



Gateway determination report – PP-2024-2653

Bega Valley Housekeeping PP-13 Items

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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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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Council Report
Council Minutes
Planning Proposal Attachment 1 – Heritage Advisors Report on Murrah Cottage
Planning Proposal Attachment 2 -Gazettal notice of historic site under the NPW Act
Planning Proposal Attachment 3 – Zone C2 Environmental Conservation areas in Bega Valley Shire

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Bega Valley
PPA	Bega Valley Council
NAME	Housekeeping PP – 13 Items
NUMBER	PP-2024-2653
LEP TO BE AMENDED	Bega Valley LEP 2013
ADDRESS	Various - 13 Items – see Table under section 1.2
RECEIVED	4/12/2024
FILE NO.	IRF24/2857
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 make minor amendments (13 Items) to Bega Valley Local Environmental Plan 2013 (BVLEP 2013) as outlined in Table 3 below.

Table 3 Objectives of 13 Items

Type	Item Number	Objective
Heritage	1	Amend property description for heritage listing at Parrabel St, Bega due to subdivision of land
	2	Remove heritage listing from 8 Bermagui Rd, Cobargo due to demolition after a bushfire.
	3	Add heritage listing to 663 Benny Gowings Rd, Murrah at owner's request
Zoning	4	Zone David Whaling Station Historic Site C1 National Parks and Nature Reserves

	5	Remove zone RU1 Primary Production from land in Warbler Circuit, Bega following residential subdivision.
	6	Ensure privately managed facilities on leased Crown lands are zoned RE2 Private Recreation.
Clauses	7	Limit small lot community title subdivisions in the R3 Medium Density Residential zone to encourage housing diversity.
	8	Apply a minimum lot size for manor houses and terraces in R2 Low Density Residential and RU5 Village zones to protect neighbours and character from adverse development impacts.
	9	Allow subdivision to create first title resulting from Council-owned Road closures as exempt development to streamline road closure processes.
Land Use Tables	10	Permit cemeteries in C3 Environmental Management zone to ensure consistent application in non-urban zones.
	11	Permit self-storage units in E4 General Industrial zone to rectify error
	12	Permit co-living housing in R2 Low Density Residential zone to encourage housing diversity.
	13	Require Council approval for agritourism in C2 Environmental Conservation zone by turning of exemption for agritourism under SEPP Exempt and Complying Development to protect water quality in oyster catchments.

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 4 Explanation of Provisions

Type	Item Number	Explanation of Provision
Heritage	1	<p>It is proposed to amend Heritage Map Sheet HER_011B and Schedule 5, Part 1 Heritage Items to reflect the location of the heritage item following the recent subdivision of land by replacing Lot 1, DP 798593 with Lot 1, DP 1306496.</p>  <p>Figure 1 Subdivision of Lot 1 DP 798593 – red outline. (Source: Planning Proposal).</p>
	2	<p>It is proposed to remove item I166 from Heritage Map Sheet HER_017AA and amend Schedule 5, Part 1 Heritage Items. 8 Bermagui Road, Cobargo was destroyed by bushfire.</p>  <p>Figure 2 Remove Heritage Item I166 – red outline (Source: Planning Proposal).</p>

- 3

It is proposed to add Murrah Cottage and yard at 663 Benny Gowings Road, Lot 352, DP 740681 to the Heritage Map Sheet HER_018 and update Schedule 5 Part 1 Heritage Items as indicated in red below:

Murrah Cottage and Yard

663 Benny Gowings Road

Lot 352, DP740681

Local Significance



Figure 3 Add Heritage Item Murrah Cottage and yard – red outline (Source: Planning Proposal).

Zoning

- 4

It is proposed to remove zone C2 Environmental Management and apply zone C1 National Parks and Nature Reserves to Lots 3 and 4, DP750213 on the Land Zoning Map.



Figure 4 Rezone to C1 Zone – red hatching (Source: Planning Proposal).

5

A recent subdivision of land in Warbler Circuit, Bega has resulted in a misalignment between the lot boundaries.

It is proposed to amend the Land Zoning Map to apply Zone R3 Medium Density Residential to the parts of Lots 7, 8, 19 and 20 DP1297606 zoned RU1 Primary Production to clearly identify that the purpose of the lots is for residential development.



Figure 5 RU1 Zone to R3 Zone (Source: Planning Proposal).

6

Council has recently conducted an audit of land use zones applied to golf clubs in the shire, finding that four out of six golf clubs; Tathra, Pambula, Tura Beach and Eden, are currently partially or completely incorrectly zoned RE1 Public Recreation.

Under the updated LEP practice note PN 11-002, these areas should be zoned RE2 Private Recreation as they are privately managed facilities on leased Crown lands.

It is proposed to amend the Land Zoning Map to apply Zone RE2 Private Recreation to the following lots to reflect their private management of leased Crown lands:

Eden: Lots 3 and 4 DP1126141, Lot 105 DP247132, Lot 94 DP750205, PLT 217 DP729204, Lots 214, 215, 216, 218, 219, 220 DP729204.

Tathra: Lot 183 DP750236, part Lot 248 DP40290

Tura Beach: Lot 1217 DP614419, Lot 7004 DP1121063, Lots 7320 and 7321 DP1166928, Lots 7301 and 7302 DP1134811, Lots 1522, 1523 and 1524 DP634389, Lot 6904 DP1204254, part of Lot 7 DP586947, Lot 1635 DP262898.

Pambula: Lots 355 and 356 DP41837, Lot 374 DP750227, Lots 1 and 2 DP1047807, Lot 501 DP821437.

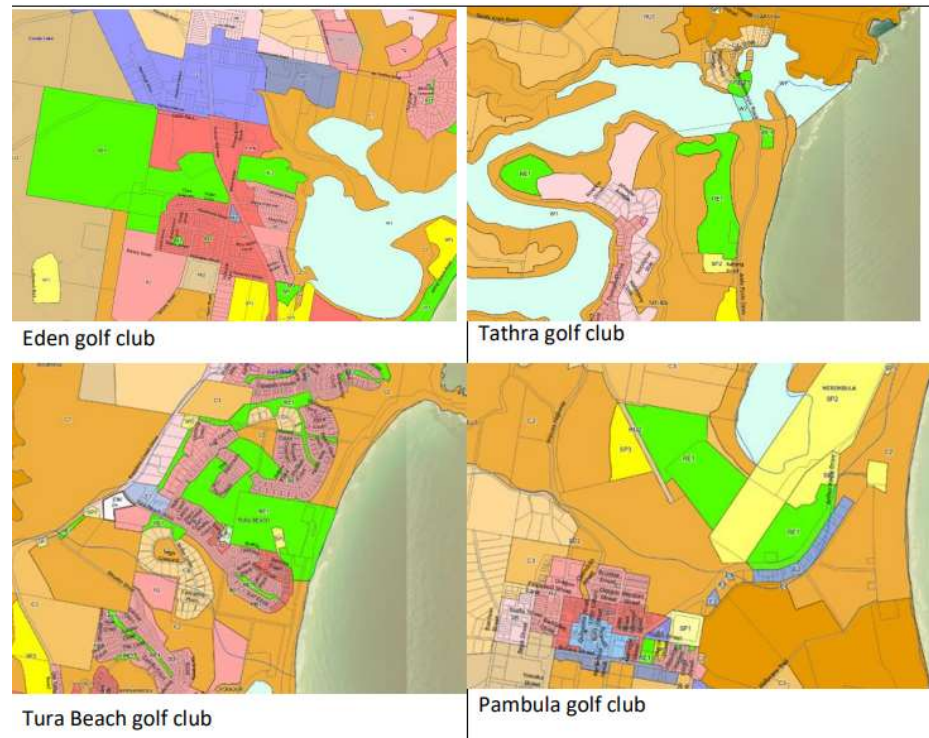


Figure 6 Location of golf clubs zoned RE1 (Source: Planning Proposal).

Clauses	7	<p>BVLEP 2013 currently prohibits community title subdivision less than the minimum lot size in the RU1, RU2, RU4, RU5, R5, C3 and C4 zones but not the R3 Zone.</p> <p>It is proposed to amend subclause (2) under clause 4.1 AA 'Minimum subdivision lot size for community title schemes' to insert zone R3 Medium Density Residential.</p>
	8	<p>The Codes SEPP provides a minimum lot size for terraces and manor houses of 600m² in zones R2 Low Density Residential and RU5 Village unless a Local Environmental plan stipulates a larger area. It is proposed to amend Clause 4.1A to apply a minimum lot size of 900m² in the R2 zone and 1000m² in RU5 zone.</p> <p>This change will ensure that lots are large enough to minimise adverse impacts to neighbouring properties and neighbourhood character due to the bulk and scale of these types of development.</p>
	9	<p>It is proposed to add a provision into BVLEP 2013 to permit the subdivision of land occurring in connection with a Council-owned Road closure as exempt development.</p> <p>The following clause will be added into Schedule 2 Exempt Development:</p> <p>Subdivision of Council public roads</p> <p><i>Must relate to land compromising a council public road proposed for closure under the Roads Act 1993, Part 4, Division 3.</i></p>
Land Use Tables	10	<p>It is proposed to amend BVLEP 2013 to ensure consistency in permissibility of cemeteries in all larger lot rural zones by inserting cemeteries into the C3 Environmental Management land use table.</p>

		Zone C3 Environmental Management <i>3 Permitted with consent Cemeteries</i>
	11	<p>It is proposed to amend BVLEP 2013 item 3 Permitted with consent in the E4 Land Use Table to reinstate the use of self-storage units in General Industrial zoned land.</p> <p>Zone E4 General Industrial <i>3 Permitted with consent Self-storage units</i></p>
	12	<p>Permit co-living housing in R2 Low Density Residential zone to encourage housing diversity by inserting the following clause.</p> <p>Clause 6.16 of the Bega Valley LEP 2013 will be amended to add co-living housing in addition to multi-dwelling housing.</p> <p>6.16 Multi dwelling housing and Co-living housing in Zone R2 Zone</p> <p><i>(1) This clause applies to land in Zone R2 Low Density Residential other than land in Bermagui, Tura Beach, Wallaga Lake or Wolumla.</i></p> <p><i>(2) Development consent must not be granted to development for the purposes of multi dwelling housing or co-living housing on land to which this clause applies unless the consent authority is satisfied—</i></p> <p><i>(a) the land is not flood prone land and is not likely to be affected by a coastal hazard, and</i></p> <p><i>(b) each lot will be serviced by a water reticulation system and a reticulated sewerage system, and</i></p> <p><i>(c) each lot will be at least 900m².</i></p> <p><i>(3) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle must not be included in calculating the lot size.</i></p>
	13	<p>Replace the term <i>agritourism</i> under item 3 in the C2 Environmental Conservation Zone to <i>farm gate premises</i> and <i>farm experience premises</i> to switch off the exemption for agritourism under the SEPP Exempt and Complying Development.</p> <p>Zone C2 Environmental Conservation 3 Permitted with consent <i>Farm gate premises, Farm experience premises</i></p>

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

The rezoning of land under items 4,5 and 6 will not generate any additional housing or jobs.

NOTE: All the items have merit but it is recommended that Item 13 be removed from the planning proposal because it cannot be implemented by amending the Bega Valley LEP 2013. As proposed, this would require an amendment to SEPP Exempt and Complying Development. This is not considered a minor housekeeping amendment and the Department will work with Council on progressing this item separately.

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 states that the proposed amendments have little or no strategic impact and are considered suitable for inclusion in a 'minor amendments' planning proposal. The proposed amendments align with Council policies and strategies including the Bega Valley Local Strategic Planning Statement 2040 and Bega Valley Shire Community Strategic Plan 2040.

Comments

Items 1-12

These Items are minor and can be included into a housekeeping planning proposal. These items do not raise any significant state or regional planning issues and are not inconsistent with local or regional planning strategies.

Item 13

The Department advised Council staff in early November 2024 that it would not be possible to achieve the intent of this item through amending the LEP's land use tables by removing *agritourism* from permitted with consent and replacing it with the sub terms *farm gate premises* and *farm experience premises* to 'switch off' the exemptions for *farm gate premises* and *farm experience premises* under SEPP Exempt and Complying Development.

The proposed approach does not 'switch off' the state-wide exemption for *agritourism* because Subdivision 16C and 16D in the Codes SEPP references the group term *agritourism* and any reference to the group term in the SEPP automatically calls up the sub terms as well. If Council removed the group term and replaced it with the sub terms, it would still have the same effect.

There are options to progress the proposal including amending the SEPP Exempt and Complying Development to specifically remove the exemption for *agritourism* on C2 Zoned land in Bega Valley. This would require the approval of the NSW Governor and the Minister for Public Places and Planning.

It is therefore recommended that although the item has merit the Gateway determination require that the planning proposal be amended to remove item 13 for the following reasons:

- An amendment to the C2 land use table under Bega Valley LEP 2013 as proposed by the planning proposal will not achieve the intent of the PP.
- The option of an amendment to the SEPP Exempt and Complying Development involves a more complex process and would not allow Council to use its delegation for plan making (i.e., requires a SEPP amendment). The processing of Item 13 would therefore require additional time and is likely to delay the implementation Items 1 to 12.
- Item 13 is not considered a simple housekeeping amendment whereby Council could process Items 1 to 13 in a reasonable time frame for minor housekeeping amendment.

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

The planning proposal states that the proposed amendments to Bega Valley LEP 2013 are the best means of achieving the objectives of the 13 items.

Comments

Items 1-12

An amendment to the LEP to implement Items 1 to Item 12 is the only means to implement the objective of the planning proposal and are considered minor housekeeping amendments.

Item 13

See comments for Q2 above. It is recommended that Item 13 be removed from the planning proposal for reasons outline under Q1 above.

3 Strategic assessment

3.1 Regional Plan

The planning proposal is not inconsistent with the objectives/goals or actions of the South East and Tablelands Regional Plan or the exhibited draft South East and Tablelands Regional Plan.

Comment

All the items have merit but it is recommended that Item 13 be removed from the planning proposal.

3.2 Local

The proposal states that the proposed amendments align with Council policies and strategies including the Bega Valley Local Strategic Planning Statement 2040 and Bega Valley Shire Community Strategic Plan 2040.

Comment

All of the items have merit but it is recommended that Item 13 be removed from the planning proposal.

3.3 Section 9.1 Ministerial Directions

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

Table 5 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	None of the items trigger an inconsistency with the South East and Tablelands Regional Plan or exhibited draft South East and Tablelands Regional Plan.
1.3 Approval and Referral Requirements	Yes	The planning proposal does not seek to introduce new provisions relating to requirements for approval or referral by another body or agency.
3.1 Conservation Zones	Yes	No items reduce the environmental standards applying to land.
3.2 Heritage Conservation	Yes	All three heritage items are consistent because: Item 1 seeks to amend property description for heritage listing at Parrabel St, Bega due to subdivision of land. Item 2 seeks to remove heritage listing from 8 Bermagui Rd, Cobargo due to demolition after a bushfire.

		Item 3 seeks to add heritage listing to 663 Benny Gowings Rd, Murrah at the owner's request.
4.1 Flooding	Yes	<p>Items 1 -11 do not trigger any inconsistency with Direction 4.1.</p> <p>Item 12 seeks to amend clause 6.16 Multi-dwelling Housing to permit co-living housing in the R2 Low Density Residential Zone.</p> <p>The planning proposal is consistent with this Direction because the clause 6.16 already contains provisions to exclude land that is flood prone, likely to be affected by a coastal hazard or land that is not serviced by a reticulated sewerage system.</p>
4.2 Coastal Management	Yes	<p>Items 1 -11 do not trigger any inconsistency with Direction 4.2.</p> <p>Item 12 seeks to amend clause 6.16 Multi-dwelling Housing to permit co-living housing in the R2 Low Density Residential Zone.</p> <p>The planning proposal is consistent with this Direction because the clause 6.16 already contains provisions to exclude land that is flood prone, likely to be affected by a coastal hazard or land that is not serviced by a reticulated sewerage system.</p>
4.3 Planning for Bushfire	Yes	Item 3 and 4 of the planning proposal is likely to affect land mapped as bush fire prone land. The planning proposal acknowledges that consultation is required with the NSW Rural Fire Service.
4.4 Remediation of Contaminated Land	Yes	<p>The planning proposal states is consistent with this Direction because none of the items apply to land that is contaminated or will need remediation.</p> <p>Item 5 potentially triggers this Direction but seeks to rezone slivers land from rural to residential as a result of an approved residential subdivision on land in Warbler Circuit Bega (Figure 5) created a minor mismatch of lot boundaries with the RU1 and R3 Zone boundary.</p>
4.5 Acid Sulfate Soils	Yes	The planning proposal states it is consistent with this Direction because it does not seek to intensify development on land identified as containing ASS.
5.1 Integrated Land Use and Transport	Yes	<p>No items trigger any requirements under Direction 5.1.</p> <p>Item 5 potentially triggers this Direction but seeks to rezone slivers land from rural to residential as a result of an approved residential subdivision that created a minor mismatch of lot boundaries with the RU1 and R3 Zone boundary (Figure 5).</p>
5.2 Reserving Land for Public Purposes	No	<p>Item 6 is inconsistent with the Direction because it seeks to change the RE1 Public Open Space Zone to an RE2 Private Recreation Zone on land at Eden, Tathra, Tura Beach and Pambula (Figure 6).</p> <p>The rezoning is considered minor because the change reflects that these parcels of land are privately managed facilities on leased Crown lands and are not public open space or proposed</p>

		<p>public open space.</p> <p>It is recommend that the Secretary's delegate approve the inconsistency with Direction 5.2 because the inconsistency has been justified and it is of minor significance. It is also recommended that consultation occurs with Crown Lands.</p>
6.1 Residential Zones	Yes	No items, including Item 5 (Figure 5), trigger an inconsistency with Direction 6.1.
7.1 Employment Zones	Yes	No items trigger an inconsistency with Direction 7.1. including Item 11 (permit self-storage in the E4 Zone).
9.1 Rural Zones	No	<p>Item 5 is inconsistent with the Direction because it rezones rural land to residential land (Figure 5).</p> <p>It is considered to be of minor significance because a recent subdivision of land in Warbler Circuit Bega has resulted in a minor misalignment between the RU1 and R3 lot boundaries.</p> <p>Recommend that the Secretary's delegate approve the inconsistency with Direction 9.1 because it is of minor significance.</p>
9.2 Rural Land	Yes	No items in the planning proposal trigger an inconsistency with Direction 9.2.

3.4 State environmental planning policies (SEPPs)

The planning proposal states that it is consistent with all relevant SEPPs.

Comment

The proposed minor changes in Items 1 to 13 are unlikely to trigger any inconsistencies with any SEPPs.

4 Site-specific assessment

4.1 Environmental

The housekeeping items are unlikely to have any significant adverse environmental impact.

4.2 Social and economic

The housekeeping items are unlikely to have any significant adverse social or economic impact.

4.3 Infrastructure

The housekeeping items are unlikely to create any significant demand for state or local infrastructure.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days (or 20 working days).

The exhibition period proposed (20 working days) is considered appropriate, and forms a condition of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

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

- NSW Crown Lands (Item 6).
- DCCEEW – Biodiversity and Science (Item 3 and Item 4).
- NSW Rural Fire Service (Item 3 and 5).

Note that Heritage Items 1,2 and 3 are considered to be justified and minor changes to Schedule 5 and the Heritage Map and therefore Council is not required to consult with NSW Heritage.

6 Timeframe

Council proposes a 12 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal (as revised by the removal of Item 13) is categorised as a standard.

The Department recommends LEP completion within 9 months in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority.

The planning proposal (as revised by the removal of Item 13) is a standard proposal that does not raise any significant state planning issues and is not considered complex or time consuming 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, subject to the removal of Item 13, with conditions for the following reasons:

- The items in the revised planning proposal are considered to have no significant adverse environmental, social or economic impacts.
- The Items in the revised planning proposal do not raise any significant state or local issues.

Based on the assessment outlined in this report, the proposal must be updated before consultation to remove Item 13.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 5.2 Reserving Land for Public Purposes and 9.1 Rural Zones are minor.

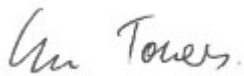
It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

The following conditions are recommended to be included on the Gateway determination:

1. The planning proposal is to be updated to delete Item 13.
2. Prior to community consultation, the planning proposal is to be revised to address condition 1.
3. Consultation is required with the following public authorities:
 - NSW Crown Lands
 - DCCEEW Biodiversity and Science
 - NSW Rural Fire Service
4. The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 10 October 2025 be included on the Gateway.

The timeframe for the LEP to be completed within 9 months.



13/12/24

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