



IRF23/3040

## Plan finalisation report – PP-2022-1827

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Increase Housing Diversity – Bega Valley LEP 2013  
(Amendment No 43)

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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# 1 Introduction

## 1.1 Overview

### 1.1.1 Name of draft LEP

Bega Valley Local Environmental Plan 2013 (Amendment No. 43).

### 1.1.2 Site description

The plan applies to land zoned RU5 Village Zone, R2 Low Density Residential Zone, R3 Medium Density Zone, MU1 Mixed Use Zone, E1 Local Centre Zone and E2 Commercial Centre Zone of the Bega Valley LEP 2013.

As discussed in the report, areas potentially affected by flooding have been excluded from the plan.

### 1.1.3 Purpose of plan

The purpose of the plan is to implement the Bega Valley Shire Residential Land Strategy 2040 and the Bega Valley Shire Affordable Housing Strategy to increase housing diversity while protecting neighbourhood character.

The intended outcomes of the plan are to:

- Item A. Enable creation smaller 350m<sup>2</sup> lots in areas zoned R2 Low Density Residential that are serviced with reticulated water and sewerage.
- Item B. Reduce the minimum lot size in Candelo, Cobargo, Kalaru and Wolumla villages serviced with reticulated water and sewerage.
- Item C. Streamline the construction and subdivision of multiple dwellings.
- Item D. Enable multi dwelling housing in the R2 Low Density Residential Zone and RU5 Village Zone.
- Item E. Increase the supply of one and two bedroom units.
- Item F. Increase the supply of adaptable housing (i.e housing designed to cater for people of all ages and abilities).
- Item G. Strengthen landscape controls to protect character and increase resilience. The new controls will be supported by amendments to the Bega Valley Shire Development Control Plan.

The table 1 below outlines the proposed controls for the LEP under the exhibited planning proposal.

**Table 1 Description of exhibited planning proposal outcomes and explanation of provisions**

Section of PP Intended Outcomes	Explanation of provisions
Item A <ul style="list-style-type: none"> <li>- Enable creation of a limited number of smaller lots in the R2 Low Density Zone serviced by reticulated water and sewerage supply.</li> <li>- Apply a minimum lot size for secondary dwellings in the R2 Zone</li> </ul>	<ul style="list-style-type: none"> <li>- Enable 40% of new lots to have a minimum lot size of 350m<sup>2</sup> provided they are not battle-axe lots.</li> <li>- Amend clause 4.1A to apply a minimum lot size of 450 m<sup>2</sup> for secondary dwellings.</li> </ul>

Section of PP Intended Outcomes	Explanation of provisions
<p>Item B</p> <p>Amend the Lot Size Map to reduce the minimum lot size in villages serviced by reticulated sewerage</p>	<ol style="list-style-type: none"> <li>1. Candelo, Cobargo, and Wolumla RU5 Zone – Reduce the minimum lot size from 1,000 m<sup>2</sup> to 600m<sup>2</sup></li> <li>2. Wolumla R2 Zone – Reduce the minimum lot size from 650 m<sup>2</sup> to 600 m<sup>2</sup></li> <li>3. Kalaru RU5 Zone – Reduce the minimum lot size from 1,000m<sup>2</sup> to 550 m<sup>2</sup>.</li> </ol>
<p>Item C</p> <p>Streamline simultaneous construction and subdivision for multiple single storey dwelling houses in the R2 and RU5 Zones on smaller lots serviced by reticulated sewerage.</p> <p>Note: Based on clause 4.1C Eurobodalla LEP 2012 and Clause 4.1A in Albury LEP 2010.</p>	<ol style="list-style-type: none"> <li>1. Enable the subdivision of land into 3 or more lots with a minimum lot size of 350m<sup>2</sup> and the erection of only a single storey dwelling house on each of the new proposed lots.</li> <li>2. At least one lot cannot be a battle-axe lot.</li> </ol>
<p>Item D</p> <ol style="list-style-type: none"> <li>1. Permit multi dwelling housing in the R2 and RU5 Zones.</li> <li>2. Amend the Floor Space Ratio in certain serviced villages.</li> <li>3. Apply minimum lot sizes for dual occupancies, secondary dwellings, multi dwelling housing in the R2 and RU5 Zones serviced by reticulated sewerage (See also Figure 1).</li> </ol>	<ol style="list-style-type: none"> <li>1. Amend the land use table for the R2 and RU5 Zones to permit multi dwelling housing with consent.</li> <li>2. Apply Floor Space Ratio controls applying to the RU5 Zone in the serviced villages of Candelo, Cobargo, and Wolumla (0.35:1) and Kalaru (0.5:1).</li> <li>3. Replace clause 4.1A to implement the following minimum lot sizes: <ul style="list-style-type: none"> <li>• Dual Occupancy – 550 m<sup>2</sup> minimum lot size</li> <li>• Secondary dwellings – 450 m<sup>2</sup> minimum lot size</li> <li>• Multi dwelling housing R2 Zone – 900 m<sup>2</sup> minimum lot size</li> <li>• Multi dwelling housing RU5 Zone – 1,000 m<sup>2</sup> minimum lot size</li> </ul> </li> </ol>
<p>Item E</p> <p>Increase the supply of one and two bedroom units in zones that permit residential flat buildings, multi dwelling housing and shop top housing i.e. B2 (now E1 and E2), B4 (now MU1), R3, R2 and RU5 Zones).</p> <p>Note: Based on clause 6.13 of Leichardt LEP 2013.</p>	<ol style="list-style-type: none"> <li>1. <u>3 and 4 dwelling development</u> – Minimum 1 dwelling to be self-contained studio dwelling/one bedroom dwelling or two bedroom dwelling with minimum 75m<sup>2</sup> floor area.</li> <li>2. <u>5 or more dwelling development</u>. Minimum 20% of dwellings to be self-contained studio dwelling/one bedroom dwelling or two bedroom dwelling with maximum 55m<sup>2</sup> floor area and bathroom. Minimum 20% to be two bedroom dwellings with maximum 75m<sup>2</sup> floor area and bathroom.</li> <li>3. <u>New clause to be referenced in clause 4.6</u> so above development standards cannot be varied.</li> </ol>

Section of PP Intended Outcomes	Explanation of provisions
<p>Item F</p> <p>Increase supply of adaptable housing in R2, R3, B2 (now E1 and E2), B4 (now MU1) and RU5 Zones. Note. Based on clause 7.17 of Great Lakes LEP 2014.</p>	<p>Insert a new provision to ensure a proportion (see below) of new residential in central locations is consistent with the Liveable Housing Australian Design Guidelines (i.e. housing designed to cater for people of all ages and abilities).</p> <p><u>B2 Zone (now E1 and E2)</u> - Residential Accommodation – Ratio of 1:1</p> <p><u>R2, R3, B2 (now E1 and E2), B4 (now MU1) and RU5 Zone</u> – 4 or more dwellings - Shop top housing, residential flat building, multi dwelling housing – Ratio of 1:4</p>
<p>Item G</p> <p>Strengthen landscaped area controls in the R2, R3 and RU5 Zones involving the erection of a building. Note: Based on clause 6.6 of Mosman LEP 2012, clause 6.9 of Hunters Hill LEP 2012 and SEPP (Housing) 2021.</p>	<p><b>Council may refuse to grant consent for non-compliance with the following landscaping standards.</b></p> <p><u>Minimum landscaped area in R2 Zone</u></p> <ul style="list-style-type: none"> <li>- 35% of site area if site area is less than 900 m<sup>2</sup>.</li> <li>- 40% of site area if site area is at least 900m<sup>2</sup> and less than 1,500 m<sup>2</sup>.</li> <li>- 45% of site area if site area is at least 1,500 m<sup>2</sup>.</li> <li>- 65% of site area within front setback if one dwelling per lot (can be reduced for building articulation or to comply with Liveable Housing Australian Design Guidelines)</li> </ul> <p><u>Minimum landscaped area in R3 Zone</u></p> <ul style="list-style-type: none"> <li>- 35% of site area</li> <li>- 65% of site area within front setback if one dwelling per lot (can be reduced for building articulation or to comply with Liveable Housing Australian Design Guidelines)</li> </ul> <p><u>Minimum landscaped area in RU5 Zone</u></p> <ul style="list-style-type: none"> <li>- 40% if site area is less than 1,500 m<sup>2</sup> - 45% if site is at least 1,500 m<sup>2</sup>.</li> </ul> <p><u>Deep Soil Zone Development in R2 and R3 Zones</u></p> <ul style="list-style-type: none"> <li>- Deep Soil Zone 15% of site area, minimum 4.5m and 50% of DSZ at rear of site.</li> <li>- Deep soil defined as “landscaped area with no buildings or structures above or below the ground.</li> </ul>

### 1.1.4 State electorate and local member

The site falls within the Bega state electorate. Michael Holland MP is the State Member. The site falls within the Eden Monaro federal electorate. The Hon. Kristy McBain MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 2 Gateway determination and alterations

The Gateway determination issued on 8/06/2022 determined that the proposal should proceed subject to conditions. There is an outstanding objection to the planning proposal from the Biodiversity and Conservation Division of DEECCW regarding an inconsistency with section 9.1 Direction 4.1 Flooding and therefore Council has not met condition 4 of the Gateway determination.

Condition 5 of the Gateway determination also required that the plan be finalised by 8 June 2023 and this timeframe has not been met.

There were also delays in obtaining independent advice from consultant's Rhelm to address the Biodiversity and Conservation Division's objection on flooding, and the preparation of a complex draft instrument that satisfactorily implemented the intent of the proposal.

## 3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 22/07/2022 to 21/08/2022, as required by section 29 of the *Local Government Act 1993*.

### 3.1 Submissions during exhibition

#### 3.1.1 Submissions raising issues about the proposal.

There were eight public submissions received during the exhibition period and there were no objections to the proposed changes outlined in the exhibited planning proposal (Source: Council report 14 December 2023).

The Council report on the exhibition of the planning proposal states that there were a wide range of issues raised in the public submissions including:

- Supply of affordable and adaptable housing.
- Building height limits (Note: No change to HOB controls under the planning proposal).
- Flood space ratios.
- Minimum lot sizes.
- Residential development in the local centre zone.
- Residential development in the rural zones (Note: no changes proposed in planning proposal to provisions in rural zones).
- Requirements for carports and garages (Note: no changes proposed in planning proposal to provisions for garages and carports. DCP Issue).
- Infrastructure and public and private open space.
- Landscaped areas.
- Mixed use development.

- Building Setbacks (Note: no changes proposed in planning proposal on building setbacks. DCP issue).
- Subdivision design.
- Waste management (Note: no changes proposed in planning proposal on waste management. DCP issue).

The Council report 14 December 2023 states that following the public exhibition “*several minor changes to the proposed amendments to BVLEP 2013 contained in the planning proposal are recommended regarding landscaping, floor space ratios, minimum lot sizes and supply of affordable and adaptable housing dwellings.*”

These changes are outlined in section 3.3 below.

## 3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 4 who have provided the following feedback.

**Table 2 Advice from public authorities**

Agency	Advice raised	Council response in Council Report 14 December 2023
Biodiversity and Conservation Division submission on planning proposal ( <b>Attachment E1</b> )	<p><u><i>BCD letter 2<sup>nd</sup> November 2022</i></u></p> <p>BCD formally objected to the planning proposal planning because it does not meet the Ministerial directions.</p> <p><i>“This planning proposal remains inconsistent with section 9.1 Ministerial Planning Directions 4.1 (Flood) and 4.2 (Coastal Management), with significant unaddressed issues relating to risks to public safety, property and infrastructure damages, impacts on emergency management services and coastal wetlands. We also consider that the planning proposal is inconsistent with 4.2 (Coastal Management) Clause 1a and c, as aspects of the planning proposal are not consistent with the objects of the Coastal Management Act (2016), nor the intent of the Coastal Design Guidelines.”</i></p>	<ul style="list-style-type: none"> <li>- <i>The “Planning proposal would not result in land being rezoned for residential purposes.”</i></li> <li>- <i>Consideration of flood impact and coastal risk is routinely addressed in the development application process through consideration of BVLEP 2013 clauses 5.21 ‘Flood Planning’ and 6.4 ‘Coastal Risk Planning’ as well as the provisions of BVDCP 2013 which adequately mitigates the risks posed by these hazards.</i></li> <li>- <i>Applicants are required to provide a Flood Assessment Report or Coastal Risk Assessment where the risk from flooding or coastal processes require further consideration.</i></li> </ul>



Agency	Advice raised	Council response in Council Report 14 December 2023
Biodiversity and Conservation Division continued		<ul style="list-style-type: none"> <li>- <i>It is noted that consideration of flooding during the development assessment process will be strengthened shortly when the NSW Government inserts clause 5.22 'Special Flood Considerations' into BVLEP 2013, which Council has previously resolved to adopt, and Council adopts a flooding and sea level rise policy and revised planning controls in BVDCP 2013 that are currently being developed by a specialist consultant.</i></li> </ul>

Agency	Advice raised	Council response in Council Report 14 December 2023
<p>NSW Rural Fire Service (Attachment E2)</p>	<p><u>NSWRFS comments 7 December 2022</u></p> <p>The NSW Rural Fire Service did not object to the proposal in its submission to Council dated 7 December 2022. It requested Council prepare a Strategic Bushfire Study due to the scope and the potential increase in housing in bushfire prone areas.</p> <p><u>Extract - NSWRFS comments to DPHI 12 March 2024</u></p> <p>“In conclusion, the NSW RFS advises DPHI that our position is:</p> <ul style="list-style-type: none"> <li>-when the NSW RFS requests a Strategic Bush Fire Study be prepared as part of a planning proposal, this should be undertaken as part of the supporting documentation and be considered satisfactory, in order to determine whether a planning proposal is consistent with Direction 4.3.</li> <li>- planning proposal PP-2022-1827 for Housing Diversity and Affordability for Bega Valley Shire Council has not demonstrated consistency with Ministerial Direction 4.3 ‘Planning for Bush Fire Protection’ and as such the NSW RFS is not currently in a position to support the planning proposal.”</li> </ul>	<p><u>Extract - NSWRFS Comments to Council 7 December 2022.</u></p> <p><i>“Consideration of bushfire risk is routinely addressed in the Development Application and complying development assessment process through consideration of compliance with Planning for Bushfire Protection 2019, which adequately mitigates the risks posed by this hazard. All applications for new housing are currently considered by an accredited Bushfire Planning and Design (BPAD) consultant or the NSW Rural Fire Service. These existing processes will ensure an acceptable level of bushfire risk does not result from any development because of the planning proposal.”</i></p> <p><u>Draft Strategic Bushfire Study</u></p> <p>Council prepared a draft Strategic Bushfire Study that was provided to NSWRFS in February 2024 for comment. The strategy was prepared in association with the Planning Proposal to Increase Housing Diversity and to consider the Planning Proposal against the strategic principles detailed in Chapter 4 of Planning for Bushfire Protection 2019 (PBP).</p> <p>The Service advised the Department on 12 March that “A preliminary review of the document indicates that further detailed work and amendments to the planning proposal would be required by the NSW RFS to be satisfied that the planning proposal is consistent with Direction 4.3.”</p>

## Comment

Council has not resolved an outstanding objection from the Biodiversity and Conservation Division regarding its concerns with increasing residential densities on flood prone land or land affected by coastal hazards. It is for that reason that the Council is unable to use its delegation for local plan-making. The Department has therefore focused on addressing concerns raised by Biodiversity and Conservation in Division in its objection to the planning proposal.

Council has produced a draft Strategic Bushfire Study in response to the NSWRFs submission and has initiated consultation with the Service on the study. All development applications will be required to be consistent with Planning for Bushfire Protection 2019.

## 3.3 Rhelm Report on Flooding

In response to the objection to the planning proposal by Biodiversity and Conservation Division the Department obtained independent advice on flooding issues from consultants Rhelm in July 2023 (**Attachment Rhelm Report**).

In summary Rhelm recommended that 10 locations listed below (extract from Rhelm Report) be omitted from the plan because they have no flood studies or outdated studies and therefore do not have adequate flood information on flood prone land to be able to respond to inconsistencies with Direction 4.3 Flooding.

### Extract from Rhelm Report

The following 10 locations in the planning proposal have either not been studied or have outdated studies and as such do not have PMF mapping available:

- Beauty Point (likely to be affected by flooding of Wallaga Lake),
- Bemboka (likely to be affected by flooding from the Bemboka River and Columbo Creek),
- Bermagui (affected by flooding from the Bermagui River, study outdated, the use of a proxy of a 3 m AHD level for the PMF is not considered to representative of a PMF level),
- Cobargo (likely to be affected by flooding from Narira Creek),
- Fairhaven (adjacent to Meads Bay, a Bay of Wallaga Lake),
- Quaama (likely to be affected by flooding from Katchencarry Creek/Dry River),
- Tura Beach (an area likely to be affected by overland flow from local catchments),
- Wallaga Lake Heights (likely to be affected by Wallaga lake),
- Wolumla (likely to be affected by flooding from Newlands Creek/Frogs Hollow Creek),
- Wonboyn Lake (likely to be affected by flooding from Wombyn River/Wombyn Lake).

Rhelm considers that R2, R3, RU5 and B2 land within these 10 locations should not be rezoned at this time or have any new Principal Development Standards clauses applied (such as the Clause 4.1A amendment to allow for certain dwellings on 350 m<sup>2</sup> lots) until some form of flood analysis has been undertaken to provide information on the level of flood affectation (for example a preliminary analysis of the PMF extent of riverine flooding). It is recognised that an analysis of this nature may have a timeframe beyond that of the planning proposal, so in order to finalise the planning proposal at this stage, Rhelm recommends that DPE exclude all R2, R3, RU5 and B2 land within these 10 locations from the planning proposal.

Rhelm has indicated that for the remaining 16 locations the intent of the planning proposal can proceed. However, 13 of these locations include flood prone land and therefore Rhelm have recommended that the proposed provisions applying to these locations requires amendment to only include certain areas that are not affected floodway areas and hazardous flood prone land.

## 3.4 Post-exhibition changes

### 3.4.1 Council resolved changes.

At Council's Ordinary Meeting on 14/12/2022, Council resolved to proceed with an amended planning proposal (Attachment A) with the following post-exhibition changes to items in the planning proposal:

#### **Item C Streamline construction and subdivision of multiple dwellings**

- Setting an upper limit of six lots that the concurrent construction and subdivision of multiple dwellings provisions apply.

#### **Item D Enable multi dwelling housing in low density residential areas.**

- Amending the proposed R2 Low Density Residential zone objective in relation to diverse housing.
- Excluding lots within Cobargo's Princes Highway 'high street' from the proposed 0.35 Floor Space Ratio control.
- Including an aim to facilitate housing diversity, including affordable and adaptable dwellings.

#### **Item E Increasing supply of one and two bedroom units.**

- Permitting consideration of variations to the supply of one and two bedroom units. Amend PP to remove proposed changes to clause 4.6 that would have prevented variation of the development standard.
- Insert a new Aim of the Plan under clause 1.2 to facilitate housing diversity.

#### **Item F Increase supply of adaptable housing.**

- Reducing the requirement for all residential development in the B2 Local Centre zone (now called E1 Local Centre Zone) to be adaptable housing at 1:1 ratio by changing the ratio to 1 in 4 dwellings for dwellings above ground level. Proposed 1:1 ratio will still apply to residential accommodation at ground level.

#### **Item G Strengthen landscaped area controls.**

- Removing the provisions for a sliding scale of minimum landscaped area in the R2 Low Density Residential zone. This provision is replaced by including the R2 zone along with the R3 Zone to require 35% landscaped area for development in both the R3 zone and the R2 Zone.
- Removing provisions for deep soil zones in landscaping.
- Removing the requirement for 65% landscaping of front setbacks.

**Create a new Item H to enable ‘co-living’ in the R2 Zone.**

Amend the R2 Land Use Table to permitting co-living housing with consent.

Note: Co-living is defined as

**co-living housing** means a building or place that—

(a) has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and

(b) provides occupants with a principal place of residence for at least 3 months, and

(c) has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day,

but does not include backpackers’ accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

Comment

Councils post exhibition amendments, except for Item H, do not alter the intent of the planning proposal and are minor amendments to the planning proposal and the Department does not object to the changes or consider that further consultation is required.

However, item H introduces a new land use to the LEP and consultation should be required. The Department is therefore recommending that Item H be excluded from the draft LEP.

### 3.4.2 The Department’s recommended changes

Following the receipt of the revised planning proposal from Council, the Department has made further changes to the proposal (Table 3):

**Table 3 Departments recommended changes to the planning proposal.**

Section of PP Intended Outcomes	DPHI Proposed changes
<p><b>Item A</b></p> <ol style="list-style-type: none"> <li>1. Enable creation of a limited number of smaller lots in the R2 Low Density Zone serviced by reticulated water and sewerage supply.</li> <li>2. Apply a 450 m<sup>2</sup> minimum lot size for secondary dwellings in the R2 Zone.</li> </ol>	<ol style="list-style-type: none"> <li>1. Limit the application of this proposed provision to exclude the following locations in Zone R2 in response to flooding issues raised by BCD and the recommendations of independent flood consultants. The following locations are proposed to be excluded from the plan because of inadequate flood studies to identify flood prone land: <ul style="list-style-type: none"> <li>- Bermagui</li> <li>- Wallaga Lake (covers Beauty Point, Fairhaven and Wallaga Lake Heights)</li> <li>- Tura Beach</li> <li>- Wolumla</li> </ul> </li> </ol>

Section of PP Intended Outcomes	DPHI Proposed changes
<p><b>Item B</b></p> <p>Amend the Lot Size Map to reduce the minimum lot size in villages serviced by reticulated sewerage, i.e Candelo, Cobargo, Kalaru and Wolumla.</p> <ol style="list-style-type: none"> <li>1. Candelo, Cobargo, Wolumla RU5 Zone – Reduce the minimum lot size from 1,000 m<sup>2</sup> to 600m<sup>2</sup></li> <li>2. Wolumla R2 Zone – Reduce the minimum lot size from 650 m<sup>2</sup> to 600 m<sup>2</sup></li> <li>3. Kalaru RU5 Zone – Reduce the minimum lot size from 1,000m<sup>2</sup> to 550 m<sup>2</sup>.</li> </ol>	<p>Limit the application of this proposed provision to two villages, <b>Candelo and Kalaru</b>, with a requirement that the creation of smaller house lots cannot be undertaken on land in these two villages that is flood prone.</p> <p>This change is in response to flooding issues raised by BCD and the recommendations of independent flood consultants which recommended Cobargo and Wolumla be removed because of inadequate flood studies to identify flood prone land. Candelo and Kalaru have adequate flood studies that identify flood prone land.</p>
<p><b>Item C (Amended by Council)</b></p> <p>Streamline simultaneous construction and subdivision for multiple single storey dwelling houses in the R2 and RU5 Zones on 3-6 smaller lots (min 350m<sup>2</sup>) (integrated housing) on land that is serviced by reticulated sewerage.</p>	<p>Limit the application of this proposed provision to localities identified in Item A and Item B and include a requirement that integrated housing cannot be undertaken on land that is flood prone or affected by coastal hazard.</p>
<p><b>Item D (Amended by Council)</b></p> <ol style="list-style-type: none"> <li>1. Amend the land use table for the R2 and RU5 Zones to permit multi dwelling housing with consent.</li> <li>2. Apply Floor Space Ratio controls applying to the RU5 Zone in the serviced villages of Candelo, Cobargo, and Wolumla (0.35:1) and Kalaru (0.5:1).</li> <li>3. Replace clause 4.1A to implement the following minimum lot sizes: <ul style="list-style-type: none"> <li>- Dual Occupancy – 550 m<sup>2</sup> minimum lot size</li> <li>- Secondary dwellings – 450 m<sup>2</sup> minimum lot size</li> <li>- Multi dwelling housing R2 Zone – 900 m<sup>2</sup> minimum lot size</li> <li>- Multi dwelling housing RU5 Zone – 1,000 m<sup>2</sup> minimum lot size</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Amend the LUT to permit multi dwelling housing in the R2 and RU5 Zone subject to the following changes: <ul style="list-style-type: none"> <li>- Insert a new clause to limit the permissibility of multi dwelling housing by excluding the five localities in the R2 Zone listed under Item A and only including the two villages in Zone RU5 listed under Item B consistent with flood advice from Rhelm (No flood study undertaken or inadequate flood study).</li> <li>- Include a requirement that development for multi dwelling housing cannot be undertaken on land that is flood prone or affected by coastal hazard.</li> </ul> </li> </ol>
<p><b>Item E (Amended by Council)</b></p> <ol style="list-style-type: none"> <li>1. Increase supply of one and two bedroom units in zones that permit residential flat buildings, multi dwelling housing and shop top housing (i.e. B2 (now E1 and E2 Zones), B4 (now MU1), R3, R2 and RU5 Zones).</li> <li>2. Insert a new Aim of the Plan under subclause 1.2 (2) (k) – facilitate housing diversity</li> </ol>	<ol style="list-style-type: none"> <li>1. No change to Council adopted PP that seeks increase the supply of one and two bedroom units for development of residential flat buildings, multi -dwelling housing or shop top housing.</li> <li>2. The proposed new Aim is similar to the existing Aim (f). Amend existing subclause 1.2 (2) (f) to include an Aim for “affordable and adaptive housing”.</li> </ol>

Section of PP Intended Outcomes	DPHI Proposed changes
<p><b>Item F (Amended by Council)</b></p> <p>Increase supply of adaptable housing by inserting a new provision to ensure a proportion of new residential development is consistent with the Liveable Housing Australian Design Guidelines (i.e housing designed to cater for people of all ages and abilities).</p> <p><u>E1 Zone</u></p> <ul style="list-style-type: none"> <li>- Residential Accommodation at ground level– Ratio of 1:1</li> <li>- Residential Accommodation above ground level (4 or more dwellings) – Ratio of 1:4</li> </ul> <p><u>R2, R3, MU1 and RU5 Zone</u></p> <ul style="list-style-type: none"> <li>– Shop top housing, residential flat building, multi dwelling housing (4 or more dwellings) – Ratio of 1:4</li> </ul>	<p>No change to Council's proposed policy for increasing the supply of adaptable housing.</p> <p><b>Note:</b> The planning proposal seeks to apply Silver Standard of the Liveable Housing Australian Guidelines to 100% of residential accommodation at ground level in the E1 and E2 Zones. It also seeks to require 25% for 4 or more dwellings in a residential flat building, shop top housing and multi dwelling housing must meet the Silver Standard of the Liveable Housing Australian Guidelines.</p> <p>However, under the definition of multi dwelling housing part of a proposed dwelling must be at ground level (see definition below). Therefore, as a result of this definition 100% of dwellings in a multi dwelling development in an E1 and E2 Zone must meet the Silver Standard of the Liveable Housing Australian Guidelines because all dwellings have a ground level. It is for this reason the draft plan does not include a requirement for 25% of dwelling for 4 or more dwellings in a multi dwelling housing above ground level must meet the Silver Standard of the Liveable Housing Australian Guidelines.</p> <p><i>multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.</i></p>
<p><b>Item G (Amended by Council)</b></p> <p>Strengthen landscaped area controls in the R2, R3 and RU5 Zones involving the erection of a building.</p> <p>Development consent must not be granted to development unless it meets the following landscaping requirements.</p> <p><u>Minimum landscaped area in R2 and R3 Zone</u></p> <ul style="list-style-type: none"> <li>- 35% of site area</li> </ul> <p><u>Minimum landscaped area in RU5 Zone</u></p> <ul style="list-style-type: none"> <li>- 40% if site area is less than 1,500 m<sup>2</sup>.</li> <li>- 45% if site is at least 1,500 m<sup>2</sup>.</li> </ul>	<p>No change. Implement Council's new policy and provisions on landscaping.</p>

Section of PP Intended Outcomes	DPHI Proposed changes
<p><b>New Item H (Inserted by Council post exhibition)</b> Permit 'co-living housing' in the R2 Zone.</p>	<p><b>Not included in draft plan.</b> This post exhibition item was not part of the original exhibited planning proposal and has not had any community consultation. This is a significant post exhibition change to the plan and it is recommended that it not be included in this plan.</p>



### 3.4.3 Justification for DPHI’s post-exhibition changes

The Department supports the post-exhibition changes as detailed above which are justified and do not require re-exhibition.

It is considered that:

- The Departments post exhibition changes are a reasonable response to an objection by Biodiversity and Conservation Division regarding flooding and coastal hazards (**Attachment E1**) and the recommendations of independent consultant. The changes by DPHI seek to exclude certain areas from the plan in response to flooding and coastal management concerns raised by BCD and advice received from independent flood consultant. The changes do not alter the intent of the planning proposal in areas that have not been excluded from the plan.

## 4 Department’s assessment

The proposal has been subject to detailed review and assessment through the Department’s Gateway determination and subsequent planning proposal processes. It has also been subject to a public consultation.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, South East and Tablelands Regional Plan and Council’s Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

The following table identifies whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

**Table 1 Summary of strategic assessment**

	Consistent with Gateway determination report Assessment	
South East and Tablelands Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

	Consistent with Gateway determination report Assessment
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No. Refer to section 4.1 for further detail. <p>Direction 4.1 Flooding – The recommended changes to the plan by DPHI will address an objection by Biodiversity and Conservation on flooding issues and ensures the plan is consistent with this Direction.</p> <p>Direction 4.2 Coastal Management - The recommended changes to the plan by DPHI will address issues raised by Biodiversity and Conservation and ensures the plan is consistent with this Direction.</p> <p>Direction 4.3 Planning for Bushfire Protection – It is recommended that the Secretary’s delegate approve any inconsistency with Direction 4.3 because Council has consulted with the NSWRFSS and has prepared a draft strategic bushfire study in response to the service’s comments. All development applications will still be required be consistent with Planning for Bushfire Protection 2019. It is also noted that excluding areas due to flood risk has resulted in a reduction of the areas affected by the proposal and therefore bushfire risk.</p>
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1

## 4.1 Detailed assessment

### Objection by Biodiversity and Conservation - Flooding

The Biodiversity and Conservation Division (BCD) formally objected to the proposal in correspondence to Council dated 2 November 2022 (**Attachment E1**) because the exhibited planning proposal is inconsistent with the section 9.1 Ministerial Plannings Direction 4.1 Flooding and 4.2 Coastal Management with significant unaddressed issues relating to risks to public safety (see BCD’s full response in Table 2).

At its meeting on 14 December 2022 Council resolved to endorse the planning proposal with post exhibition changes (see Section 3.4.1) and requested the Minister approve the plan.

The Council endorsed planning proposal (as amended) does not resolve the objection from BCD and Council is unable to use delegations for plan making to approve the plan. The plan was formally sent to the Department on 21 December 2022 to finalise.

In response to the NSW Flood Inquiry, the Urban Sustainability Unit of the Department developed criteria for Tier 1, Tier 2, and Tier 3 planning proposals to determine if a proposal that included flood prone land should, or should not, be referred to an independent consultant to review the potential flood impacts and to provide recommendations on the proposal.

Planning proposal PP-2022-1827 met the criteria for a Tier 2 planning proposal as the proposal included flood prone land that is intended to be used for residential purposes and the Biodiversity and Conservation Division had submitted a formal objection to the proposal. Tier 2 proposals could proceed to determination subject being referred to an independent flood consultant for further advice on flood risk and recommendations on mitigation measures.

### Independent Flood Advice

An independent report prepared by consultant Rhelm (**Attachment Rhelm**) on the planning proposal, received by the DPE Regional Office in July 2023, provided advice and recommendations to the Department to address the objection from Biodiversity and Conservation.

The consultant considered a number of relevant flood studies and floodplain risk management studies in Bega Valley. The report conclusions are outlined in section 3.3 above.

The flood consultant's report and DPE's proposed changes to the plan based on the report were provided to BCD on the 10 July 2023. BCD advised the Department by email dated 9 August 2023 (**Attachment E1**) that:

- the assessment by Rhelm "*is largely consistent with our advice however, Rhelm has taken a more conservative approach.*"
- BCD generally concur with the Rhelm report except for the E2 zoned land in Merimbula. Based on high hazard overland flow and climate change information documented in Councils adopted Merimbula Lake and Back Lake FRMS&P (2021) BCD concluded that there is significant flood impact on parts of the E2 zoned land in Merimbula and have recommended the decision-making authority consider excluding intensification of residential development in the Merimbula B2 high hazard locations.
- BCD also indicated that "*On coastal risk management matters, we note no assessment has been completed for consistency with section 9.1 Direction 4.2- Coastal Management; Coastal Management Act 2016; Resilience and Hazards SEPP 2021*".

The Department is recommending post exhibition changes to the exhibited planning proposal as shown in Table 3. In summary these changes will exclude locations identified by Rhelm that have inadequate flood information to identify flood prone land. These changes address flooding concerns raised by BCD (**Attachment F**) by excluding proposed increases housing density and diversity on flood prone land in Zone R2 Low Density Residential and Zone RU5 Village.

#### Issue raised by Biodiversity and Conservation Division - Coastal Management

Biodiversity and Conservation Division indicated that the proposal was inconsistent with Direction 4.2 Coastal Management because of land-use intensification on land within areas subject to coastal hazards and within coastal wetland proximity areas.

The plan includes provisions to exclude higher housing density on land likely to be affected by a coastal hazard. This provision satisfies Biodiversity and Conservation Division's concerns with a potential inconsistency with Direction 4.2.

#### NSW Rural Fire Service Submissions

The RFS clarified on 12 May 2024 that it does not support the proposal unless a strategic bushfire strategy has been prepared by Council. The services response also indicates that it is inconsistent with Direction 4.3 Planning for Bushfire Protection. It also acknowledged that Council has provided the NSW RFS with a copy of a draft strategic bushfire strategy for review and comment.

Although a strategic bushfire strategy has not been finalised by Council the Department is recommending that the plan proceed for the following reasons:

- The initial submission from the NSW Rural Fire Service in December 2022 did not object or oppose the plan and this was noted in the Council report dated 14 December 2022.
- Council has considered the submission from NSW RFS and has prepared a draft strategic bushfire study and has sent it to the service for comment.
- The NSW RFS is considering the draft strategic bushfire assessment prepared by Council in response to the NSW RFS submission. The NSW RFS and Council can work outside of the PP process to implement this study.
- Council has considered Direction 4.3 Planning for Bushfire Protection and has, in accordance with the Direction, consulted with the service and has had regard to Planning for Bushfire Protection 2019.
- Many areas have been removed from the original proposal which now applies to much less land. The PP also only applies to land that is serviced by a reticulated water supply.

- The proposal does not increase the footprint of any settlement. It applies only to existing zoned residential serviced land.
- Bushfire hazard and risk assessment and, where required, the implementation of appropriate mitigation measures will still be required for any development that increases housing density in accordance with the requirements of Planning for Bushfire Protection 2019.
- The proposal that seeks to increase housing diversity and affordability in Bega Valley is long overdue and should now be finalised as soon as possible.

## 5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

**Table 2 Consultation following the Department’s assessment.**

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	5 FSR maps have been prepared by the Department’s ePlanning team and meet the technical requirements. A map cover sheet is provided at <b>Attachment MCS</b> .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council ( <b>Attachment D</b> )	<p>Council was initially consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> on 11 March 2024 (<b>Attachment C</b>).</p> <p>Council provided comments on 18 March 2024 on version do5 and again on the 20/05/2024 on version do10 (<b>Attachment D</b>).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Biodiversity and Conservation ( <b>Attachment F</b> )	Biodiversity and Conservation were consulted on the terms of the draft instrument and provided a response dated 5 April 2024 ( <b>Attachment F</b> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 7/06/2024 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at <b>Attachment PC</b> and a Local Environmental Plan <b>Attachment LEP</b> .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

## 6 Recommendation

It is recommended that:

- The Secretary’s delegate approves any inconsistency with Direction 4.3 Planning for Bushfire Protection for the following reasons:
  - Council has prepared a draft strategic bushfire study (Planning for Bushfire Protection 2019) in response to comments made by the NSW Rural Fire Service. The proposal is long overdue and therefore it is recommended that that Council be advised to continue to work with NSW Rural Fire Service on completing the strategic bushfire study after the finalisation of Amendment 43.
- The Minister’s delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:
  - The draft LEP has strategic merit being consistent with the Bega Valley Residential Strategy. It seeks to increase the variety of medium density housing to address housing supply and affordability, increase the number of adaptable dwellings for people with a disability and strengthen landscaping controls applied to development to protect character, improve amenity of the streetscape, and improve resilience by mitigating the impacts of urban heat during extreme hot weather.

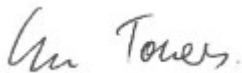
- It is consistent with NSW Government Policy under the South East and Tablelands Regional Plan and draft regional plan to improve community resilience to climate change and increase housing diversity and affordability in regional areas.
- Issues with flood prone land and coastal hazards raised during consultation with Biodiversity and Conservation Division have been addressed by amendments to the plan, including amendments recommended by the Department's independent flood consultant.
- Council has prepared a draft strategic bushfire study (Planning for Bushfire Protection 2019) in response to comments made by the NSW Rural Fire Service. The proposal is long overdue and therefore it is recommended that Council be advised to continue to work with NSW Rural Fire Service on completing the strategic bushfire study after the finalisation of Amendment 43.



13/6/2024

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13/6/24

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## Attachments

Attachment	Document
A	Planning Proposal November 2022
B	Gateway determination
C	Consultation with Council section 3.36
D	Comments from Council on draft LEP

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<b>Attachment</b>	<b>Document</b>
E1	Submission – Biodiversity and Conservation Division objection
E2	Submission – NSW Rural Fire Service
F	Biodiversity and Conservation comments on draft LEP
PC	Opinion
LEP	Draft Bega Valley LEP 2013 (Amendment 43)
Maps	LEP Maps (Floor Space Ratio)
MCS	Map Cover Sheet
Rhelm Report	Rhelm Report on Flooding