

8.3. Endorsement of Minor Amendments Planning Proposal

This report seeks a resolution of Council to support a planning proposal for minor amendments to the *Bega Valley Local Environmental Plan 2013*.

Director Community Environment and Planning

Officer's Recommendation

That Council:

1. Support a planning proposal to implement several minor amendments to the *Bega Valley Local Environmental Plan 2013*.
2. Authorise Council officers to submit the planning proposal (Attachment 1) and supporting information to the Department of Planning and Environment requesting a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*.
3. Authorise Council officers, subject to the conditions of the Gateway Determination (including public exhibition) and providing no substantial changes to the planning proposal are required and no objections are received during exhibition, to progress the planning proposal to finalisation and gazettal without a further report to Council.

Executive Summary

This report seeks Council's resolution to support a planning proposal to make minor amendments to the *Bega Valley Local Environmental Plan 2013* (BVLEP 2013). These proposed amendments have no strategic impact and are considered suitable for inclusion in a 'minor amendments' planning proposal.

The Council-initiated planning proposal results from the need to amend BVLEP 2013 to update references, correct omissions and remove ambiguity. The planning proposal will also ensure that BVLEP 2013 is aligned with recent changes to state legislation and Council policies and strategies. The amendments relate to:

- permitted uses and approval pathways
- a heritage schedule amendment
- clause amendments relating to strata subdivision, lot averaging subdivisions, building heights, flooding and aircraft noise.

Background

The planning proposal results from the need to update references, correct omissions and remove ambiguity from BVLEP 2013, as well as align with recent changes to state legislation and Council policies and strategies.

To make these minor amendments to BVLEP 2013, a planning proposal is required (Attachment 1). This planning proposal is the sixth minor amendments (or housekeeping) planning proposal prepared by Council since the gazettal of BVLEP 2013.

The following is an overview of the objectives of the planning proposal.

Permitted uses and approval pathways

The planning proposal will:

- Correct an omission in the drafting of BVLEP 2013 that removed cemeteries and crematoriums as a land use that is permitted with consent in zones RU1 Primary Production and RU2 Rural Landscape. The proposed amendment reinstates the cemeteries and crematorium land uses as being permitted with consent in the RU1 and RU2 zones.
- Align the R2 Low Density Residential zone land use table with *State Environmental Planning Policy (Housing) 2021* in relation to permissibility of secondary dwellings to make it clear that secondary dwellings (sometimes referred to as granny flats) are permitted with consent in the R2 zone.
- Align the RU5 Village zone land use table with *State Environmental Planning Policy (Transport and Infrastructure) 2021* in relation to permissibility of medical centres and health services facilities in village zones to make it clear that medical centres and health services facilities are permitted with consent in the RU5 zone.
- Implement the recommendations of the review of Council's *Use of Public Land (Local Approvals) Policy* to enable certain development including A-frame signs, murals, community gardens, annual events and quarterly markets to be carried out as exempt development, and in some cases subject to alternative approval processes such as the Use of Public Land (Local Approvals) Policy.

Clause amendments

The planning proposal will:

- Increase the maximum allowable size of roadside stalls from 10sqm to 20sqm. The proposed amendment responds to recent changes to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)* which provide an exempt development pathway for roadside stalls up to 9sqm in zones RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones.
- Provide clarification that strata subdivision of dual occupancies in rural and conservation zones is not permitted. The proposed amendment addresses a gap in the Standard Instrument LEP to clarify that strata subdivision of dual occupancies in rural and conservation zones is not permitted. This issue has been addressed by several other councils through similar amendments to their LEPs.
- Update Clause 5.4 Height of buildings to reflect the existing range of height of buildings limits across the shire. The proposed amendment acknowledges the range of building height limits across the shire (from 5.5 metres up to 18 metres) by removing the reference to 'low set building form' and giving consideration to the desired future character by referencing 'surrounding development (present or future), surrounding landforms and the visual setting'.
- Ensure that new noise sensitive development, including residential accommodation, child care centres, educational establishments, entertainment facilities and hospitals near Merimbula Airport takes into consideration potential aircraft noise impacts. The proposed amendment brings BVLEP 2013 into alignment with the *Merimbula Airport Master Plan* by ensuring new sensitive development takes into consideration the Australian Noise Exposure Forecast (ANEF) Contour Map that has been developed for the airport.
- Progress adoption of the special flood considerations clause as previously resolved by Council on 30 June 2021. The NSW Government's delay in progressing this amendment is impacting the finalisation of planning proposals that give effect to Council's strategic directions in relation to increasing housing diversity in the shire, due to formal objections from a NSW Government Agency regarding flooding.
- Provide clarification that consent may be granted to development for residential purposes on a lot which has been created under cl. 4.1B(3). The proposed amendment

removes ambiguity in relation to the permissibility of residential development on a rural residential lot created under the lot averaging clause in BVLEP 2013.

Heritage schedule amendment

The planning proposal will:

- Update the property description of the heritage listing for Twyford Hall, Merimbula in Schedule 5 of BVLEP. The proposed amendment updates the lot and deposited plan numbers for the heritage item following lot consolidation.
- Update the property description of the heritage listing for Cottage On Rise, Wolumla in Schedule 5 of BVLEP. The proposed amendment updates the lot and deposited plan numbers for the heritage item following subdivision.

Options

This report recommends that Council support the planning proposal to make minor, but important amendments to BVLEP 2013. These changes are important to ensure that BVLEP 2013 remains contemporary and meets the requirements of landowners, the wider community and Council's strategic direction.

Council could choose not to make these changes and the outdated references, omissions, ambiguities and non-alignments would remain as there is no other avenue to make the proposed changes other than through the planning proposal process.

Community and Stakeholder Engagement

Engagement undertaken

At this time, no specific community consultation has been undertaken. However, community consultation was undertaken on the following related documents:

- Merimbula Airport Master Plan
- Bega Valley Use of Public Land (Local Approvals) Policy
- Bega Valley Commercial Land Strategy
- Bega Valley Local Strategic Planning Statement

Engagement planned

Community consultation for this planning proposal will be consistent with the requirements of the *Bega Valley Shire Community Engagement Strategy*, being a minimum exhibition timeframe of 28 days or as specified by the Gateway Determination.

Public exhibition of the planning proposal will include notification on Council's website.

Should agency or community feedback to the planning proposal be received that warrant substantial changes to the planning proposal, a further report will be prepared for Council outlining the submissions received and any changes to the planning proposal recommended in response to those submissions prior to resolving whether to proceed with amending BVLEP 2013.

If no objections to the planning proposal are received and no substantial changes are required to the planning proposal, it is recommended that Council resolve to authorise staff to proceed to finalise the proposed amendment to BVLEP 2013.

Financial and Resource Considerations

The processing of the planning proposal and its public exhibition will be undertaken as part of Council's regular work program.

Legal /Policy

This planning proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the NSW Department of Planning and Environment's Local Environmental Plan Making Guideline (December 2021).

Impacts on Strategic/Operational/Asset Management Plan/Risk

Strategic Alignment

The planning proposal is consistent with the *South East and Tablelands Regional Plan 2036*, *Bega Valley Community Strategic Plan 2040*, *Bega Valley Shire Local Strategic Planning Statement*, *Bega Valley Commercial Land Strategy* and *Merimbula Airport Master Plan*.

Environment and Climate Change

Insertion of the optional special flood considerations clause into BVLEP 2013 will apply matters for consideration in development applications for certain sensitive and hazardous development on land between the Flood Planning Level and the Probable Maximum Flood and for land that in the event of a flood Council considers may cause risk to life or require evacuation.

It is considered that the inclusion of the optional clause will not prevent development on the affected land but would enable consideration of factors such as risk to life and evacuation when planning and assessing certain types of development in locations that may present a risk to life.

Economic

The planning proposal seeks to increase the maximum size of a roadside stall and provide a simpler planning assessment pathway for annual events and quarterly markets. It is anticipated that these modest amendments will have positive economic impacts.

Risk

The planning proposal seeks to address a broad range of risks to Council and the broader community by:

- correcting omissions, updating references and removing ambiguity
- clarifying that certain desirable land uses are permitted with consent
- increasing opportunities for roadside stall operators
- clarifying the approval pathway for A-frame signs
- ensuring that future activities on public land can be more easily assessed and managed
- protecting the future growth and operations of the Merimbula airport
- managing risk to life associated with the development of land between the flood planning area and probable maximum flood level.

Social / Cultural

The planning proposal is anticipated to have positive social impacts as it seeks to clarify that certain desirable land uses, including secondary dwellings, medical centres and health consulting rooms, are permitted with consent in certain residential zones.

The proposal to permit a broader range of events and certain markets as exempt development, but subject to the alternative Use of Public Land (Local Approvals) Policy assessment pathway, is likely to result in positive social and cultural outcomes. Likewise, clarity regarding Council's formal pathway to establish a community garden or paint a mural on a building is likely to have positive social and cultural impacts.

Attachments

1. Planning Proposal Minor Amendments 2023