

Planning Proposal - Clause 5.9 Natural Disasters



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Bega Valley Shire Council acknowledges and pays our respects to the Traditional Custodians of the lands, waterways and airspace of the shire.

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Introduction and background

On 18 June 2021 the *Bega Valley Local Environmental Plan 2013* (BVLEP 2013) was amended by *State Environmental Planning Policy Amendment (Natural Disasters) 2021* by the insertion of a new clause, clause 5.9 Dwelling house or secondary dwelling affected by natural disaster, often referred to as the “natural disasters” clause. The existing clause is provided in full at Attachment 1.

In essence, the intention of clause 5.9 is to facilitate the rebuild and repair of dwellings following a natural disaster. The clause clarifies that a dwelling, including a secondary dwelling, can be rebuilt or repaired if the original lawful dwelling was destroyed or damaged in a natural disaster. A merit assessment is still required, however the rebuild or repair cannot be refused on the basis of any development standards in the BVLEP2013.

One element of the clause is that a development application (DA) seeking approval to rebuild or replace a dwelling under the clause must be made to the consent authority no later than five (5) years after the day on which the natural disaster caused the damage or destruction. This is specified in clause 5.9 (3) of the BVLEP 2013.

The significant bushfire event of 2019/20, often referred to as the Black Summer bushfires, lasted for 64 days, destroying 467 homes and approximately 1,000 sheds and outbuildings.

The table below provides some statistics for the progress of “bushfire rebuild” applications as of January 2025.

Application type	No. submitted	No approved
Development application (DA)	147 (31%)	144 (30%)
Construction certificate (CC)		132 (28%)
Occupation certificate (OC)		78 (16%)

The above figures show that after 5 years only 30% of the homeowners/property owners impacted by the significant 2019/20 bushfire event have managed to lodge applications and gain planning approval for the rebuild of their destroyed or damaged dwelling. This is considered a relatively low uptake in arranging and gain approval for bushfire rebuilds.

The relatively low uptake would suggest that a period greater “than 5 years after the day on which the natural disaster caused the damage or destruction” is justified to provide sufficient time and opportunity for the remaining impacted homeowners/property to arrange the necessary documentary requirements for their applications to rebuild.

In conclusion, a period of “10 years after the day on which the natural disaster caused the damage or destruction” would seem a reasonable period to allow any party whose home has been destroyed or damaged by a natural disaster to plan and arrange the necessary documentary requirements for their applications to rebuild.

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 (now Department of Planning, Housing and Infrastructure) *Local Environmental Plan Making Guideline* (August 2024).

This Council-initiated planning proposal is categorised as a basic planning proposal under the *Local Environmental Plan Making Guideline*.

Objective

The objective of the planning proposal is to extend the timeframe allowed under clause 5.9 Dwelling house or secondary dwelling affected by natural disaster of the BVLEP 2013 to make and lodge a development application (DA) to the Council for the repair or rebuild a lawfully erected dwelling (or secondary dwelling) that was damaged or destroyed by a natural disaster.

OR

The objective of the planning proposal is to extend the timeframe:

- (a) allowed under clause 5.9 to make and lodge a development application (DA) to the Council for the repair or rebuild a dwelling (or secondary dwelling) to be granted, notwithstanding any other provision in the BVLEP 2013 if the original lawful dwelling was destroyed or damaged in a natural disaster.
- (b) Provided for in clause 5.9(3)(b) from the current 5 years to 10 years.

Intended outcomes

The principal intended outcome is to provide sufficient time for those homeowners impacted by a natural disaster to prepare and lodge a DA for the repair or rebuild a lawfully erected dwelling (or secondary dwelling) where they currently have been already unable to do so under the existing provisions.

Part 2 – Explanation of provisions

It is proposed to amend the wording of clause 5.9 (3) (b) of BVLEP 2013 to read as follows (changes indicated in red):

- (3) Despite the other provisions of this Plan, development consent may be granted to development on land to which this clause applies to enable a dwelling house or secondary dwelling that has been damaged or destroyed by a natural disaster to be repaired or replaced if -*
- (a) the dwelling house or secondary dwelling was lawfully erected, and*
 - (b) the development application seeking the development consent is made to the consent authority no later than **5 10** years after the day on which the natural disaster caused the damage or destruction.*

Part 3 – Justification

A. Need for the planning proposal

1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

No.

The planning proposal results more from the need to assist those property owners whose homes were damaged or destroyed by the significant 2019/20 bushfire event and who have struggled to prepare and lodge a DA to the Council within the 5 year timeframe specified in the current natural disaster clause.

The planning proposal is not inconsistent with Councils relevant strategies including the *Bega Valley Local Strategic Planning Statement 2040* and *Bega Valley Shire Community Strategic Plan 2040*.

2. 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 objective to extend the timeframe specified in clause 5.9 (3) (b).

B. Relationship to the strategic planning framework

3. 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)?

The planning proposal is not inconsistent with any objectives and actions of the *Draft South East and Tablelands Regional Plan 2041*.

4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The planning proposal is not inconsistent with the *Bega Valley Local Strategic Planning Statement 2040* and *Bega Valley Shire Community Strategic Plan 2040*.

It is also not inconsistent with other relevant Council strategies including:

- Bega Valley Residential Land Strategy 2040
- Bega Valley Rural Residential Strategy 2020

5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

There are no other applicable State or regional studies or plans that are relevant to the planning proposal.

6. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

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

Relevant SEPP	Consistency
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Consistent. The planning proposal is not attempting to do anything that makes it inconsistent with this SEPP.
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	This SEPP is not applicable to planning proposals.
State Environmental Planning Policy (Housing) 2021	This SEPP is not applicable to planning proposals.
State Environmental Planning Policy (Industry and Employment) 2021	This SEPP is not applicable to planning proposals.
State Environmental Planning Policy (Planning Systems) 2021	This SEPP is not applicable to planning proposals.
State Environmental Planning Policy (Precincts - Regional) 2021	Consistent. However, the SEPP is not applicable to planning proposals. Further there are currently no lands within the Bega Valley LGA covered by the SEPP.
State Environmental Planning Policy (Primary Production) 2021	This SEPP is not applicable to planning proposals.
State Environmental Planning Policy (Resilience and Hazards) 2021	This SEPP is not applicable to planning proposals.
State Environmental Planning Policy (Resources and Energy) 2021	This SEPP is not applicable to planning proposals.
State Environmental Planning Policy (Sustainable Buildings) 2022	This SEPP is not applicable to planning proposals.
State Environmental Planning Policy (Transport and Infrastructure) 2021	This SEPP is not applicable to planning proposals.

7. Is the planning proposal consistent with applicable Ministerial Directions?

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. Planning Systems		
1.1	Implementation of Regional Plans	Consistent. The planning proposal is consistent with the <i>South East and Tablelands Regional Plan 2036</i> and <i>Draft South East and Tablelands Regional Plan 2041</i> .
1.3	Approval and Referral Requirements	Consistent. The planning proposal does not include provisions that require the concurrence, consultation or referral of applications to a Minister or public authority
1.4	Site Specific Provisions	Consistent. The planning proposal is not specifically allowing a particular development to be carried out.
1.4A	Exclusion of Development Standards from Variation	Consistent. The planning proposal does not propose to introduce or alter an existing exclusion to clause 4.6 of the LEP.

No.	Direction	Comment
Note: Directions 1.2 and 1.5 to 1.22 are not applicable or relevant to the planning proposal.		
3. Biodiversity and Conservation		
3.1	Conservation Zones	Consistent. The planning proposal does not reduce the conservation standards that apply to the land.
3.2	Heritage Conservation	Consistent. The planning proposal does not diminish the level of conservation protection afforded to items, areas, objects and places of environmental heritage significance and indigenous heritage significance.
Note: Directions 3.3 to 3.10 are not applicable or relevant to the planning proposal.		
4. Resilience and Hazards		
4.1	Flooding	Consistent. The planning proposal is consistent with the objective and intent of the Direction. It does not expose any additional development than is currently permissible under current zonings and provisions to a flooding risk or an increased flooding risk.
4.2	Coastal Management	Consistent. The planning proposal does not rezone land which would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.
4.3	Planning for Bushfire Protection	Consistent. The planning proposal is consistent with the objective and intent of the Direction. It does not expose any additional development than is currently permissible under current zonings and provisions to bushfire risk.
4.4	Remediation of Contaminated Land	Consistent. The planning proposal is not including any additional or new land in a zone that will enable the carrying out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital. In this regard the planning proposal is maintaining the status quo. The planning proposal meets the objective of Direction 4.4 by not increasing the risk of harm to human health and the environment.
4.5	Acid Sulfate Soils	Consistent. The planning proposal does not propose an intensification of land uses on land identified as having a probability of containing ASS on the Acid Sulfate Soils Planning Maps. As such the planning proposal is consistent with the objective of the Direction and complies with the Direction.
Note: Direction 4.6 is not applicable or relevant to the planning proposal.		
5. Transport and Infrastructure		
Note: Directions 5.1 to 5.5 are not applicable or relevant to the planning proposal.		
6. Housing		
6.1	Residential Zones	Consistent. The planning proposal does not propose anything that is antipathetic to the objectives and intent of the Direction.
6.2	Caravan Parks and Manufactured Home Estates	Consistent. The planning proposal is not proposing to facilitate caravan parks or manufactured home estates.
7. Industry and Employment		
Note: Directions 7.1 to 7.3 are not applicable or relevant to the planning proposal.		
8. Resources and Energy		
8.1	Mining, Petroleum Production and Extractive Industries	<p>Consistent. The planning proposal does not intend to:</p> <ul style="list-style-type: none"> prohibit the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or restrict the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development. <p>The planning proposal is consistent with the objectives and intent of the Direction.</p>

No.	Direction	Comment
9. Primary Production		
9.1	Rural Zones	Consistent. The planning proposal is consistent with the objective and intent of the Direction. It does not aim to rezone any existing rural zone land covered by the planning proposal. Further it does not increase the permissible density of land within a rural zone.
9.2	Rural Lands	Consistent. The planning proposal does not seek to: <ul style="list-style-type: none"> change the existing minimum lot size of land within a rural or conservation zone; or alter an existing rural or conservation zone boundary
9.3	Oyster Aquaculture	Consistent. The planning proposal does not seek to rezone land or introduce any land uses that may result in adverse impacts on a Priority Oyster Aquaculture Area.
Note: Direction 9.4 is not applicable as the Bega Valley LGA is not one of the LGAs that the Direction applies to.		

C. Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

No. The planning proposal is administrative in nature seeking to extend a timeframe in an existing clause.

In this regard the status quo is being substantially maintained and there is no likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal.

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

No. The planning proposal is administrative in nature seeking to extend a timeframe in an existing clause.

In this regard the status quo is being substantially maintained and there is no likelihood of any adverse environmental effects or impacts because of the proposal.

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

Yes. The planning proposal is administrative in nature seeking to extend a timeframe in an existing clause.

This will have the effect of providing more time for those homeowners impacted and displaced by a natural disaster to prepare and lodge a development application for the repair or rebuild a lawfully erected dwelling (or secondary dwelling) where they currently have been already unable to do so. This should deliver a positive social impact to those who have been impacted by recent past natural disasters and future natural disasters.

D. Infrastructure (Local, State and Commonwealth)

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

Yes. The planning proposal does not increase development potential or intensity of the lands to which it applies and therefore does not increase demand for public infrastructure. Existing public infrastructure is adequate.

E. State and Commonwealth interests

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

Council staff have consulted with the NSW Department of Planning, Housing and Infrastructure regarding the proposed amendment.

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 does not propose to amend any map under the BVLEP 2013.

Part 5 – Community Consultation

Community consultation for this planning proposal will be consistent with the requirements of the *Bega Valley Shire Community Engagement Strategy*, being a minimum exhibition timeframe of 28 days or as specified by the Gateway Determination.

Public exhibition of the planning proposal will include notification on Council's website.

Part 6 – Timeline

It is estimated that the amendments to BVLEP 2013 will be completed by December 2025.

Council requests delegation to be the Local Plan-Making Authority (LPMA) in relation to this proposal. Delegation would be exercised by Council's Chief Executive Officer or Director of Community, Environment and Planning. The planning proposal is a "Standard" Planning Proposal, and the approximate project timeline is outlined in the following table.

Key Stages of consultation and approval	Estimated timeframe
STAGE 1 – Pre-lodgement	NA
STAGE 2 – Planning Proposal – Submit to Department	April 2025
STAGE 3 – Gateway Determination	June 2025
STAGE 4 – Post-Gateway (action conditions of Gateway Determination)	July 2025
STAGE 5 – Public Exhibition and Assessment	August 2025
STAGE 5 – Consideration of submissions received	September 2025
STAGE 5 – Council Report if required	October 2025
STAGE 6 – Finalisation	November – December 2025

Attachments

Attachment 1 – Clause 5.9 – Bega Valley LEP 2013

Bega Valley Local Environmental Plan 2013

Current version for 13 September 2024 to date (accessed 20 February 2025 at 9:39)

[Part 5](#) > Section 5.9

Rectangular Snip

5.9 Dwelling house or secondary dwelling affected by natural disaster

- (1) The objective of this clause is to enable the repair or replacement of lawfully erected dwelling houses and secondary dwellings that have been damaged or destroyed by a natural disaster.
- (2) This clause applies to land in the following zones—
 - (a) RU1 Primary Production,
 - (b) RU2 Rural Landscape,
 - (c) RU4 Primary Production Small Lots,
 - (d) RU5 Village,
 - (e) R2 Low Density Residential,
 - (f) R3 Medium Density Residential,
 - (g) R5 Large Lot Residential,
 - (h) MU1 Mixed Use,
 - (i) C3 Environmental Management,
 - (j) C4 Environmental Living.
- (3) Despite the other provisions of this Plan, development consent may be granted to development on land to which this clause applies to enable a dwelling house or secondary dwelling that has been damaged or destroyed by a natural disaster to be repaired or replaced if—
 - (a) the dwelling house or secondary dwelling was lawfully erected, and
 - (b) the development application seeking the development consent is made to the consent authority no later than 5 years after the day on which the natural disaster caused the damage or destruction.



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