

August 2020

Greater clarity for landowners rebuilding their homes following a natural disaster

Over the 2019-2020 summer, NSW was devastated by bush fires which destroyed over 2,400 homes, and damaged over 1,000 more. Subsequent floods also affected large parts of NSW causing further damage to homes and infrastructure. Many people affected by these natural disasters are now seeking planning approvals to enable them to rebuild or repair their dwellings.

The Department has received feedback from councils that in some cases, where dwellings were originally approved and constructed under historical planning instruments, development consent cannot be granted to reconstruct a new dwelling under the current planning controls. This may be the case even if the proposed dwelling is of a similar size, scale and location to the original dwelling, due to changes to local planning controls over time.

The Department is working with local councils to cut red tape to enable the rebuilding of homes following natural disasters.

A new clause to enable rebuilding and recovery

The Department is proposing to amend the *Standard Instrument (Local Environmental Plans) Order 2006* to insert an optional provision that may be inserted into local environmental plans (LEP). The purpose of the provision is to allow consent authorities to grant development consent to the repair or rebuild of a lawfully erected dwelling house or secondary dwelling that has been damaged or destroyed by a natural disaster, despite any applicable development standards in the LEP. The proposed provision will:

- clarify that a dwelling that has been destroyed or damaged in a natural disaster can be rebuilt or repaired with development consent;
- save the applicant time and money by removing the need to request a variation to development standards under the applicable LEP;
- allow the consent authority to assess and determine the application on its merits.

Councils will be able to elect whether the optional provision should be inserted into their LEP and participating councils will be able to nominate which zones the clause will apply to. This will allow councils to identify areas in their local government area where the clause would be appropriate and prevent it from being included in areas that are unsuitable for residential development.

The proposed provision would apply to dwelling houses and secondary dwellings that were lawfully constructed in accordance with the *Environmental Planning and Assessment Act 1979* or historical planning and building legislation.

Saving applicants time and money

Applicants will be able to rely on the provision to seek development consent to rebuild or repair their home if it was destroyed or damaged in a natural disaster. Applicants will not have to lodge a request to vary a development standard under clause 4.6 of the LEP, or pay fees associated with the preparation, lodgement and processing of the request, saving them time and money.

The provision will also alleviate any cost burdens and extended approval timeframes for applicants and consent authorities dealing with applications to rebuild homes that have been destroyed or damaged in a natural disaster.

Opting-in to the clause

The Department will work with interested councils to consider feedback provided during exhibition, and to insert the final clause into the LEPs of councils who would like to opt-in.

To expedite the inclusion of this provision in LEPs and support communities recovering from bush fires and floods, the Department will amend participating LEPs through an amending State Environmental Planning Policy (SEPP). This will save councils the time and resources required to progress individual planning proposals.

Councils can also choose to include the optional provision in their LEPs at a later date as part of a council led planning proposal.

Stage 1 – Exhibition

The draft Standard Instrument (Local Environmental Plans) Amendment (Natural Disasters) Order 2020, which includes the proposed clause, is being publicly exhibited for a period of 28 days. Councils and other interested persons are invited to provide feedback on the clause. In addition to any feedback, the Department is asking interested councils to:

- Provide an expression of interest in incorporating the final clause into their LEP; and
- Nominate a suitable contact(s) who can liaise with the Department about the following stages of implementation.

Only those councils who have submitted an expression of interest and associated planning contact during exhibition will be contacted to opt-in to the final clause.

Stage 2 – Consideration of Feedback and Drafting

Following exhibition, the Department will consider feedback received which will inform the final clause.

Stage 3 – Opt-in

The Department will distribute the final clause to interested councils and request that councils provide the following by way of email correspondence:

- Formal confirmation that the council elects to have the clause inserted into their LEP as part of the amending SEPP; and
- Nominate relevant LEP(s) and the zones where the proposed clause will apply.

Councils will have a period of six weeks to formally opt-in from the date of distribution of the final clause. Only councils who formally opt-in will be included in the amending SEPP.

Stage 4 – Implementation

The draft Standard Instrument (Local Environmental Plans) Amendment (Natural Disasters) Order 2020 will be finalised and made with the effect that the proposed clause can be selected as an optional provision that can be inserted into Standard LEPs.

An amending SEPP will also be prepared and finalised to insert the optional clause into the LEPs nominated by participating councils.