



Your ref: F12/281 Scoping Proposal Lot 23 Mount Darragh Rd Lochiel
Our ref: DOC24/141878

Ms Elizabeth Schindler
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Bega Valley Shire Council
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By email: eschindler@begavalley.nsw.gov.au

Dear Ms Schindler

F12/281 Scoping Proposal Lot 1 & 5 Mount Darragh Rd Lochiel

Thank you for the opportunity to review this Scoping Proposal. We have reviewed the document provided and offer the following comments.

We have concluded that there is insufficient information in the scoping documents to adequately address the following ministerial local planning directions that are required in a planning proposal:

- 1.1 - Implementation of Regional Plans
- 3.1 - Conservation Zones and
- 4.1 - Flooding

The scoping proposal has not included sufficient information on the biodiversity values of the site. Biodiversity Conservation and Science recommend that an assessment of biodiversity values is carried out consistent with Stage 1 of the Biodiversity Assessment Method (BAM) or similar methodology, to inform a planning proposal and demonstrate consistency with the ministerial local planning directions. This needs to include groundcover, as previously grazed areas can contain significant proportions of native species. Groundcover as well as overstorey is covered by the Biodiversity Conservation Act 2016 (BC Act).

BCS also require a clear development footprint, or area of impact, from the proposed development. Planning Proposals must be assessed having regard to all clearing associated with the final use of the land as intended in future subdivisions.

The scoping proposal seeks to rezone land that is flood prone and therefore will need to demonstrate consistency with *Section 9.1(2) Direction 4.1* of the Local Planning Direction, the NSW Government's Flood Prone Land Policy and the Flood Risk Management Manual, 2023. The planning proposal should be supported by a Flood Impact and Risk Assessment (FIRA) to address the requirements of the local planning direction over the range of floods up to the Probable Maximum Flood (PMF) and issues relating to flood risk, impacts and public safety.

Further detailed comments for biodiversity, flooding and estuary management are contained in Attachment A.

If you have any further questions about this issue, please contact Ms Allison Treweek, Senior Team Leader Planning, Biodiversity and Conservation Division, at rog.southeast@environment.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink, reading "Allison Treweek".

Allison Treweek 26/03/2024

**Senior Team Leader Planning
Biodiversity and Conservation Division**

ATTACHMENT A

Biodiversity Comments

The scoping proposal has not included sufficient information on the biodiversity values of the site. BCS recommend that an assessment of biodiversity values is carried out consistent with Stage 1 of the Biodiversity Assessment Method (BAM) or similar methodology, to inform a planning proposal and demonstrate consistency with the ministerial local planning directions.

It appears that the site has native vegetation, so future development applications might trigger entry into the Biodiversity Offsets Scheme (BOS) and would be required to follow the 'avoid, minimise and offset' approach. The South East and Tablelands Regional Plan says that high environmental value land that is confirmed must be safeguarded in the Bega Valley Local Environment Plan (LEP) so any future planning proposal will need to show how this will be done. More information is given below.

This scoping proposal is proposing to rezone lots 1 & 5 of DP 1292533 from RU2 Rural Landscape with MLS of 120ha to C4 Environmental Living with a MLS of 1ha, which is a significant change to the density of development and potential for significant impacts to biodiversity.

Future impacts relating to the subdivision of land to any areas assessed as native vegetation should consider the [Biodiversity Offset Scheme](#) (BOS) entry thresholds:

1. **Area clearing threshold** -The proposed clearing exceeds the clearing thresholds in clause 7.2 of the *Biodiversity Conservation Regulation 2017* (BC Reg)
2. **Biodiversity Values Map threshold** -The proposed clearing is within land mapped on the Biodiversity Values Map (BV map)
3. **Test of Significance** -The proposed development or activity is 'likely to significantly affect threatened species', as determined by the 5-part test in section 7.2 of the *Biodiversity Conservation Act 2016* (BC Act).

In the case of this Planning Proposal, additional biodiversity assessments (and the potential generation of an offset liability) would be required if one of the above listed thresholds is triggered. Careful design of a future subdivision and development layout that avoids or minimises impacts to the environment would reduce a potential future offset obligation. If a BOS entry threshold is triggered, a Biodiversity Development Assessment Report (BDAR) consistent with the [Biodiversity Assessment Method](#) (BAM) will be required to be submitted with the DA.

More information of the Biodiversity Assessment Method and how BOS entry thresholds apply to subdivisions is included below.

The Biodiversity Assessment Method

The BC Act and BC Reg outline the framework for addressing impacts on biodiversity from development and clearing. The framework provides a transparent, consistent and scientifically-based approach to biodiversity assessment and offsetting. Through the application of the BOS a proponent is required to identify the biodiversity values of a site and then demonstrate how they would avoid, minimise, and if required, offset impacts in the context of a proposed development. Where a threshold is likely to be triggered, an accredited assessor must be engaged to undertake a BAM assessment.

The BAM establishes a consistent methodology for identifying and documenting the biodiversity values of a location. A proposal assessed consistent with the BAM allows a determining authority to make an informed decision about the likely impacts of a proposed development on biodiversity values. The BAM is divided into three stages.

- BAM Operational Manual – Stage 1 provides operational guidance to assist applicants to apply the BAM to quantify biodiversity values on land subject to the development proposal.

- BAM Stage 2 follows and is used to undertake an impact assessment of the proposed actions when the BOS is triggered; applying the principles of avoid, minimise and offset to assess direct, indirect and prescribed impacts on the biodiversity values identified in Stage 1.
- BAM Stage 3 is applied to proposed biodiversity stewardship sites.

The outcomes of Stage 1 and 2 assessments for proposed developments are documented in BDARs. The purpose of a BDAR is to ensure consistency in the documentation of the biodiversity values of the subject land in the context of the proposed development including a detailed assessment of the biodiversity values of the site and measures to avoid, minimise and offset impacts to identified biodiversity values in the context of the proposed development. A BDAR must be prepared by an Accredited Assessor.

Area clearing threshold and how it is applied to subdivision

The BC Reg requires that all clearing associated with the final land use of the subdivision is considered when determining whether the clearing area exceeds the threshold. The BC Regulation Section 7.1 (3) states –

(3) If proposed development is or involves the subdivision of land, the subdivision is taken to involve the clearing of native vegetation that, in the opinion of the relevant consent authority or other planning approval body, is required or likely to be required for the purposes for which the land is to be subdivided. Once that clearing has been taken into account, the clearing for the purposes of the subsequent development of the land for which it was subdivided is not to be taken into account when determining whether the subsequent development exceeds the threshold.

When the BC Regulation Section 7.1 (3) is taken into consideration, it is uncommon for subdivisions to not trigger entry into the BOS via the native vegetation clearing thresholds where native vegetation is present. This is because the full suite of impacts related to the future intended use of the land must be considered in the impact assessment. This includes direct impacts such as:

- roads and driveways,
- building envelopes,
- onsite sewage effluent disposal,
- clearing for fence lines of individual lots,
- asset protection zones,
- construction laydown areas,
- infrastructure such as water tanks or ground-mounted solar panels landscaped areas,
- utilities within lots, and
- change of land use such as introduction of, or more intensive livestock grazing.

In addition to direct impacts, indirect impacts must be assessed beyond the development footprint and within the surrounding assessment area. The assessment of indirect impacts must describe the nature, extent and duration of short-term and long-term impacts and identify the native vegetation, threatened species, threatened ecological communities and their habitats likely to be affected and the type of indirect impact, such as (and not limited to) those listed above, that are considered likely to occur.

Ministerial Planning Direction 1.1 Implementation of Regional Plans/Direction 14 of Regional Plan

Direction 1.1 requires that planning proposals be consistent with a Regional Plan. The current South East and Tablelands Regional Plan 2036, specifically, Direction 14 – Protect important

environmental assets, requires that validated High Environmental Value (HEV) land be protected in Local Environmental Plans (LEPs). The scoping proposal has not addressed this direction.

As there is currently little information provided on the biodiversity values of the site in the scoping proposal, it is currently unlikely that consistency with this direction can be demonstrated in a subsequent planning proposal without further evidence being provided.

Application of the avoid, minimise and offset hierarchy should also be demonstrated when addressing this direction. Areas that have HEV will need to be avoided from impact in the first instance, and the planning proposal should demonstrate how these areas will be protected. There may be areas of threatened species habitat that will be impacted by the development, which have not been adequately identified or assessed in the scoping proposal.

Ministerial Planning Direction 3.1 Conservation Zones

Direction 3.1 requires that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. As with direction 1.1 above, an assessment should be provided to adequately identify whether there are environmentally sensitive areas or areas of high environmental value that need to be protected.

Floodplain Risk Management Comments

The proposal involves the rezoning and intensification of development on flood prone land and therefore will need to be considered in accordance with *Section 9.1(2) Local Planning Direction 4.1- Flooding* and the NSW Government's Flood Prone Land Policy as set out in the Flood Risk Management Manual, 2023. The policy aims to reduce the impact of flooding and flood liability on individual owners and occupiers, and to reduce private and public losses resulting from flooding utilising ecologically positive methods wherever possible.

The site is subject to a Flood Planning Constraint Category (FPCC) 1 flooding as identified in council's Pambula River, Pambula Lake and Yowaka River Flood Study (2021). The planning proposal should be based on a thorough understanding of flood behaviour to avoid adverse flood impacts to people, property and the environment during times of flood. The scoping proposal documentation does not currently provide consideration of flood risk or impacts both on and off the subject land. A site-specific Flood Impact Risk Assessment (FIRA) will need to be undertaken and demonstrate consistency with the requirements of the local planning direction and Flood Risk Management Manual. Guidance on the requirements for a fit for purpose FIRA can be found at: [Flood Impact and Risk Assessment | NSW Environment and Heritage](#)

The FIRA should assess flood risk over the full range of possible floods up to the probable maximum flood (PMF) and address the following key matters:

- The impact of flooding on the proposed development.
- The impact of the proposed development on flood behaviour, including any offsite flood impacts due to any land-use and landform changes.
- The impact of flooding on the safety of people for the full range of floods including issues linked with isolation and accessibility for emergency services during times of flood.
- Assess the effectiveness of any proposed management measures to manage the impacts of flooding to future development and off-site impacts.
- Establish that proposed land-use zones are informed by an understanding of flood behaviour and is compatible with the flood function, hazard, natural flow paths and Bega Valley Local Environmental Plan (LEP) 2013 for flood risk, riparian land and watercourse environment objectives. The proposed land use zone for high hazard and riparian lands could be an environmental conservation zone and establish if there are any conflicts with permissible use in the LEP such as residential development in hazardous areas.
- If the planning proposal includes land-use zones that enables residential use of the floodplain, it will require a thorough assessment of flood planning levels considering flood risk, the implications of climate change to flooding (particularly increased rainfall intensity), cumulative development impacts, structure blockage and inherit flood estimation variability and uncertainty. We note that council has not yet completed its Flood Risk Management Study and Plan for this area and as such flood planning levels consistent with the principles of the Flood Risk Management Manual are not yet established.

With regard to flood risks to public safety and emergency service implications, we recommend the proponent also seek early advice of the NSW State Emergency Service (SES) as the responsible authority for emergency management planning. As a minimum, the FIRA should demonstrate how flood access/egress to all proposed residential lots is possible and the merit of emergency management strategies developed in consultation with the SES. Typically such an assessment would address:

- Potential isolation times over a range of design flood events and durations for from frequent events and up to the PMF.
- Number of lots that are likely to be isolated.
- Number of lots which will be isolated then inundated (including consideration of peak inundation level as well as peak isolation event) particularly where residential development is permissible on flood prone land (i.e. PMF). Evidence should be provided on the event that causes the longest duration of isolation (see below).

- Any alternate isolation risks which are beyond the site and outside of the area of potential influence of this development proposal (i.e. other points at which road access routes may be cut including those not in the vicinity of the development).
- The requirements of a flood emergency management strategies and capability assessment should be prepared consistent with available guidance and in consultation with the SES.

Reference and details to undertake an isolation assessment and emergency capability assessment can be found in the following EM01 guide: [Support for Emergency Management Planning | NSW Environment and Heritage](#)

Conclusion

The proposal seeks to rezone land that is flood prone and therefore will need to demonstrate consistency with *Section 9.1(2) Direction 4.1* of the Local Planning Direction, the NSW Government's Flood Prone Land Policy and the Flood Risk Management Manual, 2023. The planning proposal should be supported by a fit for purpose Flood Impact and Risk Assessment (FIRA) to address the local planning direction requirements and associated guidance.