



Planning Proposal

Deemed Concessional Lots

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Part 1 – Objectives and intended outcomes

This planning proposal has been prepared by Bega Valley Shire Council in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the NSW Department of Planning, Industry and Environment's *A Guide to Preparing planning proposals* (December 2018).

This planning proposal seeks to amend Clause 4.2A of *Bega Valley Local Environmental Plan 2013* as well as to implement a new local clause with considerations for development assessment of deemed concessional lots.

The objectives of this planning proposal are to amend the *Bega Valley Local Environmental Plan 2013* to:

- Reinstatement of dwelling entitlements for certain rural lots between 2 and 10ha that were not created under an environmental planning instrument and on which a dwelling house was permissible before the commencement of the *State Environmental Planning Policy (Rural Lands) 2008* (Rural SEPP)

The intentions of this planning proposal are to:

- Amend Clause 4.2A to re-introduce certain dwelling entitlements called 'Deemed Concessional' that were inadvertently removed by Clause 4.2A *Erection of dwelling houses on land in certain rural, residential and environment protection zones*
- Insert a new Clause 6.12 into Part 6 Additional Local Provisions outlining a number of site requirements for the erection of a dwelling house on lots with a re-instated dwelling entitlement

Any additional dwellings entitlements that may have been inadvertently created under Bega Valley Local Environmental Plan 2002 by the Rural SEPP (9 May 2008) and removed by clause 4.2A will not be re-instated by the planning proposal.

Any previous dwelling entitlements on rural lots larger than 10 ha that were inadvertently removed by clause 4.2A under Bega Valley Local Environmental Plan 2013 will not be re-instated by the planning proposal.

Part 2 – Explanation of the Provisions

The planning proposal seeks to amend Clause 4.2A in the *Bega Valley Shire Local Environmental Plan 2013* (LEP 2013) by:

NOTE: amendments to LEP 2013 are indicated below in red

1) Amendment to Clause 4.2A:

4.2A Erection of dwelling houses on land in certain rural, residential and environment protection zones

(1) The objectives of this clause are as follows—

- (a) to minimise unplanned rural residential development,*
- (b) to enable the replacement of lawfully erected dwelling houses in rural, residential and environment protection zones.*

(2) This clause applies to land in the following zones—

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*

- (c) Zone RU4 Primary Production Small Lots,
- (d) Zone R5 Large Lot Residential,
- (e) Zone E3 Environmental Management,
- (f) Zone E4 Environmental Living.

(3) Development consent must not be granted for the erection of a dwelling house on land to which this clause applies, and on which no dwelling house has been erected, unless the land—

- (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or
- (b) is a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or
- (c) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or
- (d) is an original holding, or
- (e) would have been a lot or a holding referred to in paragraph (a), (b), (c) or (d) had it not been affected by—
 - (i) a minor realignment of its boundaries that did not create an additional lot, or
 - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose.

(f) is a lot that would have been a deemed concessional lot of between 2 and 10 hectares on 8 May 2008, or

Note—

A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

(4) (Repealed)

(5) Development consent may be granted for the erection of a dwelling house on land to which this clause applies if there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house.

(6) In this clause—

holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.

Note—

The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.

original holding means—

- (a) land that is identified as “Original Holdings” on the Original Holdings Map, or
- (b) any other land that was a holding on 7 January 1966, and is a holding at the time the application for development consent referred to in subclause (3) is lodged, whether or not there has been a change in the ownership of the holding since 7 January 1966.

2) Insert a new Clause 6.12 into Part 6 Additional Local Provisions

6.12 Deemed Concessional Lots

(1) This clause applies to land identified as a deemed concessional lot in Clause 4.2A(3)(f)

(2) Notwithstanding any other provision of this plan, consent may only be granted to the erection of a dwelling house on an allotment to which this clause applies if the consent authority is satisfied that:

- (a) the erection of the dwelling house will not create any substantial conflict with the objectives of the zone, and*
- (b) the erection of a dwelling house will not create or increase demand for the uneconomic provision of services to the locality, and*
- (c) the land has a suitable dwelling house site, and*
- (d) use of the land and the dwelling house will not adversely affect the economic viability of existing farmland, and*
- (e) the dwelling house will not be located near operational aspects of a farm, and*
- (f) the land is located outside areas designated as Class 1 or 2 in the New South Wales Department of Agriculture's "Agricultural Land Classification Atlas, Far South Coast Region New South Wales" dated August 1986, and*
- (g) the land is not part of an inholding within a national park within the meaning of the National Parks and Wildlife Act 1974, and*
- (h) the dwelling house will not be located within 100m of the boundary of a national park or nature reserve within the meaning of the National Parks and Wildlife Act 1974, and*
- (i) the dwelling house has legal and practical access to an existing Council-maintained public road, and*
- (j) use of the land and the dwelling house will not create a need for any additional access onto a State highway or an arterial road, and*
- (k) the dwelling house will be located outside any areas of bushfire hazard identified by the Council, and*
- (l) the dwelling house is to be serviced by existing electricity reticulation or short extensions from the existing reticulation network, or utilises alternative stand-alone electric power systems, and*
- (m) the land has soils suitable for on-site sewage management disposal, and*
- (n) the land does not contain or adjoin perennial streams and does not have access by easement for drawing water from perennial streams, and*
- (o) the dwelling house and its use will not adversely affect important features of cultural or natural heritage nor disrupt regional ecological systems or processes.*

It is important to note that the proposed LEP provisions may be subject to change by the Department of Environment, Planning and Infrastructure and the Parliamentary Counsel's Office to improve their clarity or interpretation or correct errors prior to the draft plan being finalised.

Part 3 – Justification

State Environmental Planning Policy (Rural Lands) 2008 (Rural SEPP) amended the *Bega Valley Shire Local Environmental Plan 2002* (LEP 2002) in 2008 to remove the clauses that enabled the creation of concessional lots in rural areas, and also that determined how Council restricted the number of existing vacant lots in rural areas that had a dwelling entitlement (known as deemed concessional lots).

This planning proposal aims to reinstate the provisions to enable consideration of dwellings on deemed concessional lots.

Existing holdings

An existing holding is the land in a rural area that was owned by a person/s on 7 January 1966 even if there has been a change in the ownership. Each existing holding could have a dwelling, and in addition, prior to the implementation of the Rural SEPP in 2008, Council could consider subdivision for the purposes of dwellings within existing holdings and/or the approval of dwellings under the provisions of LEP 2002. These provisions were commonly known as concessional lot subdivisions and deemed concessional lots.

Concessional lots

Concessional lot subdivision provisions existed in the Bega Valley Shire's LEPs from 1987 until the Rural SEPP in 2008. These provisions permitted the creation of lots between 2 and 10 hectares for dwellings in rural areas. Concessional lots were created from intact existing holdings or the largest part of an existing holding. The maximum number of concessional lots that could be created from an existing holding was determined by a formula based on the area of the existing holding.

Deemed concessional lots

Under the 1987 and 2002 LEPs, Council could sometimes grant consent to the erection of a dwelling house on an existing lot (including a crown portion) within rural zones. Such lots were "deemed" to be created under the concessional lot subdivision provisions for existing holdings and were included in the yield calculations for the maximum number of concessional lots that could be created for the purposes of a dwelling from an existing holding.

Importantly, the provisions stated that the effect of approving a lot as a deemed concessional must be substantially the same as if the land were subdivided as a concessional lot. The notes accompanying the 2002 LEP explain this in the following way: "This provides for crown portions to have a dwelling entitlement where a lot of similar size and impact could otherwise be created under [the concessional lot provisions]. With respect to lot area, generally the crown portion is to be commensurate with the 2-10ha requirement under [the concessional lot provisions] although there may be mitigating circumstances that permit a lot of larger area, provided that all other assessment criteria under the plan are satisfied." *State Environmental Planning Policy (Rural Lands) 2008*

Concessional lot provisions were removed from LEP 2002 by the application of the Rural SEPP on 9 May 2008. This was one of the primary objectives of the Rural SEPP in line with the outcomes of the Central West Rural Lands Inquiry in 2007. Other purposes of the Rural SEPP included: facilitating the orderly and economic use and development of rural lands for rural and related purposes; assisting in the proper management, development and protection of rural lands; and minimising land use conflict.

The implementation of the Rural SEPP removed clauses from all NSW Councils' LEPs relating to concessional lot subdivision, including the deemed concessional lots provisions that determined how Bega Valley Shire Council calculated the number of lots within an existing holding that retained a dwelling entitlement.

These changes inadvertently enabled dwellings to be erected on almost all existing lots in rural areas because there was no longer a requirement for them to qualify as a deemed concessional lot. These provisions remained in place from 9 May 2008 until the commencement of LEP 2013 on 2 August 2013.

A. Need for the Planning Proposal

Bega Valley Shire Council has expressed an explicit desire to retain the dwelling opportunities previously provided by the Bega Valley LEP 2002 under the deemed concessional lot provisions. It is considered that the planning proposal is the most appropriate means of achieving the intended objectives and outcomes.

Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

The planning proposal does not align with any Council strategies but instead seeks to reinstate dwelling entitlements for deemed concessional lots that were inadvertently lost with the application of the State Environmental Planning Policy (Rural Lands) 2008.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The planning proposal is the best means of achieving the stated objectives. These matters can only be achieved through a planning proposal.

B. Relationship to the strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

Yes. The planning proposal aims to achieve the following directions of the NSW Department of Planning, Industry and Environment's *South East and Tablelands Regional Plan*:

- Direction 5: Promote agricultural innovation, sustainability and value-add opportunities by permitting housing on small lots in rural areas to support new and existing agricultural enterprise.
- Direction 8: Protect important agricultural land by providing for housing on small existing lots and not lead to further fragmentation of ownership.

Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

The planning proposal is consistent with the following goals of the *Bega Valley Shire Community Strategic Plan 2040*:

- Goal 5: Our air and water is pristine and our natural environment and rural landscapes are protected as future development in rural areas resulting from the planning proposal will be minimal and on existing parcels of land Goal 8: Our places retain their character and scale, development is well planned, and a range of goods and services

are available with our Shire that meet local needs as future development resulting from this planning proposal will be in keeping with the existing character and scale of existing development in rural areas

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The following table identifies the applicable SEPPs and outlines this planning proposal's consistency with these:

Relevant SEPP	Consistency
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP. This SEPP may apply to future residential development and will be considered at the detailed development consent stage.
State Environmental Planning Policy (Coastal Management) 2018	Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP. This SEPP may apply to future residential development and will be considered at the detailed development consent stage.
State Environmental Planning Policy (Primary Production and Rural Development) 2019	Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?

Yes. The following table identifies the applicable Section 9.1 Directions by the Minister and outlines this planning proposal's consistency with these:

No.	Direction	Comment
1. Employment & Resources		
1.2	Rural Zones	Consistent. The planning proposal is consistent with the objectives of this Direction as it does not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. Clause 4(b) does not apply to the Bega Valley Shire.
1.5	Rural Lands	Consistent. This proposal is consistent with the objectives of this Direction and the Planning Principles of the State Environmental Planning Policy (Rural Lands) 2008 as it provides opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities.
2. Environment and heritage		
2.1	Environmental Protection Zones	Consistent. The objective of this direction. The proposal is consistent with this Direction is to protect and conserve environmentally sensitive areas. Although it provides dwelling opportunities, any future development application will be assessed on merit in terms of environmental considerations.
2.2	Coastal Management	Consistent. This planning proposal would not prevent any future development application for a dwelling from being assessed under the relevant provisions of <i>State Environmental Planning Policy (Coastal Management) 2018</i> .
2.3	Heritage Conservation	Consistent. The planning proposal does not intend to rezone land. This planning proposal would not prevent any future development application for a dwelling from being assessed with consideration of European heritage or Aboriginal

		cultural heritage.
4. Hazard and risk		
4.1	Acid sulfate soils	Consistent. This planning proposal would not prevent any future development application for a dwelling from being assessed with consideration of acid sulfate soils in accordance with Clause 6.1 of the <i>Bega Valley Local Environmental Plan 2013</i> .
4.3	Flood prone land	Consistent. The planning proposal does not seek to vary any of the flood control provisions currently contained in the LEP and will not result in development of flood prone land that is inconsistent with the Floodplain Development Manual 2005, nor will it result in changes to the LEP that would undermine clause 6.3 Flood Planning. The application of Clause 6.3 of BVLEP 2013 prevents inappropriate development in flood prone areas.
4.4	Planning for bushfire protection	This planning proposal is consistent with the objectives of the ministerial direction. All rural areas of the Bega Valley Shire are mapped as bushfire prone. Any subsequent development will be required to demonstrate compliance with Chapter 7 and clause 8.2.1 of Planning for Bushfire Protection 2019. In accordance with the Direction, Council will consult with the Commissioner of the NSW Rural Fire Service during the preparation of a draft Local Environmental Plan and take into account any comments made.
5. Regional planning		
5.10	Implementation of Regional Plans	Consistent. The South East and Tablelands Regional Plan is the plan applicable to this proposal. The planning proposal's consistency with this plan is addressed previously under Question 4.
6. Local plan making		
6.1	Approval and referral requirements	Consistent. The planning proposal does not identify development as designated development.

C. Environmental, social and economic impact

Q7. 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?

It is not anticipated that the planning proposal will adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

It is not anticipated that there will be any adverse environmental effects because of this planning proposal. Future development will consider environmental impacts as part of the development application process.

Q9. Has the planning proposal adequately addressed any social and economic effects?

The extent of any social or cultural impacts resulting from the planning proposal is expected to be limited due to the relatively small number of lots affected. The planning proposal may have positive social benefits in reinstating dwelling opportunities for rural landholders.

There are currently approximately 132 vacant rural lots that were not created under an environmental planning instrument that are between 2 and 10ha that may have been considered deemed concessional providing there was still capacity for dwellings within the relevant existing holdings. This number increases to 1,134 if lots between 2 and 16ha are eligible for consideration as deemed concessional lots due to “mitigating circumstances”.

While the number of affected lots is likely to be considerably less than 1,134 because there may not be capacity remaining within the Existing Holding, it is likely to run to several hundred lots. An exact figure or identification of affected parcels of land can-not be determined because of the flexibility of the deemed concessional provisions and the amount of research required to assess each of the 1,400 Existing Holdings and the dwellings and the subdivisions within each one.

It is possible that around 5-10% of the lots will be significantly constrained and/or have access issues, however this number would not be significant. Council estimates that access is likely to be the most significant issue in many cases. It is noted that many crown portions are located either on existing farm holdings or in remote, marginal country.

To limit the scale of rural development that may result from this planning proposal, provide certainty to landowners about the size of lots that can qualify as a deemed concessional and achieve Council’s and the NSW Government’s objectives with regard to rural land use planning, the proposed amendment includes clarification that deemed concessional lots must be between 2ha and 10ha in size.

D. State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

Yes. The planning proposal will not significantly increase development in rural areas and therefore additional demand on public infrastructure will be limited. Further consideration of the adequacy of public infrastructure would be considered as part of any development application.

Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Council will consult with the relevant State and Commonwealth authorities in accordance with the conditioning of the Gateway Determination.

Part 4 – Mapping

The planning proposal will not require any amendments to *Bega Valley Local Environmental Plan 2013* maps.

Part 5 – Community Consultation

Community consultation for this planning proposal will be consistent with the requirements of the Gateway Determination and the consultation guidelines contained in the NSW Department of Planning, Industry and Environment's *A Guide to Preparing Local Environmental Plans* (December 2018).

Public exhibition of the planning proposal will include notification on the Bega Valley Shire Council website.

At the conclusion of the public exhibition, a report will be prepared and reported back to Council to allow for the consideration of any submissions received from the community.

Part 6 – Timeline

It is estimated that this amendment to *Bega Valley Local Environmental Plan 2013* will be completed by June 2022.

Council requests delegation to carry out certain plan-making functions in relation to this proposal. Delegation would be exercised by Council's General Manager or Director of Community, Environment and Planning.

APPENDIX: Impact of State Environmental Planning Policy (Rural Lands) 2008 on the provisions of Bega Valley Local Environmental Plan 2002

Clauses removed by the implementation of the Rural SEPP are indicated in red.

Clauses added by the implementation of the Rural SEPP are indicated in blue.

16 Limited subdivisions for the purpose of dwellings within Zone 1(a)

(1) Consent may be granted pursuant to this clause to a subdivision that excises an allotment or allotments to be used for the purpose of a dwelling house from land within Zone 1 (a):

(a) that comprises the whole of an existing holding that was in a single ownership when the development application for consent to the subdivision was made, or

(b) that comprises the largest part of an existing holding that was in a single ownership when the development application for consent to the subdivision was made, if the whole of the existing holding was not in a single ownership at that time.

(2) Not more than one consent may be granted pursuant to this clause for the excision of land from any existing holding, whether or not the excision is made from the largest part of the existing holding.

(3) The number of allotments excised under this clause from an existing holding shall not exceed:

(a) 1, where the existing holding has an area of 10 hectares or more but less than 20 hectares,

(b) 2, where the existing holding has an area of 20 hectares or more but less than 30 hectares,

(c) 3, where the existing holding has an area of 30 hectares or more but less than 80 hectares, or

(d) where the existing holding has an area of 80 hectares or more, 3 plus 1 additional allotment for each 40 hectares in the existing holding. This subclause is subject to subclause (5) and clause 17 (3).

(4) No allotment can be excised under this clause if the existing holding has an area of less than 10 hectares.

(5) Any allotment within an existing holding and comprised of less than 120 hectares of land within Zone 1 (a) is to be treated as an excised allotment in calculating the number of allotments that may be excised from the existing holding under this clause if a dwelling lawfully exists or may be erected in accordance with this plan on the allotment.

(6) Each allotment excised under this clause must have an area of not less than 2 hectares and not more than 10 hectares.

(7) Consent must not be granted to a subdivision of land pursuant to this clause unless the consent authority is satisfied that each allotment proposed to be excised for use for the purpose of a dwelling house:

(a) has a suitable dwelling house site, and

- (b) will not, because of its use, affect the economic viability of existing farmland, and*
- (c) is not located near operational aspects of a farm, and*
- (d) is located outside areas designated as Class 1 or 2 in the New South Wales Department of Agriculture's "Agricultural Land Classification Atlas, Far South Coast Region New South Wales" dated August 1986, and*
- (e) will not be part of an inholding within a national park within the meaning of the National Parks and Wildlife Act 1974, and*
- (f) will not have a dwelling located on it within 100m of the boundary of a national park or nature reserve within the meaning of the National Parks and Wildlife Act 1974, and*
- (g) will have legal and practical access to an existing Council-maintained public road, and*
- (h) will not create a need for any additional access onto a State highway or an arterial road, and*
- (i) will have a dwelling site located outside any areas of bushfire hazard identified by the Council, and*
- (j) will be serviced by existing electricity reticulation or short extensions from the existing reticulation network, or will utilise alternative stand-alone electric power systems, and*
- (k) has soils suitable for on-site sewage management disposal, and*
- (l) does not contain or adjoin perennial streams and does not have access by easement for drawing water from perennial streams, and*
- (m) will not adversely affect important features of cultural or natural heritage or disrupt regional ecological systems or processes.*

17 Controls for building dwelling houses within Zone 1 (a)

(1) Despite any other provision of this plan except this clause, consent must not be granted to the erection of a dwelling house on an allotment in Zone 1 (a) unless the land:

- (a) comprises an allotment of not less than 120 hectares, or*
- (b) comprises an allotment created for the purpose of a dwelling house by a subdivision for which consent has been granted,*
- (c) comprises an allotment identified as the residue in a subdivision for which consent has been granted for the excision of allotments for the purpose of a dwelling house, or*
- (d) comprises an existing holding on which there is no other dwelling house and the consent authority is satisfied that:*
 - (i) the land is of sufficient size and the soils are of appropriate quality for the effective on-site disposal of domestic waste, and*
 - (ii) the erection of a dwelling house will not create or increase any demand for the uneconomic provision or upgrading of roads and other utilities to that land.*

(2) Notwithstanding any other provision of this clause, consent may be granted to the erection of a dwelling house on an allotment (including a portion of a Parish or a lot in a Crown plan) within Zone 1 (a) that was lawfully created prior to 7 January 1966 and that is not an existing holding if the consent authority is satisfied that:

(a) the erection of the dwelling house will not create any substantial conflict with the objectives of the zone, and

(b) the erection of a dwelling house will not create or increase demand for the uneconomic provision of services to the locality, and

(c) the effect will be substantially the same as if the allotment had been excised under clause 16.

(3) Where consent is granted as referred to in subclause (2), the allotment is to be treated as an excised allotment in calculating the number of allotments that may be excised under clause 16 from the existing holding.

(4) Consent may be granted to a development application made pursuant to subclause (2) for land within an existing holding that at 1 July 2000 was owned separately from any other land within the existing holding, even where that development application does not comply with one or more of paragraphs (d), (e), (f), (g), (h) and (l) of subclause (5) if a dwelling house was otherwise permissible on the land immediately prior to the commencement of this plan.

(5) Consent must not be granted to the erection of a dwelling house pursuant to subclause (2) on any land unless the consent authority is satisfied that:

(a) the land has a suitable dwelling house site, and

(b) use of the land and the dwelling house will not adversely affect the economic viability of existing farmland, and

(c) the dwelling house will not be located near operational aspects of a farm, and

(d) the land is located outside areas designated as Class 1 or 2 in the New South Wales Department of Agriculture's "Agricultural Land Classification Atlas, Far South Coast Region New South Wales" dated August 1986, and

(e) the land is not part of an inholding within a national park within the meaning of the National Parks and Wildlife Act 1974, and

(f) the dwelling house will not be located within 100m of the boundary of a national park or nature reserve within the meaning of the National Parks and Wildlife Act 1974, and

(g) the dwelling house has legal and practical access to an existing Council-maintained public road, and

(h) use of the land and the dwelling house will not create a need for any additional access onto a State highway or an arterial road, and

(i) the dwelling house will be located outside any areas of bushfire hazard identified by the Council, and

(j) the dwelling house is to be serviced by existing electricity reticulation or short extensions from the existing reticulation network, or utilises alternative stand-alone electric power systems, and

(k) the land has soils suitable for on-site sewage management disposal, and

(l) the land does not contain or adjoin perennial streams and does not have access by easement for drawing water from perennial streams, and

(m) the dwelling house and its use will not adversely affect important features of cultural or natural heritage nor disrupt regional ecological systems or processes.

6) Nothing in subclause (1) shall prevent the erection of a dwelling house on land in Zone 1 (a) on which another dwelling house has been lawfully erected if the first mentioned dwelling house is intended to replace the other dwelling house and is not to be occupied until the other dwelling house is demolished or its occupation has permanently ceased.

(7) Despite any other provision of this plan, consent may be granted to the erection of a dwelling house on an allotment in Zone 1 (a) resulting from a minor boundary adjustment, consolidation, road widening or acquisition for a public purpose or a combination of these where the consent authority is satisfied that the allotment is substantially the same as the allotment that existed immediately prior to the minor boundary adjustment, consolidation, road widening or acquisition for a public purpose and the erection of a dwelling house would be permissible on that former allotment under this clause.

In this subclause, minor boundary adjustment means an alteration of a boundary between allotments:

- (a) that does not result in the creation of any additional number of allotments, and
- (b) that the consent authority is satisfied is of a minor nature and will not result in any significant adverse environmental effect.

(8) In considering whether to grant consent to a development application made pursuant to subclause (6) or (7), the consent authority must have regard to the matters for consideration listed in subclause (5).

(9) Consent may be granted to the erection of a second dwelling house on any allotment in Zone 1 (a) on which a dwelling house may be erected under this clause, subject to the following:

- (a) compliance with all requirements under this plan that would apply if only one dwelling house was proposed to be erected on the allotment, and
- (b) the development resulting in not more than two dwellings on the allotment, and
- (c) the land not being used for an ecotourism facility or tourist accommodation.

(10) An allotment in Zone 1 (a) containing more than one dwelling house shall not be subdivided except in conformity with clause 15 or 16.

17A Dwelling entitlements on existing concessional lots

The amendment of this plan by the State Environmental Planning Policy (Rural Lands) 2008 does not affect any entitlement arising under a provision of this plan (as in force before that amendment) to erect a dwelling house on a lot, if: