



# Planning Proposal

Minimum site areas for residential development: dwelling houses on unsewered lots. August 2021



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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 4.1A of *Bega Valley Local Environmental Plan 2013*.

The objective of this planning proposal is to amend the *Bega Valley Local Environmental Plan 2013* (LEP 2013) to permit consideration of the site suitability for a dwelling on an unsewered lot less than 2,000m<sup>2</sup> based on a merit assessment and without requiring a Clause 4.6 variation statement.

Currently, Council is routinely approving Clause 4.6 variations to this clause for this type of development, under delegation from the Secretary. However, this Planning Proposal seeks to allow Council officers to assess each matter on its merits under delegation, instead of requiring approval by the Council at a Council meeting.

The current provisions of the clause as it relates to consideration of dwellings on unsewered lots are:

- Unnecessary as the matter is already covered by Section 68 of the *Local Government Act 1993* and Section 5.7 of the *Bega Valley Shire Development Control Plan 2013*
- Obsolete due to advances in OSSM technologies
- Prescriptive and arbitrary toward a matter that is better considered on a case-by-case basis
- Inconsistent with the provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP)
- Inconsistent with neighbouring Councils' provisions

Removing the current provisions of the clause as it relates to consideration of dwellings on unsewered lots:

- Is administrative in its effect only
- Will not change outcomes only process
- Will not increase the density of residential development in unsewered villages
- Will not change the minimum lot size for subdivision
- Will not affect Council's ability to regulate the installation and management of OSSM facilities
- Is anticipated to impact approximately 1-2 development applications per year

## Part 2 – Explanation of the Provisions

The planning proposal seeks to amend Clause 4.1A of LEP 2013 by reducing the land use zones and the development types to which it applies.

A separate planning proposal (PP – 2021 – 4351) that seeks to make amendments to Clause 4.1A of LEP 2013 has received Gateway determination and is being progressed. PP – 2021 – 4351 seeks to make the following changes to Clause 4.1A, as detailed in blue font.



This planning proposal seeks to make further changes to Clause 4.1A to remove the reference to dwelling houses and delete (3)(a)(ii) pertaining to unsewered lots, as detailed in red font.

4.1A Minimum site areas for ~~dwelling houses, and~~ dual occupancies, ~~multi dwelling housing and residential flat buildings~~ in certain zones

(1) *The objective of this clause is to achieve planned residential density in certain zones.*

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

(a) Zone RU5 Village,

(b) Zone R2 Low Density Residential,

~~(c) Zone R3 Medium Density Residential,~~

~~(d) Zone B4 Mixed Use.~~

(3) *Development consent may be granted to development for the following purposes if the site area is equal to or greater than the area specified for that purpose—*

~~(a) a dwelling house—~~

~~(i) if the land is serviced by a sewerage system—550 square metres, or~~

~~(ii) in all other cases if the land is not serviced by a sewerage system—2,000 square metres,~~

(b) a dual occupancy—550 square metres,

~~(c) multi dwelling housing—250 square metres per dwelling,~~

~~(d) a residential flat building—250 square metres per dwelling.~~

## Part 3 – Justification

Under the Standard Instrument—Principal Local Environmental Plan (the Standard Instrument) Councils can add local clauses that address specific local circumstances where justified. Clause 4.1A of LEP 2013 is a local clause that is not included in the Standard Instrument.

When LEP 2013 was adopted, Clause 4.1A contained development standards rolled over from *Bega Valley Local Environmental Plan 2002* (LEP 2002) and various Development Control Plans that were in force at the time. However, LEP 2013 didn't include LEP 2002 Clause 27(3), which had the effect of permitting Council officers to consider each matter on its merits. LEP 2002 Clause 27(3) follows:

(3) Notwithstanding subclause (1), a person shall not erect a dwelling house or attached dual occupancy on unsewered land within a zone specified in the Table to the clause unless the Council is satisfied that the proposed allotment will be reasonably capable of disposing of on-site sewage effluent without nuisance or any likely pollution of surface or subsurface water.

Since the gazettal of LEP 2013, Council has found that Clause 4.1A(3)(a)(ii) has resulted in an onerous and inefficient application and assessment process for a dwelling house on unsewered RU5 Village lots smaller than 2,000m<sup>2</sup>, regardless of how they were created and their capability to contain an on-site sewerage management (OSSM) facility. Additionally, the clause creates unwarranted confidence for some landowners with unsewered lots larger than 2,000m<sup>2</sup>.

The existing clause duplicates consideration of matters that are separately addressed through a merit assessment under the *Local Government Act 1993*. Section 68 of the *Local Government Act 1993* provides that Council approval is required to operate a system of sewage management. Section 89 details that Council must take into consideration the principles of ecologically sustainable development, and in considering the public interest must consider protection of the environment and protection of public health and safety. Therefore, barriers to considering each proposal on its merits, such as Clause 4.1A(3)(a)(ii) are unnecessary.

Practically, advances in OSSM technologies are rendering the clause obsolete, as lot size is no longer a significant determining factor for whether a lot can support an OSSM facility. Site suitability for an OSSM facility is determined on a set of practical criteria, including soil profile, dwelling size and hydraulic load, OSSM facility type and design, and proximity to watercourses and underground water. Bega Valley Shire has an area greater than 6,000 square kilometres with varying soil profiles across the Shire. Viable alternatives to traditional septic systems are available, such as waterless composting toilet systems, aerated wastewater treatment systems and greywater diversion devices. The clause has been found to be prescriptive and arbitrary toward a matter that is better considered on a case-by-case basis, informed by the provisions of the *Local Government Act 1993*, Council's Development Control Plan, NSW Health Guidelines and Australian Standard, rather than under the Clause 4.1A(3)(a)(ii) lot size control.

Removal of this clause will not affect Council's ability to regulate the installation and management of OSSM facilities. Existing consideration of the site suitability and likely impacts of applicable development on environment, public health and local amenity through the approval process under Section 68 of the *Local Government Act 1993* will not be altered by the planning proposal. Section 5.7 of the Bega Valley Shire Development Control Plan 2013 outlines the process for consideration of OSSM facilities by Council.

The clause is inconsistent with the provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). The Codes SEPP simply details that complying development must, if required, have an approval under the *Local Government Act 1993* for an on-site effluent disposal system if the development is undertaken on unsewered land. This approach recognises that site suitability can be determined by a merit assessment under existing legislation. Under Part 3 Housing Code, complying development for a dwelling house may be carried out on a lot that is not less than 200m<sup>2</sup>. Therefore, Clause 4.1A(3)(a)(ii) is inconsistent with the Codes SEPP's complying development criteria.

This planning proposal does not seek to increase the density of residential development in unsewered villages. The removal of the clause will not affect the existing mapped 2,000m<sup>2</sup> minimum lot size which applies to all unsewered RU5 Village zoned land and which prevents further subdivision that cannot comply with the minimum lot size. The Bega Valley Shire Residential Land Strategy 2040 focuses its recommendations for increased residential density in sewerred towns and villages.

By removing this clause this planning proposal does not change any outcomes, but only the process. Council's Environmental Health Team have statutory obligations for approving and checking OSSM facilities, which are upheld by Council's Development Control Plan, NSW Health's design requirements and the relevant Australian Standard. The proposed removal of Clause 4.1A(3)(a)(ii) should not be interpreted as Council seeking to soften its approach to assessing OSSM facilities.

The proposed removal of this clause will affect RU5 Village zoned lots in the unsewered villages of Quaama, Bemboka, Wyndham, Burragate, Towamba and Wonboyn. Of these, Quaama and Bemboka are connected to reticulated water. While important, the impact of the planning proposal in terms of the number of lots affected will be limited. A review of Council's Clause 4.6 variations demonstrates that over the past three years, Council has approved four applications that seek to vary Clause 4.1A(3)(a)(ii).

The clause does not appear to be consistently applied across jurisdictions. Surrounding local government areas (Eurobodalla and Snowy Monaro) do not have corresponding clauses in their respective Standard Instrument LEPs that restrict the development of single dwelling houses on unsewered lots. Their instruments (Eurobodalla LEP, Snowy River LEP and Cooma Monaro LEP) include clauses that apply to subdivision, dual occupancies, multi dwelling housing and residential flat buildings on unsewered lots, but not to single dwelling houses. Should the proposed removal of Clause 4.1A(3)(a)(ii) raise significant concern, then a comprehensive approach that amends the Standard Instrument LEP would be the appropriate pathway to address the matter.

## **A. Need for the Planning Proposal**

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

No, the planning proposal is not a result of an endorsed local strategy. It is administrative in its effect.

***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 objective. This matter 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)?***

No. The planning proposal is administrative in its effect.

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

No. The planning proposal is administrative in its effect.

***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 application 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 application stage.
<i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>	Consistent. The planning proposal does not contain provisions that would hinder the application of this SEPP.
<i>State Environmental Planning Policy (Primary Production and Rural Development) 2019</i>	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 application stage.
<i>State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007</i>	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
<b>2. Environment and heritage</b>		
2.2	<b>Coastal Management</b>	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	<b>Heritage Conservation</b>	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.
<b>3. Housing infrastructure and urban development</b>		
3.1	<b>Residential zones</b>	<p>The planning proposal is consistent with the ministerial direction, excepting for item (5)(a):</p> <p>(5) A planning proposal must, in relation to land to which this direction applies:</p> <p>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it).</p> <p>However, the matter is addressed thoroughly in Bega Valley Development Control Plan 2013 Section 5.7 On-site Sewerage Management and Section 68 of the <i>Local Government Act 1993</i>, and all development applications lodged with</p>



		Council would be assessed against the relevant provisions of these parts. Therefore, the inconsistency is of minor significance.
<b>4. Hazard and risk</b>		
<b>4.1</b>	<b>Acid sulfate soils</b>	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> .
<b>4.3</b>	<b>Flooding</b>	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.
<b>4.4</b>	<b>Planning for bushfire protection</b>	<p>This planning proposal is consistent with the objectives of the ministerial direction. Some urban 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.</p> <p>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 consider any comments made.</p>
<b>5. Regional planning</b>		
<b>5.10</b>	<b>Implementation of Regional Plans</b>	Consistent. The planning proposal is administrative in its effect.
<b>6. Local plan making</b>		
<b>6.1</b>	<b>Approval and referral requirements</b>	<p>Consistent. The intent of this planning proposal aligns with the objective of this direction, which is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p>The planning proposal does not identify development as designated development.</p>

## 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 planning proposal will make it easier and less expensive for some applicants to lodge a development application with Council and is therefore anticipated to have positive social and economic effects.

## **D. State and Commonwealth interests**

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

Yes. The planning proposal will not increase the density of residential development.

**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).

Council requests a 14-day exhibition period as the proposal is considered to be "low-impact" in accordance with Section 6.5.2 of the Guidelines, as follows:

- is consistent with the pattern of surrounding land use zones and/or land uses
- is consistent with the strategic planning framework
- presents no issues regarding infrastructure servicing
- is not a principal Local Environmental Plan
- does not reclassify public land.

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

## **Part 6 – Timeline**

It is estimated that this amendment to *Bega Valley Local Environmental Plan 2013* will be completed within 12 months from the Gateway Determination.

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

Anticipated commencement date (date of Gateway determination)	August 2021
Anticipated timeframe for the completion of required technical information	NA

Timeframe for government agency consultation (pre exhibition)	September 2021
Commencement and completion dates for public exhibition period	October 2021
Dates for public hearing (if required)	NA
Timeframe for consideration of submissions	November 2021
Timeframe for the consideration of a proposal post exhibition	November 2021
Date of submission to the Department to finalise the LEP	December 2021
Anticipated date the local plan-making authority will make the plan (if authorised)	January 2021
Anticipated date the local plan-making authority will forward to the PCO for publication	January 2021