

Minutes of the Ordinary Meeting of Wollondilly Shire Council held in the Council Chamber, 62-64 Menangle Street, Picton, on Monday 9 February 2015, commencing at 6.32pm

Planning and Economy

PE3 Draft Planning Proposal - Dual Occupancies in Rural Zones and Clarification of Sewer Requirements

244936

TRIM 8290

Applicant: Council Initiated Planning Proposal
Owner: Various

6/2015 Resolved on the Motion of Crs Hannan and B Banasik:

1. That Council support the preparation of a Planning Proposal to permit dual occupancies (attached) with Council's consent in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones and clarify sewer requirements by removing part (3) of clause 7.1 – Essential Services of Wollondilly Local Environmental Plan 2011.
2. That the Planning Proposal be forwarded to the Minister for Planning and Environment for a Gateway Determination.
3. That Council request the Minister to grant Council delegation to make the amendments to Wollondilly Local Environmental Plan, 2011 in accordance with Section 59 to the Environmental Planning and Assessment Act, 1979.

On being put to the meeting the motion was declared CARRIED.

Vote: Crs Law, B Banasik, Terry, Amato, M Banasik, Mitchell, Hannan, Gibbs and Landow

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PE3

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Applicant: Council Initiated Planning Proposal
Owner: Various

Stage	Completed
Preliminary notification	N/A
Gateway Determination	Not yet issued
Consultation with Public Agencies	Not yet completed
Specialist Studies	Not yet completed
Public exhibition/community consultation	Not yet completed
Referred to Minister for Publication	Not yet completed

EXECUTIVE SUMMARY

- This Planning Proposal seeks changes to Wollondilly Local Environmental Plan 2011 to permit dual occupancies (attached) with Council consent on rural zoned land and provide clarity on the requirements for disposal and management of sewage for dual occupancies (attached), rural workers dwellings and secondary dwellings.
- There have not been any disclosures of political donations made in regard to this application.
- It is recommended that:
 - Council support the preparation of a Planning Proposal to permit dual occupancies (attached) with Council's consent in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones and clarify sewer requirements by removing part (3) of clause 7.1 – Essential Services of Wollondilly Local Environmental Plan 2011.
 - The Planning Proposal be forwarded to the Minister for Planning for a Gateway Determination.
 - Council request the Minister to grant Council delegation to make the amendments to Wollondilly Local Environmental Plan. 2011 in accordance with Section 59 to the Environmental Planning and Assessment Act, 1979.

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REPORT

1.1 DESCRIPTION OF PROPOSAL

This draft Planning Proposal intends to amend Wollondilly LEP 2011 in the following manner:

- Permit dual occupancies (attached) with consent in rural zones (RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots); and
- Amend clause 7.1 of Wollondilly LEP 2011 to remove subclause 3 in order to clarify that if dual occupancies (attached), rural workers dwellings and secondary dwellings are permitted on land where reticulated sewer is not available (i.e. rural zones, the R5 Large Lot Residential zone and E4 Environmental Living zone), requirements for adequate disposal and management of sewage can be satisfied by adequate on-site wastewater disposal rather than reticulated sewer.

Dual Occupancies (attached) in Rural Zones

Dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling" (Dictionary to WLEP 2011).

- It is not proposed to alter the LEP in a manner that would permit rural dual occupancies to be subdivided below the minimum lot size.

There is an inconsistency between current planning controls and previous longstanding controls regarding dual occupancies (attached). This is due to the fact that dual occupancies (attached) were previously permitted under clause 15 - Conversion of buildings of the Environmental Planning and Assessment Model Provisions 1980 and their design was guided by draft amendment no.29 to Wollondilly Local Environmental Plan 1991. However, dual occupancies (attached) are now not permitted in rural zones under Wollondilly LEP 2011.

It was always Council's intention to allow dual occupancies (attached) with consent in the rural zones in Wollondilly LEP 2011. Council had included dual occupancies (attached) as a permitted use with consent in rural zones in draft Wollondilly LEP 2011 (as exhibited and reported to Council for a resolution to send to the then Department of Planning for finalisation). However, dual occupancies (attached) were removed as a permitted use by the Department of Planning prior to LEP 2011 being finalised.

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The prohibition of dual occupancies (attached) has created uncertainty for land owners, who perceive it inequitable that nearby land owners have been able to construct two dwellings on their property under the previous planning controls, but any land owner making a recent enquiry is not able to construct a second dwelling. Council receives a large volume of enquiries about building a second house on rural properties; however, land owners are only able to build secondary dwellings, which are limited to either 60m² or 25% of the floor area of the principal dwelling, whichever is the larger.

It has previously been established during the public exhibition of Wollondilly LEP 2011 that there is community support for the permissibility of dual occupancies (attached) in rural zones. Additionally, the comprehensive LEP 2011 was reported to Council in this format on 17 May 2010 and Council resolved to support the LEP and forward to the then Department of Planning for finalisation.

Clarification of disposal of sewage provisions – for Dual Occupancies (attached), Rural Workers Dwellings and Secondary Dwellings.

The proposed amendment to clause 7.1 of WLEP 2011 will assist in clarifying the requirement for the disposal of sewage for dual occupancies (attached) in rural and large lot residential zones, to accompany the abovementioned amendment.

As per the Council resolution in April 2012, there is an anomaly regarding the permissibility of rural workers dwellings and secondary dwellings where reticulated sewer is not available. This is proposed to be addressed by amending the wording of clause 7.1, to clarify that on-site effluent disposal is acceptable because reticulated sewer is not available.

“Rural workers dwelling means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.” (Dictionary to WLEP 2011).

A Rural workers dwelling is permitted with consent in Zones RU1 and RU2. Reticulated sewer is not available to land in Zones RU1 and RU2.

“Secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling” (Dictionary to WLEP 2011).*

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A secondary dwelling is permitted with consent in Zones RU1, RU2, R2, R3, R5, B4 and E4. Reticulated sewer may be available to some, but not all, land within Zones R2, R3 and B4.

Clause 7.1 requires the development assessment process to ensure that satisfactory arrangements are, or will be, made for essential services and states:

"7.1 Essential services

(1) *Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:*

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage.*

(2) *This clause does not apply to the following:*

- (a) *development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure referred to in this clause,*
- (b) *land to which Part 6 applies.*

(3) *In this clause:*

disposal and management of sewage means the disposal and management of sewage in the form of a reticulated sewerage scheme:

- (a) *that is provided to each separate lot proposed as part of the development, and*
- (b) *if a lot contains 2 or more dwellings, is for the purposes of dual occupancy, multi dwelling housing, residential flat buildings, attached dwellings and shop top housing.*

reticulated sewerage scheme means a network of pipes that conveys sewage from dwellings to a treatment facility licensed or required to be licensed under the Water Industry Competition Act, 2006."

There is some concern that Clause 7.1 creates ambiguity as to the permissibility of rural workers' dwellings and secondary dwellings on land not serviced by a reticulated sewerage scheme. Throughout WLEP 2011 it is the intent that rural worker's dwellings and secondary dwellings are permissible with consent on sites which may or may not be serviced by a reticulated sewerage scheme.

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This Council report stated that if the clause is to be changed it is a minor amendment for clarification purposes and does not change the intent of the LEP. The change is suitable for inclusion in a Housekeeping Planning Proposal.

Additionally, it has been discovered by Council staff that there is an anomaly within WLEP 2011 with regard to the permissibility of dual occupancies (attached) within the E4 Environmental Living zone. Clause 7.1 Essential Services requires reticulated sewer to be available for dual occupancies but reticulated sewer is not available in the E4 Environmental Living zone. Therefore, dual occupancies (attached) are effectively prohibited in the E4 zone.

This has resulted in the unintentional prohibition of dual occupancies (attached) in the E4 Environmental Living zone in relation to the requirement for the provision of reticulated sewer requires an amendment to clause 7.1 Essential Services. It was never intended for dual occupancies (attached) in the E4 Environmental Living zone to be required to be provided with reticulated sewer. Rather it was intended that they be provided with adequate disposal and management of sewage, which in this zone would be on-site effluent disposal because reticulated sewer is not available. This would be subject to assessment as part of a DA.

The proposed amendment would delete subclause (3) and in doing so would remove the ambiguity whilst retaining the desired outcomes of the clause.

CONSULTATION

2.1 CONSULTATION WITH COUNCIL MANAGERS & STAFF

No comments have been sought from Council staff at this point in time. This could be undertaken post-Gateway Determination if necessary.

2.2 CONSULTATION WITH PUBLIC AGENCIES

No public agencies have yet been consulted. Council does not consider that any agencies would need to be consulted as part of this Planning Proposal. Any required agency consultation could occur with the submission of individual DAs for the construction of attached dual occupancies.

2.3 COMMUNITY CONSULTATION

In accordance with Council's notification policy, initial community consultation was not undertaken. Community feedback can be sought during formal public exhibition following receipt of a Gateway Determination, in accordance with section CO4 "Engagement and Communication" of the Community Strategic Plan 2033.

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2.4 PREPARATION OF A PLANNING PROPOSAL

Should Council resolve to support the application, a Planning Proposal will be prepared in accordance with Section 55 to the Environmental Planning and Assessment Act, 1979 and guidelines published by the Department of Planning and Environment. The Planning Proposal is then forwarded to the Minister for Planning and Environment for a Gateway Determination.

Council's options are:

1. Resolve to support the application in its original form and prepare a Planning Proposal accordingly. Matters can be more fully investigated and resolved with future specialist studies (if required) as determined by the Gateway process.
2. Resolve that a Planning Proposal be prepared in a form different to the application (and as described in Section 1.2 of this report). Matters can be more fully investigated and resolved with future specialist studies (if required) as determined by the Gateway process.
3. Resolve not to support a Planning Proposal for this site.

Option 1 is the recommendation of this report.

2.5 METROPOLITAN PLAN FOR SYDNEY 2031

The Metropolitan Plan for Sydney indicates that the growth of rural settlements is to be managed through comprehensive local strategies prepared by local councils and endorsed by the Department of Planning. The relevant strategy for Wollondilly is the Wollondilly Growth Management Strategy (GMS), which is discussed later in this report (although has not been adopted by the Department of Planning and Environment).

This proposal will provide the potential for variety in the housing market to cater for local housing demands and regional population trends. It is unlikely that this will result in adverse environmental impacts, as factors such as bushfire, flora and fauna, wastewater disposal, traffic and heritage will be considered at the Development Application stage.

The correction to provide clarity on the requirements for reticulated sewer for dual occupancies, rural workers dwellings and secondary dwellings is administrative and is not inconsistent with this strategy.

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2.6 DRAFT SOUTH WEST SUBREGIONAL STRATEGY

The Subregional Strategy has identified a total of 5,230 new dwellings for Wollondilly between 2004 and 2031. This Planning Proposal is generally consistent with the relevant provisions of the Draft South West Subregional Strategy as it will make a small contribution to meeting the target for additional dwellings whilst allowing an assessment of any potential environmental impacts at the Development Application stage. This would also be in accordance with section EC3 "Manage Growth" of the community Strategic Plan.

2.7 SECTION 117 MINISTERIAL DIRECTIONS

This Planning Proposal is either consistent with these directions or can be justified where inconsistent at this point. Further assessment against the relevant section 117 directions can be undertaken following receipt of a Gateway Determination, if necessary.

2.8 STATE ENVIRONMENTAL PLANNING POLICIES

The proposed amendments do not give rise to any conflicts with any SEPP as can be determined at this point. Compliance with SEPPs can be further investigated as part of the gateway process, if necessary.

2.9 WOLLONDILLY GROWTH MANAGEMENT STRATEGY

The GMS sets directions for accommodating growth in the Shire for the next 25 years. The GMS contains Key Policy Directions which form the overarching growth strategy for Wollondilly and Assessment Criteria for all Planning Proposals and for specific types of land use categories.

The following table sets out the relevant Key Policy Directions within the GMS along with comments relating to the Planning Proposal:

Key Policy Direction	Comment
General Policies	
P1 All land use proposals need to be consistent with the key Policy Directions and Assessment Criteria contained within the GMS in order to be supported by Council.	This proposal meets all the relevant Key Policy Directions and Assessment Criteria contained within the GMS. The component of this Planning Proposal that will permit dual occupancies (attached) in rural zones was previously supported by Council as part of the preparation of the comprehensive LEP.
P2 All land use proposals need to be compatible with the concept and vision of "Rural Living" (defined in Chapter 2 of the GMS).	This proposal is generally consistent with the concept and vision of 'Rural Living'. In particular, it recognises that rural and environmental zoned land within Wollondilly is unable to be provided with reticulated sewer, in keeping with the

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Key Policy Direction	Comment
	character of most fringe Metropolitan rural areas. Regarding dual occupancies, there is the potential to increase the developability of rural land (with Council consent). However, this has historically been permitted in Wollondilly and has not been deemed to have had a detrimental effect on the concept of rural living in the LGA.
P3 All Council decisions on land use proposals shall consider the outcomes of community engagement.	This Planning Proposal has not been subject to preliminary notification, as one part of the proposal is only aiming to clarify the requirements for disposal and management sewer, not change what Council would actually require. The other facet of this proposal (permitting attached dual occupancies) has previously been put out for public comment as part of the preparation of WLEP 2011. This was also previously supported by the Council as dual occupancies (attached) were permitted with consent in rural zones in draft WLEP 2011 until shortly before the LEP was gazetted (see Appendices D, E & F). Additionally, feedback from the community since the introduction of WLEP 2011 has highlighted that the permissibility of dual occupancies (attached) was supported in rural zones and that the community would be in favour of this permissibility returning to the way it was prior to WLEP 2011. It is expected that the Gateway Determination will require the community to be consulted through public exhibition of the planning proposal.
P4 The personal financial circumstances of landowners are not relevant planning considerations for Council in making decisions on land use proposals.	There have been no such representations regarding this Planning Proposal and therefore this Key Policy Direction has been satisfied.
P5 Council is committed to the principle of appropriate growth for each of our towns and villages. Each of	The proposal is not typical “growth” as anticipated and guided by the GMS, in that it is not infill development or new development on the fringe of an existing

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Key Policy Direction	Comment
our settlements has differing characteristics and differing capacities to accommodate different levels and types of growth (due to locational attributes, infrastructure limitations, geophysical constraints, market forces etc.).	town centre. However, it would allow a small amount of growth that is considered appropriate that has previously been agreed to by Council. Additionally, the appropriateness of each dual occupancy (attached) and the provision of sewer to secondary dwellings, rural workers dwellings and dual occupancies will be assessed as part of a future DA.
Housing Policies	
P6 Council will plan for adequate housing to accommodate the Shire's natural growth forecast.	Allowing for dual occupancies (attached) in the rural zones within Wollondilly will allow for some provision of additional housing to cater for growth within the LGA.
P8 Council will support the delivery of a mix of housing types to assist housing diversity and affordability so that Wollondilly can better accommodate the housing needs of its different community members and household types.	This proposal will provide for a housing type (dual occupancies) that will assist in providing some diversity in the housing market and also affordability to land owners and families, as opposed to the more common single dwellings in greenfield release areas. The proposal has the potential to meet this demand.
P9 Dwelling densities, where possible and environmentally acceptable, should be higher in proximity to centres and lower on the edges of towns (on the "rural fringe").	This PP will allow lower densities on the edges of towns and in rural areas, by permitting attached dual occupancies with consent in rural zones. Assessment of individual DAs will determine whether this is appropriate.
P10 Council will focus on the majority of new housing being located within or immediately adjacent to its existing towns and villages.	This PP will allow growth outside of areas immediately adjacent to existing towns and villages, however this is very low density growth. As per the point above, assessment of individual DAs will determine whether this is appropriate.
Macarthur South Policies	
Key Policy Directions P11, P12, P13 and P14 are not applicable to this planning proposal. The subject land is not with the Macarthur South area.	Not applicable.

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Key Policy Direction	Comment
Employment Policies	
P15 Council will plan for new employment lands and other employment generating initiatives in order to deliver positive local and regional employment outcomes.	This proposal does not include employment lands. The potential construction of new dual occupancies could generate some short-term construction industry related job opportunities.
P16 Council will plan for different types of employment lands to be in different locations in recognition of the need to create employment opportunities in different sectors of the economy in appropriate areas.	This proposal does not include employment lands. As with the above point, there is the potential for short-term employment opportunities to be created.
Integrating Growth and Infrastructure	
P17 Council will not support residential and employment lands growth unless increased infrastructure and servicing demands can be clearly demonstrated as being able to be delivered in a timely manner without imposing unsustainable burdens on Council or the Shire's existing and future community.	This PP is not expected to generate significant demand for new infrastructure. Attached dual occupancies will be subject to DA assessment to determine if adequate services are available. The amendment to clause 7.1 – Essential Services proposed by this PP will help to clarify Council's requirements for the disposal and management of sewage, i.e. that reticulated sewer does not need to be provided to dual occupancies, secondary dwellings and rural workers dwellings in rural and environmental zones. Developer contributions payable at the development application stage will further fund the necessary local infrastructure required to support any future development.
P18 Council will encourage sustainable growth which supports our existing towns and villages, and makes the provision of services and infrastructure more efficient and viable – this means a greater emphasis on concentrating	As previously discussed, rural land does not always adjoin an existing town or village, but the level of density that this PP would permit is considered appropriate and sustainable for rural zoned land in that existing services and infrastructure could be augmented to support new attached dual occupancies.

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Key Policy Direction	Comment
new housing in and around our existing population centres.	
P19 Dispersed population growth will be discouraged in favour of growth in, or adjacent to, existing population centres.	As previously discussed, rural zoned land is often not adjacent to existing population centres, but the level of growth this PP would be minimal, especially considering many rural zoned properties in Wollondilly already have two dwellings on them.
P20 The focus for population growth will be in two key growth centres, being the Picton/Thirlmere/Tahmoor Area (PTT) area and the Bargo Area. Appropriate smaller growth opportunities are identified for other towns.	This PP is not identifying a specific site/area for growth, however it would facilitate appropriate small opportunities for additional dwellings on rural zoned land.
Rural and Resource Lands	
P21 Council acknowledges and seeks to protect the special economic, environmental and cultural values of the Shire's lands which comprise waterways, drinking water catchments, biodiversity, mineral resources, agricultural lands, aboriginal heritage and European rural landscapes.	It is not expected that this PP would result in any adverse impacts on these factors. Future DA assessment would need to determine the impacts of an attached dual occupancy with regard to any of these factors.
P22 Council does not support incremental growth involving increased dwelling entitlements and/or rural lands fragmentation in dispersed rural areas. Council is however committed to maintaining where possible practicable, existing dwelling and subdivision entitlements in rural areas.	This PP will not result in rural lands fragmentation or further subdivision potential, rather it will allow for additional dwellings on rural zoned lots that have already been deemed appropriate to contain a dwelling.

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2.10 WOLLONDILLY LOCAL ENVIRONMENTAL PLAN, 2011 (WLEP 2011)

Following consideration of previous planning controls and preliminary assessment of this proposal, it is considered that the Planning Proposal should take the form as detailed below.

2.13.1 WOLLONDILLY LOCAL ENVIRONMENTAL PLAN, 2011 (WLEP, 2011)

The proposed amendments to WLEP 2011 are described below:

- permit dual occupancies (attached) with consent in rural zones (RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots); and
- amend clause 7.1 of Wollondilly LEP 2011 to remove subclause (3), in order to clarify that if dual occupancies (attached), rural workers dwellings and secondary dwellings are permitted on land where reticulated sewer is not available (i.e. rural zones, the R5 Large Lot Residential zone and E4 Environmental Living zone), requirements for adequate disposal and management of sewage can be satisfied by adequate on-site wastewater disposal rather than reticulated sewer.

2.13.2 WOLLONDILLY DEVELOPMENT CONTROL PLAN, 2011 (WDCP, 2011)

No amendments are proposed to WDCP 2011 at this stage.

FINANCIAL IMPLICATIONS

Funding for the maintenance of Planning Instruments is part of the ongoing operational budget for Strategic Planning and no additional funding sources are required. This matter has no financial impact on Council's adopted budget of forward estimates.

ATTACHMENTS

Nil.

RECOMMENDATION

1. That Council support the preparation of a Planning Proposal to permit dual occupancies (attached) with Council's consent in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones and clarify sewer requirements by removing part (3) of clause 7.1 – Essential Services of Wollondilly Local Environmental Plan 2011.
2. That the Planning Proposal be forwarded to the Minister for Planning and Environment for a Gateway Determination.
3. That Council request the Minister to grant Council delegation to make the amendments to Wollondilly Local Environmental Plan, 2011 in accordance with Section 59 to the Environmental Planning and Assessment Act, 1979.