

Planning Proposal

Amendments to ELEP 2012 to rezone certain lands, amend clause 6.5 and amend the Minimum Lot Size, Height of Buildings and Wetlands Maps.

Amendment No. 14

INTRODUCTION

Background

Eurobodalla Local Environmental Plan 2012 (ELEP) was notified on 20 July 2012. Since then there have been ten (10) amendments for various reasons. Three other amendments are currently in progress.

Amendments to ELEP 2012 are as follows:

- amend local provision 6.5 Flood Planning to generally reflect the current model clause issued by the Department of Planning and Environment
- rezone certain E2 zoned land to an appropriate zone within the mapped flood planning area.
- amend the minimum lot size map in relation to certain land in Moruya and Moruya Heads
- amend the maximum height of buildings map in relation to certain land at Moruya
- amend the Wetlands, Riparian Lands and Watercourses Map in relation to certain land at Moruya Head.

Delegation of Plan Making Function to Council

Council intends to request an authorization to exercise delegation to all matters addressed in this Planning Proposal. Responses to the relevant matters in the 'Evaluation Criteria for the issuing of Authorisation' are provided in Attachment A of this report.

PART 1: OBJECTIVES or INTENDED OUTCOMES

The intended outcome of this planning proposal is to rezone flood affected land from E2 to a more appropriate alternative zoning.

PART 2: EXPLANATION of PROVISIONS

The planning proposal contains the following provisions:

1. Amend Clause 6.5 to generally reflect the current model clause (see Appendix 1)
2. Amend Land Zoning Map to remove E2 Zone where it was applied to represent a flood risk and where appropriate environmental merit has not otherwise been met. Lands affected are proposed to be rezoned to an appropriate alternative zone.
3. Amend the minimum lot size map in relation to certain land in Moruya and Moruya Heads.
4. Amend the maximum height of buildings map in relation to certain land at Moruya.
5. Amend the Wetlands, Riparian Lands and Watercourses Map to remove the wetland designation from private land and public road at Moruya Heads.

PART 3: JUSTIFICATION

Section A – NEED for the PLANNING PROPOSAL

1. Is the planning proposal a result of any strategic study or report?

The following flood studies prepared in accordance with the NSW Floodplain Development Manual 2005 have informed this proposal:

- Moruya River Floodplain Management Plan 2004
- Moruya Flooding – Climate Change Assessment 2011
- Flood Prone Access to Moruya Hospital: Flood Assessment and Murray Street Crossing Upgrade Concept Design 2014
- Wagonga Inlet, Kianga and Dalmeny Flood Study 2016
- Broulee, Tomakin, Mossy Point and Mogo Flood Study 2017.

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

There is no alternative means of achieving the intended outcome.

Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK

3. Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The South East and Tablelands Regional Plan requires councils to locate development away from areas of known high hazard risk to reduce the community's exposure to natural hazards and to implement the requirements of the NSW Floodplain Development Manual. The planning proposal provides appropriate zoning to land based on the level hazard identified through flood studies prepared in accordance with the Floodplain Development Manual.

The South East and Tablelands Regional Plan states that local environmental plans will incorporate the best available hazard information consistent with current flood studies, flood planning levels, modelling, floodplain risk management plans and coastal zone management plans. The planning proposal ensures that the appropriate provisions are applied through Clause 6.5 of ELP 2012.

The planning proposal is therefore considered to be generally consistent with the South East and Tablelands Regional Plan.

4. Is the planning proposal consistent with the Council's local strategy or other local strategic plan?

The planning proposal meets the objectives, actions and directions of the following local strategies and plans:

- Eurobodalla Settlement Strategy 2006 2031, Environmental Protection (pp47 – 55)
- Moruya Structure Plan, Natural Hazards Directions (p102)
- Community Strategic Plan, "Respond to our changing environment and build resilience to natural hazards" (3.1, p20).

5. Is the planning proposal consistent with applicable state environmental planning policies?

Table 1: Consistency with State Environmental Planning Policies

| State Environmental Planning Policies and Aims/Objectives | Relevance to Planning Proposal | Consistency of Planning Proposal |
|---|--|---|
| SEPP (Coastal Management)2018 To ensure that coastal wetlands are preserved and protected. | Relevant – The planning proposal relates to land that contains Coastal Management Area 1 – Coastal Wetlands. | Consistent With the exception of the correction of a mapping anomaly on certain land at Moruya Heads, the planning proposal does not propose to rezone any lands identified by the existing Coastal Management Area - Coastal Wetlands mapping within the Coastal Management SEPP 2018. |
| SEPP (Coastal Management)2018 To promote an integrated and co-ordinated approach to land use planning in the coastal zone | Relevant - The planning proposal applies to land in the coastal zone. | Consistent The planning proposal does not facilitate development that would have detrimental impacts on the coastal zone. While some land is proposed to be rezoned from E2 to R2 or R5, the same land will be subject to clause 6.5 which has been amended to consider coastal hazards as a relevant matter. |
| SEPP Rural Lands 2008 To facilitate the orderly and economic use and development of rural lands for rural and related purposes through the application of rural planning principles and rural subdivision principles. | Relevant – The planning proposal applies to some rural land and other land used for agricultural purposes. | Consistent The planning proposal is consistent with the rural planning principles contained in the SEPP. |

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Table 2: Consistency with Ministerial Directions

| Ministerial Direction | Relevance to Planning Proposal | Consistency of Planning Proposal |
|--|---------------------------------------|---|
| 1.2 Rural Zones To protect the agricultural production value of rural land | Relevant | Consistent The planning proposal does not facilitate an increase in permissible density of land in existing or proposed rural zones. The planning proposal is therefore considered to be consistent with this Direction. |
| 1.5 Rural Lands (a) protect the agricultural production value of rural land, (b) facilitate the orderly and economic development of rural lands for rural and related purposes. | Relevant | Consistent The planning proposal does not facilitate an increase in permissible density of land in existing or proposed rural zones. The planning proposal is therefore considered to be consistent with this Direction. |
| 2.1 Environmental Protection Zones To protect and conserve environmentally sensitive areas. | Relevant | Consistent. The planning proposal does not propose to rezone environmentally sensitive areas. Land currently zoned E2 that is proposed to be rezoned to another zone is flood prone land that does not have any other environmentally sensitive attributes. The planning proposal is therefore considered to be consistent with this Direction. |
| 3.1 Residential Zones To encourage a variety and choice of housing types, to make efficient use of existing infrastructure and services and to minimise the impact of residential development on the environment and resource lands. | Relevant | Consistent. The planning proposal potentially provides for some additional dwellings in residential areas where the flood hazard is low. Any proposed development will be subject a merit assessment having regard to the amended clause 6.5. |
| 3.4 Integrating Land Use and Transport To ensure that urban development improves access to housing, jobs and services, increases transport choice, reduces travel demand, supports viable public transport and provides for the efficient movement of freight. | Relevant | Consistent. The planning proposal potentially provides for some additional dwellings in urban areas. Any proposed development will be subject to a merit assessment having regard to the amended clause 6.5. |

| | | |
|---|----------|--|
| 4.3 Flood Prone Land To ensure development of flood prone land is consistent with NSW Government Guidelines and that LEP provisions are commensurate with flood hazard. | Relevant | Part Consistent /Part Inconsistent. (See below) |
| 5.10 Implementation of Regional Plans To give effect to the vision, land use strategy, goals, directions and actions contained in regional plans. | Relevant | Consistent The planning proposal is consistent with the South East and Tablelands Regional Plan. |

4.3 Flood Prone Land

Ministerial Direction 4.3 applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land. This proposal outlines how the relevant provisions of the Direction has been met and where there are inconsistencies, how they are justified.

Clause 4 of the Direction states that *“a planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas)”*.

Consistent: The planning proposal seeks to update Clause 6.5 of the ELEG2012 to be generally consistent with the current Drafting direction – flood planning for the model clause that gives effect to and is consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). A revised clause 6.5 updates definitions and incorporates relevant provisions from the existing clause 6.5 in ELEG 2012, is provided in Appendix 1.

Clause 5 of the Direction states that *“a planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone”*.

Inconsistent: The planning proposal seeks to rezone certain land zoned E2 Environmental Protection to the most appropriate adjoining land use zone. This will only occur where the E2 zone was applied to specifically identify land that is flood prone (such as overland flow paths). The E2 zone will continue to apply in instances where the relevant sensitive environmental area criteria are met (SEPP 14 wetlands, endangered ecological communities, protected vegetation listed under Fisheries Management Act) and/or for areas of Eurobodalla where flood studies have not yet been completed.

Land zoned E2 solely for the purpose of flooding or overland flow was so zoned when ELEG 2012 was first made as Council did not at that time have sufficient studies completed to determine the flood planning area.

Council now has sufficient information in the following areas to support substitution of the E2 zone where appropriate in the following areas:

- Mogo
- Tomakin
- Broulee
- Mossy Point
- Moruya and Moruya Head
- Dalmeny
- Kianga and
- Narooma.

Where a property has a split zone (eg. part E2 / part R2 Low Density Residential) and is in a low flood hazard area, the E2 part is proposed to be changed to the other zone applying to the land. Where the whole of a lot

is currently zoned E2, the adjoining zone is proposed to be applied, or a suitable alternative zone, such as RE1 Public Recreation for some public lands and RU1 Primary Production for lots that are highly flood constrained and currently used for some form of agricultural purpose. Table 3 and the maps in Part 4 of this Planning Proposal identify individual privately owned properties proposed to be rezoned and the zone proposed to be applied. The table also identifies properties where the minimum lot size and/or the maximum building height is proposed to be changed. Table 4 identifies publicly owned properties proposed to be rezoned and the zone proposed to be applied.

Clause 6 of the Direction states that *“a planning proposal must **not** contain provisions that apply to the flood planning areas which:*

- (a) permit development in floodway areas,*
- (b) permit development that will result in significant flood impacts to other properties,*
- (c) permit a significant increase in the development of that land,*
- (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or*
- (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development”.*

Inconsistent: Rezoning the land from E2 to an adjoining zone (eg R2) technically facilitates a wider range of land uses permissible on flood prone land. Any proposed development will be by consent only and managed in accordance with the flood risk by the relevant clause of ELEG 2012 (6.5) and associated development codes.

The planning proposal does not seek to modify the relevant sections of Clause 6.5 of the ELEG 2012 that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). In addition, Council’s relevant flood codes (eg. Moruya River Flood Code) have adequate provisions for development to meet the criteria of 6 (a) to (e) above.

Clause 7 of the Direction states that *“a planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General)”.*

Consistent: The planning proposal does not seek to implement flood related development controls for development above the residential flood planning level.

Clause 8 of the Direction states that *“for the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General)”.*

Consistent: The planning proposal seeks to update Clause 6.5 to be inclusive of climate change projections over the relevant planning life of the development to be consistent with the current model clause.

Amendments to Clause 6.5 of the ELEG 2012 are consistent with the most recent Drafting Direction – Flood Prone Land prepared by the Department of Planning and Environment.

Clause 9 of the Direction states that *“a planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that:*

- (a) the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or*
- (b) The provisions of the planning proposal that are inconsistent are of minor significance”.*

As noted above, the planning proposal is inconsistent with Clauses (5) and (6) of the Section 117 Direction 4.3. Notwithstanding, the planning proposal is consistent with the proposed amended Clause 6.5 of ELEP 2012 (in accordance with the Department's drafting direction) that gives effect to and is consistent with the NSW Flood Prone Land Policy and the principles and guidelines of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). On this basis, it is considered that the inconsistency with the Direction is justified.

The inconsistencies are of minor significance as all potential development within the FPA will be by consent only and assessed with consideration of the updated Clause 6.5 of the Eurobodalla LEP 2012 and any relevant Codes.

Section C – ENVIRONMENTAL, SOCIAL and ECONOMIC IMPACT

7. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?* No.

The planning proposal does not result in any additional potential impacts on environmentally sensitive areas, as land zoned E2 that meets the specific environmental criteria of that zone (such as coastal wetlands), will not be rezoned as a consequence of this proposal regardless of there being a flood hazard.

8. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

The planning proposal does not result in any additional potential impacts on environmentally sensitive areas. Existing E2 Zones that meet the specific environmental criteria of that zone will not be rezoned as a consequence of this proposal regardless of there being a flood hazard.

9. *How has the planning proposal adequately addressed any social and economic effects?*

The planning proposal does not have any social or economic effects, as land that will be identified on the Flood Map has previously been known to be flood affected and has been confirmed as such by recent studies.

Section D – STATE and COMMONWEALTH INTERESTS

10. *Is there adequate public infrastructure for the planning proposal*

Not relevant.

11. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

State and Commonwealth public authorities will be consulted following Gateway determination.

PART 4: MAPPING

Table 3: Private land proposed to be rezoned and proposed changes to minimum lot size and maximum building height

| Address | Lot and DP | Current Zone | Proposed Zone | Current Minimum Lot size | Proposed Minimum Lot Size | Current Maximum Building Height | Proposed Maximum Building Height | Comment | Flood Hazard | Map No. |
|--|-----------------------------------|--------------|---------------|-----------------------------|---------------------------|---------------------------------|----------------------------------|---|--------------------------------------|---------|
| Hawdon Street Moruya | Lot 6, DP 1111121 | R5/E2 | R5 | 1000ha / 5000m ² | 5000m ² | 12m / No MBH | 12m | Remove split zone/lot size/maximum building height. As lot size is less than 5000m ² , no further subdivision is possible. | Low to Medium | 1 |
| Fitzroy Street Moruya | Lots 4, Sec 38, DP 758710 | R2/E2 | R2 | 1000ha / 550m ² | 5000m ² | 12m / No MBH | 12m | Remove split zone/lot size/maximum building height. Any subdivision will be assessed on merit of flood hazard. | Low/Medium High within drainage line | 1 |
| Fitzroy Street Moruya | Lots 4-5, DP 1086274 | E2 | R2 | 1000ha | 5000m ² | No MBH | 8.5m | Consistent with adjoining land and flood free access is available. Lots are 4376m ² in size. Given flood hazard, no further subdivision should be permitted. | Low | 1 |
| Fitzroy Street and 82 Thomas Street Moruya | Lots 1-2, Sec 36, DP 758710 | E2 | R2 | 1000ha | 5000m ² | No MBH | 8.5m | Consistent with adjoining land and flood free access could be provided. Lots are 4003m ² in size. Given flood hazard, no further subdivision should be permitted. | Low to High | 1 |
| 63 Murray Street | Lot 8, DP 778743 | E2 | RU1 | 1000ha | 2ha | | | Lot is 2174m ² in size. Given flood hazard, no further subdivision should be permitted. The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. | | |
| 64 and 66 Murray Street and | Lots 12-13, 15-16, Sec 25, 758710 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Lots are 2023m ² in size. | High | 1 |

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|---------------------------------------|------------------------------------|--------|--------|--------------------|----------------------------|------------------|------------------|--|-----------|---|
| 39A, 39B Campbell Street Moruya | | | | | | | | Given flood hazard, no further subdivision should be permitted. | | |
| 39 Campbell St Moruya | Lot 17, Sec 25, DP 758710 | R2/E2 | R2/RU1 | 1000ha / No MLS | 2ha / 550m ² | No MBH | 8.5m / No MBH | Alter split zone/lot size/maximum building height. The existing E2 part is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Apply a 550m ² lot size to the R2 part (which is approximately 937m ² in area) and a 2ha lot size to the RU1 part. Apply 8.5m to R2 part, consistent with adjoining land. | Very High | 1 |
| 30 Shore Street Moruya | Lot 455, DP 47651 | E2 | RE2 | 1000ha | No MLS | | | Consistent with adjoining zone. Remove minimum lot size to be consistent with adjoining land zoned RE2. | Very High | 2 |
| 13 Riverwood Pl Moruya | Lot 9, DP 1190258 | E4/E2 | E4/RU1 | 1000ha / 2ha | 100ha / 2ha | | | Alter split zone/lot size. The existing E2 part is highly flood constrained. 100ha consistent with proposed zoning (under Rural Lands Planning Proposal) for adjacent land zoned RU1. | High | 2 |
| River Street West Moruya | Lot 10, DP 1190258 | R2/E2 | R2 | 1000ha | 550m ² | | | Remove split zone/lot size. Any subdivision will be assessed on merit of flood hazard. | Medium | 2 |
| 2570 Princes Hwy Moruya | Lot 12, DP 804804 | E2/RU1 | RU1 | 1000ha | 100ha | | | Map correction. 100ha consistent with proposed zoning (under Rural Lands Planning Proposal) for subject land. | Very High | 2 |
| Larrys Mountain Rd Moruya | Lot 1, DP 1394 | E2 | RU1 | 1000ha | 100ha | 8.5m / No MBH | 8.5m | Cleared land used for agricultural purposes. 100ha consistent with proposed zoning (under Rural Lands Planning | Very High | 2 |

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|--------------------------------|-----------------------|-------|------------|--|-----------------------------------|--|--|--|------------------------|---|
| | | | | | | | | Proposal) for subject land. Remove split maximum building height. | | |
| 2815 Albert St Moruya | Lot 1, DP 125321 | R2/E2 | R2/E2/RU 1 | 1000ha / 550m ² / 600m ² | 40ha / 550m ² / No MLS | | | Reduce area of E2 zone to only cover area of EEC. Remaining E2 area is highly flood constrained. 40ha consistent with proposed zoning (under Rural Lands Planning Proposal) for adjacent land zoned RU1. Note that under Rural Lands Planning Proposal, the 600m ² MLS is proposed to be changed to 550m ² and E2 areas are proposed to have no MLS. | Very High/High | 3 |
| 7 - 14 Carrie Crs Moruya | Lots 9-11, DP 1174944 | R2/E2 | R2/RU1 | 1000ha / 550m ² / 600m ² | 40ha / 550m ² | | | Alter split zone. The existing E2 part is highly flood constrained. 40ha consistent with proposed zoning (under Rural Lands Planning Proposal) for adjacent land zoned RU1. Note that under Rural Lands Planning Proposal, the 600m ² MLS is proposed to be changed to 550m ² . | Very High/High/ Medium | 3 |
| 123-133 Vulcan St Moruya | Lot 88, DP 736964 | R2/E2 | R2/RU1 | 1000ha / 550m ² | 2ha / 550m ² | | | Alter split zone. The existing E2 part is highly flood constrained. Alter split lot size. Given the high flood hazard, the RU1 part is proposed to have a 2ha minimum lot size to ensure no further subdivision. | High to very High | 4 |
| 95 Albert Street Moruya | Lot 1, DP 995245 | R2/E2 | R2/RU1 | 1000ha / 550m ² | 2ha / 550m ² | | | Alter split zone/lot size. The existing E2 part is highly flood constrained. Given the high flood hazard, the RU1 part is proposed to have a 2ha minimum lot size to ensure no further subdivision. | Medium/High/ Very High | 4 |
| 2, 6, 10, 12, 14 Otton Street, | Lots 1-11, DP 194484 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural | Medium/High/ Very High | 4 |

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|--|-----------------------------|----|-----|--------|-----|--|--|---|----------------|---|
| 75 Albert Street and 5, 7, 9, 11, 13 Moruya Street Moruya | | | | | | | | activities (eg. horse agistment) are undertaken. Lots range from 1014m ² to 2027m ² in size. Given flood hazard, no further subdivision should be permitted. | | |
| 5 Haslingden Street 6, 8, 10 Moruya St Moruya | Lots 501-504, DP 1113193 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Lots are 1012m ² in size. Given flood hazard, no further subdivision should be permitted. | High/Very High | 4 |
| 12 Moruya Street Moruya | Lot 5, DP 1086119 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Lot is 1012m ² in size. Given flood hazard, no further subdivision should be permitted. | High | 4 |
| Moruya Street Moruya | Lot 1, DP 744472 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Lot is 1012m ² in size. Given flood hazard, no further subdivision should be permitted. | High | 4 |
| 16, 18, 20, 22 Otton St and 15, 17 Moruya St Moruya | Lots 7-10, 29-30, DP 788788 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Lots range from 835.1m ² to 1007m ² in size. Given flood hazard, no further subdivision should be permitted. | High/Very High | 4 |

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|----------------------------|--------------------------------|----|-----|--------|-----|--|--|--|-------------|---|
| 6 Haslingden St Moruya | Lot 2, Sec 4, DP 983687 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Lot is 1011.6m ² in size. Given flood hazard, no further subdivision should be permitted. | High | 4 |
| 23 Otton Street Moruya | Lo 2, DP 782026 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Lot is 1019m ² in size. Given flood hazard, no further subdivision should be permitted. | Medium/High | 4 |
| 25, 27 Otton St Moruya | Lots 104- 105, DP 632687 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Lots range from 1002m ² to 1003m ² in size. Given flood hazard, no further subdivision should be permitted. | High | 4 |
| 79, 81 Albert St Moruya | Lots 1-2, DP 194485 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Lots are 2027m ² in size. Given flood hazard, no further subdivision should be permitted. | Very High | 4 |
| 89 Albert Street Moruya | Lot 1, DP 794646 | E2 | RU1 | 1000ha | 2ha | | | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Lot is 2023m ² in size. Given flood hazard, no further subdivision should be permitted. | Very High | 4 |

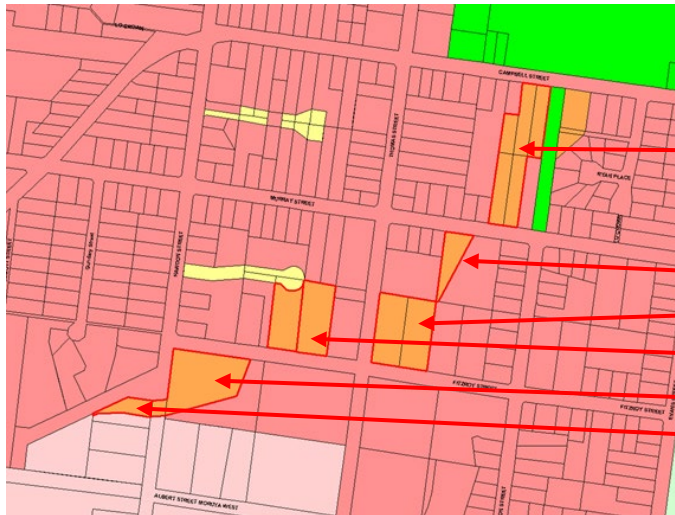
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|--|--------------------------|-------|--------|-------------------------------|----------------------------|--|--|--|------------|----------------|
| 24, 26 Otton St Moruya | Lots 11-12, DP 788788 | R2/E2 | R2/RU1 | 1000ha / 550m ² | 2ha / 550m ² | | | Alter split zone/lot size. The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. Given the high flood hazard, the RU1 part is proposed to have a 2ha minimum lot size to ensure no further subdivision. | High | 4 |
| 28 Otton St Moruya | Lot 13, DP 788788 | R2 | R2 | 1000ha / 550m ² | 550m ² | | | Remove split lot size, given the whole lot is currently zoned R2. | High | 4 |
| 20, 22 Millers Crs Moruya | Lots 4-5, DP 26279 | E2 | R2 | 1000ha / 550m ² | 550m ² | | | Mapping error - wetland extent does not reach property. No flooding on property. | N/A | 5 and 14 |
| 10 Preddys Wharf Road Moruya Heads | Lot 1, DP 551598 | R2/E2 | R2 | 1000ha / 550m ² | 550m ² | | | Mapping error - wetland extent does not reach property Lot is 560m ² with existing dwelling. Flood risk is low/medium. Removing split lot size cannot result in additional development in flood zone. | Low/Medium | 5 and 14 |

Table 4: Publicly owned land proposed to be rezoned

| Address | Lot(s) | DP | Current Zone | Proposed Zone | Comment | Flood Hazard | Map No. |
|-------------------------|-----------|---------|--------------|---------------|---|--------------|---------|
| Queen Street Moruya | 19 | 259737 | E2 | RE1 | Cleared land | Very High | 6 |
| Jersey Road Moruya | 6 | 703585 | E2 | RE1 | Cleared land | Low | 6 |
| Otton Street Moruya | 22-23 | 983687 | E2 | RE1 | Cleared land | High | 7 |
| Otton Street Moruya | 120, 121 | 818937 | E2 | RE1 | Cleared land | Low/Medium | 7 |
| Otton Street Moruya | 119 | 818937 | E2/SP2 | RE1/SP2 | Part pumping station, part cleared | Low | 7 |
| Otton Street Moruya | 3 | 1088852 | E2 | RU1 | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. | High | 4 |
| Moruya Street Moruya | 1 | 738261 | E2 | RU1 | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. | High | 4 |
| Moruya Street Moruya | 1 | 720026 | E2 | RU1 | The land is highly flood constrained and is within an area where rural activities (eg. horse agistment) are undertaken. | High | 4 |
| Campbell Street Moruya | 13 | 250233 | E2 | RE1 | Consistent with adjoining zone | Very High | 8 |
| Campbell Street Moruya | 1, Sec 26 | 758710 | E2 | RE1 | Consistent with adjoining zone | Very High | 8 |
| North Head Drive Moruya | 7007 | 1020754 | E2 | RE1 | Cleared Parkland: consistent with use | Very High | 9 |

| | | | | | | | |
|--|------|---------|----|-----|---|---------|----|
| Preddeys Wharf Road Moruya South Head | 1 | 1061092 | E2 | RE1 | Consistent with use: Boat ramp, toilets and car park | Extreme | 10 |
| North Head Drive Moruya | NULL | 755963 | E2 | RU1 | Consistent with adjoining zone | Extreme | 11 |
| North Head Drive Moruya | 3 | 1138945 | E2 | RU1 | Cleared land. Road verge. Consistent with adjoining zone | Extreme | 11 |
| Dalmeny Drive Kianga | 7019 | 1024286 | E2 | RE1 | Consistent with use: Toilet block and shelters; park | High | 12 |
| Myuna Street Dalmeny | 66 | 203032 | E2 | RE1 | Cleared land | High | 13 |

Map 1 Campbell Street to Hawdon Street, Moruya



Lots 12-13 and 15-17, Section 25, DP 758710

Lot 8, DP 778743

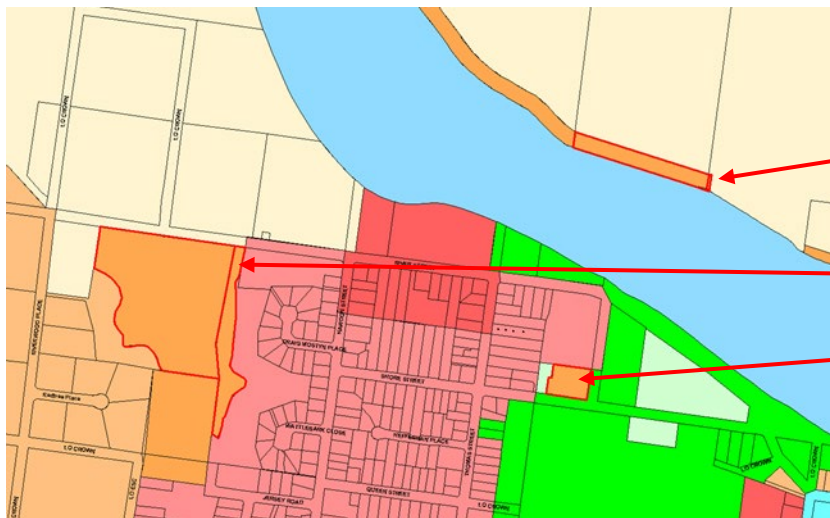
Lots 1 and 2, Section 36, DP 758710

Lots 4 and 5, DP 1086274

Lot 4, Section 38, DP 758710

Lot 6, DP 1111121

Map 2 Shore Street to River Street West, Moruya

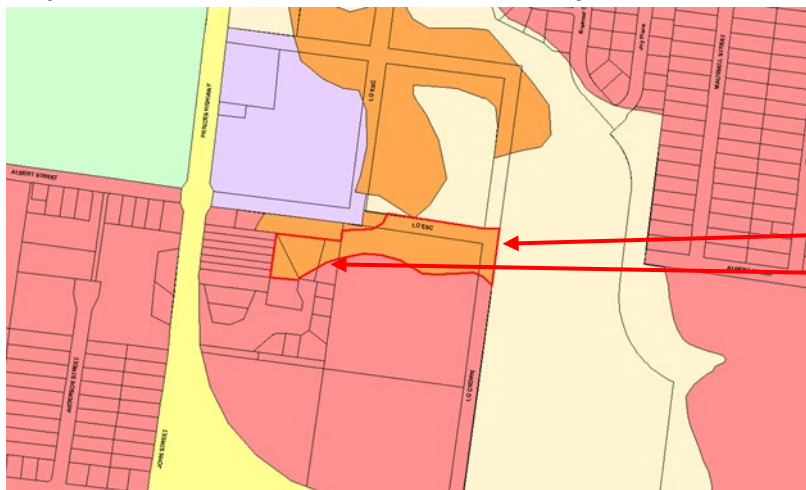


Lot 1, DP 1394 and Lot 12, DP 804804

Lots 9 and 10, DP 1190258

Lot 455, DP 47651

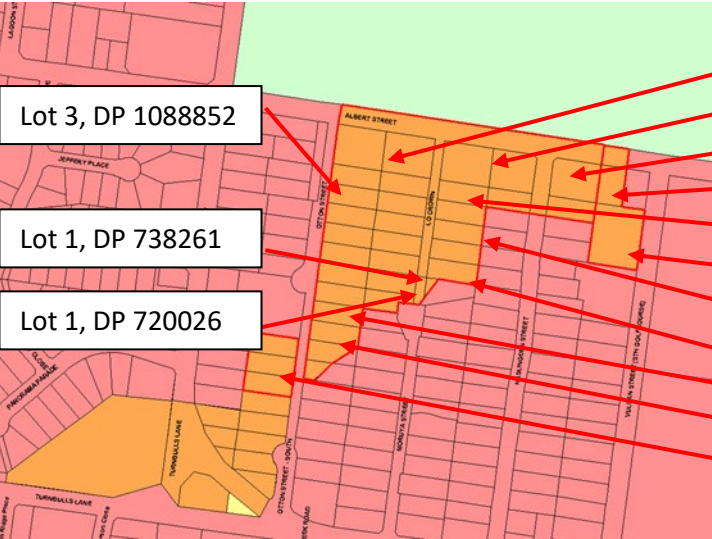
Map 3 Carrie Crescent and Albert Street, Moruya



Lot 1, DP 125321

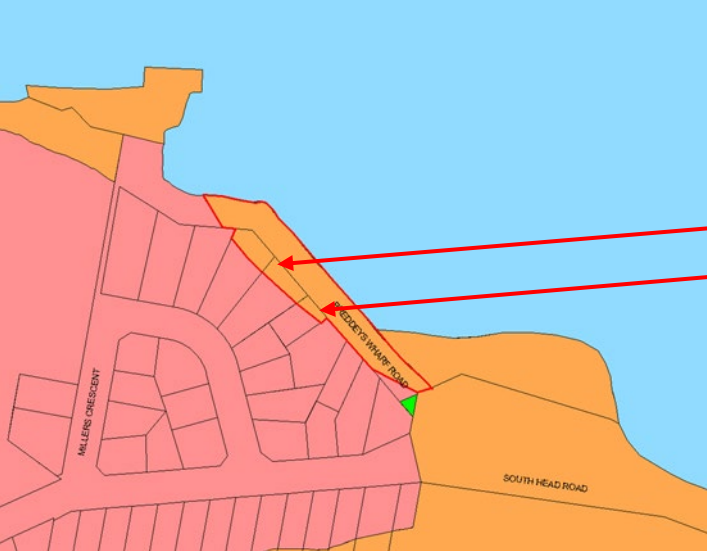
Lots 9-11, DP 1174944

Map 4 Albert Street to Bergalia Street including Otton, Moruya and Haslingden Streets, Moruya



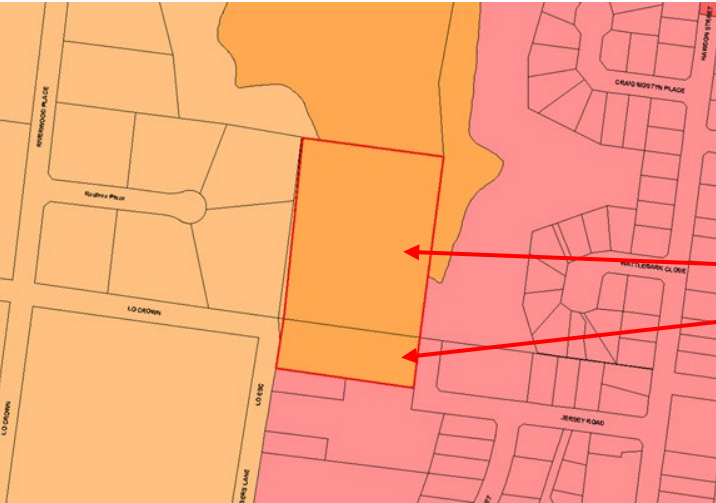
- Lots 1-11, DP 194484
- Lots 1-2, DP 194485
- Lot 1 DP 794646
- Lot 1, DP 995245
- Lots 501-504, DP 1113193
- Lot 88, DP 736964
- Lot5, DP 1086119
- Lot 1, DP 744472
- Lots 7-12 & 29-30, DP 788788
- Lot 2, DP 782026
- Lots 104-105, DP 632687

Map 5 Preddeys Wharf Road, South Head



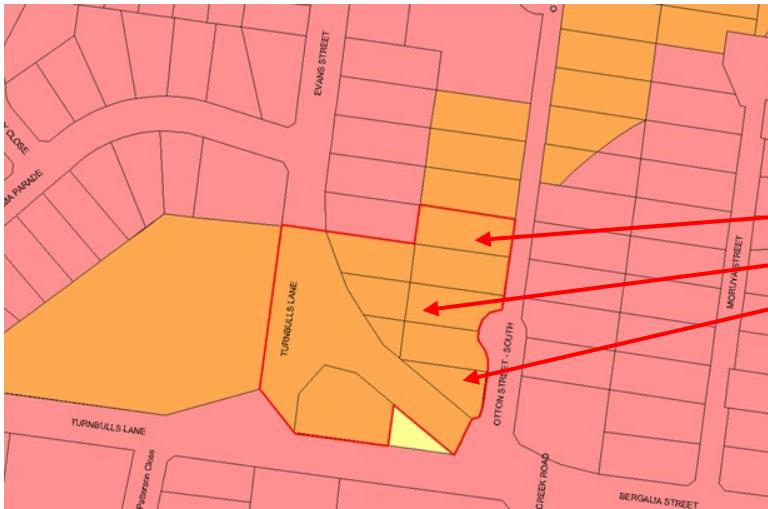
- Lots 4-5, DP 26279
- Lot 1, DP 551598

Map 6 River Street West, Moruya



- Lot 19, DP 259737
- Lot 6, DP 703585

Map 7 Otton Street – South, Moruya



Lots 22-23, DP 983687

Lots 115-118, 120 & 121, DP 818937

Lot 119, DP 818937

Map 8 Campbell Street, Moruya



Lot 1, Section 26, DP 758710

Lot 13, DP 250233

Map 9, North Head Drive, Moruya



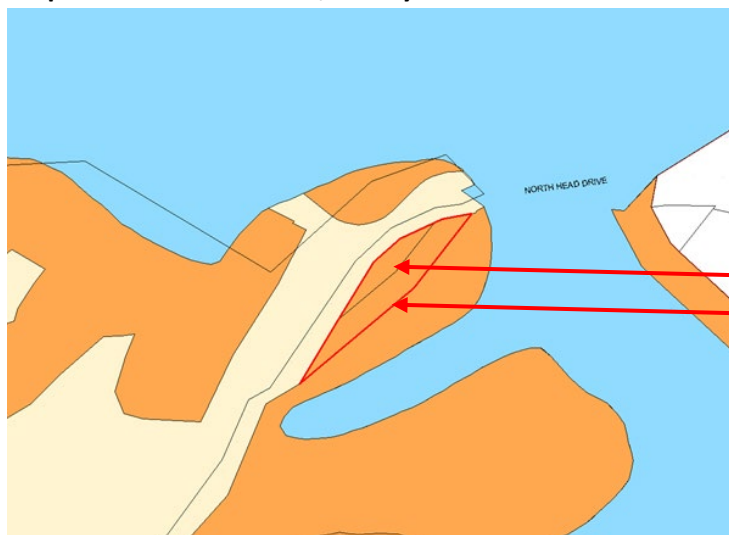
Lot 7007, DP 1020754

Map 10 Preddeys Wharf, South Head



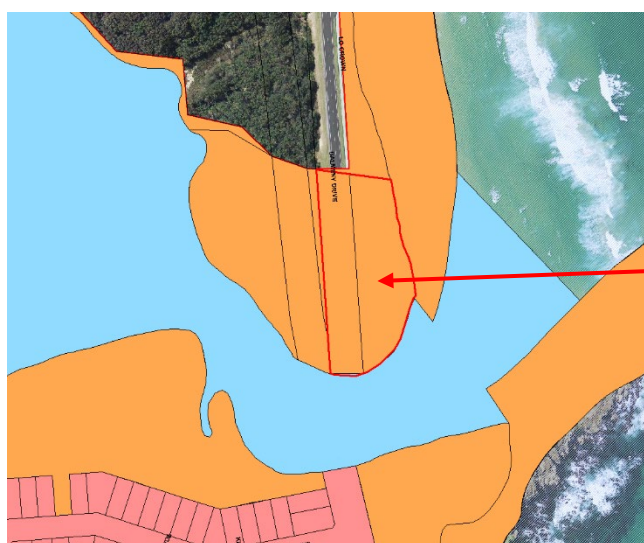
Lot 1, DP 1061092
Change from to

Map 11 North Head Drive, Moruya



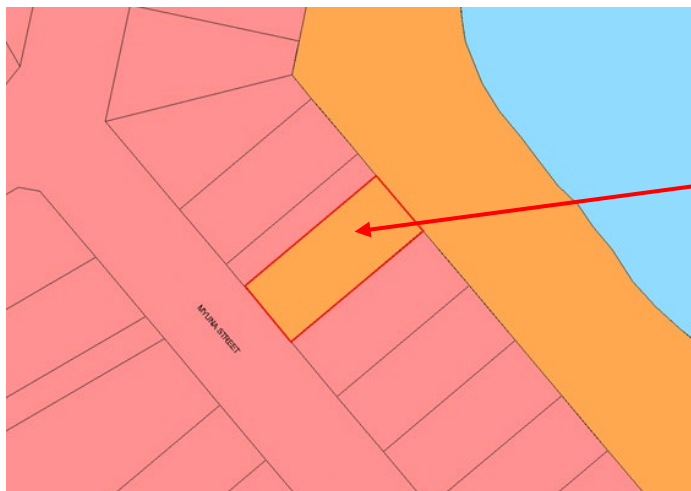
Lot 3, DP 1138945
DP 755963

Map 12 Dalmeny Drive, Dalmeny



Lot 7019, DP 1024286

Map 13 Myuna Street, Dalmeny



Lot 66, DP 203032

Map 14 Preddeys Wharf Road, South Head



Amend Wetland Map to remove this area

PART 5: COMMUNITY CONSULTATION

The proposed amendments warrant community consultation in accordance with Council's community engagement framework and as required by legislation. It is considered that an exhibition period of 42 days for the planning proposal is warranted.

Part 6: PROJECT TIMELINE

| Activity | Anticipated date of commencement | Actual date of delivery |
|---|----------------------------------|---------------------------------|
| Gateway determination | September 2017 | 27 November 2017 |
| Anticipated timeframe for the completion of required technical information | N/A | |
| Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination) | September to October 2017 | September 2017 to February 2019 |
| Commencement and completion dates for public exhibition period | December 2017 | February 2018 |
| Dates for public hearing (if required) | N/A | |
| Timeframe for consideration of submissions | March 2018 | April 2018 |
| Timeframe for the consideration of a proposal post exhibition | April 2018 | November 2018 |
| Date of submission to the department to finalise the LEP | N/A | |
| Anticipated date RPA will make the plan (if delegated) | May 2019 | June 2019 |
| Anticipated date RPA will forward to the department for notification | June 2019 | August 2019 |

APPENDIX 1 – REVISED CLAUSE 6.5 - FLOOD PLANNING

6.5 Flood planning

- (1) The objectives of this clause are as follows:
 - (a) to minimise the flood risk to life and property associated with the use of land,
 - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
 - (c) to avoid significant adverse impacts on flood behaviour and the environment.
- (2) This clause applies to:
 - (b) other land at or below the flood planning level.
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:
 - (a) is compatible with the flood hazard of the land; and
 - (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
 - (c) incorporates appropriate measures to manage risk to life from flood, and
 - (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
 - (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.
- (4) When determining development to which this subclause applies, council must take into consideration any relevant matters outlined in subclause 3(a) – (e), depending on the context of the following:
 - (a) the proximity of the development to the current flood planning area; and
 - (b) if the land is affected by coastal hazards and projected sea level rise; and
 - (c) the intended design life of the development; and
 - (d) the scale of the development; and
 - (e) the sensitivity of the development in relation to managing the risk to life from any flood, and
 - (f) the potential to relocate, modify or remove the development.
- (5) Before determining a development application for development for the purposes of residential accommodation or tourist and visitor accommodation on land within Zone B2 Local Centre and identified as "Moruya Town Centre" on the Land Zoning Map, the consent authority must consider whether or not the development:
 - (a) will increase the demand for the provision of emergency equipment, personnel, welfare facilities or other resources that may be required for an evacuation due to flooding, or
 - (b) will increase the risk to life and personal safety of any emergency service and rescue personnel who may be involved in any such evacuation, or

- (c) will adversely affect the cumulative impact of further development on potential flooding, or
- (d) will increase the potential for pollution during flooding, or
- (e) will increase public and private losses resulting from flooding.

(6) A word or expression used in this clause has the same meaning as it has in the NSW Government's *Floodplain Development Manual* published in 2005, unless it is otherwise defined in this clause.

(7). In this clause:

flood planning area means the area of land below the Flood Planning Level and thus subject to flood related development controls.

flood planning level means the level of a 1:100 ARI (average recurrence interval) flood event which has the same meaning as the 1% AEP (Annual Exceedance Probability) plus 0.5 metres freeboard

projected sea level rise means the 2050, 2070 and 2100 sea level rise projections associated with the RCP 6.0 emissions scenario identified in *South Coast Regional Sea Level Rise Policy and Planning Framework 2014*.

Coastal hazard has the same meaning as Section (4)1 of the *Coastal Management Act 2016*.

ATTACHMENT A – Evaluation Criteria for Delegation

Local Government Area: Eurobodalla Shire Council

Name of draft LEP: Eurobodalla Local Environmental Plan amendment No 14

Address of Land (if applicable): Various lots

Intent of draft LEP:

- Amend local provision 6.5 Flood Planning to generally reflect the current model clause
- Rezone certain E2 zoned land to an appropriate zone.
- Amend the minimum lot size map in relation to certain land in Moruya and Moruya Heads.
- Amend the maximum height of buildings map in relation to certain land in Moruya.
- Amend the Wetlands, Riparian Lands and Watercourses Map in relation to land at Preddys Wharf Road, Moruya Heads.

| (Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed) | Council response | | Department assessment | |
|--|------------------|--------------|-----------------------|-----------|
| | Y/N | Not relevant | Agree | Not agree |
| Is the planning proposal consistent with the Standard Instrument Order, 2006? | Y | | | |
| Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment? | Y | | | |
| Are appropriate maps included to identify the location of the site and the intent of the amendment? | Y | | | |
| Does the planning proposal contain details related to proposed consultation? | Y | | | |
| Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General? | Y | | | |
| Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions? | Y | | | |
| Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)? | Y | | | |
| Minor Mapping Error Amendments | Y/N | | | |
| Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed? | N | | | |
| Heritage LEPs | Y/N | | | |
| Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office? | N | | | |
| Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study? | N | | | |
| Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained? | N | | | |
| Reclassifications | Y/N | | | |
| Is there an associated spot rezoning with the reclassification? | N | | | |
| If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy? | N | | | |
| Is the planning proposal proposed to rectify an anomaly in a classification? | N | | | |
| Will the planning proposal be consistent with an adopted POM or other strategy related to the site? | N | | | |
| Will the draft LEP discharge any interests in public land under section 30 of the Local Government Act, 1993? | N | | | |

| | | | | |
|--|------------|--|--|--|
| If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal? | N | | | |
| Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land? | N | | | |
| Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation? | N | | | |
| Spot Rezoning | Y/N | | | |
| Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy? | N | | | |
| Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format? | N | | | |
| Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed? | N | | | |
| If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed? | N/A | | | |
| Does the planning proposal create an exception to a mapped development standard? | N | | | |
| Section 73A matters | | | | |
| <p>Does the proposed instrument</p> <p>a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;</p> <p>b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or</p> <p>c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?</p> <p>(NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A(1)) of the Act in order for a matter in this category to proceed).</p> | N | | | |

| | DocID | Issues/Concerns | Response |
|---|--------------------------|---|---|
| 1 | 79593.17 | Floor level of dwelling was built above the flood planning requirements of 2015. Requested mapping is altered to remove his property from the mapping because floor level was built according to the 2015 requirements. | Flood mapping and planning advice applies to the property, not the dwelling, and should therefore remain to advise owners/purchasers that the <i>land</i> is affected by flooding. This will ensure that any future applications for development will be conditioned according to the flood risk. No action is required in response to this submission. |
| 2 | 7106.18 | Flood study is in error. Land sterilised as a result of error in study. Seeking dwelling entitlement on rural zoned land. | The flood study is not in error. The flood study does not sterilise the land. The land does not have a dwelling entitlement as a consequence of the rural zoning and the lot being residual to a previous lot with a dwelling entitlement that was sub-divided. No action is required in response to this submission. |
| 3 | 42.18 | <p>1. Supports rezoning of E2 lands to an alternative zone.</p> <p>2. Requested land be removed from the flood planning map due to not being impacted by flooding from Moruya River. Rather, the land is impacted by overland flow from upstream catchment.</p> | <p>Noted.</p> <p>Not supported. Comments relating to impact from Moruya River not relevant as land is subject to flooding from a tributary (Refer to Moruya River Flood Study Appendix A - Tributary Backwater Analysis of Moruya River Flood Study). A flood study for this tributary has been completed to support the boundaries of the flood planning area.</p> |

3. Requested a smaller lot size from 5000 to 550msq.

Not supported. The purpose of the planning proposal is to provide appropriate zoning and development potential commensurate with the flood risk. For this reason, some limited development potential has been facilitated in areas of low to medium flood hazard only. Providing a smaller minimum lot size would facilitate a level of development inconsistent with the intent of the planning proposal and significantly inconsistent with the s117 Ministerial Direction. Any further development potential should be the subject of a site specific planning proposal and detailed studies of the cumulative impacts of increased development would be required to support the planning proposal.

4. Suggested removing reference to overland flow and riparian areas from E2 clause.

Not supported. The objective of the planning proposal is not to change E2 objectives but to rezone identified land from E2 to a more appropriate land use zone.

5. Amend Watercourse Map and Riparians lands mapping to remove lands above Fitzroy St.

Not supported. The land has been identified as a Category 3 Stream (Riparian Corridors Objective Setting Report) and as flood prone in the Moruya River Flood Study (Appendix A, Fig A2).

| | | | |
|---|-------------------------|---|---|
| | | 6. Amend permitted uses in R2 zone to include flood mitigation and drainage works. | Not supported. Practice Note PN11-003 issued by the Department of Planning advises the term <i>drainage</i> does not need to be listed in the land use tables as it is not considered to be development. <i>Flood mitigation works</i> is a land use term that could be listed in land use tables. Such works are usually carried out by or on behalf of a public authorities in response to actions identified within a Flood Risk Management Plan. The State Environmental Planning Policy (Infrastructure) 2007 allows such works to be carried out by or on behalf of a public authority without consent. There is therefore no need to amend the LEP as suggested. |
| 4 | 7766.18 | General comment on clarity of mapping which was difficult to read. Sought additional advice relating to their property. | The correspondent didn't comment on the planning proposal and expressed that his correspondence was not intended to make comment on the planning proposal exhibited. The letter wanted to know what would occur if a DA was lodged |
| 5 | 14915.18 | Advised against inclusion of mapping in LEP due to additional administrative process to prepare a planning proposal with each update of mapping. Advised ESC may be in breach of s117 Directive and not compliant with manual by spot-rezoning land without considering cumulative impact of future development that may occur in created residential lots. | <i>A more detailed response to OEH is provided in a separate attachment.</i> Council recognise the administrative burden of including flood mapping into the ELEP 2012 and will look to amend the planning proposal. |
| 6 | 8042.18 | Supports rezoning of E2 lands generally. Objects to inclusion of flood mapping in LEP. Contests the accuracy of the mapping based on scientists making errors of judgement on other issues such as the Sydney desalination plant. | The flood mapping was generated from the Wagonga Inlet and Narooma Coastal Inlets Flood Study which was adopted by Council in 2016. The Study was exhibited and reviewed by the community at the time of preparation and is considered as the most accurate flood information available. |

- 81176.17 Questioned process of identifying flood prone land and questioned accuracy of mapping. Concerned about impact on property values, ability to re-sell and insurance costs. Stated they were made aware the property was at risk from 1 in 100 flood when they purchased but they were not concerned because mapping was not available to identify lot as immediately affected. The property was purchased on July 31 2016. Stated the previous owners/vendor did not advise them of any flood risk.
- A flood study and associated mapping was adopted by Council on 28 March, 2017. The most recent Planning Certificate (No. 2013/17) issued for the property on 21/4/2017 contained advice relating to flooding and identified the Tomakin, Mossy Point, Broulee, Mogo Flood Study as a reference to the flood advice. All relevant information was available at the time the property was purchased. No action is required in response to this submission.

Flood Mapping Planning Proposal – OEH comments and responses

Issue – Including flood mapping may be an administratively onerous approach for Council

Response – Noted

Issue – Inadequate assessment of flood behaviour to demonstrate that rezoning will not enable developments in floodway areas. The determination of flood planning areas should be based on the completion of a Floodplain Risk Management Study and Plan. The absence of a Floodplain Risk Management Plan that has assessed development potential and controls means that the proposal is inconsistent with the principles of the Floodplain Development Manual (and therefore inconsistent with the S117 Direction 4.3 Flood Prone Land).

Response – The proposed flood planning area is based on the outcomes of flood studies. It is acknowledged that the flood planning area may change as a result of the completion of Floodplain Risk Management Plans and Council would propose to amend the LEP Flood Mapping at that time should the flood planning area change.

The rezoning of land within the currently identified flood planning area from E2 to a different zone provides for a small number of potential additional dwellings in low flood hazard areas. There are five lots that could achieve a dwelling. Development consent is required for future dwellings and a flood impact assessment would be required. Consideration must be given to clause 6.5 Flood Planning to assess the appropriateness of the development proposal having regard to the mapped flood hazard.

Issue – Some sites affected by coastal hazards. Recommend that Council seek advice from DPE.

Response – Noted

Issue – Dwelling entitlements will be created over a range of sites including:

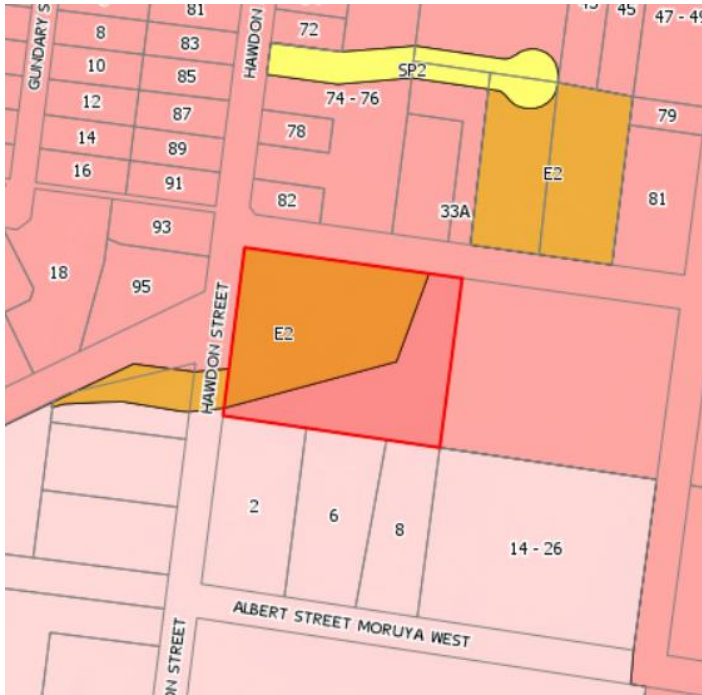
1. Lot 4 Sec 38 DP 758710
2. Lot 10 DP 1190258
3. Lot 1 DP 125321
4. Lot 9 DP 1174944
5. Lot 11 DP 1174944
6. Lots 4 and 5 DP 26279

Response – All of the above lots are currently part zoned R2 and part zoned E2. The planning proposal would remove the E2 zone component and replace it with R2 or RU1. For some of the lots identified above, no further dwelling potential is facilitated by the planning proposal. See below.

The OEH submission does not specifically refer to other lots, but by implication, any lot that may have additional dwelling potential is not considered appropriate in the absence of a floodplain risk management plan that allows Council to be satisfied that such development could be realised.

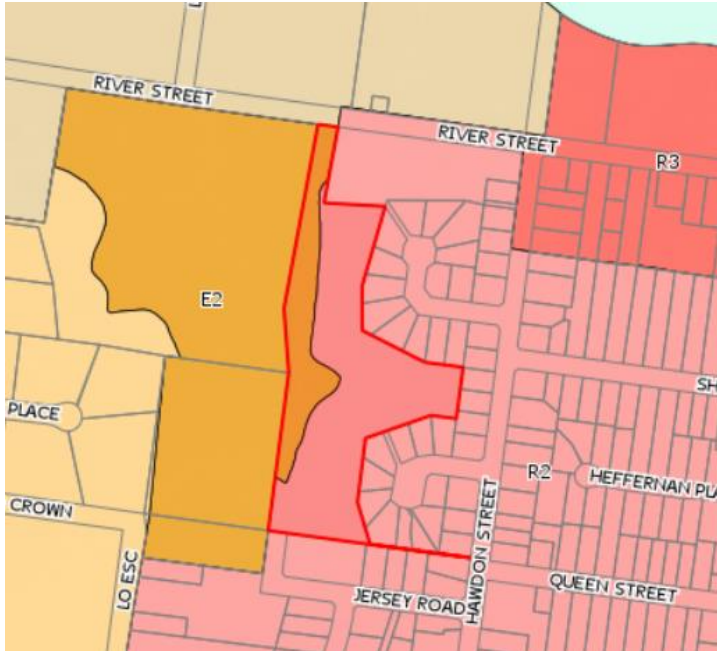
There are only four lots where this applies. See below.

1. Lot 4 Sec 38 DP 758710



5000m² MLS proposed – Area of E2 is approx. 7,600m². One dwelling potential, could be located out of flood hazard area.

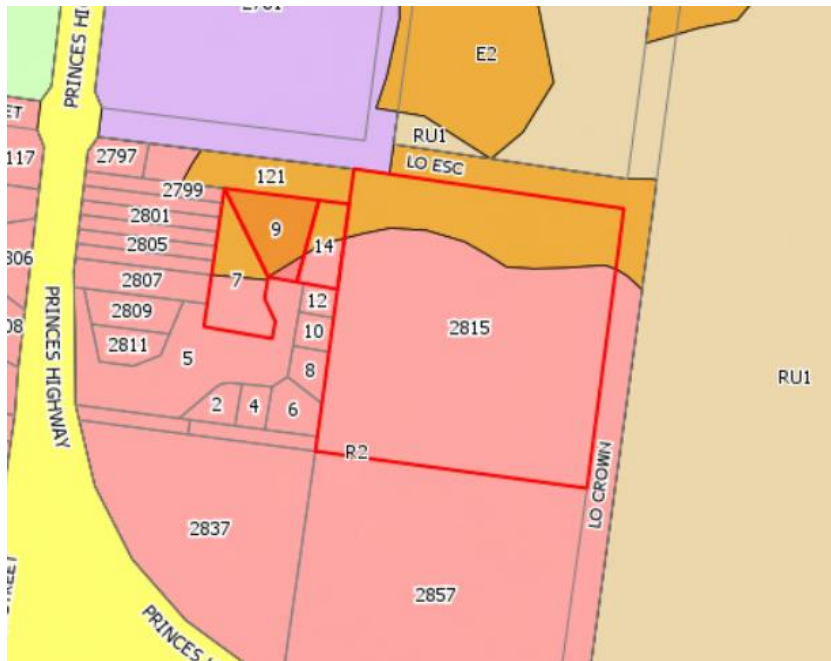
2. Lot 10 DP 1190258



Subdivision approval already granted for site, with access road through E2 portion of site. No further dwelling potential as a result of rezoning E2 to R2.

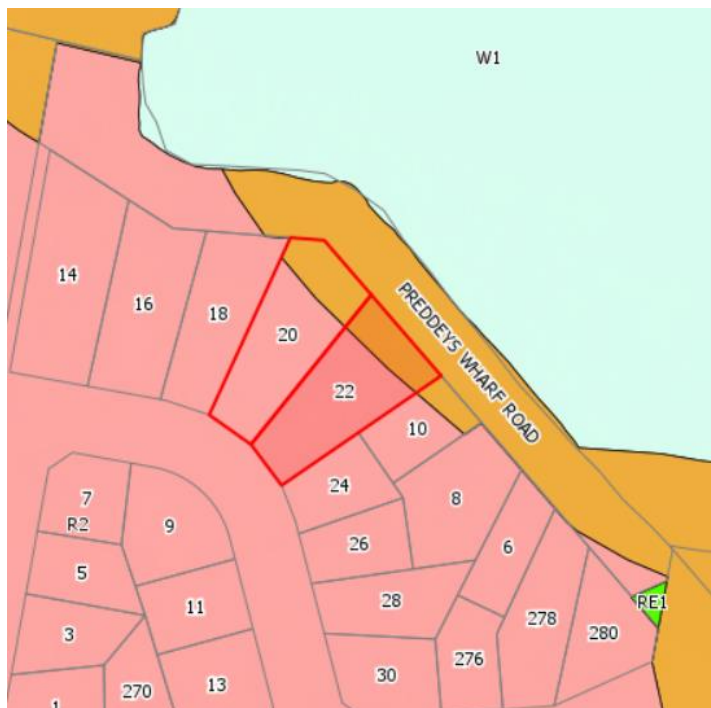
3. Lot 1 DP 125321
4. Lot 9 DP 1174944

5. Lot 11 DP 1174944



E2 portions proposed to be zoned RU1 – no further dwelling potential.

6. Lots 4 and 5 DP 26279



E2 portion along rear road frontage of lots already developed with dwellings. No further dwelling potential.

Lots with additional dwelling potential, not specifically identified in the OEH submission

1. Lots 4-5 DP 1086274



Potential dwelling on each lot in low hazard area with access to future road. Proposed MLS prevents further subdivision.

2. Lots 1-2 Sec 36 DP 758710



Potential dwelling on each lot in low hazard area with access to future constructed road. Proposed MLS prevents further subdivision.