

Frequently Asked Questions

The NSW Government is committed to helping communities recover after natural disasters and future-proof our planning system. To facilitate the rebuild and repair of dwellings following a natural disaster, the Department of Planning, Industry and Environment has prepared a clause for inclusion as an optional provision in the Standard Instrument (Local Environmental Plans) Order.

What does the clause do?

The clause clarifies that a dwelling, including a secondary dwelling, can be rebuilt or repaired if the original lawful dwelling was destroyed or damaged in a natural disaster. A merit assessment is still required, however the rebuild or repair cannot be refused on the basis of any development standards in the LEP.

What types of development does the clause apply to?

The clause applies to development applications (DAs) to rebuild or replace lawfully erected dwelling houses and secondary dwellings that have been damaged or destroyed by a natural disaster.

Applicants seeking to make DAs in accordance with the clause will need to outline the nature, extent and circumstances of the damage caused by a natural disaster to the dwelling house or secondary dwelling. Applicants and local councils are encouraged to work together in good faith to establish this information and whether it is appropriate to apply the clause for DAs to rebuild homes.

What land does the clause apply to?

Individual councils will nominate which land use zones the clause will apply to. This will allow councils to identify areas in their local government area where the clause would be useful and prevent it from being applied to areas that are unsuitable for residential development.

Does the replacement or repair of a dwelling house or secondary dwelling have to be identical to the original building?

No. The replacement or repair of a dwelling does not have to be identical to the original dwelling which was destroyed or damaged. Changes to the design and location of a proposed dwelling may be required to meet the relevant provisions of development control plans or other relevant planning instruments and associated legislation.

What is a *natural disaster* for the purposes of applying the clause?

A natural disaster is not defined in the legislation but should be taken to be an extreme weather event that is consistent with the commonly understood meaning of the term.

What is meant by *lawfully erected* for the purposes of applying the clause?

To be a lawfully erected dwelling house or secondary dwelling, it must have been constructed under a valid development consent, building approval or another lawful planning pathway under the *Environmental Planning and Assessment Act 1979* or equivalent historical planning legislation.

Applicants and local councils are encouraged to work together in good faith to establish the planning context of the site and the applicability of the clause for DAs to rebuild homes. This may involve accessing council's property records.

How long following the natural disaster can a DA be made under the clause?

A DA seeking development consent to rebuild or replace a dwelling under the clause must be made to the consent authority no later than five years after the day on which the natural disaster caused the damage or destruction.

Why does the clause only apply to dwellings and not other forms of development, such as commercial buildings?

Many LEPs in regional areas include provisions that enable consent to be granted for a dwelling house that is intended only to replace an existing lawfully erected dwelling house.

However, the Department has received feedback that uncertainty in respect to whether these provisions could apply when a dwelling is completely destroyed (ie no longer exists) has resulted in the need for the new clause.

In addition, the Department has received feedback that another impediment facing the rebuild of dwellings is changes in minimum lot size controls over time. This isn't typically an impediment faced when rebuilding commercial or other types of development. An applicant relying on the clause to rebuild his/her home will not have to submit a clause 4.6 variation if planning controls have changed since the dwelling was built, saving the applicant time and money, and providing them certainty in respect to being able to lodge a DA for rebuild.

Can a consent authority refuse a DA where the clause applies on the basis that it does not meet development standards outlined in the LEP?

No. For DAs where the clause applies, the consent authority cannot refuse a DA on the basis it does not comply with a development standard in the applicable LEP. The proposed development will still be assessed on its merits against the relevant considerations under section 4.15 of the *Environmental Planning and Assessment Act 1979* and any other applicable legislation.

Where a DA made pursuant to the clause is inconsistent with a development standard(s) outlined in a LEP, is a request to vary development standards under Clause 4.6 required?

No, applicants are not required to submit a request to vary development standards under clause 4.6 of the applicable LEP where the clause applies. The clause allows consent authorities to grant development consent to the specified development despite any other provisions in the LEP.

Do relevant provisions outlined in State Environmental Planning Policies (SEPPs) apply to DAs where the clause applies?

Yes. Development standards, concurrence requirements and other applicable provisions outlined in SEPPs will continue to apply to development where the new clause applies.

Does *Planning for Bushfire Protection* apply to DAs utilising the clause?

Yes. Section 4.14 of the EP&A Act applies for development of bushfire prone land and all relevant requirements of *Planning for Bushfire Protection* must be satisfied.

Does the *Biodiversity Conservation Act 2016* apply to DAs utilising the clause?

Yes. Where the clause and the *Biodiversity Conservation Act 2016* apply, any relevant assessment and offsetting requirements under that Act must also be met.

How does the clause interact with existing use rights?

The optional clause for natural disasters does not affect existing use rights. The clause will operate alongside any existing use rights. Existing uses are defined in [Section 4.65 of the EP&A Act 1979](#).

How will the proposed clause be rolled out to local council LEPs?

To expedite the inclusion of this provision in LEPs, the Department will amend the relevant LEPs for councils who have opted into the process, saving those councils the time and resources required to progress individual planning proposals.

What does my council have to do to have the clause included in their LEP?

The natural disasters clause is an optional clause in the Standard Instrument LEP and councils who are interested in adopting should liaise with their relevant DPIE regional or district team to progress a planning proposal to amend their LEP.

The regional or district team will be able to assist with nominating zones to which the clause will apply and determining the most appropriate planning proposal pathway for the clause considering the timing of other strategic planning work that may be being undertaken by council.

Where can I find more information?

For more information:

Web: www.planningportal.nsw.gov.au/natural-disasters-clause

Phone: 1300 73 44 66

Email: disaster.recovery@planning.nsw.gov.au