

Part 11 Provisions that apply generally in Bega Valley area

65 General principles for development and use of land and buildings

- (1) Before granting consent for development within any zone, consideration shall be given by the consent authority to such of the following as are relevant to the proposed development:
 - (a) the impact of that development on:
 - (i) the water quality of waterbodies, and
 - (ii) the ability of rural land to be used for agricultural production or industry, or both, and
 - (iii) soil resources, and
 - (iv) existing vegetation, native flora and fauna and riparian corridors, and
 - (v) the topography and setting of the land, and
 - (vi) the streetscape character of the locality, and
 - (vii) the scale and design of neighbouring development, and
 - (viii) significant views enjoyed from parks, reserves, roadways, footpaths and other public places, and
 - (ix) the energy efficiency of the site and any buildings on the site, and
 - (x) the availability of a water supply to adequately provide for domestic, agricultural and fire fighting purposes and, where that proposed water supply is from a river, creek, dam or other waterway, the effect upon the other users of that water supply, and
 - (xi) waste generation, and
 - (xii) the cultural significance of the land, and
 - (xiii) the treatment of stormwater prior to discharge or the use of stormwater, and

- (xiv) traffic generation and appropriate vehicular access into and around the site, and
 - (xv) any measures necessary to mitigate any of these impacts,
- (b) the cumulative impact on the environment of:
- (i) the development, and
 - (ii) other development in the vicinity of the proposed development.

This clause must be considered in the assessment of all development applications.

Applicants note - to enable a thorough assessment of a development proposal these matters need to be addressed in the supporting documentation submitted with any development application.

66 Development near zone boundaries

- (1) Development that (in the absence of this clause) would be prohibited in a zone may be carried out with development consent within 50 metres of the boundary between that zone and another zone if it is permitted in the other zone either with or without consent.
- (2) However, this clause does not allow consent to be granted to carrying out any development on land within Zone 6 (a), 7 (b), 7 (d), 7 (f1), 7 (f2) or 8.
- (3) Consent must not be granted pursuant to this clause unless the consent authority is satisfied the proposed development satisfies the objectives of the zone in which it will be carried out.
- (4) The provisions of State Environmental Planning Policy No 1—Development Standards do not apply to subclause (1).
- (5) For the purposes of this clause, the zone boundary is the boundary between adjoining zones as shown on the zoning map and is not affected by the application of subclause (1).

This clause allows council to consider Development Applications for development that is not permitted in some zones if that development is permitted in the zone of the land within 50metres of the development site and the development is consistent with the objectives of the zone of the land being developed. This clause does not operate to rezone land it only allows consideration of some additional land uses where there is merit.

This clause has no effect on land to which Sepp 71 Coastal Development applies.

67 Subdivision

- (1) Except as provided by subclause (2), development consent is required for the subdivision of land.
- (2) Development consent is not required for subdivision which is exempt development.
- (3) Despite any other provision of this plan, consent may be granted to a boundary adjustment between existing allotments that does not create any additional number of allotments, but only where the consent authority is satisfied that use of the resulting allotments will be consistent with the uses for which the existing allotments were originally created.

Minor subdivision is listed as exempt development in Development Control Plan No 4(98). Refer to this plan for details.

Certain types of subdivision in the Coastal Zone invoke the provisions of Sepp 71 and may require a master plan to be prepared and/or the consent of planning NSW.

Contact Council's Environment, Planning and Development Department for further clarification of site circumstances.

68 Reclassification of public land

- (1) The land described in Part 2 of Schedule 2 is classified or reclassified as operational land for the purposes of the Local Government Act 1993.
- (2) In accordance with section 30 of the Local Government Act 1993, a parcel of land described in Part 2 of Schedule 2, to the extent (if any) that it is a public reserve, ceases to be a public reserve on the commencement of the relevant amending plan and, by the operation of that plan, is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except for:

- (aa) those trusts, estates, interests, dedications, conditions, restrictions and covenants (if any) specified in relation to the land described in Part 2 of Schedule 2, and^Δ
- (a) any reservations that except land out of a Crown Grant relating to the land, and
- (b) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).
- (3) Before the relevant amending plan that inserted the description of a parcel of land into Part 2 of Schedule 2 was made, the Governor approved of subclause (2) applying to the land.
- (4) In this clause, the relevant amending plan, in relation to a parcel of land described in Part 2 of Schedule 2, means this plan or, if the description of the land is inserted in that Part by another local environmental plan, that plan.
- (5) Land described in Part 1 of Schedule 2 is not affected by the amendments made by the Local Government Amendment (Community Land Management) Act 1998 to section 30 of the Local Government Act 1993.

69 Restrictions on access

A road or other means of access which forms a junction or intersection with an arterial road shall not be formed, except with development consent.

70 Community use of school facilities or sites

- (1) Where land to which this plan applies is used for the purpose of an educational establishment, the site and facilities of the establishment may, with development consent, be used for the purpose of meeting rooms, public halls, public libraries, entertainment, sport or recreation or for any other community land use, whether or not such use is a commercial use of the land.
- (2) Nothing in this clause requires development consent to be granted for the carrying out of development on any land if that development could, but for this clause, be carried out on that land without development consent.

71 Temporary use of land

Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended

Δ LEP Amendment 5

Despite any other provision of this plan, consent may be granted to the carrying out of development for the purpose of a street stall or carnival or to other temporary development in any zone for a maximum period of 28 days, whether consecutive or not consecutive, in any one year.

72 Tree preservation

- (1) The Council may, by resolution, make, revoke or amend a tree preservation order.
- (2) A tree preservation order, or any revocation or amendment of such an order, does not have effect until it has been published in a newspaper circulating in the Bega Valley local government area.
- (3) A tree preservation order must specify the types or sizes of trees, or identify the locations of the trees, that are covered by the order. It may be made so as to apply to some or all of the land within the area of Bega Valley.
- (4) While a tree preservation order is in force, a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree covered by the order without development consent.
- (5) Subclause (4) does not apply:
 - (a) if the Council has issued a permit that authorises the activity concerned and the activity is carried out in accordance with any conditions set out in the permit, or
 - (b) where it can be demonstrated to the satisfaction of the consent authority that the tree is dying or dead or has become dangerous.
- (6) A tree preservation order does not apply to or in respect of:
 - (a) trees within a State forest, or land reserved from sale as a timber or forest reserve under the Forestry Act 1916, or
 - (b) action required or authorised to be done by or under the Electricity Supply Act 1995, the Electricity Safety Act 1945, the Roads Act 1993 or the Surveyors Act 1929, or
 - (c) plants declared to be noxious weeds under the Noxious Weeds Act 1993, or
 - (d) trees within a national park or nature reserve reserved under the National Parks and Wildlife Act 1974.

Council's Tree Preservation Order has been included as a separate attachment at the end of the plan.
The removal of a few scattered trees is a matter for consideration under the Tree Preservation Order. However, clearing of part or whole of an Urban or Rural Residential block is a Development Application matter under this plan.
Contact Council's EPD Department for further clarification of site circumstances.

73 Unzoned land

- (1) This clause applies to all land (including waterways) to which this plan applies that is not shown zoned on the zoning map.
- (2) Development shall not be carried out on land to which this clause applies except with development consent.
- (3) In determining a development application required by this clause, the consent authority must have regard to the objectives of any zone within which land abutting the unzoned land is situated.
- (4) Notwithstanding subclause (2), consent is not required for development on unzoned land for the purpose of roads or utility installations (other than railway, water or air transport, wharf or river infrastructure, gas holders or generating works).

74 On-site sewage management

Before granting consent to development that will result in the generation of sewage or other effluent, consideration shall be given by the consent authority to:

- (a) whether the site of the proposed development should be connected to public sewerage facilities, and, if so, whether the land is capable of being connected to public sewerage facilities either now or in the future, and
- (b) the suitability of the site for on-site disposal of effluent and the ability of the effluent disposal system to function effectively over the long term without causing adverse effects on adjoining land, where public sewerage facilities are not to be provided to the land, and
- (c) the likely effect of any on-site effluent disposal area on:

Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended

△ LEP Amendment 5

- (i) any waterbodies in the vicinity, or water supply catchments, and
 - (ii) groundwater resources, and
 - (iii) seasonally waterlogged soils, and
- (d) the cumulative environmental impacts of all on-site systems or works in the area with respect to water quality, soil degradation and odour.

[Refer to Council's Development Control Plan No 5 On-Site Sewage Management for specific requirements.](#)

75 Land subject to bushfire hazard

Consent must not be granted to the subdivision of land or the erection of a building on land which is, in the opinion of the consent authority, subject to bushfire hazards unless it is satisfied that:

- (a) adequate provision will be made for access for fire fighting vehicles,
- (b) adequate safeguards will be adopted in the form of fire breaks, reserves and fire radiation zones, and
- (c) adequate water supplies will be available for fire fighting purposes as recommended by the New South Wales Rural Fire Service.

[Refer to "Planning for Bushfire Protection Manual". \(Planning NSW and NSW Rural Fire Service\). Copies can be obtained from Planning NSW direct. Council has mapping of Bushfire hazard areas.](#)

76 Contaminated land

- (1) Consent must not be granted to the subdivision of land or the erection of a building on any land unless the consent authority has made an assessment of:
 - (a) any contamination of the land resulting from previous use of the land, and
 - (b) any measures to mitigate against any adverse impacts arising from the contamination of the land.
- (2) This clause does not affect any requirement made by the State Environmental Planning Policy No 55—Remediation of Land.

[Refer to Council's Development Control Plan No 8 Contaminated Land for details.](#)

77 Development along arterial roads

Consent must not be granted to the development of land which has a frontage to an arterial road unless, in the opinion of the consent authority:

- (a) wherever practicable, vehicular access to that land is provided by a road other than the arterial road, and
- (b) the safety and efficiency of the arterial road will not be adversely affected by the proposed development as a result of:
 - (i) the design of the access to the proposed development, or
 - (ii) the emission of smoke or dust from the proposed development, or
 - (iii) the nature, volume or frequency of vehicles using the arterial road to gain access to the proposed development.

78 Land filling and excavation

- (1) A person shall not, without development consent, excavate or fill any land or waterbody (other than a farm dam) to which this plan applies.
- (2) Before granting an application for consent required by subclause (1), the consent authority must have regard to:
 - (a) the likely disruption of, or detrimental effect on, existing drainage patterns, vegetation, sedimentation and soil stability in the locality that would be caused by the proposed work, and
 - (b) the effect of the proposed work on the likely future use or redevelopment of the land, and
 - (c) the effect of the proposed work on the existing and likely amenity of adjoining properties.
- (3) Subclause (1) does not apply to:

Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended

△ LEP Amendment 5

- (a) any excavation or filling of land necessarily carried out to allow development for which a consent was granted under the Act, or
- (b) any excavation or filling of land which, in the opinion of the prospective consent authority, is of a minor nature, including minor landscaping works.

79 Ecologically sustainable development

Before determining an application for consent to development, consideration shall be given by the consent authority to the following in so far as they are relevant to the proposed development and may promote the principles of ecologically sustainable development:

- (a) building and allotment orientation,

Development should be planned to achieve maximum energy efficiency through building siting layout design and materials. The selection of energy and water efficient building services and equipment and appliances should also be included in the development where possible.

- (b) conservation, protection and enhancement of natural resources (including riparian areas and remnant native vegetation),

Development should be planned to minimise impacts on areas of high biodiversity and or Aboriginal heritage significance.

- (c) optimisation of the use of natural features of the site,
- (d) reduction of car dependence,

Development should provide for users of all modes of transport including public transport cycling and walking with a recognition of the need to integrate the development into the surrounding network of each mode where possible.

- (e) use of landscaping to improve air, soil and water quality,
- (f) optimisation of energy efficiency,
- (g) waste minimisation.

Development should be consistent with the principles of Council's waste minimization strategy and should ensure that waste is minimised through reuse recycling and reprocessing with disposal being the last resort option.

80 Roads, drainage, recreational areas and parking

Nothing in this plan prevents the Council or another public authority from carrying out, or requires the Council or another public authority to obtain consent to carry out, development on land within any zone for the purpose of roads, stormwater drainage, recreational areas, landscaping, gardening, bushfire hazard reduction, amenities buildings or parking.

Refer to Council's Development Control Plan No (4) 98 for exempt development types that include some council works.

81 Flood liable land

- (1) A person shall not subdivide land or build or carry out a work on flood liable land except with development consent.
- (2) Consent must not be granted to the subdivision of, or to the erection of a building or the carrying out of a work on, flood liable land if, in the opinion of the Council, the subdivision, building or work would be likely:
 - (a) to impede the flow of flood waters on that land or land within its immediate vicinity, or
 - (b) to imperil the safety of persons or to cause damage to property on the land or land within its immediate vicinity in the event of those lands being inundated by floodwaters, or
 - (c) to aggravate the consequences of floodwaters flowing on to that land or land within its vicinity with regard to erosion, siltation or the destruction of vegetation, or
 - (d) to have an adverse effect on the water table of that land or of land within its immediate vicinity, or
 - (e) to cause pollution or contamination of floodwaters or land as a result of inundation by floodwaters.

Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended

Δ LEP Amendment 5

- (3) Consent shall not be granted to development on flood liable land unless the consent authority has taken into consideration the cumulative impact of development on flooding within the area.
- (4) Before granting an application for development consent, the consent authority shall consider the possible effects of floods in excess of the flood planning level and the significance of the risk proposed by larger floods to the development.

82 Development on land identified on acid sulfate soils planning maps

(1) Consent usually required

A person shall not, without development consent, carry out works described in the following Table on land of the class specified for those works, except as provided by subclause (3).

Class of land as shown on acid sulfate soils planning maps	Works
-------------------------------------------------------------------	--------------

1	Any works
2	Works below natural ground surface Works by which the watertable is likely to be lowered
3	Works beyond 1 metre below natural ground surface Works by which the watertable is likely to be lowered beyond 1 metre below natural ground surface
4	Works beyond 2 metres below natural

Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended

- ground surface
- Works by which the watertable is likely to be lowered beyond 2 metres below natural ground surface
- 5 Works within 500 metres of adjacent Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land
-

(2) For the purpose of the Table to subclause (1), works includes:

- (a) any disturbance of more than one tonne of soil (such as occurs in carrying out agriculture, the construction or maintenance of drains, extractive industries, dredging, the construction of artificial waterbodies (including canals, dams and detention basins) or foundations, or flood mitigation works), or
- (b) any other works that are likely to lower the watertable.

(3) Exception following preliminary assessment

This clause does not require consent for the carrying out of works if:

- (a) a copy of a preliminary assessment of the proposed works undertaken in accordance with the Acid Sulfate Soils Assessment Guidelines has been given to the Council, and
- (b) the Council has provided written advice to the person proposing to carry out works confirming that results of the

Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended

Δ LEP Amendment 5

preliminary assessment indicate the proposed works need not be carried out pursuant to an acid sulfate soils management plan prepared in accordance with the Acid Sulfate Soils Assessment Guidelines.

(4) Considerations for consent authority

A consent required by this clause must not be granted unless the consent authority has considered:

- (a) the adequacy of an acid sulfate soils management plan prepared for the proposed development in accordance with the Acid Sulfate Soils Assessment Guidelines, and
- (b) the likelihood of the proposed development resulting in the discharge of acid water, and
- (c) #

(5) Public authorities not excepted

This clause requires consent for development to be carried out by councils, county councils or drainage unions despite:

- (a) clause 35 and clauses 2 and 11 of Schedule 1 to the Environmental Planning and Assessment Model Provisions 1980, as adopted by this plan, and
- (b) clause 10 of State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Complying Development.

[Maps identifying the type and location of acid sulphate soils in the Shire can be viewed at Council's Bega Office.](#)

83 Tourism development adjacent to waterways

The Council must not grant consent to the carrying out of development for the purpose of caravan parks, camping sites, ecotourism facilities, tourist accommodation or services apartments within 400m of the mean high water mark (or, where there is no mean high water mark, the top of the bank) of a river, lagoon or lake specified in Schedule 3 unless it has taken into consideration: #

- (a) the consequences of the development being located within the close proximity to the waterway, #

- (b) the preservation and enhancement of the scenic quality of the foreshores,[#]
- (c) minimising the risk of pollution of any waterway involved in the development,[#]
- (d) the protection of foreshore ecosystems, having regard to the regional significance of the area to which the development application relates,[#]
- (e) the potential impacts of climate change including sea level rise.[#]

Note that setbacks for other development types from nominated waterways are contained in Council's Development Control Plan No 6 Minimum Setbacks from Nominated Waterways and Roads.

84 Building lines

- (1) Consent must not be granted to the erection of a building on land with frontage to a road unless the building is required to be set back from the nearest alignment of the road at a distance determined by the consent authority.
- (2) In determining a distance for the purposes of this clause, the consent authority shall have regard to:
 - (a) the nature, scale and function of the building, and
 - (b) the maximisation of sight distances for drivers using the road, including visibility of points of access to the road, and
 - (c) the minimisation of distractions to drivers using the road, and
 - (d) any possible future need to alter the road alignment, and
 - (e) the desirability of maintaining existing roadside vegetation.

Refer to Council's Development Control Plan No 6 Minimum Setbacks from Nominated Waterways and Roads for details.

85 Height of buildings

- (1) A building shall not be erected on land to which this plan applies where:

[#] Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended

^Δ LEP Amendment 5

- (a) in the case of land within 50 metres of the mean high water mark:
 - (i) the building contains more than 2 storeys, or
 - (ii) the vertical distance between any part of the building and the natural ground level exceeds 7.5 metres, or
 - (b) in all other cases:
 - (i) the building contains more than 3 storeys, or
 - (ii) the vertical distance between any part of the building and the natural ground level exceeds 10 metres.
- (2) When the number of storeys in a proposed building are counted for the purposes of this clause, any storeys that are basements, cellars or similar structures and that do not protrude more than 1.2 metres above finished ground level at the perimeter of the building are excluded.
- (3) A reference in this clause to a building does not include a reference to any of the following:
- (a) an aerial,
 - (b) a chimney stack,
 - (c) a mast,
 - (d) a pole,
 - (e) a receiving tower,
 - (f) a silo,
 - (g) a transmission tower,
 - (h) a utility installation,
 - (i) a ventilator,
 - (j) a building erected or to be erected on land within Zone 4 (a).

86 Development in flight paths

- (1) A person shall not erect a building on land that is within the flight path of an airport to a height greater than 4 metres above natural ground level, except with development consent.
- (2) Such a consent may be granted only if the consent authority is satisfied, after consultation with the Civil Aviation Safety Authority, that the building will not constitute an obstruction, hazard or potential hazard to aircraft flying in the vicinity.
- (3) Before granting such a consent, the consent authority shall give consideration to any noise exposure forecasts prepared by the Civil Aviation Safety Authority and as to whether the proposed use of the building will be adversely affected by exposure to aircraft noise.
- (4) For the purposes of this clause, the flight path of an airport shall include such land as is determined by the Civil Aviation Safety Authority and communicated to the Council.

Consultation with the local airport authority should also be undertaken for any development applications prior to lodgement with Council.

87 Suspension of certain laws etc

- (1) For the purpose of enabling development to be carried out in accordance with this plan (as in force at the time the development is carried out) or in accordance with a consent granted under the Act, any covenant, agreement or similar instrument which purports to impose restrictions on the carrying out of the development, to the extent necessary to serve that purpose, shall not apply to the development.
- (2) Nothing in subclause (1) shall affect the rights or interests of any public authority under any registered instrument.
- (3) Pursuant to section 28 of the Act, before the making of this clause the Governor approved of subclauses (1) and (2).

88 Particular development permitted with consent

- (1) Notwithstanding any other provision of this plan, a person may, with development consent or (if specified) without development consent carry out development on land referred to in Schedule 4 if the development is specified in relation to that land in that Schedule, but only subject to such conditions, if any, as are so specified.

Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended

△ LEP Amendment 5

- (2) Subclause (1) does not affect the application, to or in respect of development to which that subclause applies, of such of the provisions of this plan as are not inconsistent with that subclause or with a consent granted in respect of the development.

89 Granny flat development

- (1) Consent may be granted to the erection of a granny flat or the conversion of part of an existing dwelling house into a granny flat within any zone (except Zone 1 (a), 3 (b), 4 (a), 5 (a), 6 (a), 6 (c), 7 (b), 7 (d), 7 (f1), 7 (f2), 9 (c) or 9 (d)), but only if:
- (a) a lawfully approved dwelling house exists upon the land, and
 - (b) the land on which the granny flat is proposed to be erected has an area of not less than the minimum area required for the erection of a dwelling house, and
 - (c) the granny flat is ancillary to and associated with the principal dwelling, and
 - (d) a condition of the consent prohibits a subdivision to create a separate land title for the granny flat.
- (2) Despite any other provision of this plan, consent must not be granted to the erection of a granny flat on land on which more than one dwelling already exists.

[See definition of a granny flat in the Dictionary.](#)
