



Planning Proposal

Minimum site areas for dwellings, multi dwelling housing and residential flat buildings. 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 align development standards for dwelling houses, multi dwelling housing and residential flat buildings with the strategic direction of Council's adopted Residential Land Strategy.

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. The planning proposal seeks to remove the reference to multi dwelling housing and residential flat buildings, delete (2)(c) and (d), delete (3)(a)(i), (c) and (d) and amend (3)(a)(ii) as indicated in red below.

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 LEP 2002 and various Development Control Plans that were in force at the time. Since that time, the *Bega Valley Shire Residential Land Strategy 2040* has identified new requirements and objectives for residential development in urban areas.

The application of Clause 4.1A is preventing Council achieving those objectives by restricting development types that are desirable in the Shire by mandating minimum site areas for dwelling houses, multi dwelling housing and residential flat buildings in residential and mixed-use zones.

Clause 4.1A(3)(a)(i) is limiting the opportunity for development of dwellings on small lots (i.e. lots smaller than 550 m²). Given the Shire's high reliance on owner developers to construct new dwellings in the Shire, removing this barrier will allow consideration of development applications for smaller dwellings on existing smaller lots based on a merit assessment.

Clause 4.1A(3)(b) limits dual occupancy development to sewered lots larger than 550m². It is proposed to retain this clause but reduce its application to the RU5 Village and R2 Low Density Residential zones only.

Clause 4.1A(3)(c) and (d) is limiting mixed use, residential flat buildings and multi dwelling housing development yields. Several recent and current development applications for mixed use and multi-unit residential development have not been able to comply with this mandated minimum site area standard and Council has begun to encourage developers to vary the standard through Clause 4.6 variations. These variations are supported by Council as they align with the *Bega Valley Shire Residential Land Strategy 2040* which aims to increase housing diversity and ensure the best use of available zoned and serviced land. Removal of the control will permit developers to consider greater bedroom mix while still maximising return on investment. Further, introduction of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65) and associated *Apartment Design Guideline* have introduced new controls to manage the impacts of larger residential flat buildings, shop top housing and mixed-use developments.

Removal of the development standards in Clause 4.1A is unlikely to result in adverse amenity impacts for the community. Site density is controlled in the R2 and R3 zones through mapped floor space ratio standards. Various residential types are permitted in each of the affected zones which are suited to the objectives of those zones and landscaping, view sharing, overshadowing and similar provisions that control amenity and character will still apply when new development is considered. Larger multi-unit developments are also required to meet the requirements of SEPP 65.

A. Need for the Planning Proposal

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

The planning proposal implements the *Bega Valley Shire Residential Land Strategy 2040*. Council's 20-year vision for residential land is: Our residential areas provide housing choices for our local community now and into the future. The Strategy includes the following general recommendations:

- Support future residential growth for Bega Valley Shire to 2036
- Respond to specific housing needs and affordability
- Expand the diversity of housing

More housing diversity is needed in all centres including housing suitable for seniors living close to services and facilities. Selected adjustments to current planning controls would support housing diversity and more growth close to existing centres.

Protecting important agricultural land, areas of high environmental value and managing risks associated with hazards and climate change limits opportunities for growth beyond existing urban areas and reinforces the need to utilise existing development capacity.

Residential land development principles of the Strategy include:

- *Increase diversity of housing:* A diverse range of housing options helps people better meet their housing needs. A lack of diverse housing, particularly of smaller dwellings and dwellings suited to older people and people with a disability, impacts on the affordability of housing and reduces opportunities for people to live close to the services and facilities they need. Well-planned increases in housing density when undertaken with local communities helps to garner the support needed for increasing housing diversity.
- *Promote efficient use and provision of infrastructure:* As the costs of servicing land and construction in Bega Valley Shire are relatively high, promoting development that is well integrated with available infrastructure within existing urban areas can help reduce overall costs and support the efficient use of infrastructure.

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)?

Yes. The planning proposal aims to achieve the following directions of the NSW Department of Planning, Industry and Environment's *South East and Tablelands Regional Plan*:

- Direction 24: Deliver greater housing supply and choice
- Direction 25: Focus housing growth in locations that maximise infrastructure and services
- Direction 27: Deliver more opportunities for affordable housing

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

The planning proposal is consistent with the following goals of the *Bega Valley Shire Community Strategic Plan 2040*:

- Goal 7: Our Shire continues to be a vibrant, enjoyable, safe and affordable place to live.
- Goal 8: Our places retain their character and scale, development is well planned, and a range of goods and services are available within our Shire that meet local needs.

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 consent 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 consent 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 (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
2. Environment and heritage		
2.2	Coastal Management	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	Heritage Conservation	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.
3. Housing infrastructure and urban development		
3.1	Residential zones	Consistent. The planning proposal will not result in any changes to residential zoning or use of land and will improve the ability of future development to create a variety of housing choice.
3.3	Home occupations	Consistent. The planning proposal will not result in any changes to zoning, and as such will not affect home occupations carried out in dwelling houses without the need for development consent.
4. Hazard and risk		
4.1	Acid sulfate soils	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> .
4.3	Flood prone land	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.
4.4	Planning for bushfire protection	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. 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.
5. Regional planning		
5.10	Implementation of Regional Plans	Consistent. The South East and Tablelands Regional Plan is the plan applicable to this proposal. The planning proposal's consistency with this plan is addressed previously under Question 4.
6. Local plan making		
6.1	Approval and referral requirements	Consistent. The planning proposal does not identify development as designated development.

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 help ensure there is a diversity of housing within the Shire's urban areas so that residential development supports continued growth and viability of existing commercial precincts. The provision of diverse and affordable housing options is also important in supporting the local workforce.

Implementation of the planning proposal will address the risk of existing housing stock not meeting the needs of our population and will enable future residential development while maintaining the existing character of towns and villages and rural landscapes.

Implementation of the planning proposal will increase the diversity of housing that will help to better meet our community's housing needs. Improving housing diversity, particularly smaller dwellings and dwellings suited to older people and people with disabilities, will impact on the affordability of housing and improve opportunities for people to live closer to the goods and services they need.

D. State and Commonwealth interests

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

Yes. The planning proposal will not significantly increase development in rural areas and therefore additional demand on public infrastructure will be limited. Further consideration of the adequacy of public infrastructure would be considered as part of any development application.

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).

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)	July 2021
Anticipated timeframe for the completion of required technical information	NA
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	September 2021
Commencement and completion dates for public exhibition period	September 2021
Dates for public hearing (if required)	NA
Timeframe for consideration of submissions	October 2021

Timeframe for the consideration of a proposal post exhibition	October 2021
Date of submission to the Department to finalise the LEP	November 2021
Anticipated date the local plan-making authority will make the plan (if authorised)	November 2021
Anticipated date the local plan-making authority will forward to the PCO for publication	November 2021