

Kempsey LEP 2013 Amendment No 4 - Dual Occupancy (detached) and secondary dwellings in the RU1, RU2, RU4 and R5 Zones

Proposal Title : **Kempsey LEP 2013 Amendment No 4 - Dual Occupancy (detached) and secondary dwellings in the RU1, RU2, RU4 and R5 Zones**

Proposal Summary : **This Planning Proposal seeks to amend the Kempsey LEP 2013 to permit with consent dual occupancy (detached) and secondary dwellings in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 Large Lot Residential zones and apply development controls relating to their location.**

PP Number : **PP_2015_KEMPS_003_00** Dop File No : **15/11731**

Proposal Details

Date Planning Proposal Received : **31-Aug-2015** LGA covered : **Kempsey**

Region : **Northern** RPA : **Kempsey Shire Council**

State Electorate : **OXLEY** Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :
Suburb : City : Postcode :
Land Parcel : **All land zoned RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 Large Lot Residential**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre : Release Area Name :
Regional / Sub Consistent with Strategy :
Regional Strategy :

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MDP Number :

Date of Release :

Area of Release
(Ha) :

Type of Release (eg
Residential /
Employment land) :

No. of Lots : 0

No. of Dwellings
(where relevant) : 0

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government
Lobbyists Code of
Conduct has been
complied with : **Yes**

If No, comment : **The Department of Planning and Environment's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge.**

Have there been
meetings or
communications with
registered lobbyists? : **No**

If Yes, comment : **The Northern Region office has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officers within the agency and lobbyists concerning this proposal.**

Supporting notes

Internal Supporting
Notes :

External Supporting
Notes : **Council has identified a desire within the community to allow the construction of a second dwelling on a single property in rural areas within the LGA. Reasons for this include:**

- To allow a second source of income to subsidise agricultural activities for the property owners by renting the second dwelling. This also provides additional rental housing stock to the market; and
- To facilitate farm succession transfer to younger generations by allowing two generations to live separately but on the same property. This creates the opportunity for both generations to take advantage of the financial, social and economic benefits of this arrangement.
- The opportunity to legitimise unapproved dwellings and structures and levy Section 94 contributions for these as Section 94 contributions apply to detached dual occupancies but not 'secondary dwellings';
- Increase in the population of rural areas therefore providing support for local schools, stores, community groups; and
- Reducing the demand for the subdivision of large parcels of rural land, thus maintaining continued agricultural use or potential future use of the land.

State Environmental Planning Policy (Affordable Rental Housing) 2009 currently permits secondary dwellings in the R5 zone with consent.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives adequately describes the intention of the Planning Proposal, which is to:**

- To permit with Council consent dual occupancy (detached) and secondary dwellings

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within the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots and R5 Large Lot Residential zones within the Kempsey Shire Local Government Area (LGA); and
- To adopt development control provisions within the KLEP 2013 relating to dual occupancy (detached) and secondary dwellings in the RU1, RU2, RU4 and R5 zones.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of the provisions adequately describes the intention the Planning Proposal.**

An minor error in the planning proposal will require correcting prior to community consultation. A suggested local clause is included in the proposal but is not clear whether it applies to land zoned R5. Council staff have verbally advised the clause is intended to apply to the R5 zone. It will be recommended that that proposal be amended to remove the proposed clause and replace it with a plain english explanation of the development controls and where they are to apply..

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

**1.2 Rural Zones
1.5 Rural Lands
2.2 Coastal Protection
2.3 Heritage Conservation
3.1 Residential Zones
4.1 Acid Sulfate Soils
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies**

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

**SEPP No 14—Coastal Wetlands
SEPP No 21—Caravan Parks
SEPP No 26—Littoral Rainforests
SEPP No 33—Hazardous and Offensive Development
SEPP No 36—Manufactured Home Estates
SEPP No 44—Koala Habitat Protection
SEPP No 55—Remediation of Land
SEPP No 62—Sustainable Aquaculture
SEPP No 64—Advertising and Signage
SEPP No 65—Design Quality of Residential Flat Development
SEPP No 71—Coastal Protection
SEPP (Building Sustainability Index: BASIX) 2004
SEPP (Exempt and Complying Development Codes) 2008
SEPP (Housing for Seniors or People with a Disability) 2004
SEPP (Infrastructure) 2007
SEPP (Major Projects) 2005
SEPP (Mining, Petroleum Production and Extractive Industries) 2007
SEPP (Rural Lands) 2008
SEPP (Affordable Rental Housing) 2009**

e) List any other matters that need to be considered :

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Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain : **See the 'Assessment' section of this planning team report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **This Planning Proposal does not seek to amend any Maps of the Kempsey LEP 2013.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The Planning Proposal does not indicate or specify a timeframe for community consultation. The project timeline indicates a month has been allowed for public exhibition and government agency consultation. Given the nature of the proposal and the wide area the proposed changes affects, a 28 day public exhibition period is considered appropriate.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **The Planning Proposal generally satisfies the adequacy criteria by:**

- 1. Providing appropriate objectives and intended outcomes;**
- 2. Providing a suitable explanation of the provisions proposed by the Planning Proposal to achieve the outcomes (noting the change required prior to community consultation);**
- 3. Providing an adequate justification for the proposal;**
- 4. Providing for community consultation; and**
- 5. Providing a project timeframe which suggests completion within 9 months.**

Timeline

- **The Planning Proposal includes a project timeline which estimates the completion of the Planning Proposal by June 2016 (9 months). It is considered that this 9 month time frame would be appropriate. This does not restrict Council from finalising the LEP amendment sooner.**

Delegation.

- **Council has confirmed via email that it does seek Plan Making Functions for this LEP Amendment. It is considered that these functions should be delegated to Council given that the proposal is consistent with the Regional and Local Growth Strategies.**

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The Kempsey LEP 2013 is a Principal LEP and came into effect on 20 December 2013. The Planning Proposal seeks to amend this planning instrument.

Assessment Criteria

Need for planning proposal :

Council has identified that the permitted residential types within the RU1, RU2, RU4 and R5 zones do not completely meet the needs of the community. Council, through its implementation of the Kempsey LEP 2013, has identified a desire within the community to allow the construction of a second dwelling on a single property in rural areas and the R5 zones within the LGA. Council is seeking to achieve this by having detached dual occupancy's and secondary dwellings (as defined by the Kempsey LEP 2013) permitted with consent in the RU1, RU2, RU4 and R5 zones.

Reasons for the need for additional dwellings in these zones include:

- To facilitate farm succession transfer to younger generations by allowing two generations to live separately but on the same property. This creates the opportunity for both generations to take advantage of the financial, social and economic benefits of this arrangement;
- Increase in the population of rural areas therefore providing support for local schools, stores, community groups;
- Reducing the demand for the subdivision of large parcels of rural land, thus maintaining continued agricultural use or potential future use of the land;
- To allow a second source of income to subsidise agricultural activities for the property owners by renting the second dwelling. This also provides additional rental housing stock to the market; and
- The opportunity to legitimise unapproved dwellings and structures and levy Section 94 contributions for these as Section 94 contributions apply to detached dual occupancies but not 'secondary dwellings'.

Council is therefore seeking to provide additional housing choice within the RU1, RU2, RU4 and R5 zones by permitting with consent detached dual occupancies and secondary dwellings.

Attached dual occupancies are currently permitted with consent in the RU1, RU2, RU4 and R5 zones.

Council is also seeking to include an additional local clause in the LEP to provide development controls on the location of detached dual occupancies and secondary dwellings. The controls they seek include that:

- the development will not impair the use of the land for agriculture or rural industries;
- the principal dwelling and the detached dual occupancy or secondary dwelling will use the same vehicular access to and from a public road;
- the principal dwelling and the detached dual occupancy or secondary dwelling will be situated within 100 metres of each other;
- the land is physically suitable for the development;
- the land is capable of accommodating the on-site disposal and management of sewage for the development; and
- the development will not have an adverse impact on the scenic amenity or character of the rural environment.

The 100m location requirement aims to ensure that dwellings are clustered therefore minimising the likelihood of land use conflicts and reducing environmental impacts, including impacts to the rural landscape and character. The 100m distance also aims to allow for potential topographical limitations of the natural landscape as well as providing sufficient distance for privacy between the two dwellings.

Council does not propose to amend the subdivision controls within the LEP.

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Consistency with strategic planning framework :

The Planning Proposal is considered to be consistent with the Mid North Coast Regional Strategy.

The amendments proposed in this planning proposal will assist in the provision of dwellings to meet projected housing demands. The proposal has the potential to provide diversity in the choice of housing as well as adding to the amount of rental stock in the LGA. The Mid North Coast Regional Strategy also acknowledges that agriculture forms an important part of the Mid North Coast's economic and social base. It recognises that future population growth is likely to put pressure on farmland resources and that it is important to find a balance between protecting high value agricultural land and providing opportunities for rural lifestyle, settlement and housing. This Planning Proposal is considered to provide an opportunity to achieve this.

The Planning Proposal is considered to be consistent with all relevant SEPPs, including the Rural Planning Principles of the SEPP (Rural Lands) 2008 and therefore the S117 Direction 1.5 Rural Land. The Proposal is also considered to be consistent with Direction 1.2 Rural Zones (4(b)) because attached dual occupancies are currently permissible with consent in the subject zones and, as a result, there would not be a net increase in potential dwellings.

The Planning Proposal is considered to be consistent with all applicable section 117 Directions, except in relation to Directions 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land and 4.4 Planning for Bushfire Protection as discussed below:

4.1 Acid Sulfate Soils

This Direction is relevant to the proposal. The direction provides that a planning proposal must not propose an intensification of land uses on land containing acid sulfate soils. There are areas of land within the RU1, RU2, RU4 and R5 zones in the Kempsey LGA that are affected by acid sulphate soils. As attached dual occupancy development is already permitted in these areas, this Planning Proposal would not result in an intensification of land use permitted in the areas affected. Provisions exist within Kempsey LEP 2013 to address the potential impact on acid sulfate soils at development application stage. It is therefore considered that the inconsistency of the proposal with the direction is of minor significance and has been justified in accordance with the terms of the direction.

4.3 Flood Prone Land

This Direction is relevant as the Planning Proposal will affect land that is flood prone. The proposal will result in the potential for detached dual occupancies or secondary dwellings to be affected by flooding, however as attached dual occupancy development is already permitted in these zones, this Planning Proposal would not result in a net intensification of dwellings nor a net increase in demand for rescue services in times of flood in the areas affected. Council's LEP has controls relating to flood prone land. It is therefore considered that the inconsistency of the proposal with the direction is of minor significance and has been justified in accordance with the terms of the direction.

4.4 Planning for Bushfire Protection

This Direction is relevant as the Planning Proposal will affect land that is identified as bushfire prone land. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred the consistency of the proposal with the Direction remains unresolved.

Environmental social economic impacts :

There is the potential that permitting dual occupancy (detached) or secondary dwellings in rural zones may impact adversely on critical habitat or threatened species, populations or ecological communities, or their habitats. However, this is considered unlikely given any future proposed development would be subject to the development application process and any environmental impacts could be appropriately managed and minimised through the proposed development controls.

It is considered that this planning proposal will have a positive social and economic impact as it will facilitate farm succession planning and the easier transfer of rural

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holdings to younger generations by allowing two generations to live separately but on the same property. It will also potentially provide a second source of income to subsidise existing agricultural activities by renting the second dwelling. This also provides additional rental housing stock to the market

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
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Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**

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Additional Information : It is recommended that:

1. The Planning Proposal be supported;
2. The Planning Proposal be exhibited for 28 days;
3. The Planning Proposal be completed within 9 months;
4. That the RPA consult with the Commissioner of the NSW Rural Fire Service in accordance with the requirements of S117 Direction 4.4 Planning for Bushfire Protection;
5. The potential unresolved inconsistency with s117 Direction 4.4 Planning for Bushfire Protection be noted;
6. That an authorisation to exercise delegation be issued to Council;
7. That the Secretary's delegate determine that the inconsistencies with s117 Directions 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are justified as the matters are of minor significance;
8. That prior to community consultation the Planning Proposal be amended to replace the proposed clause with a plain english explanation of the proposed development controls and where they are to apply.

Supporting Reasons : The Planning Proposal seeks to amend the Kempsey LEP 2013 for the purpose of permitting detached dual occupancies and secondary dwellings in the RU1, RU2, RU4 and R5 Zones as well as providing development controls via a local clause in the LEP. This will help address housing choice issues in these zones that better meets the needs of all the community.

Signature: _____



Printed Name: _____

Jim Clark

Date: _____

2 September 2015

Team Leader Local Planning