

## 8.1. Endorsement of planning proposal to extend the natural disaster clause

This report seeks a resolution of Council to support a planning proposal to extend the timeframe of the natural disaster clause in *Bega Valley Local Environmental Plan 2013*.

Director Community Environment and Planning

### Officer's Recommendation

That Council:

1. Support a planning proposal to amend the natural disaster clause in *Bega Valley Local Environmental Plan 2013*.
2. Endorse submission of the planning proposal (Attachment 1) to the Department of Planning, Housing and Infrastructure requesting a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*.
3. Subject to the conditions of the Gateway Determination and providing no changes to the planning proposal are required or objections received, progress the planning proposal to finalisation and gazettal without a further report to Council.

### Executive Summary

In 2020 the Department of Planning, Housing and Infrastructure developed a natural disaster clause to support the rebuild and repair of dwellings following a natural disaster as an optional provision for inclusion in councils' Local Environmental Plans. This report seeks Council's resolution to support a planning proposal to extend the application of the clause in the Bega Valley Local Environmental Plan 2013 (BVLEP 2013) for an additional five years to provide impacted landowners with more time to prepare and lodge development applications to rebuild.

### Background

The natural disaster clause was developed by the NSW Government in response to bushfires and floods, which impacted thousands of homes across NSW in 2019/2020. The clause is now known as Standard Instrument Clause 5.9 'Dwelling house or secondary dwelling affected by natural disaster'. The purpose of the clause is to clarify that, despite any other provisions in the relevant Local Environmental Plan, approval to repair or rebuild a dwelling, including a secondary dwelling, can be granted if the original lawful dwelling was destroyed or damaged in a natural disaster. A merit assessment is still required however this clause secures the dwelling entitlement assessment pathway for the rebuild or repair, despite any other Local Environmental Plan clauses that may otherwise act to prohibit the development.

On 16 December 2020 Bega Valley Shire Council resolved to incorporate the natural disaster clause into BVLEP 2013.

The wording of the clause is currently:

**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) B4 Mixed Use,
- (i) E3 Environmental Management,
- (j) E4 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*

As of 9 January 2025, bushfire rebuild dwelling applications had been submitted for 147 (or 31%) of the 467 dwellings that were lost in the Black Summer bushfires. The purpose of the planning proposal is to amend Clause 5.9 (3)(b) by replacing '5 years' with '10 years' to provide impacted landowners with more time to prepare and lodge development applications utilising the provisions of the clause. During discussions with Council officers, representatives of the NSW Department of Planning, Housing and Infrastructure indicated they would be willing to consider this amendment to BVLEP 2013 for a period of up to five years.

## Options

1. Council can resolve to support the planning proposal to amend the natural disaster clause in the BVLEP 2013 to extend the timeframe by another 5 years. This is the **recommended option** as outlined in this report.

2. Council could opt to not extend the application of Clause 5.9 as BVLEP 2013 already contains provisions which permit the replacement of lawfully erected dwellings in the RU1, RU2, RU4, R5, E3 and E4 zones (under Clause 4.2A(5)). However, Clause 5.9 extends these provisions to zones RU5, R2, R3 and B4 (now MU4). This option is **not recommended** as Clause 5.9 streamlines development approvals for bushfire rebuilds by removing the requirement to provide justification for variations of standards that may have changed since an impacted dwelling was lawfully erected.

Should Council resolve not to extend the application of Clause 5.9, some landowners may be required to prepare planning proposals to rebuild lawfully approved dwellings in the RU5, R2, R3 and B4 (now MU4) zones prior to lodging a development application to rebuild.

## • Community and Stakeholder Engagement

### **Engagement undertaken**

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

***Engagement planned***

Community consultation for this planning proposal will be consistent with the requirements of the Gateway Determination. Should agency feedback be received that warrants a change to the planning proposal, a further report will be prepared for Council outlining the feedback and any changes to the planning proposal recommended in response prior to resolving whether to proceed with amending BVLEP 2013.

If no objections to the planning proposal are received and no changes are required to the planning proposal, it is recommended that Council resolve to authorise staff to proceed to finalise the proposed amendments to BVLEP 2013.

Notification to the Bega Valley Development Professionals group as well as the wider community would occur when the amendment to BVLEP 2013 comes into effect.

**Financial and Resource Considerations**

Initial enquires were made with the Department of Planning, Housing and Infrastructure to gauge whether any other councils had identified a need to extend the time period of this clause and if so whether the NSW Government could amend the model clause on behalf of councils. Advice was received that if Bega Valley needed this work initiated, then a planning proposal to amend BVLEP 2013 was required. The preparation and processing of the planning proposal has therefore been undertaken within Council's existing resources and budget. [Legal /Policy](#)

The planning proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the *NSW Department of Planning and Environment's Local Environmental Plan Making Guideline* (August 2024).

**Impacts on Strategic/Operational/Asset Management Plan/Risk*****Strategic Alignment***

The planning proposal is not inconsistent with the *South East and Tablelands Regional Plan 2036*, *Bega Valley Community Strategic Plan 2024*, and the *Bega Valley Shire Local Strategic Planning Statement*.

***Environment and Climate Change***

Any impacts on environment and climate change will be addressed through the standard development assessment process. This amendment to BVLEP 2013 will not create additional development potential and therefore will not create additional impacts on the environment beyond that which existed prior to the destruction of lawful dwellings from a natural disaster.

***Economic***

Extension of the application of Clause 5.9 will have a positive economic benefit to those landowners affected by natural disaster through reducing the costs and complexity of the development assessment process.

***Risk***

Clause 5.9 only applies to lawfully approved development and will not create any additional risk to people or the environment.

***Social / Cultural***

Extension of the application of Clause 5.9 will have a positive social benefit to some landowners impacted by natural disaster through reducing the costs and complexity of the development assessment process.

## Attachments

1. Planning proposal to extend Natural Disaster Clause 5.9