

Your ref: PP-2022-1827
Our ref: DOC22/557631-13

Ms Sophie Thomson
Bega Valley Shire Council

16 August 2022

By email: council@begavalley.nsw.gov.au

Dear Ms Thomson

Planning Proposal PP-2022-1827

Thank you for referring this planning proposal to Biodiversity and Conservation Division (BCD) for our review and comments. We understand that the planning proposal is to increase the diversity of housing available in the Bega Valley local government area and will include changes to the Bega Valley Development Control Plan (DCP).

BCD is satisfied that Ministerial Local Planning Direction (Direction) 3.1 Conservation Zones, does not apply to this planning proposal as it relates only to land zoned RU5, R2 and R3 and does not involve any change of land zone to Conservation zones. In addition, the planning proposal is consistent with Direction 1.1 Implementation of Regional Plans for Direction 14,15 and 28 of the South East and Tablelands Regional Plan.

We note that the Gateway Determination Report acknowledges that the planning proposal is not consistent with Direction 4.1 Flooding, but documents this is of minor significance. However, it is unclear how this conclusion was reached as there is no investigation into the flood risks associated with significant intensification of R2, R3, RU5, B2, B4 zones on flood prone land. It also does not demonstrate that Council currently has adequate controls to manage these flood related risks.

In addition, the planning proposal is inconsistent with Direction 4.2 Coastal Management, as risks from coastal hazards have not been considered, and some areas are known to be affected by tidal and coastal inundation. We encourage council to consider these risks and the need for additional studies to be undertaken to understand the extent of immediate and future risks, as well as potential impacts to coastal wetlands at a few locations.

As such, the planning proposal should be amended to address the above concerns, with further detailed comments included in **Attachment 1**.

If you have any further questions about this issue, please contact Ms Lyndal Walters, Senior Conservation Planning Officer, on 02 6229 7157 or at rog.southeast@environment.nsw.gov.au

Yours sincerely



Nicola Hargraves
**A/Senior Team Leader Planning
South East, Biodiversity and Conservation**

Enclosure: Attachment 1 – Detailed comments on planning proposal 2022-1827

Attachment 1 – Detailed comments on planning proposal 2022-1827

Floodplain Risk Management

As the planning proposal seeks to alter the dwelling density of zones that affect flood prone land it should be considered in accordance with Section 9.1 Planning Direction 4.1 Flooding and the NSW Government's Flood Prone Land Policy as set out in the Floodplain Development Manual, 2005. 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 Gateway determination report PP-2022-1827 acknowledges that the planning proposal is not consistent with Section 9.1 Direction 4.1 but documents this is of minor significance. We are unclear how this conclusion was reached, as the planning proposal does not present evidence of an investigation into the flood risks associated with enabling significant intensification of R2, R3, RU5, B2, B4 zones on flood prone land and does not demonstrate that Council currently has adequate controls to manage these flood related risks.

To fulfill council's floodplain risk management responsibilities, we recommend that council undertake a flood impact risk assessment over this planning proposal to understand the impacts and risks of development intensification on flood prone land. This should consider the full range of floods and how public safety, flood damages and impacts on emergency management services will be managed. This will ensure Council has the information required to make informed floodplain risk management decisions consistent with the NSW Government's Flood Prone Land Policy, the Floodplain Development Manual and enable the consent authority is satisfied with the planning proposal being consistent with Section 9.1 Planning Direction 4.1 Flooding.

It is noted that Council presently has limited flood risk related controls in its DCP to minimise risks to life and property for the full range of floods. Whilst we understand and support Council embarking upon its flood DCP chapter 5.8.1 update, Council should commit to the completion of its Floodplain Risk Management Plans to ensure that its planning processes and decisions about future floodplain development is consistent with the principles of the gazetted Floodplain Development Manual. We commend Council on developing a forward program of flood studies and flood risk management plans, to better inform its decision-making including areas covered by this planning proposal that Council has limited or no flood information. We recommend that council prioritise the completion, review and implementation of its Floodplain Risk Management Plans and utilise the technical and financial support from the NSW Floodplain Management Program.

Finally, should council choose to determine this planning proposal in the absence of an assessment of flooding when the risks are known to be significant, we can only recommend council firstly seek legal advice regarding the liability provisions afforded to it, and its officers under *section 733 of the Local Government Act*.

Coastal Risk Management

We have considered whether the proposal impacts any land mapped under the State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2 Coastal Management. Local Planning Direction 4.2 Coastal Management applies to those areas and should be further addressed in the Planning Proposal. Risk from coastal hazards has not been considered in the Planning Proposal but some areas are known to be affected by tidal and coastal inundation. We encourage council to consider these risks and whether additional studies need to be undertaken to fully understand the extent of risks now and into the future. Potential impacts to coastal wetlands also need to be addressed at a few locations.

Coastal Wetland

We have identified that some areas zoned as R2 are within the coastal wetland proximity area and as such Direction 4.2, Clause 3 applies. We encourage council to review areas mapped as Coastal Wetland and Proximity Area in relation to this proposal. We note that although there may not be

areas of coastal wetland impacted by this proposal, clause 3 also applies to the proximity areas mapped under the SEPP.

We consider that this planning proposal is inconsistent with Direction 4.2, clause 3 and does not provide any justification for inconsistency or assessment of whether intensification of land use could have negative impacts on adjacent coastal wetland areas.

Coastal Hazards

Council has a Coastal Processes and Hazards Definition Study (BMT WBM 2015) and associated coastal hazard mapping that identifies areas at risk from coastal erosion and coastal inundation now and into the future. This mapping indicates that some of the R2 zoned land may be at risk from coastal hazards for example in locations around Curalo Lake, Merimbula and Tathra and as such Planning Direction 4.2, clause 2b applies. We recommend council review the coastal hazard mapping and consider the potential risk of intensifying land use in the impacted locations.

Council's Coastal Management Program Scoping Study has identified tidal inundation as an issue at several locations covered by this Planning Proposal. This likely covers R2 and R3 zoned land. We understand the extent of this risk is not yet fully understood and encourage council to complete their Coastal Management Programs to allow better understanding and management of risk from tidal inundation.