

# DISCUSSION PAPER 9

## LAND USE IN THE GENERAL RURAL AREAS

A DISCUSSION PAPER TO GUIDE THE  
EUROBODALLA SHIRE COUNCIL RURAL  
STRATEGY



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For: EUROBODALLA COUNCIL

January 2016

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# 1 INTRODUCTION

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## 1.1 PURPOSE OF THIS DISCUSSION PAPER

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The Draft Eurobodalla Rural Strategy is presented in three volumes:

Volume One: The Strategy – this is a summary document of the recommended preferred options, strategies and action plans.

Volume Two: The Discussion Papers – there are 10 broad papers in this volume, each presenting a discussion on the more significant issues applicable to Council’s role in the rural lands of Eurobodalla.

This is Discussion Paper 9 and it explores the options and directions for zoning, lot size and dwellings in the general rural area. For the purpose of this Paper and the Rural Strategy overall, the “general rural area” is seen as the lands outside of the rural small holding zones (Currently R5, E4 and smaller lots in RU4). Discussion Paper 10 looks into the options and directions for rural residential and rural small holding development.

This Paper is closely linked to and builds from most of the Discussion Papers 1 to 8.

Volume Three: A compendium of larger scale maps – given the size of the Shire and the detail sometimes required, the more important maps of general land use information and those from the Discussion Papers are presented in A3 page size. In addition, if accessing the PDF version, there is the capacity to “zoom in” to explore more detail.

The draft strategy package as presented in the three volumes, represents the work of the consultant team Garret Barry Planning Services (GBPS). It is stressed these documents are drafts prepared for community comment and input. Council has not concluded any view on the draft recommendations and will resolve a final strategy when it has considered community feedback.

We welcome suggestions from the community as to any issues we may have overlooked and your preferred options and strategies to guide the future direction of the rural areas.

## 1.2 EXECUTIVE SUMMARY

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Part of the brief for the Eurobodalla Rural Strategy includes a requirement for the consultants to review the zoning, mapping and permissible uses currently applied by Council in the general rural areas and make any suggestions relating to:

- Zone types/mix;
- Lot sizes to apply for the purposes of subdivision and dwellings;
- Current and future supply and demand of living opportunities in the general rural area;
- Permissible uses in zones; and
- Use of overlay maps.

This Discussion Paper focuses on the first three of these elements and in doing so draws on relevant options and recommendations from the other 9 Discussion Papers that form the Strategy background information. The other two elements are covered in this Paper, but have been addressed in more detail in other Discussion Papers.

In several of the issues above, in particular the preferred option for lot sizes for subdivision and dwellings, there will be a range of views on the best option and it is important these be given careful consideration. There is some discretion for Council, but there are also requirements imposed by the legislation, State policies and departmental guidelines.

The recommendations of this Paper in overview are:

1. On zoning:
  - a. That the RU1 Zone remain the principle zone for the general rural areas.
  - b. That Council use lot sizing in the RU1 zone where land is already fragmented but suitable for small lot farming to delineate areas in the lot size range 20 to 40 ha.
  - c. That Council extend some minor areas of E4 zoning where land is already fragmented, heavily vegetated and of low quality for agriculture and some other minor areas where the use best fits RU4.
  - d. That the E3 zone not be used in the general rural area subject to use of an overlay for biodiversity.
2. On Permissible uses:
  - a. Generally the range of permissible uses in the RU1 and RU4 zones are suitable for likely development needs. Four additional uses are recommended.
  - b. For other uses not already permissible or recommended, it is considered the need would be rare and in such cases a Planning Proposal would be a justified process to prove the validity of additional permissible activity.
3. On Overlays:
  - a. That a modified Native Vegetation overlay and a Wetlands overlays be retained in the Eurobodalla LEP.
  - b. That these overlays continue to be developed as living maps to guide development application work in the general rural area.

4. Lot sizing and dwelling permissibility:
  - a. That Council develop a “landscape” approach to preferred lots sizes for dwellings in the RU1 zone where holdings above 100 ha with a significant proportion of quality agricultural lands are constrained from further subdivision but that a small increase in supply of small lot farms be accommodated by selecting varying lot sizing across the fragmented areas of the Shire.
  - b. The current sunset clause 4.2 A(3) for the 2012 LEP should be removed from the LEP as it would cause unreasonable harm to some owners of vacant land.
  - c. The Existing Holding provisions in the LEP be replaced with lot size mapping of vacant existing holdings when resources allow. A further 5 year sunset clause might be put in place before the current processes for determination of existing holdings as defined in Clauses 4.2A(2)(d) and (e) are removed from the LEP to allow time for people who may be missed in the mapping, to seek consent for a dwelling or to be mapped as retaining the right to apply for a dwelling.
  - d. Extend use of the RU4 and E4 zones in appropriate locations to provide for some additional subdivision and dwellings in rural areas.

## 2 STRATEGY WORK TO DATE

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### 2.1 THE RURAL LANDS ISSUES PAPER

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This Section provides a review of references in the Rural Lands Issues Paper as they relate to subdivision, dwelling entitlements, lot size, environmental zones and overlays, dwelling entitlements, permissible uses and protection of agricultural land in Eurobodalla's General Rural Areas.

The Issues Paper was the first of a series of Rural Land Strategy documents and as such was essentially an introductory document raising general issues without exploring each issue in detail. Consequently, there is little detail regarding subdivision, dwelling entitlements, lot size, environmental zones and overlays, dwelling entitlements, permissible uses and protection of agricultural land. These matters were developed in subsequent documents.

#### 2.1.1 Environmental Values and Overlays

The Issues Paper makes the point that rural landholders have the challenge of making their business profitable whilst complying with legislative requirements for the protection of environmental attributes, and responding to environmental constraints.

#### 2.1.2 Protection of Agricultural Land

The Rural Lands Issues Paper identifies the following risks to agricultural land from subdivision activity:

- The potential permanent loss of agricultural land;
- The potential increase in rural/urban conflicts which can impact on farming operations;
- The creation of dispersed settlements that will have infrastructure capacity and cost issues; and
- Inflated land values caused by price speculation, making land purchase for farming activities unviable.



## 2.2 THE RURAL OPPORTUNITIES AND CONSTRAINTS REPORT (ROC)

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This Subsection provides a review of references in the Rural Opportunities and Constraints Report as they relate to subdivision, dwelling entitlements, lot size, environmental zones and overlays, dwelling entitlements, permissible uses and protection of agricultural land in Eurobodalla's General Rural Areas.

The ROC states that *in the development of the vision for rural lands in Eurobodalla, the fundamental principle should be the protection of agricultural land for both commercial and sub-commercial agriculture in Eurobodalla.*

### 2.2.1 Subdivision Matters

The ROC Report concludes that in the short to medium term there is no need to create new rural residential lots as there was (according to the Eurobodalla Settlement Strategy) between 7.5 and 17 years supply of rural residential lots with additional rural residential opportunities afforded by subdivision of land adjoining urban areas and lot averaging. The 2013 Eurobodalla Shire Rural Residential Land Monitor referenced in the ROC report found that there is a short term supply of land zoned for rural residential purposes of 9 years, with a further medium term supply of 8 years.

The report concludes that current supply is sufficient to meet demand for rural residential lots in the medium term.

The following considerations in regard to future rural residential development are detailed in the report:

- Further residential or rural residential zoning in the catchments of the coastal lakes and estuaries identified in the South Coast Regional Strategy is not supported unless it is demonstrated that a neutral or beneficial effect on water quality can be achieved.
- In its discussion regarding the policy context of rural residential development, the Report references the South Coast Regional Strategy which states that rural residential development must be located on cleared land unsuitable for urban or agricultural use and must be part of an endorsed growth management strategy.
- Council's ability to augment infrastructure will be a major consideration in provision of rural residential allotments.
- The Eurobodalla Settlement Strategy states that there will be no further rezoning of rural land for rural residential purposes in the short term as part of that strategy.

#### 2.2.1.1 Community and stakeholder views about subdivision

The following community views are listed:

- General support for accommodating growth on cleared land that is not productive agricultural land;
- Concern about the quality and accuracy of the data underpinning the LEP and environmental overlay mapping; and
- There were mixed feelings about locating development in areas supplied with established infrastructure. Some supported the principle while others were of the

opinion that development in areas of poorer infrastructure would not increase demand for infrastructure and services as people either accepted existing levels of provision and the infrastructure and services were already provided so more people would not increase costs.

### 2.2.2 Protect Agricultural Land

Strategies to protect agricultural land are suggested in the Report include giving consideration to the following factors when locating rural-residential development:

- Avoiding areas used for commercial and semi-commercial agriculture;
- Proximity to towns and settlements. Although the report recognises that this may also cause pressure on productive agricultural land adjacent to towns and settlements;
- Utilising existing fragmented land;
- Utilising existing infrastructure and services; and
- Avoiding land of high conservation value of risk.

### 2.2.3 Minimum Lot Size

The Report makes little reference to the issue of minimum lot size.

The Report notes the Department of Primary Industry view that “*minimum size of holdings for dwelling entitlement needs to be based on sustainable productive agriculture*”.

### 2.2.4 Environmental Values and Overlays

The Report identifies considerable community concern and debate regarding the accuracy and validity of data that underpinned the LEP maps and overlays.

However, the Report states that there is general community support for the protection of environmental values but differences about how it should be achieved. There is strong opinion that it should be at the discretion of the landholder while others believe that environmental values on private land should be recognised for their wider public benefit.

The report suggests the following options for addressing management of environmental values of private rural lands:

- Improved agricultural practices to manage environmental values of rural land; and
- Alternative uses such as low impact tourism or accommodation for land that has important environmental or scenic value.

## 2.3 POLICY DIRECTIONS PAPER

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This Subsection provides a review of references in the Policy Directions Paper as they relate to subdivision, dwelling entitlements, lot size, environmental zones and overlays, dwelling entitlements, permissible uses and protection of agricultural land in Eurobodalla's General Rural Areas.

### 2.3.1 Subdivision Matters

Planning rules for subdivision should provide an appropriate balance between facilitating change and growth in rural activities and avoiding fragmentation that may result in a loss of land for primary production or an increase in land use conflicts.

In considering the application of subdivision and other controls, Council must be consistent with the following principles outlined in State Environmental Planning Policy (Rural Lands) 2008:

- a) The minimisation of rural land fragmentation;
- b) The minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses;
- c) The consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands;
- d) The consideration of the natural and physical constraints and opportunities of land;
- e) Ensuring that planning for dwelling opportunities takes account of those constraints.

### 2.3.2 Lot Size

The general principle stated in the Policy Directions Paper regarding lot size is that lot sizing policy should provide for a mix of farm types and sizes without compromising the existing or potential use of productive agricultural lands.

### 2.3.3 Environmental Overlays

The Policy Directions Paper notes that Council resolved on 22 July 2014 that “overlays not be included in the Local Environmental Plan” and that “the Rural Lands Committee gives further consideration to...the options for the appropriate use of the overlays...in consultation with the Departmental advisors that currently sit on the Rural Lands Committee”.

The Paper also states that it is “important that environmental hazards and values are recognised in the planning system, including in the strategic and development assessment processes”.

#### 2.3.4 Dwelling Entitlements

The Paper supports the provision of rural dwellings in locations where a dwelling is required to support rural activities and will have minimal impacts on services, infrastructure and the existing or potential use of productive agricultural lands.

It is noted in the Paper that community and industry representatives have expressed strong views regarding the provision of greater potential for the creation of dwelling entitlements within rural lands and that existing entitlements be retained.

#### 2.3.5 Permissible Uses

The Policy Directions Paper suggests that land use permissibility in the RU1 and RU4 zones be reviewed to ensure maximum flexibility in rural land uses, as is appropriate having regard to the scale and impact of the activity on the primary purpose of the land for primary production.

It further suggests that split zoning be applied where appropriate to recognise different land uses or landscapes and that the Rural Lands Strategy give consideration to the circumstances in which split zoning is appropriate and the alternative approaches to split zoning where it is not considered appropriate.

#### 2.3.6 Protect Agricultural Land

An underlying theme in the Paper is that developments (such as subdivision for rural living, rural tourism and minimum lot sizing) should have a minimal impact on existing or potential use of productive agricultural lands.

### 3 DEVELOPING A VISION FOR THE GENERAL RURAL AREA WITH A TRIPLE BOTTOM LINE

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#### 3.1 RURAL ECONOMIC DIRECTION

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Discussion Papers 1, 2, 7 and 8 drew the following conclusions or at least discussion points relevant to the general rural areas of Eurobodalla:

- That commercial agriculture in Eurobodalla was more a part-time than full-time activity for the majority of people engaged in commercial scale agriculture in Eurobodalla. This did not mean commercial agriculture was not important for the Eurobodalla economy, just that the majority engaged in it have varying degrees of non-farm generated income and that agriculture is probably not an employment growth area except in the sectors of new products and in value adding.
- That high land prices in Eurobodalla make it a less attractive place for farm aggregation for getting bigger, which is a requirement for survival in many of the broad scale agricultural endeavours.
- That possibly up to 1,000 small businesses are currently operated from the rural zones with no direct dependence on the agricultural use of the holding they are operating from and that this economic activity will likely grow. The activities span a wide range from professional services using on line connection, to plant contractors, tourist accommodation, transport and training businesses.
- There are a large number of hobby scale farmers (80% of ownerships in the general rural areas are 40 ha or less). There seems to be demand from more people seeking hobby scale properties and still some reservoir of vacant properties to service that demand.
- While the terms of trade for commercial agriculture have continued to decline for several decades, there may be a new optimism entering agriculture given world-wide growth in demand for food and especially for specialised, value added food products.
- There is a small but rapidly growing sector based on local food production.

Looking to an economic vision for the general rural areas of Eurobodalla for the next 20 years, the following seem to be supportable objectives:

- Aim to retain and grow the current levels of part-time farmers but accept few full-time family commercial agricultural operations may survive the coming 20 years given the land price pressures.
- Provided expansion of hobby scale and small part-time farms does not fragment or constrain larger holdings and providing services can cope with the increased traffic, power and internet demands, continued growth of hobby farming is a supportable goal with economic benefits from buoyant farm supply services to building.
- Encourage growth in appropriate small-scale non-rural businesses in the rural areas as an option for income for part-time farmers.

## 3.2 RURAL SOCIAL DIRECTION

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- Eurobodalla is fortunate in that it does not face the rural decline of some inland Councils.
- There is demand and capacity to grow the numbers of hobby farmers, retain and grow part-time farmers and keep or expand the associated community viability that comes from retaining an adequate population across the rural areas.
- The landscape beauty, biodiversity and overall healthy function of agriculture are appreciated not only by residents of the rural areas but by urban and visiting people as well. The wider function of the rural areas is vital to the wellbeing of residents and visitors alike.
- While employment in the traditional beef and dairy areas may not grow, there are prospects of employment growth in the new food and value adding agricultural endeavours.

## 3.3 RURAL ENVIRONMENTAL DIRECTION

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Discussion Papers 5 and 6 relate to protection of landscape and biodiversity in the general rural areas.

They detail the value and importance of the rural areas scenic qualities and environmental attributes:

- The tourism industry relies heavily on the natural values and scenic qualities of the rural lands of Eurobodalla;
- Some natural habitats and species rely on conservation measures continuing on private rural lands for their ultimate survival; and
- There are reciprocal benefits for conserving landscapes and wildlife from pest control to conserving native grasses to support agriculture and gene banks for research and new products. There are bush food products and some new settlers prepared to pay a premium for well conserved and managed rural lands.

But rural land holders also raise concerns that there is some expectation they conserve biodiversity and landscapes without recognition or benefit for the constraints placed on their agricultural operations. There is a need for balance and for some flexibility.

It is important land owners be recognised and treated equitably for conserving the natural values on private lands in the Shire for the wider public good. But it is also important such assets not deteriorate significantly over the 20 year vision of this Strategy.

## 4 ZONES AND OVERLAYS IN THE GENERAL RURAL AREAS

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From Discussion Paper 3, it was recommended Council retain the RU1 Primary Production zone as the main zone for the general rural areas including RU1 to be the zone to be recommended for the majority of the lands currently deferred in LEP 2012.

The option of using the RU4 Primary Production (small lots) zone for some fragmented areas of the general rural areas is also recommended to give a better definition to those sections of the rural area with small lot farming potential. But the selection of areas for new RU4 needs detailed assessment as that zone currently allows dwellings on all lots, with consent.

Council has resolved to not utilise the E3 Environmental Management Zone. The 2012 LEP also limits the use of the E2 Environmental Conservation Zone to wetlands and other highly sensitive systems in mostly the eastern third of the Shire. This position is supported provided the environmental overlays are retained in the LEP as detailed in Discussion Paper 6 on Biodiversity.

Council may have to further justify this position on the environmental zones to the Department of Planning and Environment in terms of the requirement under Section 117 Direction of the Minister number 2.1 when seeking Gateway approval to zone the deferred areas. This Direction requires a justification if a proposed LEP amendment seeks to remove environmental protection zoning from an area already so zoned or identified as environmentally sensitive (e.g. where land is currently zoned 7(f1) under the Rural Local Environmental Plan 1987).

Discussion Paper 6 presents the case for retention of a modified Native Vegetation overlay and the Waterways overlays in the LEP. This is supported as a reasonable compromise between protection of biodiversity on private lands and not overly restricting development options for owners of land with native vegetation and habitat.

## 5 DWELLING POTENTIAL FROM THE LEP 2012

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### 5.1 WHAT ARE THE CURRENT REQUIREMENTS FOR A DWELLING IN THE GENERAL RURAL AREA?

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Before projecting requirements and options for future dwellings in the general rural areas it is necessary to examine what is possible now under the current LEP.

The varying attitudes and philosophies towards dwellings and expanded living opportunities in the general rural areas are explored in Section 6.

The current LEP sets 2 main tools for governing dwelling potential in the general rural area:

- A lot size of 1,000 ha has been set over all RU1 zoned lands. This essentially “rolled over” the planning position applying in the general rural areas before the 2012 LEP of no additional subdivision potential for dwellings.
- To protect past “rights” to have a dwelling on vacant land, Clause 4.2A of the 2012 LEP specifies the circumstances where a dwelling might be approved on vacant land:
  - Land shown on the Dwelling Entitlement Map.
  - Land that meets the test in the LEP as being an existing holding or a 1987 holding. These relate to the ownership pattern at a particular point in time and the remaining number of vacant properties with this provision is estimated below. (This provision is the subject of a “sunset” clause which would see those who do not gain approval for a dwelling by 20 July 2017, find a dwelling is no longer permissible on the land, unless the land is shown on the Dwelling Entitlement Map).
  - A lot created for the purposes of a dwelling under a planning scheme prior to the 2012 plan.
- Council also added an additional provision as part of the 2012 plan which allows consideration of a dwelling on any land over 40 ha where the land has direct access to a sealed council maintained road. But the opportunities under this additional clause are quite limited:



## 5.2 ESTIMATING THE REMAINING NUMBER OF VACANT PROPERTIES OR LOTS WHERE A DWELLING IS PERMISSIBLE

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Providing an accurate estimate of the remaining dwelling potential in the RU1 and deferred areas under the current LEP 2012 faces a number of challenges:

- All options for placement of a new dwelling in the RU1 and Deferred areas require the merit approval of a development application. Some land by nature of its risks, uneconomic access or servicing may fail to achieve a consent even if the right to apply exists. Other parcels may need expensive conditions imposed that economically limit the parcels ability to have a dwelling. To accurately determine this category would require a detailed survey of each parcel.
- There are a proportion of lots that do not attract the right to apply for a dwelling but identification of these lots is not straight forward. Old crown titles (of which there are many in the RU1 and deferred areas) do not attract a right per se but if they are or form part of an existing Holding or 1987 Holding, then they do. An existing holding search can mean an historic search of records of ownership going back to 1963 for each such holding.
- There are many lots approved from past subdivisions but not all are lots approved for a dwelling under a former planning scheme. This can mean an individual search of each title plan and related files to determine if the lot was approved for a dwelling.
- Some owners of multiple lots may have more than one right to seek consent for a dwelling.
- A few dwellings in the rural areas may have been built without the necessary consent and on land that has no right of consideration for a dwelling.

The best that is possible to estimate this supply of potential dwelling properties, under available program budget is as follows:

Using Council's GIS and property information, the consultants derived the number of ownerships in 3 categories:

- |                                             |              |
|---------------------------------------------|--------------|
| • Ownerships of size less than 40 ha        | 1,375        |
| • Ownerships of size 40 ha but under 100 ha | 226          |
| • Ownerships of size 100 ha and greater     | 129          |
| • <b>Total - all ownerships</b>             | <b>1,730</b> |

(See Map 1 for an overview).

Aerial photography was then used to estimate which of these 1,751 ownerships was vacant.

The accuracy of this method has some limitations but is considered sufficient for regional scale planning as being developed in this Paper. This survey of aerial photography identified:

- Vacant ownerships less than 40 ha 326
- Vacant ownerships 40 to under 100 ha 47
- Vacant ownerships over 100 ha 42
- **Total vacant 415**

The estimate of 415 vacant ownerships above includes some ownerships without right of consideration for a dwelling. Conversely, a relatively small number of property owners may have more than one option for a dwelling consideration.

Possibly as much as 30% of the estimated 415 potential dwelling properties have such severe constraints relating to bushfire, access and service costs that **a more realistic figure of total vacant properties able to have an economic and practical dwelling site is estimated at 300.**

To improve on this estimate would require many person days of detailed records searching and individual site inspections which is beyond the scope of this draft Strategy. By conclusion of the strategy process, the consultants propose some mapping options to help refine the real potential for dwelling parcels and to replace the complex Holdings searches with a simple map.

### **5.3 DISCUSSION ON CURRENT SUPPLY AND DEMAND OF DWELLING OPPORTUNITIES IN THE GENERAL RURAL AREA**

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Map 2 depicts the location of the estimated 415 ownerships identified through the survey in Section 5.2 as vacant.

A significant number of the vacant properties that may have dwelling potential are more remote from the towns and villages but there is a spread across the Shire.

Discussions with real estate agents have identified that vacant rural properties listed for sale of most sizes outside the rural residential zones are uncommon and ones under about 50 ha often keenly sought after when they are listed.

Unlike the rural residential zones, where monitoring of past rates of building activity can be projected forward as a reasonable indication of future demand, the supply situation in the RU1 and deferred areas is very much constrained and past building activity is not necessarily an indication of demand. The “supply” of living opportunities in the RU1 and Deferred areas has been fixed by current and past planning controls for some time and as such continues to reduce. The philosophy of those controls is explored in Section 6.

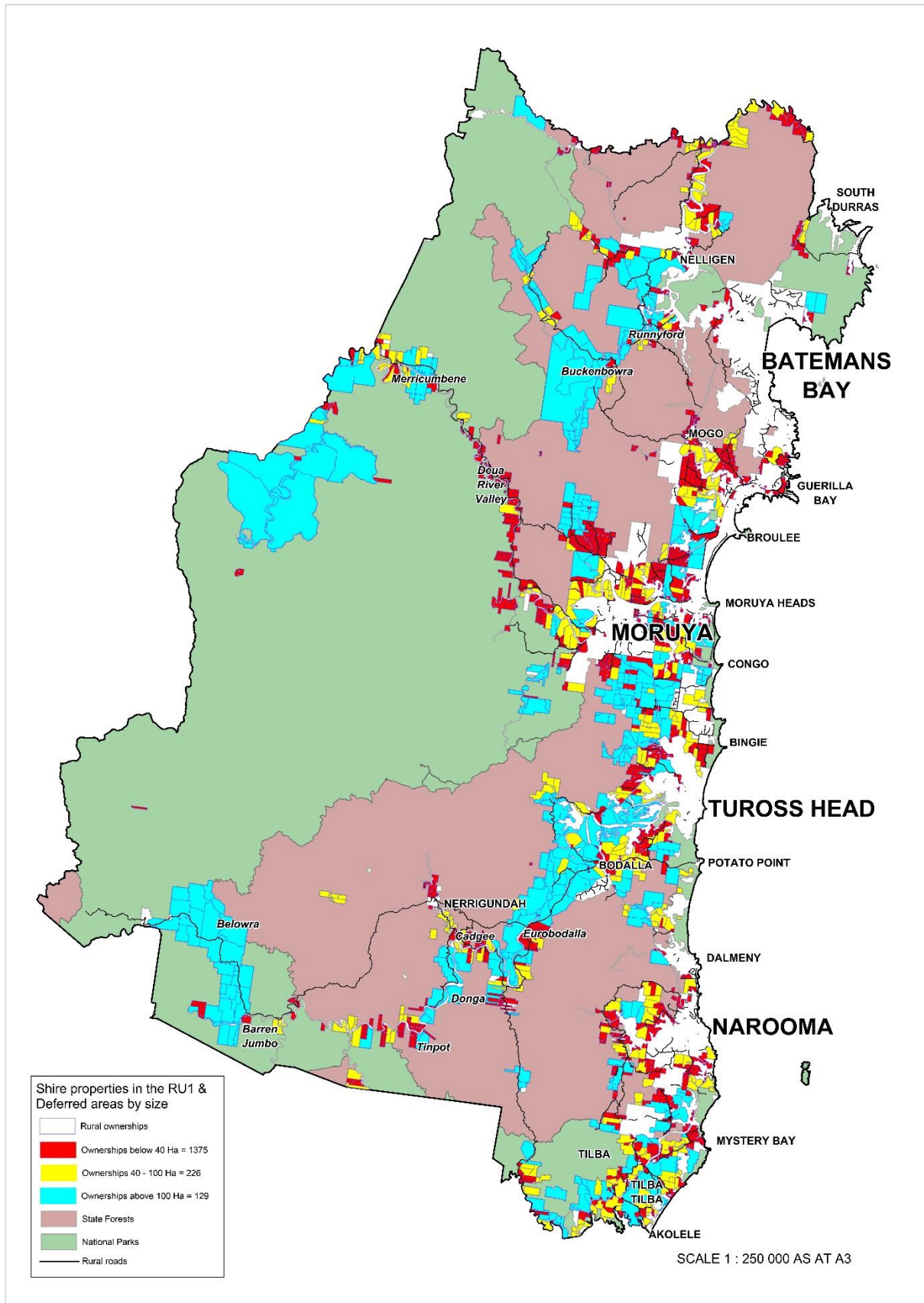
According to Council building records, 110 new dwellings were commenced in the last 15 years within what is now zoned as RU1 and deferred lands – an average of 7 dwellings per year. But as discussed above, this is not an indication of “market demand” as the supply has been capped for some years, is reducing and many owners of vacant properties are not listing them for sale i.e. holding the land for their own future dwelling or similar motives.

Given the supply and demand figures are relatively small and data limited, it is challenging to project what might be the uptake if various supply options were increased in the general rural area.

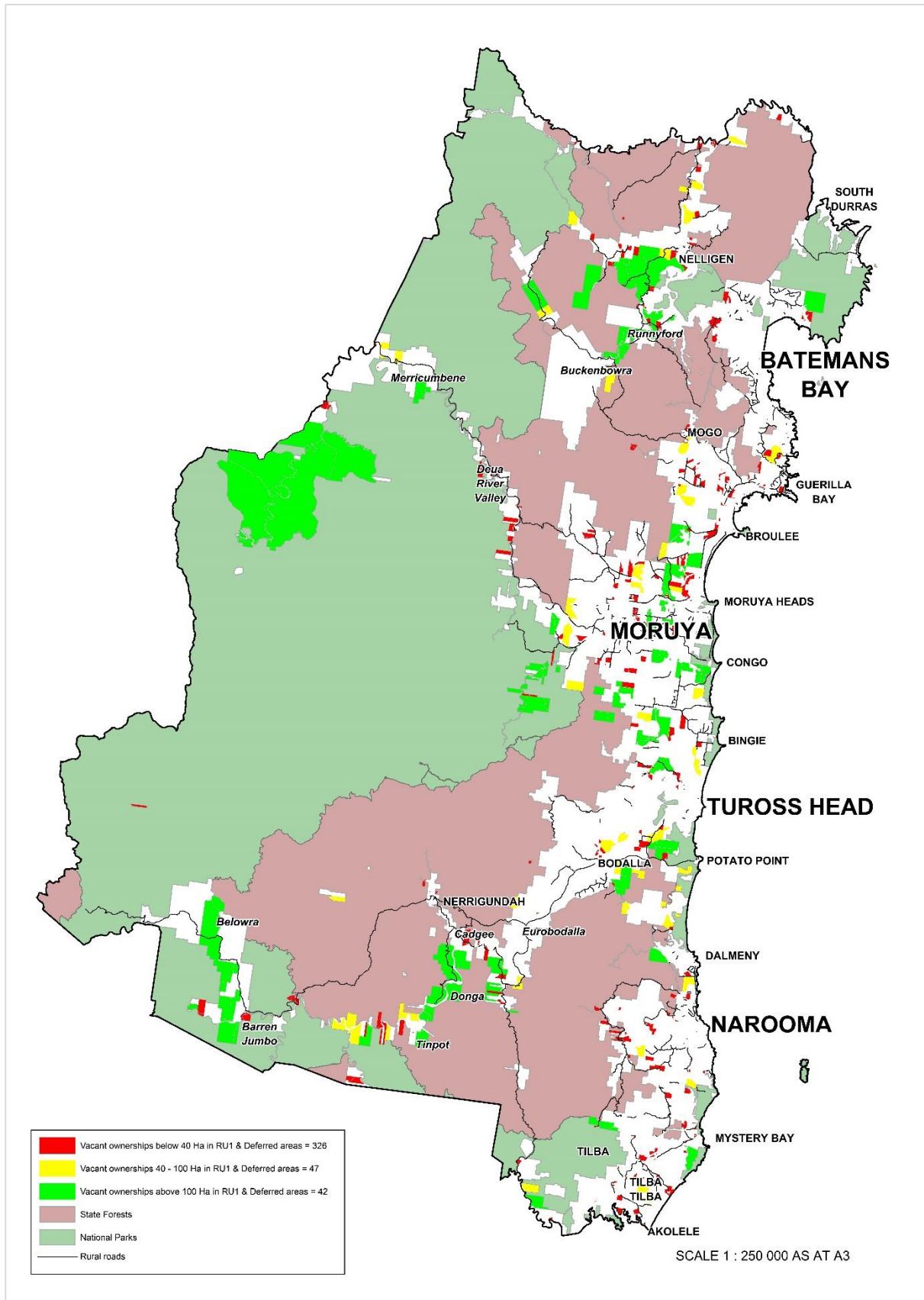
Anecdotal evidence suggests there is higher demand than the 7 dwellings per year derived from past building records. Other anecdotal evidence seems to point to a lessening of demand as property sizes rise. Agents suggest lots of 40 ha or less have a ready market if not too constrained by hazards or services but larger properties have a smaller and more specialised market.

Section 6 now explores some “what ifs” with respect to changes on dwelling supply across the general rural areas.

**Map 1: Existing ownerships by area in the RU1 Zone and the Deferred Areas**



**Map 2: Vacant ownerships by area in the RU1 Zone and Deferred Areas**



## 6 OPTIONS FOR SUBDIVISION AND DWELLINGS IN THE GENERAL RURAL AREAS

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### 6.1 RETAIN CURRENT POSITION AS PROVIDED THROUGH LEP 2012

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As detailed in Section 5, the current options for dwellings are governed by LEP 2012. It sets a 1,000 ha minimum area for subdivision for the purposes of a dwelling lot – effectively a planning position of a prohibition on further subdivision of land in the general rural areas for dwellings.

The 2012 LEP also specified the circumstances where dwellings are permissible on vacant existing titles. The planning position is the supply and opportunities for further dwellings has been fixed for some time and is currently estimated at 300 vacant properties with some realistic option to secure consent for a dwelling. Approximately 80% of these are 40 ha or less in size. This number would continue to gradually reduce if current provisions remain as there are no opportunities to create other additional dwelling opportunities.

### 6.2 DIFFERENT VIEWPOINTS ON SUBDIVISION AND DWELLINGS IN THE GENERAL RURAL AREAS

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There are a wide range of views and positions when it comes to the topic of how many dwellings to allow in the general rural areas of any Council but in particularly in a coastal Council like Eurobodalla with demand pressures on agricultural land for uses beyond commercial agricultural use.

Importantly, it is necessary for Council to identify early that there are State imposed limitations on the options available to Council for creating additional opportunities for dwellings in the general rural areas. There are also constraints imposed if objectives are to be met such as protecting future capacity for the agricultural economy and for limiting the community's exposure to servicing costs.

But to commence the discussion it is worthwhile to try to occupy the position of various players in the rural land use. The following are only some of the perspectives that apply in the rural area.

#### **The development perspective:**

It is clear from submissions on the earlier phases of this Strategy that a proportion of current landowners feel the constraints on subdivision and dwelling rights are too great and seek opportunity to be able to subdivide or sell titles for dwelling purposes. The motivations for this vary but would likely be financial. Additional dwelling potential, in a rural area with demand like Eurobodalla, can increase property value over similar land without extra dwelling potential but the proportionate increase is larger with smaller lots.

Some owners suggest there are options where overall planning objectives can be met but where some further dwelling options may also be provided. These options are tested in the remainder of Section 6.

### **The expanding farmer perspective:**

The farmer wishing to expand and buy additional land does not want new potential for dwellings to drive up the price of land. As detailed in Discussion Paper 2, Eurobodalla land prices have long been inflated by speculative pressures but adding dwelling potential does further inflate land value above that which might apply in a Council area remote from development demand.

Numerically, this group are small as farm aggregation is already a challenge in Eurobodalla given its current land prices compared to agricultural lands to the west.

### **The prospective hobby farmer:**

Current rural residential zone supply is mostly targeted at small lots below 10 ha. There is demand for hobby scale properties and from the work in Discussion Paper 2, it is suggested most holdings below 40 ha would only produce hobby scale returns. This perspective would like to see more opportunities for properties in perhaps the range 20 to 40 ha where there is some potential for minor agriculture and even properties larger where there are rural retreat or bush living options.

### **The prospective part-time commercial farmer:**

From the work in Discussion Papers 1 and 2 it is clear most commercial agriculture in Eurobodalla is already performed by part-time operators – usually with either off-farm income or on-farm business activity not directly dependant on the land.

There is anecdotal evidence of demand for part-time farms but it is hard to quantify locally as supply is currently mostly capped by the current planning provisions. There are only an estimate of 40 vacant ownerships over 100 ha in the Shire. This means a person wanting to buy a part-time farm in Eurobodalla needs in most cases to buy an existing property and in most cases a property with an existing dwelling.

### **Public agencies perspective:**

Public agencies including Council and State departments like Planning and Environment, Primary Industries and Environment and Heritage are charged with a range of duties “for the public good” including land use planning and consideration of impact on services and infrastructure.

In terms of rural planning there are long established objectives of trying to protect and enhance commercial agriculture for the economic and social benefits it can bring. And to protect natural resources, landscapes and heritage for the perceived wider benefits to the community.

The focus from this perspective goes beyond the individual landowner to attempting to achieve broader public good – sometimes at the expense of constraining some land use options of individuals.

Tools used to date to protect agricultural land have tended to focus on planning rules that constrain the further placement of dwellings and associated subdivision of land for dwelling lots. These controls can be effective in constraining dwellings and in limiting fragmentation of large agricultural holdings but as discussed in Paper 2, these controls alone do not guarantee a vibrant rural economy – especially in growing coastal areas where land values are already inflated beyond the value of the land based on what it can produce from agriculture.

## 6.3 WHAT IS THE RANGE OF OPTIONS OPEN TO COUNCIL FOR RURAL DWELLINGS AND SUBDIVISION?

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In the topics of economic and social development of the rural community, Councils can have a wide role and are more constrained by budget limits than regulation. If Council wishes to assist with tourism promotion, economic development or implement various social plans, it is often free to do so to the extent it can both find and justify the funds.

But with land use planning it is a more constrained role with the State Government retaining overall approval powers. Local environmental plans require the approval of the Minister to be made and it is the State government that both sets the planning legislation and has wide powers with respect to its interpretation and use by Local Government. If any change to lot sizes or the requirements for permitting dwellings in the general rural areas is to be effected, an amendment will need to be approved by the Minister to Council's LEP 2012.

With specific reference to the options for lot sizing and dwellings in the general rural areas, Council options are tempered by the following.

### 6.3.1 South Coast Regional Strategy

This regional level planning strategy sets various principles relevant to rural land. Because it is set at regional level it does not impose specific controls on the lot sizes and dwelling requirements for general rural areas but does specify the following principles (p. 29):

- *Local environmental plans will include provisions to limit dwellings in rural zones.*
- *Local environmental plans will include minimum subdivision standards for rural zones.*
- *Councils will consider the South East Regional Conservation Plan prepared by OEH.*

It connects problems such as increasing land prices, land use conflicts and loading on road and other services with poorly planned expansion of rural living opportunities in the general rural areas.

Councils, in preparing possible changes to lot sizes and dwelling controls, need to show the changes will not conflict with the above principles.

### 6.3.2 Section 117 Directions of the Minister

Section 117 of the *Environmental Planning and Assessment Act* empowers the Minister to set directions that Councils need to comply with in making LEPs, or to at least justify departures from such directions. The following directions are directly relevant to Councils consideration of lot and dwelling options in the general rural areas:

#### **Direction 1.2 Rural Zones**

This Direction requires local environmental plans "...not contain provisions that will increase the permissible density of land within a rural zone". But then states:

*... A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are justified by a strategy which:*



- (i) *gives consideration to the objectives of this direction,*
- (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
- (iii) *is approved by the Director-General of the Department of Planning...*

### **Direction 1.5 Rural Lands**

This Direction applies where: “...a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone”.

The Direction requires where a Council seeks to vary an existing minimum lot size for rural land in an LEP, it must do so in accordance with the Rural Subdivision Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.

These 8 principles are as follows:

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The Direction further requires any departure from the principles to be justified by a Study which obtains the approval of the Director-General of Planning.

Should Council wish to set a lower lot size for the Rural Lands than the current 1,000 ha, or set provisions for rural dwellings more generous than currently exist, it will be necessary to establish the changes meet the above 8 principles or that any inconsistency is justified to the satisfaction of the Director-General.

## Direction 5.1 Implementation of Regional Strategies

This Direction gives statutory force to the requirement Council consider and implement the South Coast Regional Strategy and the South Coast Regional Conservation Plan.

### 6.3.3 Policies of the Department of Primary Industry

The NSW Department of Primary Industries provides advice to planning consent authorities and industry groups to support sustainable resource use and production opportunities.

There are two current policy documents of the DPI and a DPI handbook for managing land use conflict issues (written for the NSW North Coast but with State-wide applicability). The following link provides access to these three documents on the DPI website.

<http://www.dpi.nsw.gov.au/agriculture/resources/lup/strategic-planning>.

### DPI Policy 0-104 – Maintaining land for agricultural industries (2011)

The purpose of this document is to guide the planning system in providing certainty and security for agricultural enterprises over the long term and to enable those enterprises to respond to future market, policy, technology and environmental changes. It provides direction in development and implementing planning instruments relevant to agriculture or rural communities, such as rural strategies. Four policy provisions and procedures are outlined:

- Environmental planning instruments should be structured to:
  - a. promote the continued use of agricultural land for commercial agricultural purposes, where that form of land use is sustainable in the long term;
  - b. avoid land use conflicts;
  - c. protect natural resources used by agriculture;
  - d. protect other values associated with agricultural land that are of importance to local communities, such as heritage and visual amenity;
  - e. provide for a diversity of agriculture enterprises, including specialised agricultural developments, through strategically planned locations to enhance the scope for agricultural investment in rural areas; and
  - f. allow for value adding and integration of agricultural industries into regional economies.

- Conversion of land

The conversion of land used by agricultural enterprises to other uses should only take place where fully justified in the strategic planning context. Considerations include:

- all alternative sites and options for non-agricultural developments;
- any decisions to convert agricultural land of high value to regional and State agricultural industries should be a last option; and
- the impact of non-agricultural developments on agricultural business and infrastructure reliant on the surrounding agriculture production.

- **Minimum size of holdings for dwelling entitlement**

The minimum area for a dwelling entitlement and other provisions in Environmental Planning Instruments to regulate subdivisions should take into account:

- a. the agricultural productivity and suitability of the land in question;
- b. the nature and requirements of agricultural industries in the area being considered;
- c. the risk of creating land use conflict;
- d. the current distribution of property sizes and the agricultural industry they support;
- e. the trends in the size of properties engaged in agriculture; and
- f. cumulative impacts e.g. gradual subdivision of agriculture becomes rural residential zone.

- **Minimising land use conflict**

Councils should also consider other approaches to achieving the goal of minimising conflict in agricultural production zones so that farms can operate without unnecessary restrictions.

### **Minimum Lot Size Methodology Paper**

This Document describes two methods that may be used to identify or determine minimum lot sizes. They provide a realistic snapshot of what could be regarded as a commercial farm size for a locality.

Option A is a basic assessment which can assist Local Government to determine an acceptable minimum lot size without detailed analysis. It is the DPI recommended approach to determining a minimum lot allotment size for an entire LGA.

Option B is a more detailed economic analysis and compilation of data for sub districts, which can assist Local Government to determine minimum allotment sizes appropriate for the promotion of sustainable agriculture in that locality.

A detailed case study is provided for reference in the methodology document.

The Option A method is presented on the following page.

### **DPI handbook**

DPI have produced 'Living and Working in Rural Areas – A handbook for managing land use conflict issues on the NSW North Coast' as a reference document to help manage and reduce land use conflict issues. The handbook is designed as practical reference that brings together information on the background to land use conflict and interface issues and material on managing land use conflict at the interface including key issues and tools available. It is of value in development assessment.

## Option A: Basic assessment

### Step 1: Identify the key agricultural industries and enterprises in the LGA

**What are the main agricultural industries in the LGA?** These may include the type and mix of crops, the grazing enterprises, and horticultural or vegetable crops.

**What is the LGA well-known for?** Most LGAs have economic development reports that provide a detailed account of agriculture in the area, and which can be used to contribute to this procedure.

**Has agriculture in the LGA changed over time and if so what has happened?** It is important to look at the changes in crops or livestock over time and the number and size of holdings that make up the enterprises. While holding size may be fairly stable, factors such as drought and seasonal variability, or fluctuating commodity prices, will affect economic returns, and should all be considered. In some areas changes in enterprises may occur due to technological change, or new market opportunities.

It is important to identify any major shifts and trends in enterprises as a result of technological, market or environmental influences.

Industry organisations, government agencies such as the Australian Bureau of Statistics (ABS) and ABARE and the farm service sector may be able to provide information on key enterprises and trends across the LGA. Once the major agricultural

enterprises have been identified across the LGA, the process of undertaking some case studies can begin.

### Step 2: Identify the characteristics of farms in the LGA

**What are the land use characteristics of the major existing agricultural enterprises in the area?**

The mix of crops and livestock enterprises across the LGA may vary according to factors such as locality, topography, soil type and climate.

**Are there distinctly different patterns of agriculture in different areas across the LGA?** Different areas may need to be considered for special provisions where the potential for conflict may arise, ie intensive agriculture.

In cropping areas, several crop options may need to be investigated, while grazing enterprises may operate both sheep and cattle enterprises, for example.

Assessment of holding size and pattern. The size of existing commercial holdings may be a useful indication of a realistic holding size in the area. It is important to recognise that some farmers are constantly adjusting their holding size and enterprise selection in response to economic conditions, so this may be a factor in determining the base size of a holding considered to be reflective of commercial farms in an area. An estimate of a realistic holding size can be determined at this point.

## 6.4 LOT SIZE AND DWELLING OPTIONS

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### 6.4.1 Alternatives that do not significantly increase subdivision or dwellings potential

The current LEP applies a 1,000 ha subdivision standard. As there are only 3 properties exceeding 2,000 ha this is a virtual prohibition on subdivision for dwellings in the RU1 zone. The 2012 plan “rolled over” the prohibition on further subdivision from the 1987 plan and conserved the dwelling opportunities of that plan, with the exception that some additional dwelling entitlements could be granted on lots over 40 ha with access to a Council maintained sealed road.

The principles behind the current LEP and past LEP centres on a philosophy of minimising further fragmentation of the agricultural holdings on the assumption this would best conserve commercial agricultural opportunities.

There are only 129 assessments over 100 ha in the Shire.

There are 53 over 200.

And there are 16 over 400.

A few of these assessments are not contiguous so the number of contiguous ownerships over 100 ha is possibly closer to 100.

So if lot sizes were to be variable and selected based on the larger lots in a particular district then the same impact of no real subdivision potential could be achieved with lot sizes ranging from 400 to 100 ha.

But this raises the question why change from 1,000 if the goal is to minimise further subdivision for dwellings?

If care was taken in the selection of areas, lesser lot sizes of 400, 200, 100 and even 40 ha could be introduced with minimal prospects of fragmentation of existing ownerships. Discussion Papers 1 and 2 clearly demonstrate the Shire is dominated now by part-time farming and, excluding holdings comprised of very poor agricultural lands, 200 ha represents at least prospects of a commercial part-time conventional beef farm.

### 6.4.2 What if the lot size across the RU1 zone was 100 ha?

As Table 1 below indicates, there are 53 ownerships in the Shire over 200 ha. If there was a 100 ha lot size and every ownership managed to subdivide to the maximum capacity, a total of 185 lots 100 ha or greater in area would be created.

**Table 1: Subdivision yield from a 100 ha lot size**

Ownership Size (ha)	Number of Properties	Maximum Hypothetical Lot Yield at 100 ha Lot Size
200-299	27	27
300-399	10	20
400-499	6	18
500-599	2	8
700-799	3	18
900-999	1	8
1,000-1,999	1	9
2,000-2,999	2	38
4,000-4,999	1	39
<b>TOTALS</b>	<b>53</b>	<b>185</b>

This maximum yield would be qualified by:

- The fact not every owner would chose to subdivide.
- 100 ha lots have a more restricted market. Bega Valley has had a 120 ha standard since 1987 and has seen few splits of large properties into 120 ha lots.
- The net gain in land value for larger lots is much smaller than for hobby scale lots 50 ha and less.
- Access, servicing and physical land constraints would rule out some potential.

There could be some negative impacts:

- Several good quality commercial agricultural operations exist on properties 200 ha or larger and these may be fragmented into part-time farms – but it is debatable if this would adversely impact on the overall agricultural production of the Shire.
- Many of the larger properties are in remote areas and additional dwellings in these areas may tax road and other public services, and also be constrained by environmental issues and hazards, such as bush fire. Conversely, the yield in most areas would be modest and possibly within the capacity of existing infrastructure.

#### 6.4.3 What if the lot size across the rural areas was 200 ha?

With a 200 ha lot size the number of properties above the 400 ha needed for subdivision would fall to 16 and the maximum potential yield to 74 Shire wide.

Similar to the 100 ha option, there would be a percentage of lots not likely yielded due to physical and economic constraints and 200 ha lots would have an even smaller market.

#### 6.4.4 What if the lot size over the general rural areas was 50 ha?

A lot size over much of the Shire of 50 ha or less would yield many potential lots but also likely see significant fragmentation of larger properties.

Such a lot size would be very difficult to justify against the 117 Directions of the Minister and would likely not be supported by State agencies.

Servicing issues would be generated given large numbers of potential lots in poorer serviced areas.

There would be more risk of conflicts in land use as hobby scale farms started appearing amongst commercial scale farms in all areas.

#### 6.4.5 The use of minimum averaging

Minimum averaging allows a range of lot sizes:

For example, take a 200 ha property. If the lot size is 100 ha and a minimum averaging clause applies then 2 lots can be created but one might be 190 ha and the other 10. The clause detail can regulate size range, approval requirements, etc., (such a clause is generally not supported by DPE and DPI in broadacre areas).

There are positives and negatives:

- Positive:
  - Retain the bulk of the property;
  - Create a marketable small lot and easier to site re services.
- Negative:
  - A “shotgun” plan – minimal control over where the lots go for servicing and impact on neighbours, etc.;
  - Still possible to create 2 or more lots at full lot size and break up the holding.

Minimum averaging is not considered to be suitable for the sections of the general rural area in larger holdings. This land resource is too valuable for agriculture and is not suited to having small holdings sprinkled throughout productive farms.

There may be a role for it in more fragmented areas once such areas are assessed as to the impacts. Minimum averaging may be a possible technique to consider in a future review and that for the current round the focus be the landscape model.

#### 6.4.6 “Landscape lot sizing”

There is little planning benefit in increasing subdivision potential for larger holdings, but some individual gain in property value would be created for the affected owners.

In the past, concessional lots and similar were a trade-off for landholders accepting other planning controls. Under the Interim Development Orders in place prior to the 1987 LEP there was a minimum 40 ha lot size for rural land zone 1(a). However, there have been no prospects of subdivision for dwellings in Eurobodalla since the introduction of the 1987 plan.

Fragmented areas with reasonable servicing, could be lot sized to allow limited yield and not impact on the commercial agricultural asset nor overly burden Council services.

A focus on constraining the subdivision potential of larger holdings but allowing a modest flow of opportunities for additional dwellings in fragmented areas seems the preferred approach and one which has prospects of satisfying the inconsistency requirements of the Minister's 117 Directions. The Consultants have attempted this model in their mapping in Section 2 of Volume Three and a small scale version of the Shire wide map forms Map 3 of this Discussion Paper.

**Principles for selection of fragmented areas for some dwelling increase:**

- Generally select areas of fragmented ownership – minimal properties over 100 ha unless they contain only modest areas of quality agricultural land. Minimal properties over 40 ha if the land is high quality.
- Either demonstrated low additional traffic impacts on existing gravel roads or a funding base through the proposed lot yield to seal the access road.
- Sound bushfire protection plan including 2 routes of access and sufficient cleared land for safe home sites.
- A preference for provision of more small lot agricultural properties – there is ample supply (and opportunities to extend supply) of rural residential, bush living and small hobby lots in the rural residential zones as detailed in Discussion Paper 10.
- Ongoing review over time of demand and supply of land for hobby and small part-time farms – say 5 yearly reviews.



## 7 PERMISSIBLE USES IN THE GENERAL RURAL AREA

Discussion Paper 3 provided a detailed review of permissible uses across the zones used by Eurobodalla and those of a sample of other Councils.

The outcome of that review was four more land uses are recommended for inclusion in the RU1 zone as detailed below:

**Table 2: Recommended additional permissible uses for the RU1 Primary Production Zone**

Suggested Additional Uses	Comment
Education facilities/ establishments	Public schools would be permissible under SEPP Infrastructure but possibly suitable to have consideration of private education options.
Function centres	Reception centres and similar seem supportable in low impact locations subject to assessment.
Information and education facilities	This category includes many rural tourist related activities such as galleries.
Places of public worship	Not unreasonable to site some religious centres in the rural area.

## **8 IDENTIFICATION OF PREFERRED OPTIONS AND RECOMMENDATIONS FOR THE RURAL STRATEGY**

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### **8.1 AGRICULTURE DIRECTION TO PLAN FOR**

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That Council adopt a vision statement for Agriculture which includes:

- That agriculture is important to the Eurobodalla economy but that part-time farming is recognised as an increasing aspect.
- That appropriate on farm businesses not dependant on agriculture be supported and there be recognition there are already significant numbers of such businesses and of the benefit to part-time farming of such business activity.
- That generally holdings above 100 ha with good agricultural land be limited in terms of prospects for further subdivisions and the focus for supply of small lot farms be set on those fragmented areas with reasonable servicing capacity.
- That the future of agriculture in Eurobodalla requires innovation and a focus on new markets and value adding.

### **8.2 ZONING AND OVERLAY OPTIONS**

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That RU1 be retained as the main zone in the general rural areas and that the deferred areas be zoned RU1.

That lot sizing under 100 ha be used in the RU1 zone to depict those fragmented general rural areas where small lot farming can be facilitated and modest increases in dwelling opportunities created. These small lot farming areas can then be the focus of further reviews over time to allow consideration of further opportunities.

The E4 Environmental Living Zone be expanded where land is already fragmented, heavily vegetated and of low quality for agriculture. That RU4 also be expanded for lot sizes of small farms under 20 ha. As above, selection of areas needs detailed consideration given the provisions of these zones also allow dwellings on all lots in the zone.

That an environmental overlay be retained in the LEP but it only depict native vegetation.

## 8.3 APPROPRIATE POLICY FOR DWELLINGS IN THE GENERAL RURAL AREA

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### 8.3.1 Lot sizes

That Council develop a “landscape” approach to preferred lots sizes for dwellings in the RU1 zone where holdings above 100 ha with significant quality agricultural lands are constrained from further subdivision but that a small increase in supply of small lot farms be accommodated by selecting varying lot sizing across the fragmented areas of the Shire.

The draft mapping in Volume Three is provided for comment and development into an eventual Planning Proposal. Map 3 below is a small scale version of the recommended lot sizing and minor zone adjustments but see Volume Three for larger scale maps.

### 8.3.2 Reasonable protection of existing dwelling opportunities

The current sunset clause 4.2 A (3) for the 2012 LEP should be removed from the LEP as it is reasonable for current dwelling considerations to be retained. In time the holding provisions might be replaced with a map of vacant existing holdings.

## 8.4 SUITABLE PERMISSIBLE USES FOR THE RU1 ZONE

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That the following additional permissible uses be added to the LEP for the RU1 Zone:

Suggested Additional Uses
Education facilities/establishments
Function centres
Information and education facilities
Places of public worship

### Map 3: Recommended lot sizes and minor zone changes across the General Rural Area (draft map)

(See mapping in Volume Three, Section 2 for more detail).

