



The General Manager
Bega Valley Shire Council
PO Box 492
BEGA NSW 2550

Our ref: DOC21/386227-8

Your ref:

Attention: Sophie Thomson
council@begavalley.nsw.gov.au

15 June 2021

Dear Sophie

Subject: Planning Proposal PP-2021-2146 Deemed Concessional Lots – dwelling entitlement Bega Valley

BCD understand that this planning proposal is to reinstate dwelling entitlements that existed under Bega Valley LEP 2002, on certain rural lands, inadvertently removed by the wording of clause 4.2A (3) (b) of Bega Valley LEP 2013.

We note that this will apply to approximately 132 vacant rural lots zoned RU1 Primary Production, RU2 Rural Landscape Zone, E3 Environmental Management and E4 Environmental Living zones.

We have reviewed the planning proposal and support the proposed lot size limit to between 2 and 10ha. We understand this ensures there are not significant portions of land that can be developed within the LGA. As such we would not support any increase above 10ha, as based on advice from Council, it would significantly increase the amount of existing lots that would qualify, increasing the impact on environmental values.

However, further information is required to demonstrate that the following ministerial planning directions have been adequately addressed in the planning proposal.

- 2.1 Environment Protection Zones
- 2.2 Coastal Management
- 4.3 Flood prone land
- 5.10 Implementation of Regional Plans

Council should clearly demonstrate that the proposed dwelling entitlement will not lead to any increase in environmental harm through existing and proposed provisions including;

- a) Proposed additional clause 6.12 – Deemed concessional lots if deemed necessary, to be developed in consultation with DPIE – BCD.
- b) *Bega Valley Local Environment Plan (LEP) 2012* other provisions such as additional local provisions 6.1, 6.3, 6.4, 6.5, 6.6, and/or 6.7
- c) Provisions from the *Bega Valley Development Control Plan 2013 (DCP)*, for example clause 5.6 Tree and Vegetation Preservation, and 5.8 Planning for Hazards.
- d) Other legislation such as the *Biodiversity Conservation Act 2016*, and *Coastal Management Act 2016*.
- e) State Environmental Planning Policies (SEPP) such as *SEPP (Vegetation in Non-Rural Areas) 2017* and *SEPP (Coastal Management) 2018*.



BCD is happy to provide assistance to Council in developing appropriate subclauses to the proposed additional clause 6.12, if it is deemed necessary, acknowledging that Parliamentary Counsel will determine the final wording/structure.

Further detailed advice is provided in Attachment 1. Please contact Lyndal Walters on 02 6229 7157 if you would like to discuss our comments.

Yours sincerely,

A handwritten signature in blue ink that reads 'Allison Treweek'.

ALLISON TREWEEK
Senior Team Leader
South East, Biodiversity and Conservation

Cc: Graham Judge – Planning & Assessment, DPIE

Enc: Attachment 1 – Detailed comments on the Bega Deemed Concessional Lots planning proposal

Attachment 1 – Detailed comments on the Bega Deemed Concessional Lots planning proposal

Further detailed advice is set out below regarding biodiversity, floodplain risk management and coast and estuary management.

Biodiversity

Ministerial Direction 2.1 Environment Protection Zones

As this direction requires that *a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas*, Council should clearly detail the provisions in the LEP (existing and proposed) that facilitate this direction. This could include:

- Explanation as to whether it is necessary to include an additional clause (6.12 Deemed Concessional Lots) in the LEP, (and a specific subclause) which places additional considerations for development for biodiversity values on the lots. If clause 6.12 is deemed necessary, we understand that the final wording of any subclauses will be subject to Parliamentary Counsel requirements and processes, we recommend that they reflect the requirements of the ministerial directions, which may include reference to High Environmental Value (HEV) land. We are happy to provide assistance in the development of suitable subclauses if required.
- Acknowledgement and discussion of existing clauses within the LEP and how they meet this direction. There are areas with high biodiversity values that are mapped in the Terrestrial Biodiversity and Environmentally Sensitive Land clauses in the LEP which places further controls on the potential impact on biodiversity values from development of the lots.
- The *Bega Valley Development Control Plan 2013* (DCP), clause 5.6 regulates clearing of vegetation in environmental zones in accordance with the *SEPP (Vegetation in Non-Rural Areas) 2017* which will be regulated by Council. We note that any clearing activities for rural infrastructure, such as fences, roads, tracks, dams, sheds on the lots that fall within the E3 and E4 zones will be regulated by Council under the Bega Valley DCP 2013. This has the potential to significantly increase demand on Council resources.
- It should also be noted that legislation such as the *Biodiversity Conservation Act 2016* which includes provisions such as the Biodiversity Offset Scheme may also apply to these lots at the development application stage.

Ministerial Direction 5.10 Implementation of Regional Plans

The planning proposal has not adequately addressed the Ministerial direction 5.10, as it has not addressed Direction 14: Protect important environmental assets, and Direction 15: Enhance biodiversity connections, of the *South East and Tablelands Regional Plan 2036* (SETRP).

The planning proposal should clearly demonstrate how these two directions of the SETRP have been considered. This is likely to be the same mechanisms as set out in direction 2.1 above.

In addition, the SETRP requires that the avoid, minimise and offset hierarchy be applied to areas identified for new or more intensive development, and that the intensification of land uses through urban development and other activities must avoid impact on important terrestrial and aquatic habitats and water quality.

We recommend that this requirement is addressed in the provisions of clause 6.12 as above, or demonstrated that it can be met through other legislative provisions such as the BC Act.

Floodplain Risk Management

DPIE notes that Bega Valley Shire Council currently lacks reliable flood information for many areas where the planning proposal is intended to be applied.

DPIE also notes that the supplied Planning Proposal identifies that it is consistent with the Section 9.1 Planning Direction 4.3 Flood Prone Land. While DPIE acknowledges that the Planning Proposal does not actively seek to avoid the application of existing flood related development controls, neither does it ensure their application to lots for which they are not currently required due to the current absence of a dwelling entitlement.

The Section 9.1 Planning Direction 4.3 Flood Prone Land states:

“(3) This direction applies when a council prepares a draft LEP that creates, removes or alters a zone or a provision that affects flood prone land.”

As the planning proposal pertains to altering provisions to permit submission of development applications for dwellings on lots where that is not currently permissible, DPIE questions the asserted consistency.

The Planning Proposal should show how the flood planning provisions contained in the LEP will be applied to lots of unknown flood exposure.

DPIE believes that BVSC should identify how flood control provisions will be applied to the lots the clause proposed to be included in the Bega Valley LEP 2013 will apply to. Council should seek advice from DPIE - Planning and Assessment on whether an explicit statement within the new clause about compliance with flood control provisions is appropriate.

Should Council require any further advice on floodplain risk management matters, it should not hesitate to contact the DPIE.

Coast and Estuary Management

DPIE notes that the *SEPP (Coastal Management) 2018* and Section 9.1 Planning Direction 2.2 Coastal Management apply to some of the lots identified in the Planning Proposal. A number of lots may be subject to risks from coastal hazards and/or may contain areas of coastal wetland. There is also a Coastal Zone Management Plan for Pambula Estuary which covers a small number of the lots identified.

The Planning Direction 2.2 Coastal Management states:

“(4) A planning proposal must include provisions that give effect to and are consistent with:

- (a) the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas;
- (b) the NSW Coastal Management Manual and associated Toolkit;
- (c) NSW Coastal Design Guidelines 2003; and

(d) any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land.”

The Planning Proposal identifies that it is consistent with Planning Direction 2.2 Coastal Management, however it does not include any detail on mechanisms to ensure consideration is given to risk from coastal hazards or potential impacts of development on coastal wetlands.

Council should identify how the coastal management provisions will be applied to the affected lots.

Council may wish to include an additional clause under Clause 6.12 Section 2 with specific coastal management considerations to be satisfied before consent can be granted. Council should seek advice from DPIE - Planning and Assessment on an appropriate clause to include or other mechanisms to ensure developments consider risk from coastal hazards or impacts on coastal processes and environmental values including coastal wetlands.