



IRF22/1457

Gateway determination report – PP-2022-729

Change Building Height development standard at 29-33 Market Street Merimbula

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Acknowledgment of Country

The Department of Planning and Environment 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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Table 1 Reports and plans supporting the proposal (Attachment with planning proposal)

Relevant reports and plans
Attachment A Planning Proposal
Submission to Commercial Strategy
Architectural Plans
Aboriginal Cultural Heritage Due Diligence Assessment

Geotechnical Investigations

Civil Engineering Assessment

Land Contamination Report

Traffic Impact Assessment

Socio-Economic Impact Assessment

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Bega Valley
PPA	Bega Valley Council
NAME	Change Building Height Limit from 13m to 18m
NUMBER	PP-2022-729
LEP TO BE AMENDED	Bega Valley LEP 2013
ADDRESS	29-33 Market Street Merimbula
DESCRIPTION	Lot 11 DP 838058 and Lot 112 DP 1227927
RECEIVED	28/04/2022
FILE NO.	EF22/6056
POLITICAL DONATIONS	There are no donations or gifts to disclose, and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal (**Attachment A**) contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to amend the Height of Buildings Map to increase the building height limit at 29-33 Market Street Merimbula from 13m to 18m.

1.3 Explanation of provisions

The planning proposal seeks to amend the Bega Valley LEP 2013 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	B2 Local Centre Zone	No change
Maximum height of the building	13m	18m

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area



Figure 1 Subject site (source: NSW Six Map)

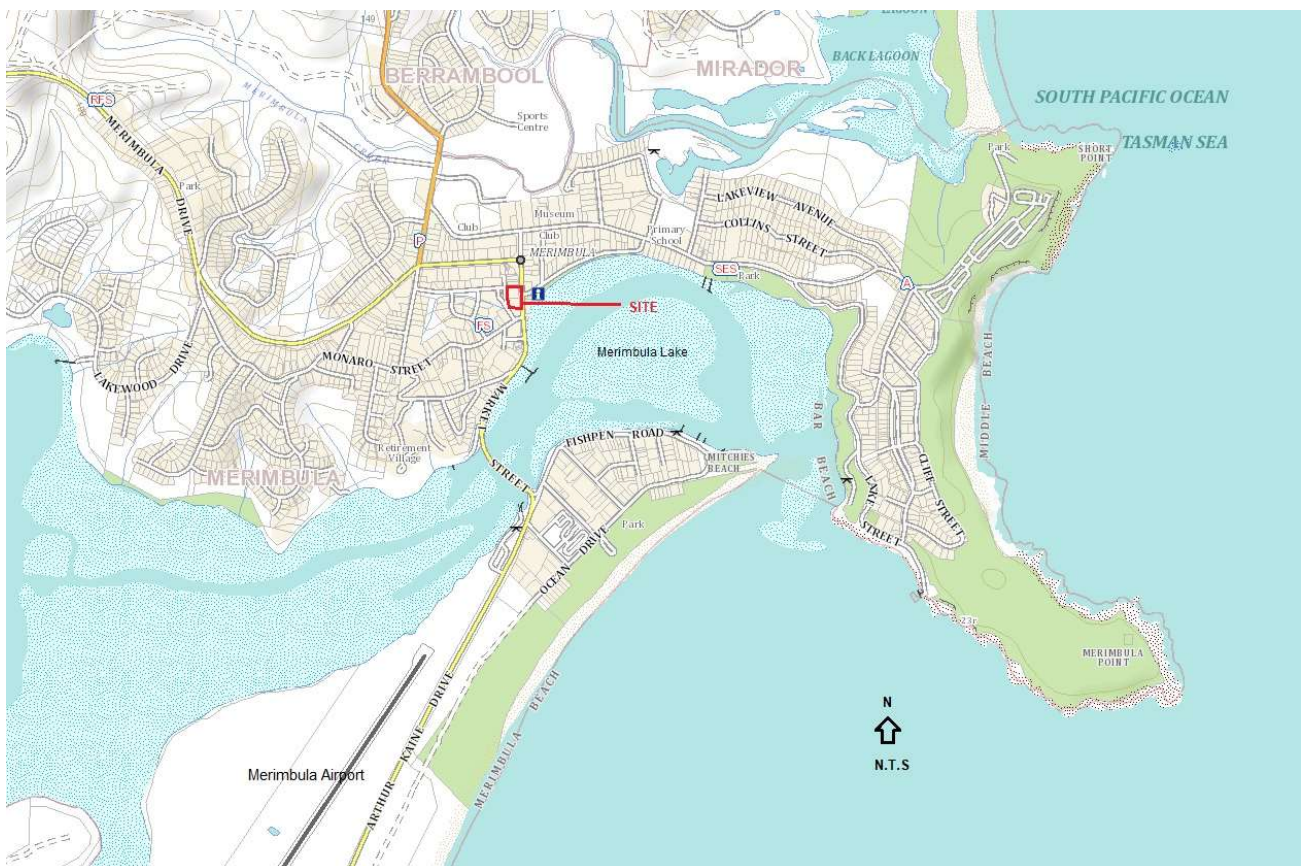


Figure 2 Site context (source: NSW SixMap)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Height of Building map, which are suitable for community consultation.

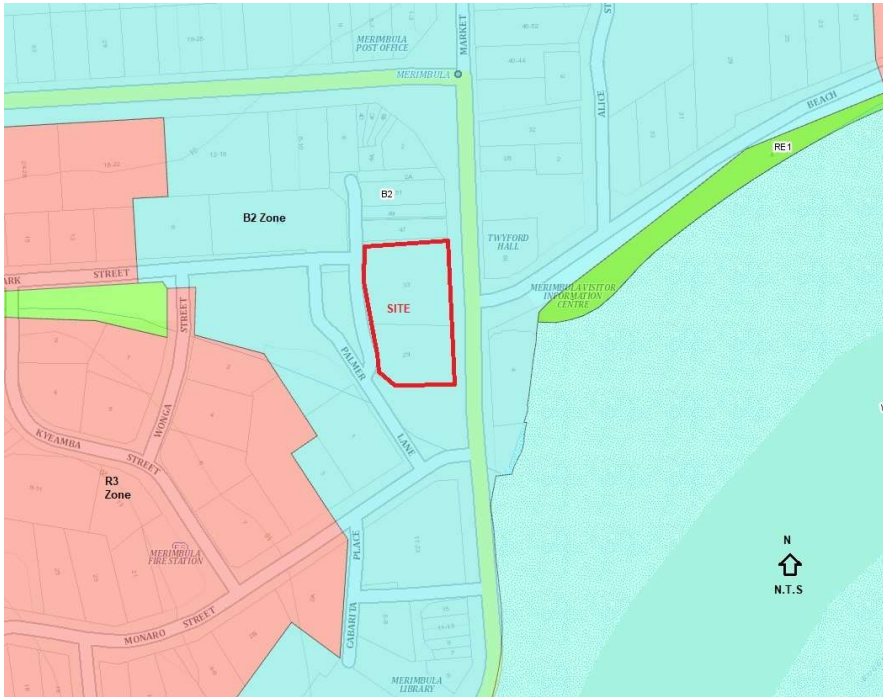


Figure 3 Current zoning map

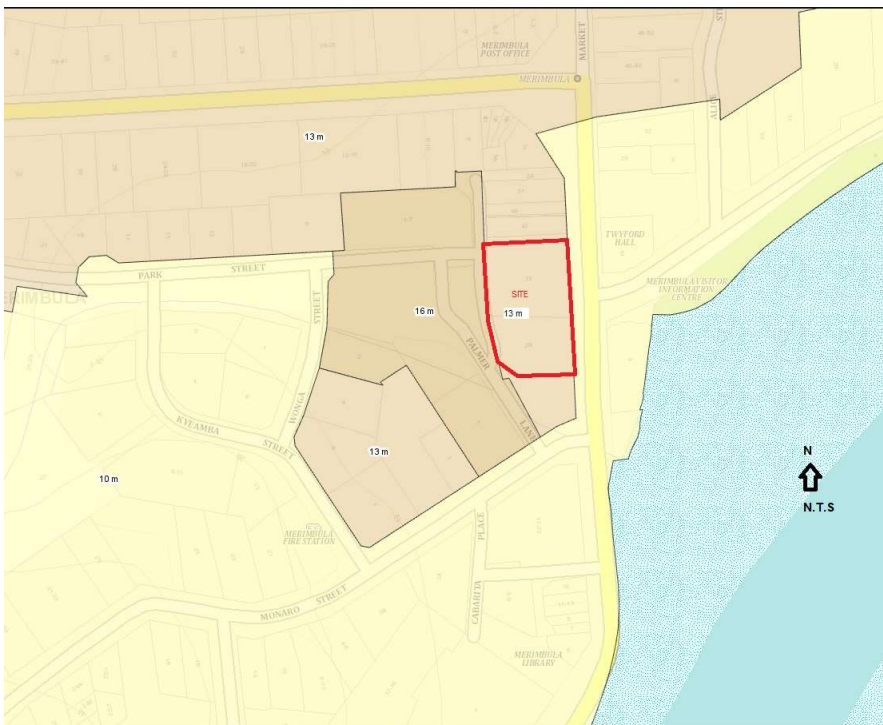


Figure 4 Current height of building map

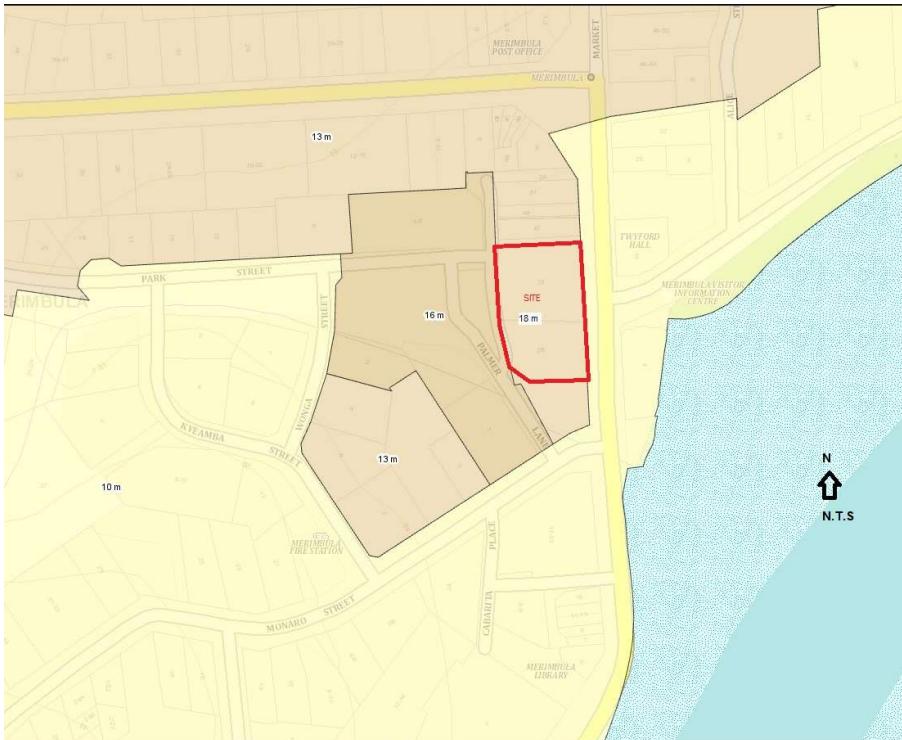


Figure 5 Proposed height of building map

2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

Both the planning proposal and the Council report on the proposal (20 April 2022) state that the proposed change in the Height of Building Map from 13m to 18m is consistent with Council's adopted Bega Valley Shire Commercial Land Strategy 2040 that states:

"To encourage new development in Bega and Merimbula town centres, Council will consider site-specific proposals, with land greater than 2,000m², to increase the maximum height of buildings in Merimbula by way of a combined Planning Proposal and Development Application that allows the community to evaluate the details of each proposal."

Council's Local Strategic Planning Statement (LSPS) acknowledges the Commercial Land Strategy and seeks to make Market Street in Merimbula the *"physical and perceptual heart of the commercial centre."*

Direction 12 of the South East and Tablelands Regional Plan promotes business activities in urban centres such as Merimbula. Actions under the plan implement this Direction by seeking to reinforce the role and function of centres as the primary place for commerce, retail, social activity, and regional services through local strategies and LEPs

Comment

The planning proposal is consistent with the Council Commercial Land Strategy because Lot 11 and 112 are located in the heart of the Merimbula town centre, have a combined area of nearly 4,000 m² and a development application has been submitted simultaneously with the planning proposal to accommodate a mixed use of commercial and residential development within the town centre. It is also generally consistent with the LSPS.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal accompanies a development application that seeks to demolish the existing one and two storey commercial structures and the construction of a new five storey mixed use development comprising ground floor commercial tenancies, carparking and four levels of 52 residential apartments and street improvements and public domain works (Source: Council report 20 April 2022).

The planning proposal states that the variation to the height of building controls could not be reasonably pursued via a development application that included a variation of the development standard under clause 4.6 of the Bega Valley LEP 2013 *“due to the extent of the variation.”* An alternative option of waiting for Council to undertake a review of the LEP to accommodate the change the building height controls over the site was not chosen because of the timeframe for the Council to undertake a review.

Comment

The variation of the building height could have been undertaken by a DA using clause 4.6 rather than varying the HOB Map under a planning proposal. Planning Circular PS 20-002 dated May 2020 states that the Secretary’s concurrence under clause 4.6 may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

Council advised the Department on the 10/5/22 that Council endorsed the proponent’s preferred option of submitting a combined planning proposal/Development Application rather than use clause 4.6 to vary the building height because it was generally consistent with the following statement in the Commercial Land Strategy *“Council will consider site-specific proposals, with land greater than 2,000m², to increase the maximum height of buildings in Merimbula by way of a combined Planning Proposal and Development Application that allows the community to evaluate the details of each proposal.”*

There is no reason why the planning proposal should not proceed as the preferred option to seek community feedback on both the planning proposal and development application to vary the development standard.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the South East and Tablelands Regional Plan. Note: Appendix A of the planning proposal provides justification for the proposal against the Goals and Actions of the Regional Plan.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Goal 1 – A connected and Prosperous economy	The planning proposal promotes business activities in the urban centre of Merimbula consistent with Direction 12: Promote business activities in urban centres.

Goal 2 – A diverse environment interconnected by biodiversity corridors	Due to the site's close proximity to Lake Merimbula, consideration of the impacts of climate change (flooding/sea level rise) have been addressed consistent with Direction 16: Protect the coast and increase resilience to natural hazards.
Goal 4 – Environmentally sustainable housing supply and choice	The proposal seeks to achieve a mixed commercial/ apartment type residential development in an existing town centre consistent with Direction 24: Deliver greater housing supply and Choice and Action 24.3 Promote increased housing choice, including apartments, in strategic centres and locations close to existing services and jobs. It is also consistent with Direction 25: Focus housing growth in locations that maximise infrastructure and services and 27: Deliver more opportunities for affordable housing.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 5 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	The planning proposal is generally consistent with Planning Priority 11 – Housing and Planning Priority 12 -Town Centres that seek to increase housing density to support the viability and vibrancy of town centres and that supports the recommendations of the Commercial Lands Strategy
Bega Valley Commercial Land Strategy 2040	The planning proposal is consistent with the Commercial Lands Strategy that states <i>“To encourage new development in Bega and Merimbula town centres, Council will consider site-specific proposals, with land greater than 2,000m², to increase the maximum height of buildings in Merimbula by way of a combined Planning Proposal and Development Application that allows the community to evaluate the details of each proposal.”</i>

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 6 9.1 Relevant Ministerial Direction assessment

Directions	Consistent	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	See Table 4 on Regional Plan Assessment. The planning proposal is consistent with the Regional Plan and Direction 1.1.

3.1 Conservation Zones	Yes	<p>Proposal does not involve land identified as environmentally sensitive or affect any environmental zones.</p> <p>The planning proposal is consistent with Direction 3.1.</p>
4.1 Flood Prone Land	Yes	<p>A small portion of the site is identified as being flood prone land in the Merimbula and Back Lakes Flood Study. The site is already developed and the proposal seeks to increase the building height on a site already zoned B2 Local Centres Zone with a 13m building height limit.</p> <p>The Planning Proposal states that the proposed building in the DA accompanying the PP <i>“has been designed with a minimum finished floor height of R.L. 2.2m as per Council engineer’s advice. For this reason the inconsistency is considered to be of minor significance.”</i></p> <p>The small amount of the site identified as flood prone is not considered significant enough trigger any inconsistency with Direction 4.1.</p>
4.2 Coastal Management	Yes	<p>The site is located within a coastal (coastal environment and coastal use area). The site is not mapped as either a coastal wetland or littoral rainforest or within a coastal vulnerability area. It is not identified as land affected by a coastal hazard in Council’s LEP or DCP.</p> <p>The planning proposal indicates that it is consistent with the objects of the Coastal Management Act 2016 and the DA addresses the requirements of the Coastal Design Guidelines and the Coastal Design Manual.</p> <p>The proposal does not trigger an inconsistency with the Direction simply based on intensifying the use of the land that is already zoned for commercial development.</p>

4.4 Remediation of Contaminated Land	Yes	<p>The Direction is not applicable because the site is already zoned B2 Local Centre Zone and already contains commercial buildings that will be demolished to make way for a new 5 storey mixed development proposal. The PP it does not trigger any inconsistency with the Direction.</p> <p>The planning proposal acknowledges that the adjoining land to the south (27 Market Street) was a former Mobile service station previously identified by the NSW EPA as a contaminated site. In 2012 Council resolved to purchase this site for the construction of the Merimbula CBD bypass. The EPA advised Council in 2017 that regulation under the Contaminated Land Management Act 1997 was no longer required. This was because the service station and contaminated soil had been excavated to the extent practicable and a Site Audit Statement had been issued certifying the site is suitable for certain land uses, including residential use. The contamination report for the adjoining property is attached as Appendix J to the Planning Proposal.</p>
5.1 Integrating Land Use and Transport	Yes	<p>The increase in the building height from 13m to 18m will potentially increase the density of residential development on the site that will improve the viability and vibrancy of the Merimbula Town Centre. It will also increase housing density located in close proximity to local services, recreation areas and amenities, employment opportunities and a variety of transport modes. The proposal is therefore consistent with the intent of the Direction.</p>

5.3 Development near regulated Airports and Defence Airfields	Yes	<p>The planning proposal indicates that the site is located within 2.5 Km of Merimbula Airport and is consistent with the Direction because:</p> <ul style="list-style-type: none"> - The proposed increase in building height will allow for the ongoing and safe operation of Merimbula Airport. - The future construction of a multi-level development up to 18 metres will not create an obstruction or a flying hazard for flying aircraft. - The site is not located on noise sensitive land. <p>The proposal indicates that the site is affected by the Obstacle Limitation Surface Map (see Figure 6 of the proposal). In the section on agency consultation the planning proposal therefore acknowledges that consultation will be required with the Civil Aviation Authority (CASA).</p> <p>To ensure consistency with the Direction the Gateway determination should include a requirement that Council consult with the Airspace Protection and Airport Safety Branch of the Commonwealth Department of Infrastructure, Transport, Regional Development and Communication as well as CASA and the operator of the airport in accordance.</p>
7.1 Business and Industrial Zones	Yes	<p>The planning proposal does not seek to reduce the location or floor space of the B2 Local Centre Zone or to create a new employment area and therefore does not trigger an inconsistency with this Direction. The proposal is generally consistent with the objectives of the Direction.</p>
9.3 Oyster Aquaculture	Yes	<p>The planning proposal acknowledges that Merimbula Lake is an identified Oyster Aquaculture Area and the Direction therefore applies to the proposal.</p> <p>The change of building height on land already zoned B2 Local Centre Zone in the Merimbula Town Centre will not result in any additional adverse impacts or an increase in the incompatibility of a land use with oyster aquaculture within a Priority Oyster Aquaculture Area. The proposal is therefore consistent with the Direction.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 7 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Resilience and Hazards) 2021	The requirements of Direction 4.2 Coastal Management are triggered by areas mapped under the SEPP as land within a coastal Zone. Land contamination is considered in Table 4 regarding Direction 4.4 Remediation of Land.	Yes	See response to Direction 4.1 Coastal Management and 4.4 Remediation of Land in Table 4.
SEPP 65 (Design Quality of Residential Apartment Development)	The SEPP seeks to improve the design quality of residential apartment development in New South Wales. It applies to development applications for a residential, shop top housing or mixed use development with a residential accommodation component. Although the SEPP does not apply to planning proposal the planning proposal states that the development application for the mixed use development of the site addresses the design requirements of the SEPP.	N/A	N/A

4 Site-specific assessment

4.1 Environmental

The change in building height from 13m to 18m to accommodate redevelopment of the site for a mixed use development within the Merimbula Town Centre is unlikely to have any significant

environmental impacts because the site is located within a highly modified urban environment that currently contains an existing commercial building. Natural hazards such as flooding and land contamination have already been adequately discussed in Table 6 regarding section 9.1 Directions 4.1 Flood Prone Land, 4.2 Coastal Management and 4.4 Remediation of Contaminated Land.

Issues associated with traffic, access, and parking as a result of the increase in the height of a mixed use development are part of the assessment of the traffic impact assessment accompanying the development application and attached to the planning proposal as Attachment K.

The site is not identified as a heritage item and the proposal is not expected to have an adverse effect on the heritage item identified as I122 – Twyford Hall on the LEP Heritage Map and Schedule 5 of the LEP that is located opposite the site on the eastern side of Market Street.

The planning proposal includes a cross section, longitudinal streetscape cross sections, indicative perspectives, and shadow diagrams of the proposed mixed use development.

The planning proposal states that there will be minimal overshadowing to the south, east and west on all neighbouring properties and the public domain and footpath. The proposal also states that a building 'Bulk Study' concluded that the proposed amendment and mixed use development will not have an adverse visual impact on key vistas and provides appropriate building separation and relief from adjoining buildings.

The site most likely to be impacted by access to views to the east (Lake Merimbula) is the Council owned carpark located to the west of the site, which is not considered to be a sensitive location due to the fleeting nature of views from the site for users.

4.2 Social and economic

The planning proposal indicates that the increase in building height to accommodate the development application for a 5 storey mixed use commercial and residential development within the Merimbula Town Centre will have overall positive social and economic impacts by increasing housing stock close to public transport and amenities, providing greater housing choice, improving public domain facilities, stimulating investment and economic activity and by generating local employment in the town centre.

The planning proposal and development application is accompanied by a socio-economic impact assessment.

The proposal is consistent with the Council's Commercial Land Strategy and does not appear to generate any significant adverse social or economic impacts.

4.3 Infrastructure

Infrastructure and services are available to the site that is located within the Merimbula Town Centre. It does not generate any requirements for state infrastructure.

5 Consultation

5.1 Community

Council proposes a community consultation period of 20 working days.

The exhibition period proposed is considered appropriate and is consistent with the conditions of the Gateway determination.

5.2 Agencies

The proposal indicates that there is an expectation that consultation will be required with the Civil Aviation Safety Authority due to potential impacts on nearby Merimbula Airport and NSW Fisheries due to the site's proximity to Lake Merimbula.

The site is already zoned for commercial development and a 13m building height. Consultation with NSW Fisheries is therefore not considered necessary. The site's proximity to Merimbula Airport and the proposed increase in building height triggers a requirement to consult with the relevant Commonwealth Department responsible for airports and the lessee/operator of that airport.

It is recommended the following agencies be consulted on the planning proposal and given 20 days to comment:

- Airport Protection and Airport Safety Branch, Commonwealth Department of Infrastructure Transport, Regional Development and Communication
- Civil Aviation Safety Authority
- Lessee/Operator of Merimbula Airport

6 Timeframe

The proponent proposes a 4 month time frame to complete the LEP.

The Department recommends a time frame of 9 months to ensure there is sufficient time for Council to undertake community and agency consultation and to finalise the planning proposal, including preparation of draft LEP Maps.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has not requested authorisation to use its delegation to be the Local Plan-Making authority.

As the planning proposal implements the recommendations of Council's adopted Commercial Land Strategy 2040 therefore the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal is generally consistent with local strategies and the Regional Plan
- Consultation with the relevant authorities will determine if there are any significant issues with the proposal and the safe operation for aircraft using Merimbula Airport.

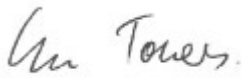
9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Directions 5.3 Development near regulated Airports and Defence Airfields is unresolved until after consultation has been undertaken with relevant agencies and any inconsistency will require justification.

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

1. Consultation is required with the following public authorities:
 - Airport Protection and Airport Safety Branch, Commonwealth Department of Infrastructure Transport, Regional Development and Communication
 - Civil Aviation Safety Authority
 - Lessee/Operator of Merimbula Airport
2. The planning proposal should be made available for community consultation for a minimum of 20 working days.
3. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



19/5/22

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(Signature)

20/5/22

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