



Planning,  
Industry &  
Environment

IRF21/1497

## Gateway determination report – PP-2021-2146

---

Amend Bega Valley LEP 2013 to Reinstate  
entitlements to erect a dwelling house on certain rural  
lands in Bega Valley

April 21



Published by NSW Department of Planning, Industry and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

Title: Gateway determination report – PP-2021-2146

Subtitle: Amend Bega Valley LEP 2013 to Reinstate entitlements to erect a dwelling house on certain rural lands in Bega Valley

---

© State of New South Wales through Department of Planning, Industry and Environment 2021. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (April 21) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

# Contents

<b>1</b>	<b>Planning proposal.....</b>	<b>1</b>
1.1	Overview.....	1
1.2	Objectives of planning proposal .....	1
1.3	Explanation of provisions .....	2
1.4	Site description .....	3
1.5	Mapping.....	3
<b>2</b>	<b>Need for the planning proposal .....</b>	<b>3</b>
<b>3</b>	<b>Strategic assessment .....</b>	<b>3</b>
3.1	Regional Plan .....	3
3.2	Local Strategy .....	4
3.3	Section 9.1 Ministerial Directions .....	4
3.4	State environmental planning policies (SEPPs) .....	6
<b>4</b>	<b>Site-specific assessment .....</b>	<b>6</b>
4.1	Environmental, social and economic.....	6
4.2	Infrastructure .....	6
<b>5</b>	<b>Consultation.....</b>	<b>7</b>
5.1	Community .....	7
5.2	Agencies.....	7
<b>6</b>	<b>Timeframe .....</b>	<b>7</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>7</b>
<b>8</b>	<b>Assessment summary .....</b>	<b>7</b>
<b>9</b>	<b>Recommendation.....</b>	<b>8</b>

**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Planning Proposal dated March 2021
Council report
Council Minutes
Email 25 February 2021 Additional Information from Council

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Bega Valley Shire Council</b>
<b>PPA</b>	<b>Bega Valley Shire Council</b>
<b>NAME</b>	<b>Reinstate entitlements to erect a dwelling house on certain rural lands in Bega Valley</b>
<b>NUMBER</b>	<b>PP-2021-2146</b>
<b>LEP TO BE AMENDED</b>	<b>Bega Valley LEP 2013</b>
<b>ADDRESS</b>	<b>Approximately 132 vacant rural lots (Source: planning proposal)</b>
<b>DESCRIPTION</b>	<b>Approximately 132 vacant rural lots (Source: planning proposal)</b>
<b>RECEIVED</b>	<b>10/02/2021</b>
<b>FILE NO.</b>	<b>IRF21/1497</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

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

### Comment

Not all lots that have an entitlement to erect a dwelling house with consent are created as a result of an approval under an environmental planning instrument. That is why the wording of the local clause relating to the erection of dwelling houses in rural zones that has been inserted into many Standard Instrument local environmental plans states that Council may grant consent to the erection of a dwellings house on rural land if it *“is a lot created before this Plan commenced and on which the erection of a dwelling house or dual occupancy was permissible immediately before that commencement”* (e.g. Shoalhaven LEP 2014, Eurobodalla LEP 2012, Shellharbour LEP 2013 and Palerang LEP 2014).

Clause 4.2A (3) (b) in Bega Valley LEP 2013 however states that Council may grant consent to the erection of a dwelling house on rural land if it *“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**”*.

The current wording of clause 4.2A (3) (b) therefore has had the effect of inadvertently removing dwelling entitlements that existed on certain rural lots under Bega Valley LEP 2002. These were lots that were not created under an environmental planning instrument and were created before the commencement of Bega Valley LEP 2013.

The planning proposal also seeks to only reinstate an entitlement for a dwelling house on lots that had the entitlement **before the commencement of the Rural Lands SEPP**. This is because the planning proposal has also identified that changes made by the Rural Lands SEPP to Bega Valley LEP 2002 on 9 May 2008 inadvertently increased the opportunity to erect a dwelling house on rural land. It did this by removing provisions that would have excluded certain lots from having a dwelling entitlement. Council has decided that this change was an unplanned and was an inappropriate increase in rural dwelling entitlements.

The objectives of the planning proposal are therefore considered to be clear and adequate.

## 1.3 Explanation of provisions

The planning proposal contains an explanation of provisions that explains how the objectives of the proposal will be achieved.

The planning proposal includes a draft amendment to clause 4.2A in Bega Valley LEP 2013 that seeks to reinstate an entitlement to erect a dwelling house with Council consent on lots *“that would have been a deemed concessional lot of between 2 and 10 hectares on May 2008.”*

The planning proposal also seeks to insert a new clause 6.12 that requires Council to be satisfied that the development application meets 15 requirements (requirements a) to o)) before it grants consent to erect a dwelling house on lots with a reinstated dwelling house entitlement. These requirements were previously listed in clause 16 (7) of Bega LEP 20002 before it was repealed by Bega Valley LEP 2013.

### Comment

The Department, including the Department's Policy and Legislation section, has agreed that there is a legitimate need for the planning proposal. The Department has however raised some potential issues with Council on the proposed wording of draft clause 4.2A (3) (b) and draft clause 6.12:

- The proposal assumes the meaning of 'deemed concessional lots' but the term 'deemed concessional lots' is not defined in the draft provisions for clause 4.2A(3) (b).
- Some of the 15 requirements under draft Clause 6.12 are unlikely to be appropriate for a modern SI LEP. Some are considered vague or unnecessary and difficult to implement.

Council has advised that they are aware that it may need to revise these provisions, and this can be undertaken following public exhibition. The proposed Clause 6.12 includes appropriate considerations such as the suitability of the site for a dwelling, impacts on farming, suitability of access and impacts on the environment.

Council has also revised the planning proposal (March 2021) to include the following statement:

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

The intent of the planning proposal is adequate therefore the drafting of appropriate and robust provisions to implement the planning proposal can therefore be undertaken in consultation with the Parliamentary Counsel when the plan is being finalised.

## 1.4 Site description

The planning proposal prepared by Council indicates that there are approximately 132 vacant rural lots that were not created under an environmental planning instrument that are between 2 and 10 hectares that may be considered to be a 'deemed concessional lot'. The planning proposal also indicates that it is possible that 5-10% of these lots will be significantly constrained.

Council also indicated in additional information to the Department in an email dated 25 February 2021 that *"No land in Environmental Zones will be affected. The proposed provisions only applied in the old 1(a) agricultural zone and this was predominantly rezoned to RU1 and RU2. A small amount of 1(a) land was rezoned to E3 in coastal catchments but investigations have shown that no lots that would qualify as deemed concessionals under this planning proposal are located in the E3 zone."*

## 1.5 Mapping

The planning proposal does not propose amending or inserting any LEP Maps. Implementation of the planning proposal will be undertaken by an amendment to the local instrument.

## 2 Need for the planning proposal

Council indicates that the planning proposal is needed to reinstate certain entitlements to erect a dwelling house on rural land that existed under Bega Valley LEP 2002 that were inadvertently removed by Bega Valley LEP 2013.

The planning proposal and amendment to Bega Valley LEP 2013 is the best means of achieving the objectives of the planning proposal.

### Comment

The intent of the planning proposal is supported, and it is agreed that the planning proposal and amendment to Bega Valley LEP are the best means of achieving the objectives.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the South East and Tablelands Regional Plan.

**Table 3 Regional Plan assessment**

Regional Plan Direction	Justification
Direction 5 Promote agricultural innovation, sustainability and value-add opportunities  Direction 8 Protect important agricultural land	<p>Consistent with these Directions “by permitting housing on small lots in rural areas to support new and existing agricultural enterprise.</p> <p>Comment</p> <p>It is possible that the erection of a dwelling house on these rural lots that are below the minimum lot size may be used for rural lifestyle development and not for primary production. The inclusion of clause 6.12 however seeks to minimise the impact of erecting a dwelling house on the subject lots on existing farmland and farming activities.</p> <p>The planning proposal has merit because it is considered fair and reasonable to reinstate the opportunity for landholders to submit a development application with Council to assess the sites suitability for the erection of a dwelling house on certain existing lots that have an area of between 2 to 10 hectares.</p> <p>It is recommended that because the planning proposal may potentially have an impact on high quality agricultural land that Council consult with DPI Agriculture.</p>

## 3.2 Local Strategy

The planning proposal states in response to Q1 under section ‘A Need for the Planning Proposal’ that it *“does not align with any Council strategies but instead seeks to reinstate dwelling entitlements for deemed concession lots that were inadvertently lost with the application of the State Environmental Planning Policy (Rural Lands) 2008.”*

### Comment

The intent of the planning proposal is not inconsistent with any local planning strategies.

It is however recommended that the response to Q1 on page 5 of the planning proposal should be amended to clarify that the dwelling entitlements were inadvertently removed by the wording of clause 4.2A (3) (b) of Bega Valley LEP 2013 and not because of the Rural Lands SEPP.

## 3.3 Section 9.1 Ministerial Directions

The planning proposal’s consistency with relevant section 9.1 Directions is discussed below:

**Table 4 Section 9.1 Ministerial Direction assessment**

Directions	Consistent	Reasons for Consistency or Inconsistency
1.2 Rural Zones	Yes	The planning proposal affects rural zoned land but does not rezone a rural zone to an urban or tourist zone.
1.5 Rural Lands	Yes	The planning proposal affects rural zoned land and is consistent with items (a) to (l) under clause (4) of the Direction.

2.1 Environmental Protection Zones	Yes	Council has advised that no land in Environmental Zones will be affected by the planning proposal. It is however possible that rural land with significant environmental value will be affected by the planning proposal. It is therefore recommended that Council consult with DPIE Biodiversity and Conservation.
2.2 Coastal Management	Yes	<p>The planning proposal will not rezone land which would enable increased development or more intensive land use on land within a coastal wetland and littoral rainforest.</p> <p>The planning proposal would not prevent any future development application for a dwelling from being assessed under the relevant provisions of SEPP Coastal Management 2018.</p>
2.3 Heritage Conservation	Yes	The planning proposal does not remove any provisions that facilitate the conservation of items, places, buildings works, relics, objects, etc.
4.1 Acid Sulfate Soils	Yes	The planning proposal does not remove any provisions relating to acid sulfate soils. The planning proposal does not prevent any future development application for a dwelling from being assessed to consider acid sulfate soils in accordance with clause 6.1 of the Bega Valley LEP 2013.
4.3 Flood Prone Land	Yes	<p>The planning proposal does not seek to vary any of the flood control provisions contained in the Bega Valley LEP 2013.</p> <p>The planning proposal does not seek to rezone flood prone land zoned rural to an urban zone.</p>
4.4 Planning for bushfire protection	RFS consultation required to confirm consistency	The planning proposal is likely to affect rural land identified as bushfire prone land. The planning proposal will be consistent with the Direction when Council has consulted with the Commissioner of the NSW Rural Fire Service. It is therefore recommended that Council consult with the NSW Rural Fire Service in accordance with the Direction.
5.10 Implementation of Regional Plans	Yes	The consistency with the South East and Tablelands Regional Plan is addressed in Table 4.
6.1 Approval and referral requirements	Yes	The planning proposal does not identify development as designated development.



## 3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs

**Table 5 Assessment of planning proposal against relevant SEPPs**

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP Building Sustainability Index: BASIX) 2004	Yes	The planning proposal does not contain provisions that would hinder the operation of the SEPP
SEPP Coastal Management 2018	Yes	The planning proposal does not contain provisions that would hinder the operation of the SEPP
SEPP Primary Production and Rural Development 2019	Yes	The planning proposal does not contain provisions that would hinder the operation of the SEPP

## 4 Site-specific assessment

### 4.1 Environmental, social and economic

The planning proposal seeks to reinstate an entitlement to erect a dwelling house on approximately 132 vacant rural lots zoned RU1 Primary Production and RU2 Rural Landscape Zone under Bega Valley LEP 2013. The reinstatement of an entitlement to erect a dwelling house on lots that had an entitlement under Bega Valley LEP 2002 is fair and reasonable and will have a positive social and economic impact on affected landholders.

#### Comment

Although detailed site assessments have not been undertaken for each of the subject lots the planning proposal proposes including clause 6.12 that requires Council to be satisfied that the proposal meets a number of requirements as part of the assessment of a development application to erect a dwelling house. These requirements duplicate provisions previously applied to the subject sites under Bega Valley LEP 2002. Many of these requirements seek to mitigate the environmental, social and economic impacts of the erection of a dwelling house.

### 4.2 Infrastructure

The planning proposal does not identify any significant issues with the provision of state infrastructure.

The planning proposal proposes including clause 6.12 that requires Council to be satisfied that the proposal meets a number of requirements, including the adequate provision of services, (particularly road access) as part of the assessment of a development application to erect a dwelling house. These requirements also seek to avoid increasing the demand for uneconomic provision of services.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period consistent with the requirements of the Departments guidelines.

#### Comment

The default consultation period under the guidelines is of 28 days. It is therefore recommended that community consultation be undertaken for a minimum of 28 days.

### 5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal:

- NSW Rural Fire Service in accordance with section 9.1 Direction 4.4 Planning for Bushfire Protection
- DPI Agriculture
- DPIE Biodiversity and Conservation

## 6 Timeframe

Council proposes a 14 month time frame to complete the LEP.

The Department recommends a time frame of 12 months to ensure it is completed in line with its commitment to reduce processing times.

The planning proposal should also include a timeline in accordance with the Department's guidelines for preparing planning proposals. For example, it does not include a timeline for consultation with agencies, public exhibition or considering submissions post-exhibition.

A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the site/planning proposal is seeks to reinstate dwelling entitlements inadvertently removed by clause 4.2A of the Bega Valley LEP 2013 the Department recommends that Council be authorised to be the local plan-making authority for this proposal. In the event of an unresolved agency objection Council would not be able to use its delegations.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The planning proposal should be amended to correct an error and insert timelines.
- Consultation is required with relevant state agencies.
- Community consultation is required for a minimum of 28 days.

Based on the assessment outlined in this report, the proposal must be updated before consultation to correct an error and insert timelines

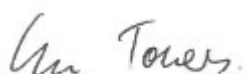
## 9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Directions 4.4 Planning for Bushfire Protection will be considered when Council consults with the NSW Rural Fire Service.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated prior to community consultation as follows:
  - The answer to Q1 in Part A of the planning proposal 'Need for the Planning Proposal' is to be amended to clarify that dwelling entitlements that existed on certain rural lots prior to the commencement of Bega Valley LEP 2013 (LEP 2013) were inadvertently removed because of the wording of clause 4.2A (3) (b) in the LEP 2013.
  - Include a timeframe for the planning proposal consistent with the requirements of section 2.6 of 'A guide to preparing planning proposals' (Department of Planning, 2018).
2. Consultation is required with the following public authorities:
  - NSW Rural Fire Service in accordance with section 9.1 Direction 4.4 Planning for Bushfire
  - DPIE Biodiversity and Conservation
  - DPI Agriculture
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



26/4/21

Graham Towers

Manager, Southern Region



27/04/2021

Sarah Lees

Director, Southern Region

Assessment officer

Graham Judge

Senior Planner, Southern Region

6229 7906