



IRF25/709

Gateway determination report – PP-2025-525

Amend Clause 5.9 Natural Disasters – Extension of time to lodge a development application for a dwelling house or secondary dwelling

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Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Appendix 1 Letter Bega Valley Council Covering Letter 26 March 2025
Appendix 2 Council Report 19 March 2025
Appendix 3 Council Minutes 19 March 2025

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	LGA name
PPA	Bega Valley Shire Council
NAME	Amend clause 5.9 – extension of time
NUMBER	PP_2025-525
LEP TO BE AMENDED	Bega Valley LEP 2013
ADDRESS	N/A
DESCRIPTION	N/A
RECEIVED	20/03/2025
FILE NO.	IRF25/709 and EF25/4451
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

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

The objective of the planning proposal is to amend clause 5.9 Natural Disasters to extend the time for applicants to submit a development application to rebuild a lawful dwelling house or secondary dwelling destroyed by a natural disaster from 5 years to 10 years.

1.3 Explanation of provisions

The planning proposal seeks to amend the Bega Valley LEP 2013 by amending clause 5.9 (3) (b) to replace 5 years with 10 years.

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

2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The planning proposal states that the 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.”

Comment

The planning proposal is not inconsistent with any local strategy. It does not change the intent of clause 5.9 but simply seeks to extend the time limit for applicants/landowners to submit a development application to rebuild a lawful dwelling house or secondary dwelling destroyed by a natural disaster e.g., flood or bushfire.

Council officers has indicated that the 5 year period for lodging a development application to rebuild a dwelling house or secondary dwelling after the 2019/2020 bushfire has now lapsed. In discussion between Council and the Department’s regional office the Council considered that a further 5 years was warranted because:

- The extension of time to another 5 years provides landowners who have missed the initial 5 year timeframe to lodge a development application to rebuild their homes destroyed by bushfire.
- There may be extenuating circumstances (financial/emotional/logistical reasons) as to why landowners have been unable to lodge a development application to rebuild a lawfully erected dwelling house or secondary dwelling destroyed by the bushfire within a 5 year time frame.

The planning proposal will assist property owners whose homes were damaged or destroyed by the 2019/20 bushfire event and who have struggled to prepare and lodge a development application with Council within the 5-year timeframe specified under the current provisions.

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

The Department has concluded that subclause 5.9(3)(b) of the Bega Valley LEP is not a development standard as the relevant aspect of the development cannot be identified and therefore the 5-year time period specified in the provision cannot be varied under clause 4.6.

Options

To increase the time period within which development applications can be made, an amendment to the provision in the Bega Valley LEP can be progressed either by:

1. a planning proposal by the planning proposal authority as part of the planning proposal which requires the amendment to be made by the local plan-making authority, or
2. a State environmental planning policy by the Department which requires the approval of the Minister and Governor-in-Executive-Council.

Option 1. is likely to be the simplest and fastest method to extend the timeframe to 10 years. An amendment to clause 5.9 under Bega Valley LEP 2013 is therefore the best means to achieve the objective of the planning proposal.

3 Strategic assessment

3.1 Regional Plan

The planning proposal is not inconsistent with the South East and Tablelands Regional Plan or the draft South East and Tablelands Regional Plan.

3.2 Local

The proposal is not in consistent with any local plans or endorsed strategies.

3.3 Section 9.1 Ministerial Directions

The planning proposal potentially will affect, or is in proximity to, land mapped as bushfire prone land and therefore triggers a requirement to consult with the NSW Rural Fire Service under Direction 4.3 Planning for Bushfire Protection. Justification for an inconsistency with this Direction can only be satisfied if Council has obtained the written advice from the Commissioner of the NSW Rural Fire Service that notwithstanding the non-compliance the Service does not object to the progression of the planning proposal. Council has not obtained any written advice from the Service so it is recommended that consultation be undertaken with the NSW Rural Fire Service.

The planning proposal is consistent with all other s9.1 Directions.

3.4 State environmental planning policies (SEPPs)

The planning proposal is not inconsistent with any SEPPs.

4 Site-specific assessment

4.1 Environmental

The planning proposal states that *“the status quo is being substantially maintained and there is no likelihood of any adverse environmental effects or impacts because of the proposal.”*

Comment

The proposal simply seeks to extend the time limit for applicants/landowners to submit a development application to rebuild a lawful dwelling house or secondary dwelling destroyed by a natural disaster e.g., flood or bushfire. Amending the timeframe does not change the requirement for the consent authority to consider environmental impacts of the proposal when assessing a development application for a dwelling house or secondary dwelling.

4.2 Social and economic

The planning proposal sates that an amendment to clause 5.9 to extend the timeframe to 10 years *“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.”*

Comment

The proposal simply seeks to extend the time limit for applicants/landowners to submit a development application to rebuild a lawful dwelling house or secondary dwelling destroyed by a

natural disaster e.g., flood or bushfire. Amending the timeframe does not change the requirement for the consent authority to consider social and economic impacts of the proposal when assessing the development application for a dwelling house or secondary dwelling.

The amendment will have the social and economic benefit of assisting property owners whose homes were damaged or destroyed by the significant 2019/20 bushfire event and who have been unable to prepare and lodge a development application to the Council within the 5-year timeframe specified under the clause.

5 Consultation

5.1 Community

In a letter dated 26 March 2025 Council has indicated that the “*Planning Proposal is administrative in nature, seeking to extend a timeframe in an existing clause and does not create increased development potential or environmental, social or economic impacts.*” Council has therefore requested that no community consultation be held for the planning proposal.

Comment

Council’s justification for no community consultation has merit and it is recommended that the Gateway determination require no community consultation.

Council will therefore be able to use its delegation for plan making to immediately request a draft amending LEP and a certificate from Parliamentary Counsel and approve the amending LEP for notification.

5.2 Agencies

The planning proposal states that Council staff have consulted with the NSW Department of Planning, Housing and Infrastructure regarding the proposed amendment and that Council will consult with the relevant State and Commonwealth authorities in accordance with the conditioning of the Gateway Determination.

Comment

Council consulted with the Department in January 2025 on options for extending the timeframe prior to lodging the planning proposal. The Department advised Council that the timeline under clause 5.9 could not be legally varied under clause 4.6 Development Standards and that the Department would be willing to work with Council to consider a Planning Proposal to amend the 5 year period

It is unlikely that state agencies will object to the proposal because it simply seeks to extend the time limit for applicants/landowners to submit a development application to rebuild a lawful dwelling house or secondary dwelling destroyed by a natural disaster e.g., flood or bushfire. Amending the timeframe does not change the requirement for the consent authority to consider environmental impacts of the proposal when assessing a development application for a dwelling house or secondary dwelling.

It is concluded that no consultation with state agencies is required except for the NSW Rural Fire Service in accordance with the requirements of Direction 4.3 Planning for Bushfire Protection.

It is recommended that consultation be undertaken with the NSW Rural Fire Service in accordance with Direction 4.3 Planning for Bushfire Protection (see Section 3.3).

6 Timeframe

Council proposes a 9 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a basic

If the recommendation for no community or agency consultation is supported the planning proposal should be completed in 6 months. The Department therefore recommends an LEP completion date of 7 October 2025 in line with its commitment to reducing processing times and with regard to the benchmark timeframes.

It is recommended that if the gateway is supported it is accompanied by guidance for Council in relation to meeting key milestone dates to ensure the LEP is completed within the benchmark timeframes.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority in its letter to the Department dated 26 March 2025 (See Appendix 1 of the Planning Report).

The planning proposal is a basic administrative amendment with no likely significant adverse environmental, social, or economic impacts. It is therefore recommended that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The proposal seeks to extend the time limit to 10 years for applicants/landowners to submit a development application to rebuild a lawful dwelling house or secondary dwelling destroyed by a natural disaster e.g., flood or bushfire.

Council is unable to use clause 4.6 Development Standards to vary the timeframe because the 5 year time frame is not a development standard.

An amendment to clause 5.9 is the simplest and fastest option to extend the timeframe to 10 years. The 10 year timeframe has been chosen as it is double the original timeframe and as Council is aware that a number of affected landowners may not have had enough time or resources to prepare and lodge a development application within the original 5 year time line and estimate that only 30% of structures have been rebuilt.

Amending the timeframe does not change the requirement for the consent authority to consider environmental, social, and economic impacts of the proposal when assessing the development application to replace a dwelling house or secondary dwelling destroyed by a natural disaster.

The amendment will have the social and economic benefit of assisting property owners whose homes were damaged or destroyed by the 2019/20 bushfire event and who have been unable to prepare and lodge a development application to the Council within the 5-year timeframe specified under the provision because of unforeseen circumstances.

It is recommended that the planning proposal proceed without the need for community consultation or consultation with agencies.

9 Recommendation

The delegate of the Secretary note that consistency with Direction 4.3 Planning for Bushfire Protection will occur when Council consults with the NSW Rural Fire Service in accordance with the Direction.

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

1. Consultation is required with the NSW Rural Fire Service in accordance with Direction 4.3 Planning for Bushfire Protection
2. No community consultation is required.

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 7 October 2025 be included on the Gateway.



10/4/25

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