*

Council has proposed to zone the non-foreshore/wetlands area on Site 4 as E3 with a 120ha minimum lot size as this is consistent with how Council is managing areas adjoining sensitive natural environments. It is agreed that an alternative E4 zone would suggest the land is suitable for rural residential development, when Council has identified it is not. The proposed E3 zone is considered suitable. Given the site already has a dwelling opportunity, the proposed lot size is considered appropriate to prevent further subdivision of the site.

## Section 9.1 Ministerial Directions

- *Direction 1.1 Business and Industrial Zones* – The proposal for Site 3 is consistent with this Direction as it does not propose to reduce the area of business zoning.
- *Direction 1.4 Oyster Aquaculture* – The planning proposal for Site 2 and Site 4 are located near oyster lease areas. As such, Council will need to consult with the NSW Department of Primary Industries. Consultation with DPI will determine the planning proposal's consistency with this Direction.
- *Direction 2.1 Environmental Protection Zones* – The planning proposal for Site 4 is considered consistent with this Direction as it proposes to increase environmental protection standards that apply to the land. The planning proposal for Site 1, Site 2, Site 3 and Site 5 is inconsistent with this Direction as it proposes to reduce environmental protection standards that apply to the land. However, the proposed changes are considered of minor significance because
  - Site 1 an E2 zoned buffer to the lake will remain in place and the proposed buffer width is consistent with the riparian buffer identified on the land title. Council also considers that the future setback created by the revised buffer from the foreshore is sufficient to manage and avoid impacts on the sensitive environmental values of the Lake.

The inconsistency with this Direction is justified as it is considered minor in nature and it is agreed that locating a future dwelling on the existing cleared

land also protects other environmental values from being impacted for clearing to locate a dwelling.

- Site 2 an E2 zoned buffer is proposed to remain in place (albeit reduced) and remains at 100m for the area that retains riparian vegetation. Council also considers the potential future setback from the foreshore to be sufficient to manage and avoid impacts on the sensitive environmental values of the Lake.

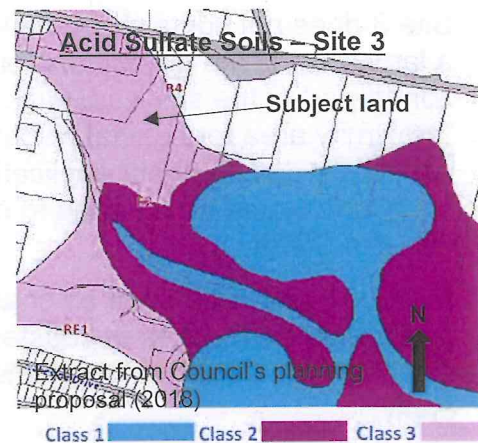
The proposal's inconsistency with the Direction has been justified.

- Site 3 as the buffer will remain and the proposed change only affects existing cleared lands. The inconsistency with this Direction is justified as it is considered minor in nature.
- Site 5 as the environmental zone does not protect significant environmental values and was originally applied for a certain purpose that has not eventuated. The inconsistency with this Direction is justified as it is considered minor in nature.

- *Direction 2.2 Coastal Protection* – the Planning Proposal for Site 1, Site 2, Site 3 and Site 4 is considered consistent with this Direction (see comments provided in relation to the Coastal Management SEPP below).
  - *Direction 2.3 Heritage Conservation* – the planning proposal for Site 1, Site 2, Site 3 and Site 4 is considered consistent as there are no known items of environmental heritage on the site. Council has identified there is potential for items of archaeological significance to be located on the sites. This would be addressed if/when a development is proposed on each of the sites.
  - *Direction 3.1 Residential Zones* – the planning proposal for Site 5 is consistent with the Direction. The site is connected to town water and sewer and the land has capacity for further residential development.
  - *Direction 3.4 Integrating Land Use and Transport* – the planning proposal for Site 5 is consistent with this Direction. The site is located on the edge of an existing village with good access to transport and services.
  - *Direction 4.1 Acid Sulfate Soils* –
    - The planning proposal for Site 1 is considered consistent with this Direction as the proposed amendment does not affect land identified as having acid sulfate soils.
    - The planning proposal for Site 2 is considered inconsistent with this Direction as the proposed amendment affects land identified as having acid sulfate soils. Council has advised that the planning proposal would not increase the likely disturbance of these soils as the masterplan for the site identifies the areas affected by acid sulfate soils to be used as communal open space.
- Therefore, given the scale of the proposal on the affected land and the proposed future use as part of the masterplan, the proposal for Site 2 is considered of minor significance and therefore justifiably inconsistent with the Direction.



- The planning proposal for Site 3 is considered inconsistent with this Direction as the proposed amendment affects land identified as being mapped Class 3 acid sulfate soils and Council has not considered an acid sulfate soils study assessing the appropriateness of the change of land use, as required by the Direction. It is likely that any future expansion of the existing business could minimise impact on potential Class 3 land. Therefore, it is agreed that the proposal is considered of minor significance and Site 3 is permitted to be inconsistent with the Direction.



- The planning proposal for Site 4 is considered inconsistent with this Direction as the proposed amendment affects land identified as being mapped Class 3 acid sulfate soils and Council has not considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils, as required by the Direction. The proposed land use changes will provide greater protection to the Class 3 lands, therefore, it is agreed that the proposal is considered of minor significance and Site 4 is permitted to be inconsistent with the Direction.

● *Direction 4.4 Planning for Bushfire Protection* – the planning proposal is mapped as containing:

- Site 2 - bushfire vegetation within Category 1, 2 and 3
- Site 3 - bushfire vegetation Category 1 and vegetation buffer
- Site 4 - bushfire vegetation within Category 1, 2 and vegetation buffer
- Site 5 - bushfire vegetation within Category 1 and vegetation buffer

Consultation with the NSW Rural Fire Service is required Direction prior to community consultation.

● *Direction 5.10 Implementation of Regional Plans* – the planning proposal for Sites 1-5 is considered consistent with this Direction (see comments provided in relation to the South East and Tablelands Regional Plan below).

### State environmental planning policies

The Coastal Management SEPP applies to the proposed amendment for Site 1, Site 2, Site 3 and Site 4 as the lands are mapped as Coastal Environment Areas.

The development controls in the SEPP for these areas identify the need to minimise impacts on the environment. The proposed amendment is consistent with the requirements of the SEPP.

Site 1 and Site 2 do not contain any wetlands and therefore this part of the Coastal Management SEPP does not apply. Site 1 is located within 400-500m of existing wetlands that form part of the Cuttagee Lake estuary system, however the SEPP only applies to land within 100m of a coastal wetland. Site 2 is located within approximately 400m of existing wetlands that form part of the Pambula Lake estuary system, however the SEPP only applies to land within 100m of a coastal wetland.



Site 3 does not contain any wetlands although a large part of the current and proposed E2 zoned part of the site is identified as within a “proximity area for coastal wetlands”. As such, any future development application that affects such land would be required to be consistent with the SEPP.

Most of Site 4 is covered by coastal wetlands and the proximity area to coastal wetlands and therefore the Coastal Management SEPP does apply.

The proposal to limit development on the site to the existing cleared area away from the coastal wetlands is supported and is appropriate given the significance of the wetlands and potential for water quality impacts in this area.

The SEPP 44 Koala Habitat Protection does not apply to the proposed amendment for Site 1 and Site 2 as the site does not contain any core koala habitat.

SEPP 62 Sustainable Aquaculture applies as Site 2 is located near oyster lease areas within Pambula Lake. Council advised the potential impact of the proposed zone change would be minimal as the subject land is already cleared and used as open space. The existing riparian vegetation is proposed to be retained within the E2 buffer zone.

Council advised that any future development application for the 7 cabins (and the camping ground) would need to address the soil and water management and effluent disposal systems for this scale of development.

SEPP 62 Sustainable Aquaculture also applies to Site 4 as it is located near oyster lease areas within Merimbula Lake. Council advised the potential impact of the proposed zone change would be minimal as the wetland adjoining the Lake will be protected from development and any future dwelling will be set well back from the Lake, enabling environmental impacts to be adequately managed.

Council’s assessment is considered adequate and the proposals for Site 2 and Site 4 are not inconsistent with the SEPP. However, it is recommended that Council to consult with the NSW Department of Primary Industries – Fisheries.

## SITE-SPECIFIC ASSESSMENT

### Social

Council has identified that the planning proposal for Site 1 allows for a more appropriate location for a future dwelling house to be located on the land, that the residential use of the land will provide for the ongoing maintenance and management of the site and it will address the need for housing opportunities in the Shire.





Council has identified that the proposal for Site 2 provides for the future growth and expansion of Jigamy Farm.

Council has identified that the planning proposal for Site 3 allows for a slight expansion of the existing B4 zone without undermining the environmental values and protections on the site. This provides positive social outcomes for the local community.

Council has identified that the planning proposal for Site 4 allows for an appropriate location for a future dwelling house.

There are not considered to be any positive or negative social impacts from the proposal for Site 1, Site 3 or Site 4.

Council has identified that the planning proposal for Site 5 allows for a more appropriate development of the site and it will address the need for housing opportunities in the Shire.

### **Environmental**

Site 1 The planning proposal for Site 1 involves a reduction of an existing E2 buffer zone from the edge of Cuttagee Lake. Council has identified that allowing the reduction will reduce future impacts from any proposed dwelling on the site as the reduction in the buffer width will allow a future dwelling to be located on existing cleared land, currently located in the E2 Zone. A E2 zoned buffer is proposed to be retained and meets the requirements of a riparian buffer on the land title.

Without the planning proposal, a future dwelling would need to be located on land that is heavily vegetated, resulting in extensive clearing to meet bushfire requirements.

Site 2 The planning proposal for Site 2 involves the slight reduction of an existing E2 buffer zone from the edge of Pambula Lake. Council has identified that allowing the reduction provides an opportunity for the site's masterplan to be realised and for cabins to be located on existing cleared land, currently located in the E2 Zone. The E2 buffer is proposed to be retained, albeit reduced for part of the foreshore area. The E2 buffer is not proposed to be reduced for area that retains riparian vegetation on the site.

Site 3 The proposal for Site 3 involves the slight reduction of an existing E2 buffer zone from Palestine Creek and the edge of Lake Curalo. The E2 buffer is proposed to be retained, albeit reduced.

Without the planning proposal, the future expansion of the existing business would not be possible. It is proposed that future expansion of the business can be achieved without undermining the site's environmental values and protection.

Site 4 The planning proposal for Site 4 involves the zoning the buffer and coastal wetlands on the site adjoining Merimbula Lake as E2 Environmental Conservation. This is intended to provide greater protection than the current zoning to the sensitive environmental lands as well as continue the ability of the Site to provide for a future dwelling opportunity.

Without the planning proposal, the subject land remains deferred from the BVLEP 2013 and does not have the proposed greater environmental protection for the coastal wetlands.



Site 5 The planning proposal for Site 5 involves the removal of an existing E2 buffer zone from the Narira Creek. Council has identified that allowing the removal of the buffer will not adversely affect the remaining riparian vegetation along the creek. The buffer was applied to manage potential impacts of an industrial zone on the site that did not eventuate.

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## **Economic**

Site 1 There are not considered to be any adverse economic impacts to the proposal for Site 1. Any future dwelling on the site would be required to comply with Council's infrastructure requirements. An electricity easement runs through the property.

Site 2 The proposal for Site 2 affects a small component of the overall camping ground proposed for Jigamy Farm. Any future development of the site would require a development application and a more detailed environmental assessment.

The ability for the Farm to expand its operations in line with the masterplan would provide positive benefits to the local Aboriginal community as well as increasing tourism opportunities in the area.

The positive economic outcome of the planning proposal is to allow the future growth and expansion of a local industry on the site without undermining the environmental values and protections on the site.

Sites 3-5 There are not considered to be any positive or negative economic impacts to these proposals.

## **Community**

Council has proposed consultation with the general community for a period of 28 days. This considered suitable given the nature of the proposed changes.

## **Agencies**

Council has proposed consultation with the Department of Primary Industries (Fisheries), NSW Office of Environment and Heritage, NSW Rural Fire Service and NSW Roads and Maritime Services.

The agencies proposed to be consulted by Council as part of the planning proposal process are considered to be appropriate. Council is required to consult with the NSW Rural Fire Service and the Department of Primary Industries (Fisheries) as part of the Section 9.1 Ministerial Directions. It is also appropriate for the Office of Environment and Heritage to be consulted about the impacts of reducing environmental zones in the specified locations.

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## **TIME FRAME**

Council has identified it will take 12 months to complete the LEP amendment. This timeframe is considered appropriate. There is no urgency to complete this amendment.

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## **LOCAL PLAN-MAKING AUTHORITY**

Council has requested to be the local plan-making authority. This considered appropriate as there are no State or regional issues of concern with this planning proposal.



## CONCLUSION

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The preparation of the planning proposal is supported to proceed with conditions as the proposal involves amendments that are supported, are not considered significant and are relatively minor in their potential impacts. The proposed conditions are standard conditions relating to consultation, authorisation and timeframe.

## RECOMMENDATION

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It is recommended that the delegate of the Secretary:

1. **agree** that any inconsistencies with Section 9.1 Directions 2.1 Environmental Zones and 4.1 Acid Sulfate Soils are minor or justified; and
2. **note** that the consistency with Section 9.1 Directions 1.4 Oyster Aquaculture and 4.4 Planning for Bushfire Protection are unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
  - Department of Primary Industries (Fisheries),
  - NSW Office of Environment and Heritage,
  - NSW Rural Fire Service
3. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority to make this plan.



05/05/2018

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