

## Graham Judge

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**From:** Graham Judge  
**Sent:** Wednesday, 24 February 2021 2:37 PM  
**To:** Schindler, Elizabeth  
**Subject:** Bega Valley Shire Council - Planning proposal - Deemed Concessional Lots

Elizabeth,

I have now undertaken a review of the PP in consultation with the Departments Legal Branch. There are a number of matters that need to be addressed to make it 'Adequate' before we can progress it to the next stage, Gateway Assessment.

### General

- The PP has some errors, i.e. some of the text of PP refers to another PP dealing with clause 4.2D and secondary dwellings and dual occupancy (Page 1 and Page 7).
  - The planning proposal includes the term 'deemed concessional lot' (see Objectives and Explanation of Provisions) however this term is not defined in the draft provisions. It may be better to simply indicate the intent of the planning proposal in the Objectives (see 1-3 below) and this will be done by an amendment to clause 4.2A (re-introduce certain dwelling entitlements called 'Deemed Concessional') that were inadvertently removed by clause 4.2A and insert a new clause 6.12 matters for consideration in assessment of DA for dwelling house on lots re-instated with a dwelling entitlement (Explanation of Provisions). PC will then then draft an appropriate amendment based on the clear intent of the clause in consultation with Council.
1. re-instate dwelling entitlements on certain rural lots, i.e.
    - o lots with an area of between 2-10 ha, and
    - o lots that were not created under an environmental planning instrument and on which a dwelling house was permissible before the commencement of the Rural SEPP 2008, and
  2. The PP should also clarify that any additional dwellings entitlements that may have been inadvertently created under Bega Valley LEP 2002 by the Rural SEPP (9 May 2008) and removed by clause 4.2A will **not be re-instated by the PP**. This is necessary to ensure transparency during the exhibition.
  3. Add a new provision, clause 6.12, outlining a number of site requirements for the erection of a dwelling house on lots with a re-instated dwelling entitlement. I do not have an issue with Council the listing these requirements in the PP at the 'Adequacy stage' but we will need to assess the wording of these requirements re practicality at the 'Assessment' and 'Gateway' stage. Some of the proposed requirements proposed under clause 6.12 'additional local provision' may not be appropriate in the context of a modern SILEP.
    - a. acceptable.

### Justification

**The PP is to be revised prior to provide additional information (Adequacy) to enable assessment.**

- The responses in section B of the planning proposal re Q3 and Q4 are not well explained. It is not clear why the proposal will be consistent with Direction 5 and 8 of the Regional Plan or goal 5 and 8 of the Bega CSP.
- Is there a particular reason/justification why Council is only re-instating dwelling entitlements on lots with an area of between 2-10 ha?
- The PP also does not accurately address certain s9.1 Directions that will apply (e.g. s9.1 4.4 Bushfire Prone Land). The response for Direction 4.4 (Page 7) refers to dual occupancy and secondary dwellings and this is not relevant to the PP. It is likely that the PP will be affect bush fire prone land and will therefore be inconsistent with Direction until Council consults with NSW Rural Fire Service. Is it possible that the PP may affect land with an environmental zone and trigger s9.1 Direction? If so the PP must provide a response to Direction 2.1 Environmental Zones.

- The PP does not have enough information on the likely number of lots affected by the proposal or justification as to why it will only re-introduce lost dwelling entitlements to lots with an area of between 2-10 ha. Is it to limit the erection of dwellings in rural areas to reduce potential environmental impacts?
- The response to Direction 4.4 refers to dual occupancy development and secondary dwellings. It appears Council has used the template from another PP to insert into this PP and has not attempted to formally address the Directions for this PP. It is quite possible that land to be affected by the PP to re-instate dwellings entitlements will be bush fire prone land or flood prone land and trigger Direction 4.4. and 4.3.
- It would be appropriate that the PP provide further information on the potential number and location of rural lots that will have dwelling entitlements re-instated and the implications of clause 6.12. For example Sophie stated in an email response 9/11/2020 that Council's records indicate approximately 132 vacant rural lots that have old titles and that are between 2-10 ha will potentially be candidates for re-instatement of a dwelling entitlement. Sophie also indicated that *"It is possible that some of the lots will be significantly constrained and/or have access issues however this number would not be significant – estimate maybe 5-10% -access is the most significant issue in many cases. It is noted that crown portions are located either on existing farm holdings or in remote, marginal country."* This information should be included in the PP. i.e. response under Section C of the PP.

### Implementation

At this stage I do not have an issue with the general intent of the PP (subject to changes above to meet 'Adequacy' test to clarify and justify the intent) but there are some implementation issues we will need to resolve, e.g. drafting robust, practical and clear provisions. The implementation issues are something we can deal with once the PP is amended to make it adequate for assessment. One of the matters we need to consider is the practicality of the 'requirements' Council has listed under clause 6.12 proposed by Council. If necessary we can introduce changes as part of the Gateway Assessment and Gateway determination.

Some of these provisions are vague or unnecessary and/or will be difficult for DA planners to interpret. I suggest we discuss any potential changes with Council before issuing a GD. For example;

- a. Requirement (a) is vague (what is substantial conflict mean?) and does not add much value. The objectives of the zone should already be taken into account by Council when assessing DAs.
- b. Requirement (c) is vague and does not add much value to the assessment process. Council's assessment of a DA for a dwelling house is already likely to consider if the site is suitable for a dwelling house, e.g. access, flooding, bushfire hazard, biodiversity impacts
- c. Requirement (e) is problematic because all of the site may technically be used for the operation of a farm and it appears to replicate the intent of requirement (d).
- d. I am not sure if requirement (f) will be accepted because it relies on information not contained in an EPI to constrain where a dwelling house can be constructed. Are the maps of class 1 and 2 land dated 1986 still relevant and if so, will they be made available during the exhibition period.
- e. Requirement (g) is vague and probably unnecessary. What is a 'inholding'. If it is part of a NP it is probably zoned E1 and/or owned by NPWS.
- f. Requirement (k). The clause probably pre-dates the mapping of bushfire prone land. If it is Council's intention to prevent dwelling houses on bushfire prone land what is the likely effect on how much land will be eligible for erecting a dwelling house?
- g. Requirement (n) indicates that a dwelling house cannot be built on a site that has a perennial (permanent stream), adjoins land with a perennial stream or has an easement to draw water from a perennial stream. I am not sure that these types of provisions that seek to prohibit development are acceptable. Is the intent of this clause to prevent further extraction of water for domestic purposes from streams in Bega LGA?

Cheers

**Graham Judge**  
**Senior Planning Officer**

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