



Planning Proposal

KLEP 2013 Amendment No 4

Various Amendments

Detached Dual Occupancy and Secondary Dwellings in RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 Large Lot Residential Zones

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1. PART 1 – OBJECTIVES OR INTENDED OUTCOMES

1.1 INTRODUCTION

This planning proposal has been prepared by Kempsey Shire Council ('Council') and is Draft Kempsey Local Environmental Plan (KLEP) 2013 Amendment No.4.

This proposal refers to all land within the Kempsey Local Government Area zoned *RU1 Primary Production*, *RU2 Rural Landscape*, *RU4 Primary Production Small Lots* and *R5 Large Lot Residential*. Council is seeking to amend land use provisions prescribed within the KLEP 2013 to allow detached dual occupancy dwellings and secondary dwellings as a use that is permitted with consent in those zones. In addition Council is seeking to apply development controls on the erection of detached dual occupancy dwellings and secondary dwellings in the rural zones and the R5 zone.

1.2 Objectives and Aims

The objectives of this planning proposal are:

- To permit with Council consent *dual occupancy (detached)* and secondary dwellings 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 provisions within the KLEP 2013 relating to dual occupancy (detached) and secondary dwellings in the RU1, RU2 – Rural Landscape, RU4 and R5 zones.

The aims of the planning proposal are:

- Limit the impact of additional dwellings in the RU1, RU2 and RU4 zones on agricultural resources, farming operations, landscape amenity and Council infrastructure;
- Provide the opportunity for landowners in the RU1, RU2, RU4 and R5 zones to benefit from financial, social and physical benefits of allowing *dual occupancy (detached) and secondary* dwellings where appropriate; and
- Limit the potential demand for fragmentation of rural land within the LGA.

1.3 Background

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. Various reasons to justify this desire have been conveyed to Council, with the primary reasons including:

- 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.

Other benefits identified by Council include:

- 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.

1.4 Land to which the planning proposal applies

This proposal refers to all land currently zoned RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots and R5 Large Lot Residential under the KLEP 2013.

1.5 Site context and setting

As the RU1, RU2, RU4 and R5 zones are located within the rural portions of the Kempsey LGA. As the LGA is primarily rural, the area that these zones apply to forms a significant proportion of the shire. The total area of the Kempsey LGA is 338,054ha. The above mentioned rural zones comprise the following area:

Table 1.1 – Proportion of Land within Kempsey LGA Affected by Planning Proposal

Zone	Area (ha)	Percentage of LGA
RU1 – Primary Production	49,410	14.6
RU2 – Rural Landscape	137,100	40.6
RU4 - Primary Production Small Lots	3,446	1.02
R5 – Large Lot Residential	2,928	0.8
Totals	192,884	57.06

2. PART 2 – EXPLANATION OF PROVISIONS

2.1 Existing Planning Controls

The dictionary within KLEP 2013 provides the following definitions:

dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).

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

dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

rural worker's 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.

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.

Note. See clause 5.4 for controls relating to the total floor area of secondary dwellings.

Clause 5.4(9) of KLEP 2013 states:

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

(a) 60 square metres,

(b) 30% of the total floor area of the principal dwelling.

Dual occupancy (attached) and rural workers dwellings are permissible with consent in RU1, RU2, RU4 and R5 zones. Secondary dwellings are prohibited in all of these zones, with the exception of the R5 Zone in which they are permissible under the State Environmental Planning Policy (SEPP) Affordable Rental Housing 2009.

Council has identified that amending the provisions of the KLEP 2013 applying to the RU1, RU2, RU4 and R5 zones to permit 'dual occupancy' with consent as the most effective way to achieve the objectives and aims of this planning proposal.

It is also proposed to make secondary dwellings permissible WITH consent in the RU1, RU, and RU4, zones. They are already permissible in the R5 zone under the provisions of the SEPP Affordable Rental Housing 2009.

It is considered that the restrictions imposed on 'secondary dwellings' result in the permissible development not being of sufficient size to allow the objectives and aims to be met. Also, the requirement that rural workers dwellings be used predominantly as a place of residence by persons employed for the purpose of agriculture or a rural industry on that land makes it difficult to achieve the objectives and aims identified in *Part 1*.

2.2 Proposed Planning Provisions

The objectives and aims described in Part 1 will be achieved by making the following amendments to the provisions of KLEP 2013:

- Removing '*dual occupancy (attached)*' as a land use permitted with consent from the Land Use Table for the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots and R5 Large Lot Residential zones;
- Include '*dual occupancy*' as a land use permitted with consent in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 Large Lot Residential zones;
- Include "secondary dwelling" as a land use permitted with consent in the RU1 – Primary Production, RU2 – Rural Landscape, RU4 – Primary Production Small Lots;

Insert the following provision in Part 4 of the KLEP 2013 (Note: It is understood and noted that the Department of Planning and Environment and Parliamentary Counsel will provide the final wording for the amendment to achieve the stated aims and objectives):

Clause 4.2E Erection of dual occupancy (detached) and secondary dwellings in Zones RU1, RU2, RU4 and R5

(1) *The objectives of this clause are as follows:*

- a) to provide alternate accommodation for rural families and workers,*
- b) to ensure development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,*
- c) to set out consent considerations for development of detached dual occupancies to address matters such as access, siting, land suitability and potential impacts.*

(2) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) dwelling on land in the RU1 Primary Production, RU2 Rural Landscape or RU4 Primary Production Small Lots zones unless the consent authority is satisfied that:*

- a) the development will not impair the use of the land for agriculture or rural industries,*
- b) each dwelling will use the same vehicular access to and from a public road, and*
- c) dwellings will be situated within 100 metres of each other, and*
- d) the land is physically suitable for the development, and*
- e) the land is capable of accommodating the on-site disposal and management of sewage for the development, and*
- f) the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

A key aspect of the proposed new provisions is the requirement that the two dwellings be located within 100m of each other. This 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.

2.2.1 Subdivision

The proposal to allow dual occupancy (detached) development in the RU1, RU2, RU4 and R5 zones is likely to raise concerns regarding the subdivision of land in these zones. Any development application for subdivision of land within these zones would still need to meet the requirements of Clause 4.2 of KLEP 2013 which states:

- 1) The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.*
- 2) This clause applies to the following rural zones:*
 - a) Zone RU1 Primary Production,*
 - b) Zone RU2 Rural Landscape,*
 - c) Zone RU4 Primary Production Small Lots,*
 - d) Zone R5 Large Lot Residential.*
- 3) Land in a zone to which this clause applies may, with development consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.*
- 4) However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.*
- 5) A dwelling cannot be erected on such a lot.*

As a result of the above KLEP 2013 provisions, it is not permissible to subdivide rural land to create an allotment, smaller than the minimum lot size, that would result in a dwelling being located on that lot. Further, a dwelling cannot be erected on a lot smaller than the minimum lot size.

The Minimum Lot Size for Land within RU1 and RU2 land is generally 40ha. The minimum lot size for land within the RU4 zone is 8ha's, with an area around Collombatti of RU4 zoned land having a minimum lot size of 4ha's. The minimum lot for land within R5 is 1ha.

3. PART 3 – JUSTIFICATION

3.1 Section A – Need for the Planning Proposal

3.1.1 Is the planning proposal a result of any strategic study or report?

It has been identified that there is a justified need being expressed within the community, for a range of reasons, to allow a second dwelling on rural allotments within the LGA.

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

An amendment to KLEP 2013 via a planning proposal is the only way to change the land use tables and local provisions applying to the RU1, RU2 and RU4 Zones.

3.1.3 Is there a net community benefit?

There is a net community benefit for allowing dual occupancy (detached) and secondary dwellings in the RU1, RU2 and RU4, land R5 zones as it would achieve the aims of this planning proposal which are:

- Limit the impact of additional dwellings in the RU1, RU2 and RU4 zones on agricultural resources, farming operations, landscape amenity and Council infrastructure;
- Provide the opportunity for landowners in the RU1, RU2 and RU4 zones to benefit from financial, social and physical benefits of allowing *dual occupancy (detached)* dwellings where appropriate; and
- Limit the potential demand for fragmentation of rural land within the LGA.
- Will provide additional housing options for second dwellings on R5 zoned properties.

A detailed Net Community Benefit Test is provided as *Appendix A*.

3.2 Section B Relationship to strategic planning framework

3.2.1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Mid North Coast Regional Strategy

Relevant chapters of the Mid North Coast Regional Strategy (MNCRS) are addressed below.

Mid North Coast Regional Strategy Aims

The aims of the MNCRS are to:

- *Protect high value environments, including significant coastal lakes, estuaries, aquifers, threatened species, vegetation communities and habitat corridors by ensuring that new urban development avoids these important areas and their catchments.*

The amendments proposed in this planning proposal will not result in ecological impacts as these would be assessed during the development application stage.

- *Cater for a minimum housing demand of 59 600 new dwellings by 2031 to accommodate the forecast population increase of 94 000 and any anticipated growth beyond this figure arising from increased development pressures in the Region.*

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 area.

- *Ensure that new housing meets the needs of smaller households and an ageing population by encouraging a shift in dwelling mix and type so that 60 per cent of new housing is the traditional detached style and 40 per cent is of multiunit style.*

The amendments proposed in this planning proposal will assist in providing a diversity of dwellings in the LGA. The amendments have the potential to allow 'aging in place' for older generations of farming families.

- *Ensure an adequate supply of land exists to support economic growth and the capacity for an additional 48 500 jobs in the Region by protecting existing commercial and employment areas and securing sufficient land to support new employment opportunities.*

The amendments proposed in this planning proposal will not result in any negative impacts to the commercial and employment areas in the region.

- *Encourage the growth and redevelopment of the Region's four major regional centres and six major towns as a means of protecting sensitive coastal and natural environments and strengthening the economic and administrative functions of these centres as well as meeting increased housing density targets.*

The amendments proposed in this planning proposal will facilitate a positive outcome in terms of any potential future development of dwellings in the RU1, RU2 and RU4 zones.

- *Protect the coast and the character of coastal villages by limiting growth to the agreed growth areas of towns and villages leaving greenbelts between settlements.*

The proposed changes to the KLEP 2013 will not impact the coast or character of the coastal villages.

- *Direct new rural residential development to areas close to existing settlements away from the coast.*

The amendments proposed in this planning proposal will not change plans for new rural residential development in the region.

- *Only consider additional development sites outside of growth areas if they can satisfy the Sustainability Criteria (Appendix 1).*

This planning proposal does not involve additional development sites.

- *Designate a Coastal Area east of the proposed final alignment of the Pacific Highway from which application of the Sustainability Criteria will be excluded (noting that approximately 70 per cent of the future dwelling capacity identified within growth areas is already within the Coastal Area).*

This planning proposal does not involve any exclusion from the Sustainability Criteria.

- *Limit development in places constrained by coastal processes, flooding, wetlands, important primary industry land and landscapes of high scenic and conservation value.*

All potential impacts and constraints for dwellings proposed as a result of the amendments in this planning proposal, including coastal processes, flooding, wetlands, important primary industry land or landscapes of high scenic and conservation value, would be assessed at the development application stage, and therefore any significant impacts would be avoided.

- *Protect the cultural and Aboriginal heritage values and visual character of rural and coastal towns and villages and surrounding landscapes.*

All potential impacts, including impacts on cultural and Aboriginal heritage values and visual character of rural and coastal towns and villages and surrounding landscapes of dwellings proposed as a result of the amendments in this planning proposal would be assessed at the development application stage, and therefore any significant impacts would be avoided.

- *Where development or rezoning increases the need for State infrastructure, the Minister for Planning may require a contribution to the infrastructure having regard to the NSW Government State Infrastructure Strategy and equity considerations.*

This planning proposal will not result in an increase in the need for State infrastructure.

Environment and Natural Resources

The *Mid North Coast Regional Strategy* (DoP, 2009) (MNCRS) acknowledges that agriculture forms an important part of the Mid North Coast's economic and social base. The MNCRS also recognises that future population growth is likely to put pressure on farmland resources.

The MNCRS states that it is important to find a balance between protecting high value agricultural land and providing opportunities for rural lifestyle, settlement and housing. The government's response to this challenge, as identified in the MNCRS, was the release of *State Environmental Planning Policy (Rural Lands) 2008* which is addressed in *Section 3.2.3*.

Kempsey Shire Council Local Growth Management Strategy 2010 - Residential Component

Kempsey Shire Council Local Growth Management Strategy 2010 - Residential Component (KSCLGMS – 2010 RC) is the first component of the Local Growth Management Strategy, with future reviews to incorporate rural residential, commercial and industrial land uses.

Part 4 of the KSCLGMS – 2010 RC relates to dwelling demand analysis. It states that 25% of new dwellings in the LGA will be located in rural and rural residential areas. Therefore, it is considered that this planning proposal is in accordance with the intent of the KSCLGMS – 2010 RC.

3.2.2 Is the planning proposal consistent with the local council's Community Strategic Plan or other local strategic plan?

Macleay Valley 2036 Community Strategic Plan June 2013

The following core values are identified in the *Macleay Valley 2036 Community Strategic Plan June 2013* (Macleay Valley 2036 CSP).

- being healthy;
- being safe;

- being wealthy; and
- being sociable.

Under each of the above core values the Macleay Valley 2036 CSP identifies matters that impact upon the core values, such as education, biodiversity, environment, earnings and self-esteem. The Macleay Valley 2036 CSP provides strategies and goals to be used to achieve the core values of the plan in the Kempsey LGA.

Permitting dual occupancy (detached) and secondary dwellings in the RU1, RU2, RU4 and R5 zones will not result in any impacts to the community achieving the core values of the Macleay Valley 2036 CSP.

3.2.3 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The planning proposal is consistent with all applicable State Environmental Planning Policies (SEPPs). Comments are provided in *Appendix B* in regards to each SEPP.

3.2.4 Is the planning proposal consistent with applicable Ministerial Directions (S 117 directions)?

The planning proposal is inconsistent with s117 Directions 3.6 Shooting Ranges, and 4.4 Planning for Bushfire Protection. These inconsistencies are considered to be of minor significance. A detailed evaluation of the consistency of the planning proposal in relation to the s117 directions is provided in *Appendix C*.

3.3 Section C – Environmental, Social and Economic Impact

3.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

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.

3.3.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Any development associated with the construction of dual occupancy (detached) dwellings has the potential to result in impacts to the environment. However, as stated above, any proposed development would have to go through the development application process, including an assessment of any potential environmental impacts. It is considered that this will prevent inappropriate development and ensure any environmental impacts are managed and minimised.

3.3.3 How has the planning proposal adequately addressed any social and economic effects?

This planning proposal has been prepared taking into consideration likely social and economic effects. *Sections 1.3 and 2.2.1* outlines some of the social and economic benefits and concerns of permitting dual occupancy (detached) or secondary dwellings in rural areas. *Appendix A* also provides an analysis of the net community benefit of the planning proposal. It is therefore considered that this planning proposal has adequately addressed the social and economic effects of permitting dual occupancies (detached) and secondary dwellings in the RU1, RU2, RU4 and R5 zones.

3.4 Section D – State and Commonwealth interests

3.4.2 Is there adequate public infrastructure for the planning proposal?

The Kempsey LGA has varying levels of public infrastructure services available depending on the location. The adequacy of available public infrastructure services for any future proposed dual occupancy (detached) dwellings would be considered as part of the development application process.

3.4.3 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

State and Commonwealth public authorities have not been formally involved in this planning proposal as it is yet to receive Gateway approval. Relevant public authorities will be consulted during formal consultation and exhibition of the planning proposal, and as directed by the Gateway determination, should Planning and Environment issue a determination to proceed.

There are no issues associated with this planning proposal of interest to Commonwealth Authorities.

4. PART 4 – MAPPING

This Planning Proposal does not involve amendments to the KLEP 2013 maps.

5. PART 5 - COMMUNITY CONSULTATION

Community consultation will be undertaken following the Gateway determination. Community consultation will be undertaken in accordance with the conditions specified in the Gateway Determination, as well as Kempsey Shire Councils Public Notification Policy.

Public exhibition of the Planning Proposal would include notification on the Kempsey Shire Council website, Department of Planning and Environment website, notice in the newspapers that circulate in the LGA and would include writing to affected landowners within the RU1, RU2, RU4 and R5 zoned land.

Information relating to the Planning Proposal would also be displayed at Kempsey Shire Council Customer Service Centre located on Tozer Street, West Kempsey and Libraries within the Shire.

6. PART 6 – PROJECT TIMELINE

An approximate project timeline is provided as *Table 6.1* below. It is estimated that this amendment to the KLEP 2013 will be complete by March 2016.

Council requests delegation to carry out certain plan making functions in relation to this planning proposal. Delegation would be exercised by Councils General Manager or Director Sustainable Environment.

Table 6.1 – Project Timeline

LEP Amendment Steps	Estimated Project Timing
Submit Planning Proposal to DP&E	July 2015
Receive Gateway determination	August 2015
Authority consultation - pre-exhibition*	September 2015
Preparation of materials for public exhibition & authority consultation	October 2015
Public exhibition of Planning Proposal & government authority consultation	November 2015
Review and consideration of submissions	December 2015
Council report preparation	January/February 2016
Public submissions report and draft LEP amendment to Council for adoption	March 2016
Submission to the department to finalise the LEP	April 2016
Submit request for drafting of LEP to Parliamentary Counsel's Office^	May 2016
Forward to the department for notification	June 2016
* If required	
^ If delegated	

Appendix A

Net Community Benefit Test

Net Community Benefit Test

“a. Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)?”

Yes, the proposal is compatible with agreed State and regional strategic direction for development in the area as it will provide a variety of housing options within the RU1, RU2, RU4 and R5 zones. The MNCRS acknowledges there is a need to find a balance between protecting high value agricultural land and providing opportunities for rural lifestyle, settlement and housing. This planning proposal assists in achieving that aim by seeking to reduce agricultural land fragmentation and, where new dwellings are located in RU1, RU2 RU4, and R5 zones cluster them together reducing the impacts on agricultural land use.

“b. Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?”

No. The LEP amendment would apply to all land zoned RU1, RU2, RU4 and R5 zones in the Kempsey Shire LGA.

“c. Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?”

The changes proposed in this planning proposal would apply to all land zoned RU1, RU2 and RU4 in the Kempsey Shire LGA. As with all development application assessment, the merits of each proposed dual occupancy (detached) or secondary dwelling development application would be considered.

“d. Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?”

The planning proposal is not for a spot rezoning.

“e. Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?”

The LEP has the potential to facilitate permanent employment in rural areas within the LGA by providing additional housing options, either for rural staff to rent from the landholder, or for extended families to live in whilst working on the property or elsewhere in the area.

“f. Will the LEP impact upon the supply of residential zoned land and therefore housing supply and affordability?”

The LEP will not affect the supply of residential land. It has the potential to add to the local housing supply and therefore increase affordability.

“g. Is the existing public infrastructure (roads, rail, utilities etc.) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?”

The Kempsey LGA has varying levels of public infrastructure services available depending on the location. The adequacy of available public infrastructure services for any future proposed dual occupancy (detached) or secondary dwellings would be considered as part of the development application process.

“h. Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?”

The planning proposal is unlikely to result in significant changes to car distances travelled within the LGA and the associated greenhouse gas emissions, operating costs and road safety.

“i. Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?”

No. The planning proposal will not affect patronage of any Government investments in infrastructure or services in the area.

“j. Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?”

The planning proposal has the potential to result in environmental impacts (from the construction and occupation of dwellings) and for such development to be located on land with environmental constraints. These matters would be assessed as part of the development application process and are therefore considered unlikely to result in development with significant environmental impacts or be located on land with significant constraints.

“k. Will the LEP be compatible / complementary with surrounding land uses? What is the impact on amenity in the location and wider community?”

The planning proposal aims to introduce a clause into the LEP that requires any proposed dual occupancy (detached) or secondary dwellings to be located within 100m of each other. The aim of this is to cluster the dwellings and therefore reduce the likelihood of land use conflicts. There is the potential that future development associated with the planning proposal may impact on amenity however the amendments in this planning proposal would require any new development to go through the development application process where any impacts to amenity or land use conflicts would be considered and therefore it is considered unlikely that this would occur.

“l. Will the public domain improve?”

The planning proposal will not impact the public domain.

“m. Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?”

The planning proposal is not for retail or commercial premises.

“n. If a stand-alone proposal and not a centre does the proposal have the potential to develop into a centre in the future?”

No, the planning proposal does not have the potential to result in development of a ‘centre’ in the future.

“o. What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?”

The planning proposal is being prepared after Council recognised that there is a demand within the community to permit dual occupancy (detached) and secondary dwelling type development in rural areas. The benefits of permitting this type of development include:

- A second source of income to subsidise agricultural activities for the property owners by renting the second dwelling;
- Additional rental housing stock to the market;
- Facilitation of 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.

If the planning proposal were to not proceed at this time it would mean that the local community could not capitalise on the abovementioned benefits.

Appendix B

Consistency with State Environmental Planning Policies

No.	SEPP Title	Summary	Consistency
14	Coastal Wetlands	Seeks to ensure the State's coastal wetlands are preserved and protected.	Consistent. It is possible that development of dual occupancies (detached) or secondary dwellings may occur on land near SEPP 14 Wetlands however all potential impacts to wetlands would be assessed through the development assessment process.
15	Rural Landsharing Communities	Seeks to facilitate the development of rural landsharing communities committed to environmentally sensitive and sustainable land use practices.	Not applicable. The site is not part of a rural landsharing community.
19	Bushland in Urban Areas	Seeks to protect bushland within urban areas. Specific attention to bushland, remnant and endangered vegetation and bushland zoned or reserved for public open space.	Not applicable. SEPP 19 does not apply to the Kempsey LGA.
21	Caravan Parks	Seeks to facilitate the proper management and development of land used for caravan parks catering to the provision of accommodation to short and long term residents.	Consistent. The planning proposal is not for a caravan park and will not impact on any existing caravan parks.
26	Littoral Rainforests	Seeks to protect littoral rainforests from development.	Consistent. It is possible that development of dual occupancies (detached) or secondary dwellings may occur on land near SEPP 26 Littoral Rainforests however all potential impacts to SEPP 26 areas would be assessed through the development assessment process.
30	Intensive Agriculture	Requires development consent and additional requirements for cattle feedlots and piggeries.	Not applicable. The planning proposal does not provide for cattle feedlots or piggeries.
32	Urban Consolidation	Seeks to facilitate surplus urban land redevelopment for multi-unit housing and related development in a timely manner.	Not applicable. The planning proposal does not apply to urban land.

33	Hazardous and Offensive Development	Seeks to provide additional support and requirements for hazardous and offensive development	Consistent. The planning proposal will not facilitate hazardous or offensive development.
36	Manufactured Home Estates	Seeks to facilitate the establishment of manufactured home estates as a contemporary form of residential housing.	Consistent. The planning proposal does not seek to amend the application of the Manufactured Home Estates SEPP in the RU1, RU2, RU4 or R5 zones.
44	Koala Habitat Protection	Seeks to encourage proper conservation and management of areas of natural vegetation that provide habitat for koalas	Consistent. It is possible that development of dual occupancies (detached) or secondary dwellings may impact on Koala Habitat however all potential impacts to Koala Habitat areas would be assessed in accordance with the Kempsey Koala Plan of Management through the development assessment process.
50	Canal Estate Development	Prohibits canal estate development	Not applicable. The planning proposal does not facilitate canal estate development.
55	Remediation of Land	Provides a State-wide planning approach for the remediation of contaminated land.	Consistent. The planning proposal would not alter the requirements for remediation of land in accordance with SEPP 55.
62	Sustainable Aquaculture	Seeks to encourage and regulate sustainable aquaculture development	Consistent. It is possible that development of dual occupancies (detached) or secondary dwellings may occur on land near aquaculture operations however all potential impacts to aquaculture developments would be assessed through the development assessment process.
64	Advertising and Signage	Seeks to regulate signage (but not content) and ensure signage is compatible with desired amenity and visual character of the area.	Consistent. The planning proposal does not change the development controls in regards to advertising and signage.
65	Design Quality of Residential Flat Development	Seeks to improve the design qualities of residential flat building development in New South Wales.	Consistent. The planning proposal does not seek to amend the application of the Design Quality of Residential Flat Development SEPP.

71	Coastal Protection	Seeks to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast.	Consistent. It is possible that development of dual occupancies (detached) or secondary dwellings may occur on RU1, RU2 RU4, and R5 zones land in the coastal zone however all potential impacts to coastal zone areas would be assessed through the development assessment process.
	Affordable Rental Housing	To provide a consistent planning regime for the provision of affordable rental housing and facilitate the effective delivery of affordable housing	Consistent. The planning proposal does not seek to amend the application of the Affordable Rental Housing SEPP in the RU1, RU2, RU4 or R5 zones. The planning proposal has the potential to increase the amount of rental housing within the Kempsey LGA.
	Building Sustainability Index: BASIX 2004	The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State	Consistent. The planning proposal does not seek to amend the application of the BASIX SEPP in the RU1, RU2, RU4 or R5 zones.
	Exempt and Complying Development Codes 2008	Seeks to provide streamlined assessment process for development that complies with specified development standards.	Consistent. The planning proposal does not seek to amend the application of the Exempt and Complying Development Codes SEPP in the RU1, RU2, RU or R5 zones.
	Housing for Seniors or People with a Disability 2004	Seeks to encourage the provision of housing to meet the needs of seniors or people with a disability.	Consistent. The planning proposal does not seek to amend the application of the SEPP Housing for Seniors or People with a Disability in the RU1, RU2, RU4 or R5 zones.
	Infrastructure 2007	The aim of this policy is to facilitate the effective delivery of infrastructure across the State. Specifies exempt and complying development controls to apply to the range of development types listed in the SEPP.	Consistent. The planning proposal does not seek to amend the application of the Infrastructure SEPP in the RU1, RU2, RU4 or R5 zones.
	Major Development 2005	Aims to facilitate the development or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State. Also to facilitate service delivery outcomes for a range of public services.	Consistent. The planning proposal does not seek to amend the application of the Major Development SEPP in the RU1, RU2, RU4 or R5 zones.

	Mining, Petroleum and Extractive Industries 2007	Seeks to provide for the proper management and development of mineral, petroleum and extractive material resources	Consistent. The planning proposal does not seek to amend the application of the Mining, Petroleum and Extractive Industries SEPP in the RU1, RU2, RU4 or R5 zones.
	Rural Lands 2008	Seeks to facilitate the orderly and economic use and development of rural lands for rural and related purposes	Consistent. The planning proposal is for rural land (in the KLEP 2013 RU1, RU2 or RU5 zones). SEPP Rural Lands requires that potential land use conflicts and any proposed mitigation measures be considered in the assessment of a development for subdivision or the erection of a dwelling on land in a rural zone, a rural residential zone or an environment protection zone. This planning proposal does not seek to change the above matters for consideration. These would be considered as part of the development assessment process for any proposed dual occupancy (detached) in the RU1, RU2, RU4 or R5 zones.
	State and Regional Development 2011	Aims to identify State significant development and State significant infrastructure. Also to confer functions on joint regional planning panels to determine development applications.	Consistent. The planning proposal does not seek to amend the application of the SEPP State and Regional Development in the RU1, RU2, RU4, or R5 zones.

Appendix C

Consistency with Section 117 Directions

Direction	Objectives	Application	Consistency
1. Employment and Resources			
1.1 Business and Industrial Zones Issued 1 July 2009	- To encourage employment growth in suitable locations - To protect employment land in business and industrial zones, and support the viability of identified strategic centres.	Applies when a planning proposal is prepared that affects land within an existing or proposed business or industrial zone (includes alteration of boundary of any existing business or industrial zone)	Not applicable. The planning proposal is not for land in a business or industrial zone.
1.2 Rural Zones Issued 1 July 2009	To protect the agricultural production value of rural land.	Applies when a planning proposal is prepared that affects land within an existing or proposal rural zone (includes alteration of any existing rural zone boundary)	Consistent. This planning proposal will not alter the zoning of any rural land. Dual occupancy (attached) development is already permitted in the RU1, RU2 RU4 and R5 zones. Permitting detached dual occupancies and secondary dwellings will allow the two dwellings to be located away from each other (within 100m) on the same property. Therefore, the proposal will not result in a net increase in the density permitted in these zones.
1.3 Mining, Petroleum Production and Extractive Industries Issued 1 July 2009	To ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	Applies when planning proposal is prepared that would prohibit or restrict the mining or potential development of coal, other minerals, petroleum production or obtaining extractive minerals of State or regional significance permitting incompatible land use.	Consistent. The planning proposal will not prohibit or restrict the mining or future extraction of State or regionally significant coal, other minerals, petroleum and extractive materials.

1.4 Oyster Aquaculture Issued 1 July 2009	To protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.	Applies to Priority Oyster Aquaculture Areas as identified in the NSW Oyster Industry Sustainable Aquaculture Strategy (2006)	Not applicable. The planning proposal is not for land located in a priority Oyster Aquaculture Area as identified in the <i>NSW Oyster Industry Sustainable Aquaculture Strategy Second Edition</i> (NSW Department of Primary Industries, 2014).
1.5 Rural Lands Issued 1 July 2009	To protect the agricultural production value of rural land and facilitate the orderly and economic development of rural land.	Applies to all planning proposals to which State Environmental Planning Policy (Rural Lands) 2008 applies	Consistent. The Planning Proposal is not inconsistent with the Rural Planning Principles contained in Clause 7 of SEPP Rural Lands. This Planning Proposal is not intended to impact the use of agricultural land or create land use conflicts. The proposed amendment would require the two dwellings to be 'clustered' within 100m of each other therefore minimising the environmental, social and economic impacts of any detached dual occupancy or secondary dwelling development. The proposed amendment would facilitate economic development of rural land by allowing additional family members or staff to live on the property. This type of development also has the potential to provide an additional source of income to rural landowners (through rent) as well as add to the rental stock within the area.
2. Environment and Heritage			
2.1 Environment Protection Zones Issued 1 July 2009	To protect and conserve environmentally sensitive areas.	Applies when a planning proposal is prepared.	Consistent. The planning proposal will not result in impacts to environmentally sensitive areas.
2.2 Coastal protection Issued 1 July 2009	To implement the principles of the NSW Coastal Policy.	Applies to the Coastal Zone as defined in the Coastal Protection Act 1979.	Consistent. Some land affected by this planning proposal is located within the coastal zone. This planning proposal is consistent with the principles of the NSW Coastal Policy as the visual impacts of any proposed dual occupancy (detached) or secondary dwelling development would be assessed through the development assessment process.

2.3 Heritage Conservation Issued 1 July 2009	To conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	To conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Consistent. KLEP 2013 contains provisions that are consistent with this Direction. This Planning Proposal does not seek to change those provisions or alter how they apply to any future development applications.
2.4 Recreation Vehicle Areas Issued 1 July 2009	To protect sensitive land or land with Significant conservation values from adverse impacts from recreation vehicles.	Limits the development of land for the purpose of a recreational vehicle area.	Not applicable. The planning proposal does not relate to development of land for the purpose of a recreational vehicle area.
3. Housing, Infrastructure and Urban Development			
3.1 Residential Zones Issued 1 July 2009	- To encourage a variety and choice of housing types to provide for existing and future housing needs - To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and - To minimise the impact of residential development on the environment and resource lands.	Applies when a planning proposal affects land within an existing or proposed residential zone (including the alteration of any existing zone boundary) or any other zone in which significant residential development is permitted or proposed to be permitted.	Not applicable. The planning proposal does not relate to land within an existing or proposed residential zone.

3.2 Caravan Parks and Manufactured Home Estates Issued 1 July 2009	• To provide for a variety of housing • types and opportunities for caravan parks and manufactured home estates	Applies when a planning proposal is prepared. Does not apply to Crown land reserved or dedicated for any purposes under the Crown Lands Act 1989 (except Crown land reserved for accommodation purposes) or land dedicated or reserved under the NP&W Act 1974.	Not applicable. The planning proposal does not relate to any existing or proposed caravan parks or manufactured home estates.
3.3 Home Occupations Issued 1 July 2009	• To encourage the carrying out of low-impact small businesses in dwelling houses.	Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.	Not applicable. The planning proposal does not relate to operation of small businesses in dwelling houses.
3.4 Integrating Land Use and Transport Issued 1 July 2009	• To ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts: • improve access to housing, jobs and services by walking, cycling and public transport, • increase transport choice and reduce travel demand and reducing dependence on cars, • reduce travel demand including distances travelled, especially by car, • support the efficient and viable operation of public transport services, and	Applies to planning proposals that create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.	Not applicable. The planning proposal will not result in changes to access, transport, car travel, public transport or the movement of freight.

	• Provide for the efficient movement of freight.		
3.5 Development Near Licensed Aerodromes Issued 1 July 2009	• To ensure the effective and safe operation of aerodromes • To ensure that the operation of aerodromes is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity. • To ensure development for residential purposes or human occupation incorporates appropriate mitigation measures	Applies to a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.	Consistent. This Planning Proposal does affect land near the Kempsey Airport. Whilst it would create the opportunity for new dwellings to be located on rural land near the airport, any potential for impacts or land use conflict would be considered as part of the development assessment process.
3.6 Shooting Ranges Issued 16 February 2011	• To maintain appropriate levels of public safety and amenity and reduce land use conflict when rezoning land adjacent to an existing shooting range,	Applies to a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/or adjoining an existing shooting range.	Inconsistent but of Minor Significance. This Planning Proposal does affect land near the both the Kempsey Clay Target Club site (191 Armidale Road) and the Macleay Valley Regional Shooting Complex (Rifle Range Road). The Planning Proposal would create the opportunity for new dwellings to be located on rural land near both of these facilities, any potential for impacts or land use conflict would be assessed as part of the development assessment process. As such the inconsistency is suggested to be of Minor Significance.

4. Hazard and Risk			
4.1 Acid Sulfate Soils Issued 1 July 2009	To avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	Applies to planning proposal on land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.	Consistent. There are areas of land within the RU1, RU2, RU4 and R5 zones in the Kempsey LGA that are affected by acid sulphate soils (ASS). 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 by ASS. Any impacts to ASS would be considered in accordance with Clause 7.1 of KLEP 2013.
4. 2 Mine Subsidence and Unstable Land Issued 1 July 2009	To prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	Applies to planning proposal on land within a mine subsidence district or that has been identified as unstable in a study, strategy or other assessment	Not applicable. The planning proposal does not relate to land within a mine subsidence district or that has been identified as unstable in a study, strategy or other assessment.
4.3 Flood Prone Land Issued 1 July 2009	- To ensure that development of flood prone land is consistent with the <i>NSW Government's Flood Prone Land Policy</i> and the principles of the <i>Floodplain Development Manual</i> 2005; and - To ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.	Applies to a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	Consistent. This Planning Proposal does affect flood prone land within the LGA. Any application for detached dual occupancy or secondary dwelling development would require development consideration in accordance with Clause 7.3 of KLEP 2013. Attached dual occupancies are already permitted in the RU1, RU2, RU4 and R5 zones and therefore the proposal will not result in a net increase in demand for rescue services in times of flood.

4.4 Planning for Bushfire Protection Issued 1 July 2009	To protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas and encourage sound management of bush fire prone areas.	Applies when Council prepares draft LEP that affects, or is in proximity to land mapped as bushfire prone land.	Inconsistent but of minor significance. Large areas of land zoned RU1, RU2, RU4 and R5 in the Kempsey LGA are identified as being bushfire prone. This would be considered as part of the development application process for any proposed detached dual occupancy or secondary dwelling.. There has been no consultation as yet with the NSW Rural Fire Service Consultation will be undertaken with the NSW Rural Fire Service regarding this Planning Proposal following the Gateway determination and prior to community consultation (if it is supported by DP&E) Given similar amendments have been supported in other areas in NSW it is likely any concerns the RFS may have can be addressed.
5. Regional planning			
5.1 Implementation of Regional Strategies Issued 1 July 2009	To give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	Applies to: Far North Coast, Lower Hunter, Illawarra, South Coast, Sydney–Canberra Corridor, Central Coast and Mid North Coast	Consistent. This planning proposal is consistent with the Mid North Coast Regional Strategy as it aims to provide additional housing in rural areas whilst minimising environmental impacts. It facilitates positive social and economic impacts through providing housing for family or rural staff as well as an additional income for rural landowners.
5.2 Sydney Drinking Water Catchments Issued 3 March 2011	To protect water quality in the Sydney drinking water catchment.	Applies to; Blue Mountains, Campbelltown, Cooma Monaro, Eurobodalla, Goulburn, Mulwaree, Kiama. Lithgow, Oberon, Palerang, Shoalhaven, Sutherland, Wingecarribee, Wollondilly, Wollongong.	Not applicable. The planning proposal does not relate to land within the Sydney drinking water catchment.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast Issued 1 July 2009	To protect, provide certainty and reduce land use conflict associated with agricultural land	Applies to: Ballina, Byron Shire Council, Kyogle, Lismore City Council, Richmond and Tweed.	Not applicable. Does not apply to the Kempsey LGA.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast Issued 29 November 2009	To manage commercial and retail development along the Pacific Highway.	Applies to council areas on the North Coast that the Pacific Highway traverses between Port Stephens Shire Council and Tweed Shire Council, inclusive.	Consistent. This Planning Proposal does not affect commercial or retail uses along the Pacific Highway.

5.8 Second Sydney Airport: Badgerys Creek Issued 1 July 2009	To avoid incompatible development in the vicinity of any future second Sydney Airport at Badgerys Creek.	Applies to land shown within the boundaries of the proposed Badgerys Creek airport site.	Not applicable. Does not apply to the Kempsey LGA.
6. Local Plan Making			
6.1 Approval and Referral Requirements Issued 1 July 2009	To ensure that LEP provisions encourage the efficient and appropriate assessment of development.	Applies when planning proposal prepared. A planning proposal must minimise or prohibit provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority or the nomination of designated development.	Consistent. The planning proposal does not introduce any additional requirements for concurrence with other Government agencies.
6.2 Reserving of Land for Public Purposes Issued 1 July 2009	To facilitate the provision of public services and facilities by reserving land for public purposes and the removal of reservations of land for public purposes where the land is no longer required for acquisition.	Applies when a planning proposal is prepared. A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority.	Not applicable. The planning proposal does not create or remove any land dedicated for a public purpose.
6.3 Site Specific Provisions Issued 1 July 2009	To discourage unnecessarily restrictive site specific planning controls.	A planning proposal to amend an environmental planning instrument must either: - allow that land use to be carried out in the zone the land is situated on, or - rezone the site to an existing zone that allows that land use without imposing any development standards, or	Not applicable. The Planning Proposal does not contain site specific controls. The controls proposed would apply to all land zoned RU1, RU2, Ru4 and R5.

		allow that land use on the relevant land without imposing any development standards in addition to those already contained in the principal environmental planning instrument being amended.	
7. Metropolitan planning			
7.1 Implementation of the Metropolitan Plan for Sydney 2036 Issued 1 February 2011	To give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036.	Does not apply to the Kempsey local government area.	Not applicable. The planning proposal does not relate to land identified in the Metropolitan Plan for Sydney 2036.