



IRF23/688

Gateway determination report – PP-2023-141

Amend Bega Valley LEP 2013 – rezone Yellow Pinch
Dam to SP2 Infrastructure Zone to allow a Water
Treatment Plant

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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

Relevant reports and plans
Preliminary Biodiversity Assessment Report
Cultural Heritage and due diligence Assessment
Bushfire Assessment

Geotechnical Investigation Report

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Bega Valley
PPA	Bega Valley Shire Council
NAME	Rezone 43 Red Gum Road, Yellow Pinch to SP2 Infrastructure Zone to allow for a Water Treatment Plant
NUMBER	PP-2023-141
LEP TO BE AMENDED	Bega Valley LEP 2013
ADDRESS	Part 43 Red Gum Road, Yellow Pinch
DESCRIPTION	Part Lot 882 DP 789858
RECEIVED	22/03/2023
FILE NO.	EF23/3776 and IRF23/688
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 contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to rezone Part 43 Red Gum Road, Yellow Pinch to SP2 Infrastructure Zone to allow a Water Treatment Plant.

The objectives of this planning proposal are clear and adequate.

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	C3 Environmental Management Zone	SP2 Infrastructure Zone – Water Treatment Plant

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

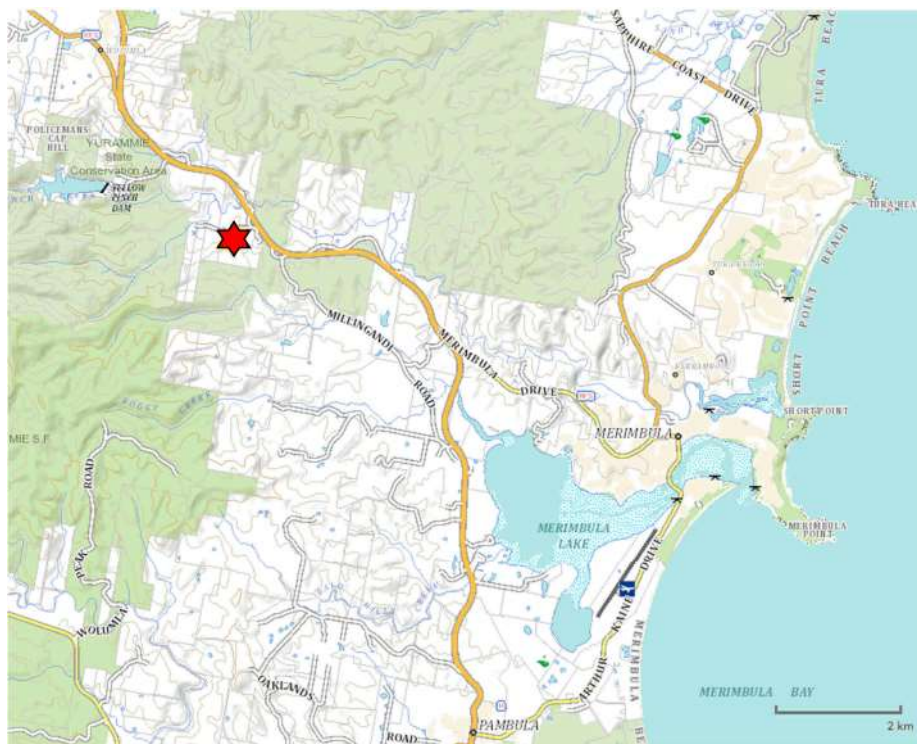


Figure 1 Site Location (source: Planning Proposal)



Figure 2 Subject Site (source: NSW SixMap)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Land Zoning map, which are suitable for community consultation.

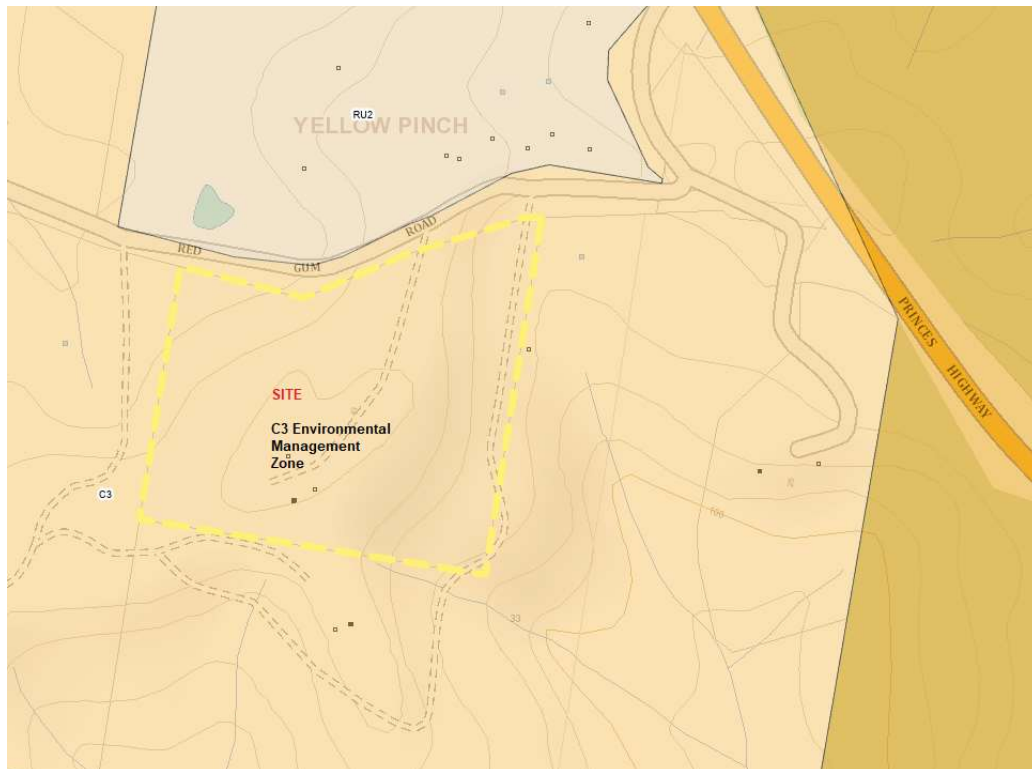


Figure 3 Current zoning map

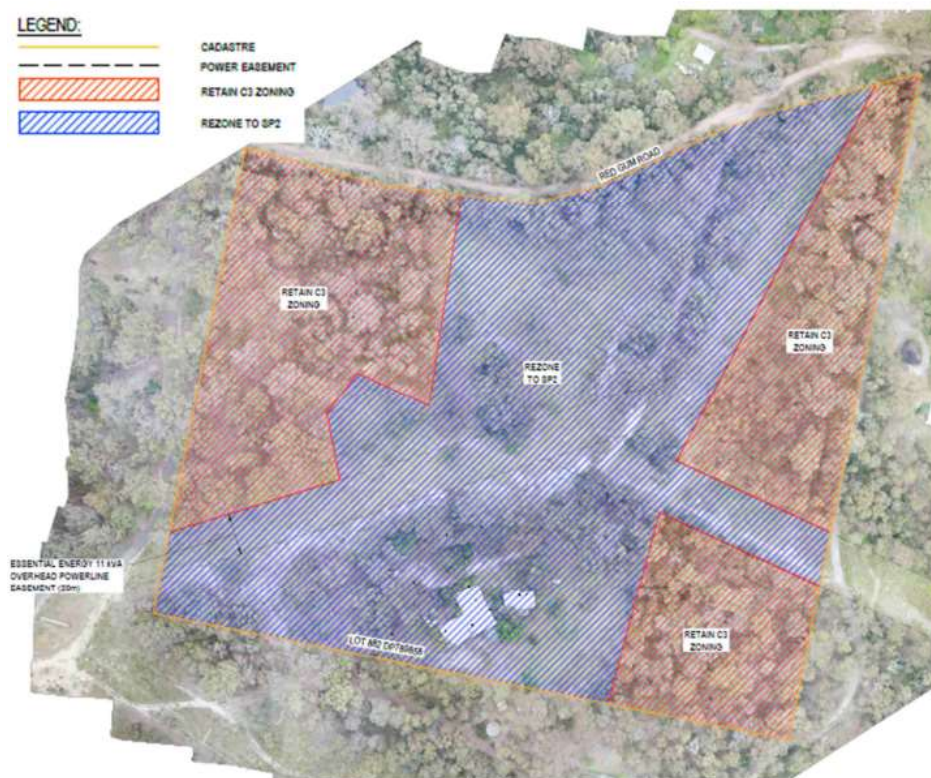


Figure 4 Proposed Zoning Map (Part Lot 882 - blue hatching) to be zoned SP2 Infrastructures Zone

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?

The planning proposal seeks to rezone the subject site to SP2 Infrastructure Zone to enable a water treatment plant based on the recommendations of the Council's Water and Sewer Strategy 2022-2025. The planning proposal states that the water treatment plant is identified in Council's Operational Plan and Council was successful in securing \$75,000 in grant funding from the Safe and Secure Water Program from Restart NSW. The current treatment facility (chlorination only) that services Merimbula, Tura Beach, Pambula Beach and Pambula will not meet proposed health-based targets for drinking water. A multi-criteria analysis revealed that Lot 882 was the preferred site out of seven sites for the project

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

The rezoning of the site to SP2 Infrastructure Zone to permit a water treatment plant and to ensure the site is within a prescribed zone under SEPP (Transport and Infrastructure) to enable the public infrastructure project to be more speedily processed under Part 5 of the Act rather than Part 4 (development application).

3 Strategic assessment

3.1 Regional Plan

The planning proposal states that it is consistent with the majority of goals, directions and actions of the South East and Tablelands Regional Plan.

The proposal is consistent with Directions and Actions under Goal 3 Healthy and connected communities Goal 4 Environmentally sustainable housing choices.

The planning proposal implies that it is inconsistent with Direction 14 and 15 under Goal 2 A diverse environment interconnected by biodiversity corridors.

Direction 14 – Protect important environmental assets

Direction 15 – Enhance biodiversity connections.

The proposal acknowledges that the necessity of locating the WTP on the existing water mains near Yellow Pinch Dam requires a compromise with environmental protection. It further states that the site was selected because it has a large, cleared area close to utilities that will minimise environmental impacts and only the required plant and buffer area will be included in the SP2 Zone with the remainder of the site retained in a C3 Environmental Management Zone.

Comment

The Planning proposal has addressed the requirements of the regional Plan, including the potential inconsistencies with Directions 14 and 15. It is recommended that Council be required to consult with Biodiversity and Conservation and the Local Aboriginal Land Council when the planning proposal is exhibited.

3.2 Local

The planning proposal is consistent with Council's Water and Sewer Strategy 2022-2025 and Operational Plan for the upgrade of public infrastructure.

3.3 Section 9.1 Ministerial Directions

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

Table 7 9.1 Ministerial Direction assessment – Applicable Directions

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
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1.1 Implementation of Regional Plans	No	<p>Site selection and design for public infrastructure seeks to minimise environmental impacts.</p> <p>The proposal indicates that it has been updated after preliminary consultation with Biodiversity and Conservation (Scoping Proposal). It also states that a representative from the LALC provided preliminary advice in 2022 into the preparation of the Aboriginal cultural heritage due diligence report that accompanies the proposal.</p> <p>Comment: Recommend consultation with Biodiversity and Conservation, Local Aboriginal Land Council and NSW Office of Heritage prior to agreeing to justification for inconsistency.</p>
3.1 Conservation Zones	No	<p>The proposal states that the site was selected because it has a large, cleared area close to utilities that will minimise environmental impacts and only the required plant and buffer area will be included in the SP2 Zone with the remainder of the site retained in a C3 Environmental Management Zone. The proposal indicates that it has been updated after preliminary consultation with Biodiversity and Conservation (Scoping Proposal) and is also accommodated by a preliminary Biodiversity assessment report.</p> <p>Comment: Recommend consultation with Biodiversity and Conservation to consider justification for change in environmental zone and preliminary BAR prior to agreeing to justification for inconsistency.</p>
3.2 Heritage Conservation	Yes	<p>The Proposal includes an Aboriginal Cultural Heritage due diligence assessment and also states that a representative from the LALC provided preliminary advice in 2022 into the preparation of the Aboriginal cultural heritage due diligence report that accompanies the proposal.</p> <p>The Due diligence assessment indicates that there are no known indigenous or non-indigenous heritage on the site.</p> <p>Comment: Recommend consultation with Local Aboriginal Land Council and NSW Office of Heritage to consider the Aboriginal Cultural Heritage Due Diligence Report.</p>

4.3 Planning for Bushfire Protection	Yes	<p>The planning proposal acknowledges that the site is identified a bush fire prone land and requires Council to undertake consultation with the NSW Rural Fire Service in accordance with the Direction. The proposal is accompanied by a Bushfire Assessment report in response to preliminary consultation with NSWRFs.</p> <p>Comment: Direction triggers requirement to consult with NSW Rural Fire Service. Consultation with NSWRFs after issuing a Gateway will satisfy the requirements of the Direction.</p>
4.4 Remediation of Contaminated Land	Yes	<p>The site is not being rezoned for residential, educational, recreational, or childcare purposes. The proposal states that the site is suitable for the intended use (water treatment plant) subject to the identification and removal of any asbestos on the site in accordance with Safework NSW requirements.</p> <p>Comment: Proposal does not seek to rezone the site for sensitive development and has addressed the requirements of the Direction.</p>
5.3 Development Near Regulated Airports and Defence fields.	Yes	<p>The proposal states that the site is not near Merimbula Airport (owned by Council). Although the site is at a higher elevation it is unlikely to be of a height that would affect aircraft operations. Preliminary consultation with CASA did not raise any issues.</p> <p>Comment: The site is located approximately 7.5 kilometres from Merimbula Airport. It is not close to the airport and therefore does not trigger any requirements under the Direction.</p>
8.1 Mining, Petroleum Production and Extractive Industries	Yes	<p>The proposal states that it has not identified any existing extractive industries or licences that would affect this site.</p>
9.2 Rural Lands	Yes	<p>The planning proposal satisfactorily address matters listed under clause (1) of the Direction. Clause (2) of the Direction is not relevant because the proposal does not seek to change the minimum lot size.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

There is no objection with Council changing the C3 Zone applying to the site to a prescribed zone, i.e. SP2 Infrastructure Zone, under SEPP (Infrastructure and Transport) 2021 to enable potential approval for essential public infrastructure (water treatment plant) under Part 5 of the EP&A Act.

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Biodiversity	<p>A preliminary Biodiversity Assessment Report accompanies the planning proposal. It concluded that <i>“While the site is currently zoned as C3, the portion of the Subject Land proposed for rezoning as part of the current Planning Proposal is heavily disturbed and degraded, and placement of the proposed future WTF in this location is not anticipated to result in significant impacts to biodiversity, based on the concept design (GHD, January 2023; Appendix A) and provided the recommended mitigation measures are implemented and maintained.”</i></p> <p>Comment: The proposal, including the preliminary BAR, should be referred to Biodiversity and Conservation for assessment.</p>
Contamination	<p>The proposal states that the site is suitable for the intended use (water treatment plant) subject to the identification and removal of any asbestos on the site in accordance with Safework NSW requirements.</p> <p>Comment: Proposal does not seek to rezone the site for sensitive development and has addressed the requirements of the Direction.</p>
Bushfire	<p>A Bushfire Assessment Report accompanies the planning proposal. The site is mapped as bush fire prone land with the majority as Category 3. The report demonstrates compliance with Planning for Bushfire Protection 2019 (NSW RFS, 2019), AS3959-2018 Construction of Buildings in Bush Fire Prone Areas.</p>

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Visual Impact	<p>The proposal states the height of buildings are unlikely to exceed 10 metres and the site has a low risk of visibility from key vantage points outside the site. The site is also visually shielded by vegetation within the site and within national parks and nature reserves that surround the site.</p>

Aboriginal cultural heritage	<p>An Aboriginal Cultural Heritage due diligence assessment accompanies the planning proposal. The proposal also states that a representative from the LALC provided preliminary advice in 2022 into the preparation of the Aboriginal cultural heritage due diligence report that accompanies the proposal.</p> <p>The Due diligence assessment indicates that there are no known indigenous or non-indigenous heritage on the site.</p> <p>Comment: Consultation should be undertaken with Local Aboriginal Land Council and NSW Office of Heritage to assess the due diligence report and the potential impacts on Aboriginal cultural heritage.</p>
Improved water supply	<p>The proposal highlights the economic and social benefits by improving the quality and security of water supplied to local communities and in the construction of the water treatment facility. The need for the WTP have already been identified as a priority in Council's water and sewer strategy.</p>

4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 11 Infrastructure assessment

Infrastructure	Assessment
Road Access	<p>The site is accessed from Gum Tree Road which connects to the Princes Highway. The PP states that the connection to the highway is sealed with good sightlines in both directions. The proposal states that a Traffic Study requested by Transport for NSW in response the preliminary consultation (Scoping Proposal) is not warranted because this issue has been “sufficiently addressed in this report and there are existing left and right hand turn lanes into Red Gum Road.</p> <p>Comment</p> <p>The rezoning of the site to SP2 Zone will enable the project to be dealt with under Part 5 of the Act (no DA required). It is therefore appropriate that any traffic issues associated with the Prices Highway are identified early. It is recommended that a traffic study be prepared prior to agency and community consultation that considers access issues/arrangements to the Princes Highway.</p>

Utility connections	<p>The proposal states that the primary reason for choosing this site is the presence of an existing water main running through the site that connects Yellow Pinch Dam to Merimbula.</p> <p>A 66kv and 11kv electricity lines are also located near the site and an additional transformer/substation may be required to service the project.</p> <p>The proposal indicates that no issues were raised by either Essential Energy or TransGrid in the consultation undertaken for the Scoping Proposal.</p> <p>Comment</p> <p>Based on the responses received from Essential Energy and TransGrid no further consultation is required with these authorities.</p>
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5 Consultation

5.1 Community

Council proposes a community consultation period of 20 working days.

The exhibition period proposed is considered appropriate and forms to the conditions of the Gateway determination.

5.2 Agencies

Council has nominated the public agencies to be consulted about the planning proposal.

It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- Biodiversity and Conservation
- Transport for NSW
- NSW Rural Fire Service
- NSW Heritage
- Local Aboriginal Land Council

6 Timeframe

Council proposes a 9 month time frame to complete the LEP.

The Department however recommends a time frame of 12 months to allow preparation of a traffic study, consultation and to ensure it is completed in line with its commitment to reduce processing times and enough time for Council to prepare a traffic study.

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

7 Local plan-making authority

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

As the planning proposal is to rezone land to for local public infrastructure (water treatment plant) 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:

- Consultation is required with the community and relevant state agencies

As discussed in the previous sections 4, the proposal should be updated to:

- Include a traffic study as requested by Transport for NSW as part of its response to the consultation on the Scoping Proposal

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- Include a traffic study as requested by Transport for NSW as part of the consultation on the Scoping Proposal

9 Recommendation

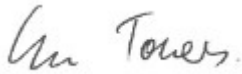
It is recommended the delegate of the Secretary:

- Note that the inconsistency with section 9.1 Directions 1.1 Implementation of Regional Plan, 3.1 Conservation Zones and 3.2 Heritage Conservation requires consultation with Biodiversity and Conservation, NSW Heritage and the Local Aboriginal Land Council to consider the adequacy of the preliminary Biodiversity Assessment Report and the Aboriginal Cultural Heritage Due Diligence Assessment Report.

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

1. The planning proposal is to be updated to:
 - Include a Traffic Study focussing on access arrangements with the Princess Highway as requested by Transport for NSW
2. Prior to community consultation, the planning proposal is to be revised to address condition 1 above.
3. Consultation is required with the following public authorities:
 - Biodiversity and Conservation
 - Transport for NSW
 - NSW Rural Fire Service
 - NSW Heritage
 - Local Aboriginal Land Council
4. The planning proposal should be made available for community consultation for a minimum of 20 working days.
5. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

6. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



1/5/23

Graham Towers
Manager, Southern Region



1/5/2023

Daniel Thompson
Director, Southern Region

Assessment officer

Graham Judge
Senior Planner, Southern Region
6229 7906