

Planning Proposal: Burials on Private Land



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Bega Valley Shire Council acknowledges and pays our respects to the Traditional Custodians of the lands, waterways and airspace of the shire.

Contents

Part 1 – Objectives and intended outcomes	1
Objective	1
Intended outcomes.....	1
Part 2 – Explanation of provisions	1
Part 3 – Justification.....	2
A. Need for the planning proposal.....	2
B. Relationship to the strategic planning framework	2
C. Environmental, social and economic impact	6
D. Infrastructure (Local, State and Commonwealth)	6
E. State and Commonwealth interests	6
Part 4 – Mapping.....	6
Part 5 – Community Consultation.....	7
Part 6 – Timeline	7
Attachment 1: Draft Burials on Private Land Policy.....	8

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 (now Department of Planning, Housing and Infrastructure) *Local Environmental Plan Making Guideline* (August 2024).

This Council-initiated planning proposal is categorised as a Standard planning proposal under the *Local Environmental Plan Making Guideline*.

Objective

The objective of this planning proposal is to permit burials on private land at a limited scale as exempt development. That is, without the need for development consent.

Note: Exempt development is development that poses minimal impact to the environment. Refer also to [clause 3.1 Exempt development](#) of the *Bega Valley Local Environmental Plan 2013* (the LEP).

Intended outcomes

The intended outcome is to facilitate the burial of up to four deceased persons on private land in certain zones in the Bega Valley Shire:

- as exempt development
- in compliance with *Council Policy – Burials on Private Land*.

Part 2 – Explanation of provisions

Background

Council manages a number of cemeteries across the shire, however on occasion, will receive requests for burials on private land (other than a private cemetery) for various reasons.

This amendment proposes to formalise Council's requirements and create an exempt development pathway for burials on private land in certain zones. As part of the process of formalising Council's position, the *Draft Burials on Private Land Policy* has been developed and will be exhibited concurrently with the planning proposal (see Attachment 1). The draft policy will ensure that Council can more effectively regulate this land use.

Proposed amendment

Insert the following clause (based on *Byron Local Environmental Plan 2014*) into Schedule 2 Exempt Development of the LEP:

Burials on Private Land

- (1) Must be on land in Zone RU1 Primary production, Zone RU2 Rural Landscape or C3 Environmental Management only.*
- (2) Must not be more than 4 deceased persons buried on the land.*
- (3) Must comply with all standards specified in Council Policy – Burials on Private Land.*

Note: Must comply with Part 8 of the *Public Health Regulation 2022* and the relevant guidelines issued by the Department of Health.

Part 3 – Justification

A. Need for the planning proposal

1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

No. The planning proposal is not a result of an endorsed LSPS, strategic study or report.

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

Yes. A planning proposal is the only means of amending Schedule 2 of the LEP to achieve the objective of making burials on private land permissible as exempt development. Identifying burials on private land as proposed will provide clarity around the threshold for when development consent is needed for a private cemetery on private land.

B. Relationship to the strategic planning framework

3. 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)?

The provisions in this planning proposal are consistent with the objectives and actions of *the Draft South East and Tablelands Regional Plan 2041*. Actions relevant to this planning proposal include:

Objective 4: Preserve the heritage and character of the region's towns and villages.

Objective 5: Protect important environmental assets.

The planning proposal is also consistent with directions and actions of the South East and Tablelands Regional Plan 2036, including:

Direction 14: Protect important environmental assets.

Direction 23: Protect the region's heritage.

4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The provisions in this planning proposal are consistent with the objectives and action of the *Bega Valley Shire Community Strategic Plan 2040 (CSP)* and the *Bega Valley Shire Local Strategic Planning Statement 2040 (LSPS)*.

Relevant strategic objectives from the CSP include:

- Respect and promote our cultural heritage and support cultural diversity.
- Ensure land use planning and resource use protects the quality of the natural environment, the existing character of rural landscapes and the high value agricultural land.
- Encourage and support local identity, heritage and character in our towns, villages and rural areas.

The planning proposal is not inconsistent with the LSPS.

5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

There are no other applicable state or regional studies or plans that are relevant to the planning proposal.

6. Is the planning proposal consistent with applicable SEPPs?

The following table identifies the applicable State Environmental Planning Policies (SEPPs) and outlines this planning proposal’s consistency with these.

Relevant SEPP	Consistency statement
SEPP (Biodiversity and Conservation) 2021	Consistent. To be exempt development, the development must not involve the removal, pruning or other clearing of vegetation that requires a permit, development consent or other approval unless it is undertaken in accordance with a permit, development consent or other approval – clause 3.1(5)(b) of the LEP.
SEPP (Exempt and Complying Development Codes) 2008	Consistent. The planning proposals endeavours to provide a local exemption without being inconsistent with the SEPP.
State Environmental Planning Policy (Planning Systems) 2021	Consistent. The planning proposal is not facilitating provisions for cemeteries for 5,000 sites or more for the interment of human remains which would otherwise be state significant development.
SEPP (Primary Production) 2021	Consistent. The Planning Proposal does not conflict with the aims of any relevant Chapter of the SEPP nor with any other provisions of the SEPP relating to primary production and the development of rural land.
SEPP (Resilience and Hazards) 2021	Consistent. The Planning Proposal does not conflict with the aims of any relevant Chapter of the SEPP nor with any other provisions of the SEPP relating to: <ul style="list-style-type: none"> coastal zone management hazardous and offensive development remediation of contaminated land.
SEPP (Resources and Energy) 2021	Consistent. The Planning Proposal does not conflict with the aims of any relevant Chapter of the SEPP nor with any other provisions of the SEPP relating to mining, petroleum production and extractive industries.
SEPP (Transport and Infrastructure) 2021	Consistent. The Planning Proposal does not conflict with: <ul style="list-style-type: none"> the aims of Chapter 2 (Infrastructure) of the SEPP the provisions of Division 29 (Cemeteries) of Part 2.3 (Development Controls) of Chapter 2 or Schedule 4A of the SEPP the aims and provisions of any other chapter of the SEPP.

7. Is the planning proposal consistent with applicable Ministerial Directions?

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
1. Planning Systems		
1.1	Implementation of Regional Plans	Consistent. The planning proposal is consistent with the <i>South East and Tablelands Regional Plan 2036</i> and <i>Draft South East and Tablelands Regional Plan 2041</i> . Refer also to Part 3 B 3 of the planning proposal above.
1.4	Site Specific Provisions	Consistent. The planning proposal is not proposing any site specific provisions.

No.	Direction	Comment
1.4A	Exclusion of Development Standards from Variation	Consistent. The planning proposal does not propose to introduce or alter an existing exclusion to clause 4.6 of the LEP.
3. Biodiversity and Conservation		
3.1	Conservation Zones	Consistent. The planning proposal does not reduce the conservation standards that apply to the land affected by the planning proposal (including by modifying development standards that apply to the land). To be exempt development, the development must not involve the removal, pruning or other clearing of vegetation that requires a permit, development consent or other approval unless it is undertaken in accordance with a permit, development consent or other approval – clause 3.1(5)(b) of the LEP.
3.2	Heritage Conservation	Consistent. To be exempt development, the development must not be carried out on land that comprises, or on which there is, an item that is listed on the State Heritage Register under the Heritage Act 1977 or that is subject to an interim heritage order under the Heritage Act 1977 – clause 3.1(3)(d) of the LEP.
4. Resilience and Hazards		
4.1	Flooding	Consistent. The proposal to permit limited private burials as exempt development is consistent with the objectives of the Direction including that it will not exacerbate any onsite and offsite flood impacts.
4.2	Coastal Management	Consistent. The proposal to permit limited private burials as exempt development is consistent with the objectives of the Direction including that it will not undermine the protection and management of land that is within the coastal zone. Note: Exempt or complying development must not be carried out on any environmentally sensitive area for exempt or complying development – clause 3.3 (1) of the LEP. Environmentally sensitive area are those referred to in clause 3.3 (2)(a) - (j) of the LEP. The planning proposal does not rezone land which would enable increased development or more intensive land-use on land: (a) within a coastal vulnerability area identified by chapter 2 of the SEPP (Resilience and Hazards) 2021 (b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken: (i) by Council, or (ii) by or on behalf of a public authority and provided to Council. The planning proposal does not rezone land which would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area identified by chapter 2 of the SEPP (Resilience and Hazards) 2021.
4.3	Planning for Bushfire Protection	Consistent. The proposal to permit limited private burials as exempt development is consistent with the objectives of the Direction including that it will not encourage the establishment of incompatible land uses in bush fire prone areas. As required by the Direction, Council will carry out consultation with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination.

No.	Direction	Comment
4.4	Remediation of Contaminated Land	Consistent. It could be argued that this Direction is not applicable or relevant. Notwithstanding this, it is considered that the planning proposal is consistent with this Direction because it is not rezoning land or permitting a change of use that would allow development for residential, educational, recreational or childcare purposes, or for a hospital.
4.5	Acid Sulfate Soils	Consistent. It could be argued that this Direction is not applicable or relevant despite the likelihood of some private burials being undertaken on land that is mapped as acid sulfate soils (ASS). The planning proposal is consistent with the Direction as it is not proposing an intensification of land uses on land identified as having a probability of containing ASS.
5. Transport and Infrastructure		
5.2	Reserving Land for Public Purposes	Consistent. The planning proposal does not seek to create, alter or reduce existing zonings or reservations of land for public purposes.
5.3	Development Near Regulated Airports and Defence Airfields	Consistent. The planning proposal does not seek to create, alter or remove a zone or a provision relating to land near a regulated airport and defence airfield.
5.4	Shooting Ranges	Consistent. The relevant shooting ranges in the Bega Valley LGA include the Bega Rifle Club, Bega Valley Pistol Club, and Bermagui Field and Game. There may be some potential for private burials to take place in close proximity to a shooting range. However private burials have expected to have minimal impact on shooting ranges.
5.5	High pressure dangerous goods pipelines	Consistent. There are no relevant pipelines in the Bega Valley Council area.
8. Resources and Energy		
8.1	Mining, Petroleum Production and Extractive Industries	Consistent. The planning proposal is not proposing anything that is contrary to the objective and intent of this Direction.
9. Primary Production		
9.1	Rural Zones	Consistent. The planning proposal is consistent with the objective and intent of the Direction. It does not aim to rezone the existing rural zone land included in the planning proposal to a zone other than an equivalent rural zone under the BVLEP 2013. Further it does not increase the permissible density of land within a rural zone.
9.2	Rural Lands	Consistent. The planning proposal does not seek to: <ul style="list-style-type: none"> change the existing minimum lot size of land within a rural or conservation zone; or alter an existing rural or conservation zone boundary.
9.3	Oyster Aquaculture	Consistent. The planning proposal does not seek to rezone land or introduce any land uses that may result in adverse impacts on a Priority Oyster Aquaculture Area.

C. Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

This planning proposal proposes a minor amendment to the LEP. As exempt development, private burials must not involve the removal or pruning of a tree or other vegetation unless the Council approves that removal or pruning. Further, burial locations on private land must meet requirements set out in Draft Procedure – Burials on private land.

These requirements will ensure that there will not be any adverse impacts to critical habitat or threatened species, populations or ecological communities, or their habitats because of this planning proposal.

9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

This planning proposal contains a minor amendment to the LEP. Burial locations on private land must meet requirements set out in Draft Policy and Procedure – Burials on private land. These requirements will ensure that there will not be any adverse environmental effects because of this planning proposal.

10. Has the planning proposal adequately addressed any social and economic effects?

It is anticipated that the overall social and economic impacts of this planning proposal will be beneficial by allowing an exempt development pathway for burial of up to 4 bodies on private land and obviate need for a development application which would otherwise impact burial timeframes.

D. Infrastructure (Local, State and Commonwealth)

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

The planning proposal does not increase demand for public infrastructure.

E. State and Commonwealth interests

12. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

As this is a minor, local matter it is not anticipated that any state or Commonwealth public authorities will have a view on this matter, however, 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 does not propose any changes to LEP mapping.

Part 5 – Community Consultation

Community consultation for this planning proposal will be consistent with the requirements of the *Bega Valley Shire Community Engagement Strategy*, being a minimum exhibition timeframe of 28 days or as specified by the Gateway Determination.

Public exhibition of the planning proposal will include notification on Council’s website.

Part 6 – Timeline

It is estimated that the amendments to the LEP will be completed by February 2026.

Council requests delegation to be the Local Plan-Making Authority (LPMA) in relation to this proposal. Delegation would be exercised by Council’s Chief Executive Officer or Director of Community, Environment and Planning. The planning proposal is a “Standard” Planning Proposal, and the approximate project timeline is outlined in the following table:

Key Stages of consultation and approval	Estimated timeframe
STAGE 1 – Pre-lodgement	NA
STAGE 2 – Planning Proposal – Submit to Department of Planning Housing and Infrastructure	July 2025
STAGE 3 – Gateway Determination	August 2025
STAGE 4 – Post-Gateway (action conditions of Gateway Determination)	September 2025
STAGE 5 – Public Exhibition and Assessment	October 2025
STAGE 5 – Consideration of submissions received	November 2025
STAGE 5 – Council Report if required	December 2025
STAGE 6 – Finalisation	February 2026

Attachment 1: Draft Burials on Private Land Policy

Attachment 2: Draft Burials on Private Land Procedure



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