

# Planning Proposal

Amendment to ELEP 2012 Land Zoning Map and Lot Size Map for land bounded by the Old Princes Highway, South Street and Gregory Street, Batemans Bay

**ELEP 2012 Amendment No. 9**

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## INTRODUCTION

The planning proposal explains the intended effect of, and justification for the proposed amendment to *Eurobodalla Local Environmental Plan (ELEP 2012)* to rezone land for business development purposes at Batemans Bay and to make consequent amendments to the minimum lot size standard for the land.

The subject land is bounded by the Old Princes Highway, South Street and Gregory Street, Batemans Bay and consists of the following lots:

- Lot 106 DP 252328, 49 South Street, Batemans Bay
- Lot 22 DP 554631, 57-59 Old Princes Highway, Batemans Bay
- Lot 281 DP 755902, 59-61 Old Princes Highway, Batemans Bay

The land is depicted in **Part 4 – Figures 1 and 2**.

The subject land currently contains a caravan park that provides predominantly tourist and visitor accommodation with a small number of permanent sites and the site of a former bulky goods development/hardware store (Bunnings).

The proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 and the relevant Department of Planning and Environment Guidelines, including *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*.

## PART 1: OBJECTIVES or INTENDED OUTCOMES

The objective of this planning proposal is to enable the redevelopment of the land for business development purposes.

## PART 2: EXPLANATION of PROVISIONS

The objective of the Planning Proposal will be achieved by a site specific amendment of the Eurobodalla LEP 2012:

- to rezone the land from the R3 Medium Density Residential and IN1 General Industrial zones to the B5 Business Development zone through an amendment to the ELEP 2012 Land Zoning Map Sheet LZN\_011A; and
- to amend the minimum lot size for the current R3 zoned portion of the land from 550m<sup>2</sup> to no minimum lot size through an amendment to the ELEP 2012 Lot Size Map Sheet LSZ\_011A.

The map amendments are described in **Part 4 – Figures 3 to 6**.

**Note 1:** The proponent of the proposed amendments also requested the Height of Buildings Map be amended to change the current height limit of 11.5m to no height limit. Council has

resolved not to proceed with this amendment on the grounds that it is inconsistent with the approach to building height in the immediate vicinity of the subject land and for other commercial areas in the Shire.

**Note 2:** The planning proposal as exhibited included a number of dwellings fronting Gregory Street (2A South Street and 4 to 12 Gregory Street). Given some objections from land owners, these properties have been removed from the planning proposal post exhibition. Refer to the Council report and minutes dated 8 December 2015.

### **PART 3: JUSTIFICATION for PROPOSAL REZONING**

In accordance with the department of Planning's *'Guide to Preparing Planning Proposals'*, this section provides a response to the following issues:

- Section A- Need for the planning proposal
- Section B- Relationship to strategic planning framework
- Section C- Environmental, social and economic impact; and
- Section D- State and Commonwealth interests

#### **Section A- NEED for the PLANNING PROPOSAL**

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

The planning proposal is not the direct result of a strategic study or report. It has been prepared following a request from Farolo Pty Ltd who are acting on behalf of the two major landholders in the subject area.

The proposal is however consistent with relevant strategies, including the South Coast Regional Strategy, the Eurobodalla Settlement Strategy and the Economic Development and Employment Lands Strategy (See Section B).

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

The best means of enabling a range of business development purposes on the subject land, including bulky goods developments, is to rezone the land to the B5 Business Development zone.

While it is noted that Council has included in a separate planning proposal the inclusion of bulky goods development as a permissible use in the IN1 General Industrial zone, it is not considered appropriate to expand the IN1 General Industrial zone across the subject land given the proximity of the site to surrounding residential development.

An alternative to the current planning proposal would be to add additional business development type uses to the current zone of the land, however this is not considered appropriate, particularly for the portion of the land currently zoned R3 Medium Density Residential.

## **Section B- RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK**

### **3. Is the planning proposal consistent with the objectives and action contained within the applicable regional or sub-regional strategy?**

#### South Coast Regional Strategy

The South Coast Regional Strategy (SCRS) 2006-2031 is applicable to the subject land and it identifies Batemans Bay as a Major Regional Centre suitable for major commercial developments.

The SCRS states that *“Local Environmental Plans will protect and add to employment lands in existing economic centres, including major regional centres and major towns...”*

The planning proposal is consistent with the SCRS as it adds to the existing employment land in the Batemans Bay Regional Centre. While a portion of the subject land is proposed to be rezoned from the IN1 General Industrial zone to the B5 Business Development zone, this portion of the site is currently occupied by a Bunnings (a bulky goods and hardware development) that is an appropriate use in the B5 zone. Although the Bunnings development will soon be relocated to another site, the proposed rezoning will facilitate a similar development on the land.

### **4. Is the planning proposal consistent with a council’s local strategy or other local strategic plan?**

#### Eurobodalla Community Strategic Plan- ‘One Community’

The planning proposal is consistent with the Eurobodalla Community Strategic Plan- One Community. It provides for additional business and employment opportunities, thus aligning with the Community Strategic Plan objectives as follows:

- *Objective 5.2 Support the growth of our business community*
- *Objective 6.1 Increase the range of opportunities to work locally*

#### Eurobodalla Settlement Strategy

The planning proposal is consistent with the Eurobodalla Settlement Strategy (ESS) which seeks to reinforce the current role and function of commercial centres. The

proposed rezoning reinforces the existing hierarchy of centres and addresses the following elements of the ESS:

- *Locate major commercial, civic, recreational and institutional functions in or near the major centres and co-locates major trip-generating activities;*
- *Generate a wider range of employment opportunities and business growth in appropriate locations close to housing, transport and services;*
- *Ensure that adequate serviced land is available for employment generating business and that these areas are best located to serve the needs of industry and the community.*

The Eurobodalla Settlement Strategy also seeks to “*optimise the use of existing services and infrastructure and promote the efficient provision of any services and infrastructure into the future*”. The proposed rezoning has the potential to generate increased traffic that may impact on the local and regional road network, increase stormwater runoff and require the relocation of an existing sewer main.

These matters are further addressed in Sections 10 and 11 of this Planning Proposal.

#### Economic Development and Employment Lands Strategy 2011

Council adopted an Economic Development and Employment Lands Strategy in 2011. Rezoning the subject land for employment generating development satisfies the following employment land planning principles in the Employment Lands Strategy:

- *That future employment lands be provided in accessible locations to service the three distinct population centres in the north, central and southern parts of the Shire and that transport connections between the centres be improved.*
- *That future employment lands be determined having regard to the need to increase economic and employment diversity, by basing employment land decisions on known or anticipated business location needs and the potential for business clusters to establish and grow.*
- *That centres remain compact in form and land use, particularly for core retail and commercial activities, with opportunities for non-core retail and commercial development to be provided in appropriate locations adjacent to centres.*

The subject land is located adjacent to an existing industrial precinct where there is an established cluster of bulky goods / building supplies / hardware type businesses. The land has good access to the Princes Highway and to the Batemans Bay Regional Centre via the Old Princes Highway. The proposal provides for non-core retail activity in an appropriate location close to the Batemans Bay Regional Centre and adjacent to the existing industrial precinct of Batemans Bay.

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

An assessment of relevant SEPPs against the planning proposal is provided in the table below.

SEPP	Relevance	Consistency and implications
SEPP 21 Caravan Parks	While the subject area contains an existing caravan park, the SEPP relates to the granting of consent for a caravan park and the subdivision of caravan parks for lease purposes. The SEPP does not address the issue of rezoning land containing a caravan park or redevelopment of existing caravan parks.	N/A
SEPP 32 Urban Consolidation (Redevelopment of Urban Land)	This SEPP requires Councils to consider whether urban land that is no longer needed for the purpose for which it is currently zoned, could be used for multi-unit housing.	The majority of the subject land is currently zoned R3 Medium Density Residential and could be redeveloped from the existing caravan park to multi-unit housing. The proposed rezoning would mean that multi-unit housing would no longer be a permissible development on the land. It is considered that the subject land is best suited to an expansion of business development activity, rather than multi-unit housing, given the land adjoins industrial development and the greater need in Batemans Bay for more land for employment generating development. Significant alternative opportunities exist for additional multi-unit housing in closer proximity to the commercial core of the Batemans Bay Regional Centre.
SEPP 55 Remediation of Land	Provides state-wide planning controls for the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed.	Consistent. Given a portion of the subject land is zoned IN1 General Industrial, it is prudent to require a phase 1 site contamination assessment prior to the land being rezoned. A Stage 1 assessment was undertaken by the proponent. While the assessment found that the risk of contamination was

		low, a Stage 2 assessment was recommended to be undertaken as part of any future development application for the land.
SEPP 71 Coastal Protection	Aims to protect and preserve coastal environments	Consistent. The subject site is within the Coastal Zone, but is not in a sensitive coastal location. Subject to further consideration of stormwater issues, through the preparation of a stormwater masterplan as part of any future development application for the land, the proposal is unlikely to have any detrimental impacts on coastal processes.
SEPP (Affordable Rental Housing) 2009	The SEPP applies to development of affordable housing and the retention of existing affordable housing. The planning proposal does not relate to new affordable housing developments and the provisions relating to the retention of affordable housing do not apply to Eurobodalla.	N/A

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

An assessment of relevant s. 117 Directions against the planning proposal is provided in the table below.

Ministerial Direction	Aim of the Direction	Consistency and Implications
1.1 Business and Industrial Zones	To retain areas of existing business and industrial zones, not reduce potential floor space and ensure new employment areas are consistent with an endorsed strategy.	Consistent. The planning proposal adds to existing employment land in the Batemans Bay. While a portion of the subject land is proposed to be rezoned from the IN1 General Industrial zone to the B5 Business Development zone, this portion of the site is currently occupied by a bulky goods and hardware development that is an appropriate use in the B5 zone. The proposal is consistent with the following statement in the South Coast Regional Strategy: <i>“Local Environmental Plans will protect and add to employment lands in existing</i>



		<i>economic centres, including major regional centres and major towns...</i>
2.2 Coastal Protection	To implement the principles of the NSW Coastal Policy	Consistent. The subject site is within the Coastal Zone, but is not in a sensitive coastal location. Subject to further consideration of stormwater issues, through the preparation of a stormwater masterplan as part of any future development application for the land, the proposal is unlikely to have any detrimental impacts on coastal processes.
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.	N/A The planning proposal involves removing some R3 Medium Density Residential zoning from a portion of the subject land and replacing it with the B5 Business Development zone. Significant alternative opportunities exist for a range of additional housing types in closer proximity to the commercial core of the Batemans Bay Regional Centre, through existing provisions of ELEP 2012.
3.2 Caravan Parks and Manufactured Home Estates	To retain provisions that permit development of caravan parks and retain the zoning of existing caravan parks.	The zoning of the land on which the existing caravan park is located is R3 Medium Density Residential. Caravan parks are prohibited in this zone, therefore the existing caravan park on the land is an existing lawful non-conforming use. The proposal to rezone the land to B5 Business Development is therefore not inconsistent with this direction.
4.4 Bushfire	To protect life, property and the environment from the effects of bushfire and to promote the sound management of bushfire prone land.	Consistent. A small portion of the subject land is mapped as bushfire prone. However, the proposed rezoning to B5 Business Development is unlikely to result in development of a special fire protection purpose. Consultation with the RFS will be required and it is anticipated that any proposed future development of the land will be able to comply with the requirements of <i>Planning for Bush Fire Protection 2006</i> . The NSW Rural Fire Service has raised no objection to the planning proposal.
5.1 Implementation of Regional Strategies	To ensure planning proposals are consistent with the relevant regional strategy.	Consistent. The proposal is consistent with the following statement in the South Coast Regional Strategy: <i>“Local Environmental Plans will protect and</i>

		<i>add to employment lands in existing economic centres, including major regional centres and major towns...</i>
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## 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?**

There are no significant environmental values on the subject land. Most of the vegetation has been planted and is not native. A few isolated native trees are located on the land.

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

Bushfire

A small portion of the subject land is mapped as bushfire prone. However, the proposed rezoning to B5 Business Development is unlikely to result in development of a special fire protection purpose. Consultation with the RFS will be required and it is anticipated that any proposed future development of the land will be able to comply with the requirements of *Planning for Bush Fire Protection 2006*.

The NSW Rural Fire Service has raised no objection to the planning proposal.

Heritage and Aboriginal Archaeological Assessment

The site does not contain a heritage item and no items are located in the vicinity of the site. No Aboriginal sites or places have been recorded in or near the subject land.

Notwithstanding the above, representatives of the Walbunja people, as traditional owners of the land and Native Title claimants, have advised that the land has cultural significance and have requested that an Aboriginal survey of the land be undertaken prior to any future development. In addition, the elders have requested that a plaque be considered for placement on the land as part of any future development acknowledging the traditional owners of the land. These matters can be considered as part of any future development application for the land.

Potential Land Contamination

A portion of the subject land is currently zoned IN1 General Industrial and has a long history of use as a hardware store. A Stage 1 Contamination Assessment was

undertaken by the proponent which found that the likelihood of contamination is low. However, a Stage 2 assessment was recommended as part of any future development application for the land.

#### Stormwater

The land drains to the “watergardens” wetland (not a SEPP 14 wetland) and any increased stormwater runoff generated by development of the land will need to be stored and treated on site prior to entering the natural system. A stormwater master plan will be required as part of any future development application for the land.

### **9. *Has the planning proposal adequately addressed any social and economic effects?***

#### Economic Impact

Batemans Bay has a limited supply of land zoned for large floor plate business development and very limited opportunities for centre growth given the topography of surrounding land and the natural boundaries of water and vegetation within State Forests. Rezoning additional land for business purposes in appropriate locations therefore presents a good opportunity for business and employment growth in Batemans Bay.

Additional business development opportunities within Batemans Bay will have a positive impact on the local economy in terms of construction and operational employment opportunities and increased retail competition.

The proposal will displace an existing caravan park which provides 5 long-term sites and 78 short-term sites. The rezoning proposal will therefore result in the loss of some tourist and visitor accommodation in Batemans Bay. It should however be noted that alternative development opportunities already exist on the land, such as redevelopment for medium density housing, and should this rezoning not proceed, the current land owners could propose alternative residential development of the land.

#### Social Impact

The planning proposal will result in the loss of a small number of long-term caravan park sites.

It is noted that the caravan park owner has obligations under the Residential Parks Act 1998 (s102 and s102AA) with respect to a long term tenant who is issued a termination notice on the grounds that there will be a change of use, including providing 12 months to vacate the premises and potentially providing compensation

to the tenant. The tenant has the right to apply to the NSW Civil and Administrative Tribunal for an order to postpone the date for vacating the site.

Some of the existing improvements upon the land (particular the current Bunnings building) are aged and visually detract from the streetscape. Redevelopment of the land will have the potential to improve the visual quality of the area.

## **Section D- STATE and COMMONWEALTH INTERESTS**

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

Access- Development of the land for business development purposes is likely to increase traffic volumes in the vicinity of the site and impact on the road network.

The NSW Roads and Maritime Services have advised that a traffic impact study to determine the impact of future development on the road network and in particular to the intersection of the Princes Highway and the Old Princes Highway should be undertaken prior to the rezoning. Further discussion on this matter is provided in section 11 below.

Water and Sewer- The site is serviced with water and sewer services that have capacity to accommodate a bulky goods type development. Relocation of a sewer main that runs through the subject land may be required.

Stormwater- The land drains to the “watergardens” wetland (not a SEPP 14 wetland) and any increased stormwater runoff generated by development of the land will need to be stored and treated on site prior to entering the natural system. A stormwater master plan will be required as part of any future development application for the land. Development of the site will also require upgrading of stormwater infrastructure as a condition of any future development consent.

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

The Gateway Determination required consultation with the following agencies:

- NSW Rural Fire Service
- NSW Roads and Maritime Services
- NSW Health

#### **NSW Rural Fire Service**

The NSW Rural Fire Service raised no objection to the planning proposal.

## **NSW Roads and Maritime Services**

The NSW Roads and Maritime Services (RMS) have advised that a traffic study to determine the impact of future development on the road network and in particular to the intersection of the Princes Highway and the Old Princes Highway should be undertaken prior to the rezoning. Such traffic impact study should identify appropriate upgrades to the road network and the constructability and funding of these upgrades. The RMS have advised that if appropriate planning mechanisms to obtain contributions for the upgrades are not established at rezoning stage, the opportunity for developers to contribute to necessary upgrades may be lost.

### Response

The RMS have rightly recognised the potential for future development of the land to have an impact on the road network and such future development may warrant upgrades to the road network. However, a portion of the site is already zoned IN1 General Industrial and can be developed for a range of traffic generating industrial developments without the need for this planning proposal. The remainder of the site can also be significantly intensified for medium density residential development under the current R3 zone. It is possible that redevelopment of the land under the current zoning could have a greater impact on the road network than a future development in the B5 Business Development zone.

Regarding the funding of road upgrades, Council's current Section 94 Development Contributions Plans relate to improvements to the local road network, not to State or National Highways (the only current exception is the intersection of the Princes Highway with the proposed link road south of Batemans Bay). However, there remains the opportunity for a Voluntary Planning Agreement to be negotiated with a proponent at the development application stage. Alternatively, road works can be required as conditions of development consent where they reasonably relate to the impact of the proposed development.

At this rezoning stage, where there is no specific development proposal, a traffic study will need to be at a high level and be based on a range of assumptions about future development outcomes. The outcomes of such a traffic study will most likely include recommendations for the preferred location of future access points and potential traffic management measures that may be required. These outcomes will guide more detailed traffic assessment at the development application stage.

**To be updated upon receipt of a traffic study.**

**NSW Health**

NSW Health raised no objection but identified a preference for the properties fronting Gregory Street to be excluded from the planning proposal.

## PART 4- MAPPING



Figure 1: The subject land



Figure 2: Aerial image of the subject land

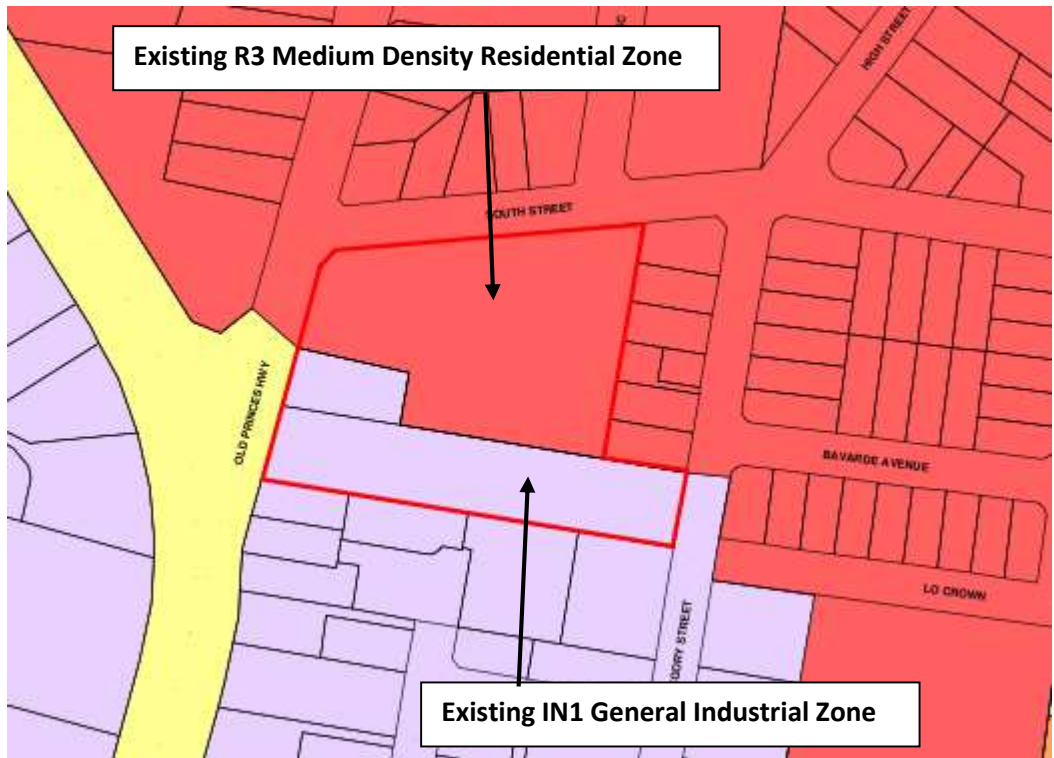


Figure 3: Current ELEP 2012 Land Zoning Map

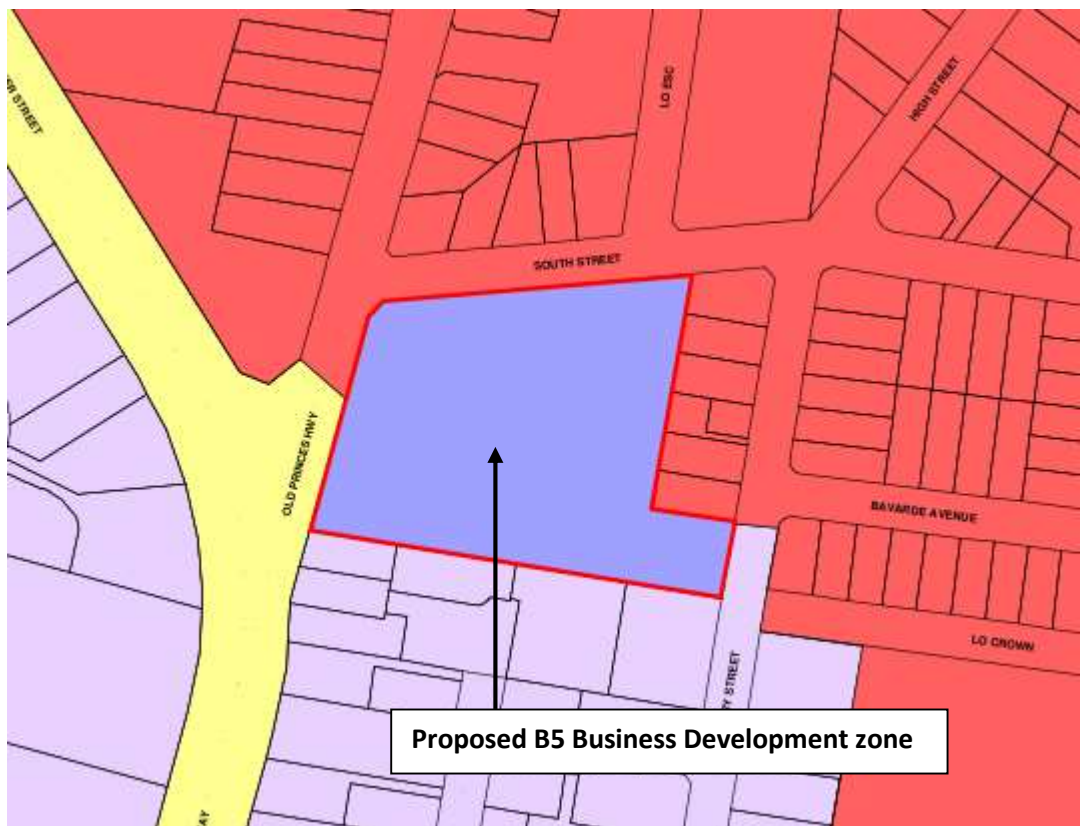


Figure 4: Proposed change to ELEP 2012 Land Zoning Map





**Figure 5: Current ELEP 2012 Lot Size Map**



**Figure 6: Proposed change to ELEP 2012 Lot Size Map**

## PART 5- COMMUNITY CONSULTATION

In accordance with Section 57(2) of the Environmental Planning and Assessment Act 1979, this planning proposal must be approved prior to community consultation being undertaken by the local authority. The Gateway Determination required the planning proposal to be exhibited for a 28 day period.

Consultation on the proposed rezoning and minimum lot size amendment was undertaken to inform and receive feedback from interested stakeholders. The engagement period was extended by Council to 44 days.

To engage the local community the following was undertaken:

- Notice in the local newspaper;
- Exhibition material and relevant consultation documents to be made available at the libraries and Council's Administration Building;
- Consultation documents to be made available on the Council's website; and
- Letters advising adjoining landowners on the proposed rezoning and minimum lot size amendment and other stakeholders that Council deem relevant to this proposal.

14 submissions were received to the planning proposal. All submission were considered by Council in finalising this amended planning proposal.

## PART 6- PROJECT TIMELINE

Anticipated commencement date (date of Gateway determination)	1 May 2015
Anticipated timeframe for the completion of required technical information	2 months
Timeframe for government agency consultation	July 2015
Commencement and completion dates for public exhibition period	26 August 2015 to 9 October 2015
Timeframe for the consideration of submissions	October 2015
Timeframe for consideration of a proposal post exhibition	November 2015
Date of submission to the Department to finalise the LEP	December 2015
Anticipated date the RPA will make the plan (if delegated)	January 2015
Anticipated date the RPA will forward to the department for notification	February 2015