

LISMORE CITY COUNCIL

PLANNING PROPOSAL

**DETACHED DUAL OCCUPANCY IN ZONE
RU1 PRIMARY PRODUCTION**

9 July, 2013

Report

Subject	Planning Proposal to Amend Lismore LEP 2012 to Permit detached Dual Occupancy in Rural Areas
TRIM Record No	BP13/503:EF13/132
Prepared by	Strategic Planning Coordinator - Integrated Planning
Reason	To obtain a Council resolution to forward a planning proposal to permit detached dual occupancy in rural areas to the Minister of Planning and Infrastructure for a Gateway Determination.
Community Strategic Plan Link	Provide Greater Housing Choices

Overview of Report

At its Ordinary meeting of 12 March 2013, Council resolved to prepare a Planning Proposal that permits:

1. Boundary adjustments to occur with resultant lots being less than 90% of the minimum area of the zone;
2. Detached dual occupancies in rural areas, subject to a Councillor Briefing being held on this matter.

Item 1 of the resolution was addressed in a report to the June 2013 Ordinary Council meeting.

This report provides the Planning Proposal for the second item above. A Councillor Briefing was held on 4 June 2013 and this report reflects the discussion and recommendations made at the briefing.

This report recommends that Council forward to the Department of Planning and Infrastructure a planning proposal to amend the Lismore Local Environmental Plan (LEP) 2012 to permit with Council consent and subject to specified criteria, detached dual occupancies in the RU1 Primary Production zone. To limit the extent and impact of housing in the Primary Production zone, it is further recommended that **'rural workers dwellings' become a prohibited use in the RU1 Primary Production zone.**

Background

The resolution to prepare the planning proposal arose as a result of community feedback received at the Place Based Forums that occurred from October to December 2012. These forums were part of the community engagement program for Imagine Lismore and the first step in the preparation of a new Growth Management Strategy for Lismore. Many people who attended these forums commented that Council should allow greater flexibility for land owners to build another dwelling on rural properties, to allow farmers and others to "age in place" by providing social, financial and physical support.

This issue was also raised during the consultation for the Housing Strategy and the Action Plan in the Lismore Housing Strategy 2012 recommends reviewing and amending the LEP to (among other matters) allow detached dual occupancy on rural properties.

The Council resolution refers to "rural areas"; in terms of the Lismore LEP 2012 this is taken to mean land in the RU1 Primary Production zone, as the RU2 Rural Landscape zone only applies in the high flood risk areas in North, South and East Lismore that were formerly in the 1(r) Riverlands zone or the 2(f) Residential (Flood Liable) zone, and dwellings are prohibited in the RU3 Forestry zone.

The other main zones in the rural areas are the RU5 Village zone and the R5 Large Lot Residential zone. In the Village zone, a wide range of dwellings are permitted with consent, including dual occupancy (attached and detached), secondary dwellings, residential flat buildings and seniors housing. In the Large Lot Residential zone, dwelling houses and dual occupancies (attached and detached) are permitted with consent.

Dwellings permitted in the RU1 Primary Production zone

In the RU1 Primary Production zone, LEP 2012 permits with consent, dwelling houses, dual occupancy (attached), rural worker's dwellings and, in defined areas (and on lots of at least 10 hectares), rural land sharing communities.

Dual occupancy (attached)

The LEP defines dual occupancy (attached) as, *'2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling'*.

Chapter 1 of Part A of the Lismore Development Control Plan further refines the definition of 'attached' to mean, *'attached or connected by a common wall, a path with an all-weather surface or a roof structure. The maximum distance between dwellings is to be six (6) metres. A roof structure connection between the dwellings may include a carport, covered walkway, or breezeway or other building. Such a dual occupancy shall give the impression of a single dwelling house, unified by similar materials, colours, textures, massing and roof pitches.'*

A review of Council's records for approval of dual occupancy development shows that only five (5) attached dual occupancies have been approved in the rural zones since 2008, and one of these was a replacement of an existing approved dual occupancy.

Dual occupancy (detached)

Dual occupancy (detached) is defined as *'2 detached dwellings on one lot of land, but does not include a secondary dwelling'*.

It is important to note that dual occupancy is *'on one lot of land'* and this planning proposal does not endorse subsequent subdivision of land on which detached dual occupancy may be approved.

Detached dual occupancy is currently a prohibited use in the RU1 zone in the Lismore LEP 2012, as it was in LEP 2000. This prohibition related to a clause in the North Coast Regional Environmental Plan (REP) that restricted dual occupancy on rural land to attached dwellings only. With the making of the LEP 2012, the REP no longer applies, which means it is possible to pursue an amendment of the LEP.

The objective of the REP in relation to rural housing was to, *'ensure that any opportunities for rural housing are available only as part of a planned strategy for rural living areas'*. Although the REP no longer applies, considering opportunities for rural housing as part of a planned strategy is good planning practice, as it allows Council and the community to fully explore and debate the implications of increasing the amount of housing in rural areas, where it should occur and under what circumstances.

This planning proposal is timely as it coincides with the preparation of the new Draft Growth Management Strategy and the feedback anticipated on the Discussion Paper. It is also consistent with the Action Plan in the Lismore Housing Strategy 2012, which included an action to *'review and amend the LEP to allow detached dual occupancies on rural properties'*.

Implications

One of the key aims of increasing rural housing options is to provide support for farmers. However, there are a significant number of properties in the RU1 zone that are not used for farming. Anecdotal evidence, including advice from development assessment staff indicates that detached dual occupancy could

become a popular housing option, not just for farmers but other rural residents who are seeking additional income and social and physical support.

It is important to consider the potential implications of this planning proposal and the table below presents advantages and disadvantages of making detached dual occupancy permitted.

Table 1: Implications of Permitting an Increase in Rural Housing Options

Advantages	Disadvantages
Additional dwellings can allow farmers and others approaching or at retirement age to remain on their farm/rural land. This occurs through physical (workers), social and financial support.	Increase dispersed rural settlement. This is expected to occur gradually as subdivision of the second dwelling is not supported, which could reduce the appeal of this form of housing.
Potential to legitimise unapproved dwellings and structures and receive financial contributions from such buildings that may otherwise be occupied illegally. Section 94 contributions for the four new attached dual occupancies approved since 2008 range from \$4,957 in Wyrallah to \$6,594 in Coffee Camp.	Potential increase in land use conflict, which can impact adversely on existing farming operations. The potential for conflict can be mitigated to some extent by requiring dwellings to have the same vehicle access from a public road and to be within a prescribed radius of each other.
Increasing the number of residents in rural areas can provide increased support for rural halls and schools.	Potential fragmentation and alienation of land from farming. This can be minimised through the criteria as discussed above. The inability to subdivide the dwellings will also assist.
Providing for an additional housing option on existing rural land may reduce the need to subdivide larger allotments for new rural residential estates.	As with any form of dispersed settlement, there is the potential for increased vehicle traffic especially if employment is not available in the immediate area. Not only will this increase the cumulative impact on rural roads but it raises questions about long term environmental sustainability, for example, in increased vehicle emissions. Section 94 contributions provide some financial response; however, they cannot address the longer term maintenance impacts.
	Impact on rural character. An increase in dispersed dwellings will impact on the rural landscape. This can be managed to some extent through the development assessment process but there will still be an impact over time.

Before discussing the detail of the planning proposal, it is worth reviewing the definition of rural workers' dwellings, under what circumstances they are permitted and whether it is necessary to retain them as a housing option if detached dual occupancy becomes a permitted use.

Rural worker's 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.*

Clause 4.2C of LEP 2012 provides criteria for the approval of rural workers' dwellings in the RU1 zone as follows:

- (1) *The objective of this clause is to ensure the provision of adequate accommodation for employees of existing agricultural or rural industries.*
- (2) *This clause applies to land in Zone RU1 Primary Production.*
- (3) *Development consent must not be granted to the erection of a rural worker's dwelling on land to which this clause applies, unless the consent authority is satisfied that:*
 - (a) *the development will be on the same lot as an existing lawfully erected dwelling house, and*
 - (b) *the development will not impair the use of the land for agricultural or rural industries, and*
 - (c) *the agricultural or rural industry being carried out on the land has a demonstrated economic capacity to support the ongoing employment of rural workers, and*
 - (d) *the development is necessary considering the nature of the agricultural or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land, and*
 - (e) *the total number of dwellings on the land will not exceed:*
 - (i) *if the minimum lot size shown for the land on the Lot Size Map is 20 hectares—one dwelling for every 20 hectares of land, or*
 - (ii) *if the minimum lot size shown for the land on the Lot Size Map is 40 hectares—one dwelling for every 40 hectares of land.*

These criteria are hard to satisfy in Lismore, particularly sub-clause (d), as the nature of most agricultural and rural industry land uses does not necessitate workers living on the farm. Therefore, very few rural workers' dwellings have been approved in the Lismore LGA. It is unlikely that this will change. Permitting detached dual occupancy in the RU1 zone would make this land use redundant as it would place no restriction on who could occupy the second dwelling.

Content of Planning Proposal

It is proposed that the land use table for the RU1 zone is amended to:

- permit dual occupancy (detached) in the RU1 Primary Production zone; and
- prohibit rural workers' dwellings.

In addition, a new clause is proposed that specifies the criteria for consideration of approval of a detached dual occupancy. Such a clause has merit in the RU1 zone to manage the location and impact of additional dwellings on any farming operations existing on the land on which the dual occupancy is proposed and on adjoining farms or rural industries.

The clause is proposed to include similar criteria to those nominated in the comments to the Notice of Motion moved at the March 2013 Council meeting. These criteria apply to detached dual occupancy in the R5 Large Lot Residential zone as follows:

- (a) *each dwelling will use the same vehicular access from a public road, and*
- (b) *each dwelling will be situated wholly within a radius of 80 metres of each other, and*
- (c) *the land is physically suitable for the erection of the dwellings, and*
- (d) *the land is capable of accommodating the onsite disposal and management of sewage for the development.*

Two (2) additional criteria to those listed above are recommended to provide that the additional dwelling will not impair the use of land for agricultural or rural industries and will not detract from the scenic amenity and character of the rural environment.

Distance Between Dwellings

At a recent Rural Contact Forum at The Channon (20 May 2013), an observation was made that requiring the second dwelling to be located within an 80 metre radius would not always be achievable due to topography. At the Councillor Briefing on 4 June 2013, similar concerns were raised by some Councillors and a request was made at the briefing that consideration be given to extending this radius.

The concerns about specifying how far the second dwelling is to be located from the first are acknowledged. It can be difficult to apply numerical standards as there are often exceptions to the standard but the development can still be acceptable in terms of satisfying the objectives for considering the development. In this instance, it is important to remember that the objectives are not just to provide additional accommodation for rural families and workers but also to ensure that such accommodation does not conflict with, or affect the viability of, existing or potential agriculture and rural industries.

Specifying a distance will ensure the dwellings are clustered, which will assist to minimise land use conflict and impact on the rural landscape and character, which is highly valued by the community. To distinguish between the R5 zone and the RU1 zone, it is suggested that the criterion specify that each dwelling is located within 100 metres of each other. This is a useful starting point for consideration of a detached dual occupancy and as it would be a development standard, it can be varied under clause 4.6 of the LEP where the applicant demonstrates:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Council also has to be satisfied, *"that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out"*.

If the Department gives a Gateway determination to proceed with the planning proposal, the standard will be subject to public consultation and changes can be made in light of comments from the community.

Ability to Levy Additional Rate

At the 4 June 2013 briefing, a question arose about Council's ability to impose additional general rates for an additional dwelling.

As the rating system is based on broad localities described within each rate category and a property's dominant use, it is not possible to use how much development is located on a parcel of land to generate additional general rates.

Planning Proposal

A Planning Proposal is required to be endorsed by Council prior to being sent to the Minister for Planning and Infrastructure for a Gateway Determination. Council is required to explain and justify the proposal to the Minister under Parts 1-5 below. These are replicated in the Planning Proposal attached to this report:

Part 1 Objectives and intended outcomes

The objectives of this planning proposal are to:

1. Provide an additional form of housing for farmers and other landowners in the RU1 Primary Production zone.
2. Enable financial, physical and social support for farmers through an additional housing option.
3. Limit the impact of additional dwellings in the RU1 Primary Production zone on agricultural resources, farming operations, landscape amenity and Council roads.

Part 2 Explanation of provisions

The objectives of the LEP amendment will be achieved by:

1. Amending the Land Use Table for the RU1 Primary Production zone to allow *dual occupancy (detached)* as a use that is permitted with consent.
2. Amending the Land Use Table for the RU1 Primary Production zone to prohibit *rural workers dwellings*.

3. Inserting the following provision in Part 4 of the LEP:

Clause xx Erection of dual occupancy (detached) in Zone RU1

- (1) *The objectives of this clause are:*
 - (a) *to provide alternate accommodation for rural families and workers on a property,*
 - (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.*
- (2) *This clause applies to land in Zone RU1 Primary Production.*
- (3) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development will not impair the use of land for agricultural or rural industries, and*
 - (b) *each dwelling will use the same vehicular access from a public road, and*
 - (c) *each dwelling will be situated within 100 metres of each other, and*
 - (d) *the land is physically suitable for the erection of the dwellings, and*
 - (e) *the land is capable of accommodating the onsite disposal and management of sewage for both dwellings, and*
 - (f) *the development will not detract from the scenic amenity and character of the rural environment.*

4. Deleting clause 4.2C Erection of workers' dwellings in Zone RU1.

Part 3 Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is a result of community feedback received during the preparation of the Lismore Housing Strategy 2012, the Draft Community Strategic Plan and Phase 1 of the Growth Management Strategy. Action 7 of the Action Plan for the Lismore Housing Strategy 2012 is to review and amend the LEP to, among other matters, allow detached dual occupancy on rural properties.

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

Amending the Lismore Local Environmental Plan 2012 to permit dual occupancy (detached) in the RU1 Primary Production zone is the only way to achieve the objectives of the planning proposal.

Section B – Relationship to Strategic Planning Framework

3. Is the Planning Proposal consistent with the objectives and actions contained within the Far North Coast Regional Strategy?

The planning proposal is consistent with the objectives and actions contained within the Far North Coast Regional Strategy (FNCRS). In particular, it is in accordance with the Regional Strategy's settlement network and the actions related to Settlement and Housing and Environment and Natural Resources. The proposal specifically responds to the actions below:

- *Councils will plan for a range of housing types of appropriate densities, location and suitability that are capable of adapting and responding to the ageing of the population.*
- *Local environmental plans will:*
 - *include minimum subdivision standards for rural and environment protection zones;*
 - *include provisions to limit dwellings in the rural and environmental zones;*
 - *not include provisions to permit concessional allotments.*

4. Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The planning proposal is consistent with Council's current Community Strategic Plan, which seeks to increase housing choice, and the community engagement undertaken in the preparation of the new CSP for Lismore. The Proposal is also consistent with the Lismore Housing Strategy 2012.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The planning proposal is consistent with the applicable State Environmental Planning Policies (SEPPs). In particular the proposal is consistent with the Rural Planning Principles of SEPP (Rural Lands) 2008. Refer to attachment 1 for the SEPP compliance table.

6. Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

The planning proposal is consistent with the applicable section 117 Ministerial Directions. Refer to attachment 1 for Section 117 Ministerial Directions compliance table.

Section C – Environmental, social and economic impact

7. 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 no land on the Critical Habitat Register within the Lismore Local Government Area. It is not expected that the proposal will result in any adverse effect on threatened species, populations or ecological communities or their habitats. Any potential impact on these habitats and communities can be addressed at the time of any development application for a dual occupancy.

8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The planning proposal may result in an impact on rural character over time. The proposed provision for insertion in the LEP includes a criterion that allows consideration to be given to this issue at the time the development application is submitted. Other environmental impacts, such as managing on-site effluent disposal, can be managed at the development assessment stage.

9. How has the Planning Proposal adequately addressed any social and economic effects?

The planning proposal will allow an additional choice of dwelling type to rural land owners, which has the potential to provide increased social, financial and physical support for residents of rural areas as they age. It also allows an aging population to support family members.

Section D – State and Commonwealth interests

10. Is there adequate public infrastructure for the Planning Proposal?

Section 94 contributions will be applicable to development applications for detached dual occupancy. These will be applied to rural road maintenance and services as provided in Council's Contributions Plan.

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

The following table provides a summary of the relevant public authorities, which in the opinion of Council, should be consulted in accordance with the Gateway determination.

Public authority/stakeholder	Issue requiring comment
NSW Rural Fire Service	Section 117 of the <i>Environmental Planning & Assessment Act 1979</i> , Ministerial Direction 4.4 to consult with the Commissioner of the NSW Rural Fire Service.
Department of Primary Industries	Impact of rural housing on farming and rural industries and their ability to grow.

The proposed agency consultation will be confirmed with the Gateway determination. The outcomes of the consultation will be reported back to Council following public consultation.

Part 4 Mapping

The planning proposal does not involve amendments to the Lismore LEP 2012 maps.

Part 5 Community Consultation

Council will commence community consultation in accordance with the Gateway Determination. For the purposes of public notification, the planning proposal is not considered to be low impact as outlined in the Department of Planning and Infrastructure's, *A guide to preparing local environmental plans*, and a 28 day public exhibition period is recommended.

Notification of the exhibited planning proposal will include:

- a newspaper advertisement that circulates in the Lismore LGA, which is the area affected by the planning proposal;
- the website of Lismore City Council and the Department of Planning and Infrastructure; and
- advertisements in the rural newspapers, Nimbin Goodtimes, Village Journal, Dunoon Gazette, Clunes Clues and Terania Times.

Exhibition material:

- the planning proposal, in the form approved for community consultation by the Director General of the Department of Planning and Infrastructure
- the Gateway determination.

Part 6 Project Timeline

The proposed timeline for the completion of the planning proposal is as follows:

Estimated completion	Plan making step
July 2013	Report planning proposal to Council
July 2013	Gateway determination issued by Department of Planning and infrastructure
August – September 2013	Public exhibition of planning proposal Government agency consultation
October 2013	Analysis of public submissions Preparation of Council report
November 2013	Public submissions report to Council
December 2013	Submission of endorsed LEP to DP&I for finalisation

Sustainability Assessment

Sustainable Economic Growth and Development

The planning proposal to allow dual occupancy (detached) in the RU1 zone will have positive economic impacts on farmers and other rural land owners.

Social Inclusion and Participation

Increased flexibility in relation to housing will enable farmers to remain on their land for a longer period after retirement. This limits social dislocation and allows people to remain in their local community as long as possible.

Protect, Conserve and Enhance the Environment and Biodiversity

The planning proposal will not have an adverse impact on the natural environment and biodiversity. The impact of individual applications for dual occupancy can be considered at the time any application is made.

Best-Practice Corporate Governance

The planning proposal demonstrates Council's commitment to responding to the housing needs of the community. These were expressed through the consultation for the Lismore Housing Strategy 2012 and this proposal allows one of the adopted actions to be implemented, which is in line with best practice corporate governance.

Comments

Finance

Not required.

Other staff comments

Development and Compliance branch staff were consulted in the preparation of the planning proposal.

LEP delegations

Council resolved at its Ordinary meeting of 11 December 2012 to accept the delegations that will enable Council to process the final stages of a planning proposal as outlined in Planning Circular PS12-006. Council subsequently wrote to the Minister of Planning and Infrastructure accepting the delegations under section 59 of the *Environmental Planning and Assessment Act 1979*.

The delegations only extend to routine LEPs as listed below:

- Section 73A amendments (minor errors and anomalies, amending references to documents etc)
- Council land reclassifications
- some local heritage items
- spot rezonings consistent with endorsed strategies and/or surrounding zones
- mapping alterations
- other matters of local significance as determined by the Gateway.

Council does not have the option to exercise delegations for plan making as the planning proposal is inconsistent with the criteria for routine LEPs.

Public consultation

Council will undertake public consultation in accordance with the Gateway Determination, which will prescribe the duration of the public exhibition period. The planning proposal is not considered to be "low impact" and a 28 day public exhibition period is recommended.

Notification of the exhibited planning proposal will include:

- a newspaper advertisement that circulates in the Lismore LGA, which is the area affected by the planning proposal;
- the website of Lismore City Council and the Department of Planning and Infrastructure; and
- advertisements in the rural newspapers, Nimbin Goodtimes, Village Journal, Dunoon Gazette, Clunes Clues and Terania Times.

Conclusion

The planning proposal to permit dual occupancy (detached) arose as a result of community feedback received at the Place Based Forums that occurred from October to December 2012. This issue was also raised during the consultation for the Lismore Housing Strategy 2012.

A Council briefing on this proposal was held on 4 June 2013 and this report reflects the discussion that occurred at the briefing. With respect to the specification of a distance between the two (2) dwellings in the LEP clause, the proposal will be subject to public exhibition and community input, which will allow Council to further consider the issue and amend accordingly (assuming the Department gives a Gateway determination to proceed with the planning proposal).

The planning proposal complies with the relevant State Environmental Planning Policies and Section 117 Ministerial Directions. The proposal is consistent with the objectives and actions of the Far North Coast Regional Strategy.

There is sufficient information to enable Council to support the planning proposal. It is recommended that Council forward to the Department of Planning and Infrastructure a planning proposal to amend the Lismore Local Environmental Plan (LEP) 2012 to permit, with Council consent and subject to specified criteria, detached dual occupancies in the RU1 Primary Production zone.

Attachment/s

1. Detached Dual Occupancy in Rural Areas Planning Proposal and SEPP and Section 117 Directions Compliance Tables

Recommendation

That:

1. Council support the dual occupancy (detached) in rural areas planning proposal as outlined in this report and in Attachment 1.
2. Council forward the subject planning proposal to the Department of Planning and Infrastructure to seek a Gateway Determination.

Lismore City Council Planning Proposal Detached Dual Occupancy in Rural Areas

Introduction

The rationale for the Planning Proposal to amend the Lismore Local Environmental Plan 2012 to permit, with consent, detached dual occupancy in the RU1 Primary Production zone in the Lismore Local Government Area is detailed in the report to the 9 July, 2013 Ordinary Council Meeting of Lismore City Council. The following Parts 1 to 5 explain and justify the Planning Proposal in accordance with the requirements of the NSW Department of Planning and Infrastructure.

Part 1 Objectives and intended outcomes

The objectives of this planning proposal are to:

1. Provide an additional form of housing for farmers and other landowners in the RU1 Primary Production zone.
2. Enable financial, physical and social support for farmers through an additional housing option.
3. Limit the impact of additional dwellings in the RU1 Primary Production zone on agricultural resources, farming operations, landscape amenity and Council roads.

Part 2 Explanation of provisions

The objectives of the LEP amendment will be achieved by:

1. Amending the Land Use Table for Zone RU1 Primary Production to include *dual occupancy (detached)* as a use that is permitted with consent.
2. Amending the Land Use Table for the RU1 Primary Production zone to prohibit *rural workers' dwellings*. This is achieved by deleting "Rural workers' dwellings" from Part 3 of the Land Use Table for Zone RU1 Primary Production
3. Inserting the following provision in Part 4 of the LEP:

Clause xx Erection of dual occupancy (detached) in Zone RU1

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

- (a) *to provide alternate accommodation for rural families and workers on a property,*
- (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.*

(2) *This clause applies to land in Zone RU1 Primary Production.*

(3) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land to which this clause applies unless the consent authority is satisfied that:*

- (a) *the development will not impair the use of land for agricultural or rural industries, and*
- (b) *each dwelling will use the same vehicular access from a public road, and*
- (c) *each dwelling will be situated within 100 metres of each other, and*
- (d) *the land is physically suitable for the erection of the dwellings, and*
- (e) *the land is capable of accommodating the onsite disposal and management of sewage for both dwellings, and*
- (f) *the development will not detract from the scenic amenity and character of the rural environment.*

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Part 3 Justification

Section A – Need for the Planning Proposal

1. *Is the Planning Proposal a result of any strategic study or report?*

The Planning Proposal is a result of community feedback received during the preparation of the Lismore Housing Strategy 2012, the Draft Community Strategic Plan and Phase 1 of the Growth Management Strategy. Action 7 of the Action Plan for the Lismore Housing Strategy 2012 is to review and amend the LEP to, among other matters, allow detached dual occupancy on rural properties.

2. *Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Amending the Lismore Local Environmental Plan 2012 to permit dual occupancy (detached) in the RU1 Primary Production zone is the only way to achieve the objectives of the planning proposal.

Section B – Relationship to Strategic Planning Framework

3. *Is the Planning Proposal consistent with the objectives and actions contained within the Far North Coast Regional Strategy?*

The planning proposal is consistent with the objectives and actions contained within the Far North Coast Regional Strategy (FNCRS). In particular, it is in accordance with the Regional Strategy's settlement network and the actions related to Settlement and Housing and Environment and Natural Resources. The proposal specifically responds to the actions below:

- *Councils will plan for a range of housing types of appropriate densities, location and suitability that are capable of adapting and responding to the ageing of the population.*
- *Local environmental plans will:*
 - *include minimum subdivision standards for rural and environment protection zones;*
 - *include provisions to limit dwellings in the rural and environmental zones;*
 - *not include provisions to permit concessional allotments.*

4. *Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

The planning proposal is consistent with Council's current Community Strategic Plan, which seeks to increase housing choice, and the community engagement undertaken in the preparation of the new CSP for Lismore. The Proposal is also consistent with the Lismore Housing Strategy 2012.

5. *Is the Planning Proposal consistent with applicable State Environmental Planning Policies?*

The planning proposal is consistent with the applicable State Environmental Planning Policies (SEPPs). In particular the proposal is consistent with the Rural Planning Principles of SEPP (Rural Lands) 2008. Refer to the attached SEPP compliance table.

6. *Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?*

The planning proposal is consistent with the applicable section 117 Ministerial Directions. Refer to the attached Section 117 Ministerial Directions compliance table.

Section C – Environmental, social and economic impact

7. *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 no land on the Critical Habitat Register within the Lismore Local Government Area. It is not expected that the proposal will result in any adverse effect on threatened species, populations or ecological communities or their habitats. Any potential impact on these habitats and communities can be addressed at the time of any development application for a dual occupancy.

8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The planning proposal may result in an impact on rural character over time. The proposed provision for insertion in the LEP includes a criterion that allows consideration to be given to this issue at the time the development application is submitted. Other environmental impacts, such as managing on-site effluent disposal, can be managed at the development assessment stage.

9. How has the Planning Proposal adequately addressed any social and economic effects?

The planning proposal will allow an additional choice of dwelling type to rural land owners, which has the potential to provide increased social, financial and physical support for residents of rural areas as they age. It also allows an aging population to support family members.

Section D – State and Commonwealth interests

10. Is there adequate public infrastructure for the Planning Proposal?

Section 94 contributions will be applicable to development applications for detached dual occupancy. These will be applied to rural road maintenance and services as provided in Council's Contributions Plan.

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

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The proposed agency consultation will be confirmed with the Gateway determination. The outcomes of the consultation will be reported back to Council following public consultation.

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Exhibition material:

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- the Gateway determination.

Part 6 Project Timeline

The proposed timeline for the completion of the planning proposal is as follows:

Estimated completion	Plan making step
July 2013	Report planning proposal to Council
July 2013	Gateway determination issued by Department of Planning and infrastructure
August – September 2013	Public exhibition of planning proposal Government agency consultation
October 2013	Analysis of public submissions Preparation of Council report
November 2013	Public submissions report to Council
December 2013	Submission of endorsed LEP to DP&I for finalisation

Table No. 1 State Environmental Planning Policy compliance table

State Environmental Planning Policy	Requirements	Compliance
SEPP No. 6 – Number of Storeys in a Building	Not applicable	Not applicable
SEPP No 14 – Coastal Wetlands	Not applicable	Not applicable
SEPP No. 21 – Caravan Parks	Not applicable	Not applicable
SEPP No. 22 – Shops and Commercial Premises	Not applicable	Not applicable
SEPP No. 26 – Littoral Rainforests	Not applicable	Not applicable
SEPP No. 30 – Intensive Agriculture	Not applicable	Not applicable
SEPP No. 32 – Urban Consolidation (Redevelopment of Urban Land)	Not applicable	Not applicable
SEPP No. 33 – Hazardous and Offensive Development	Not applicable	Not applicable
SEPP No. 36 – Manufactured Home Estates	Not applicable	Not applicable
SEPP 44 – Koala Habitat Protection	3 Aims, objectives etc Aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline: (a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and (b) by encouraging the identification of areas of core koala habitat, and (c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.	Consistent. Impact on any core koala habitat can be determined at the time of any development application for a dual occupancy (detached).
SEPP No. 50 – Canal Estate Development	Not applicable	Not applicable
SEPP No. 52 – Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable	Not applicable
SEPP 55 – Remediation of Land	6 Contamination and remediation to be considered in zoning or rezoning proposal. 7 Contamination and remediation to be considered in determining development application	The planning proposal is not rezoning any land. Clause 7 will be addressed at the development application stage for any dual occupancy.
SEPP No. 62 – Sustainable Aquaculture	Not applicable	Not applicable
SEPP No. 64 – Advertising and Signage	Not applicable	Not applicable
SEPP No. 65 – Design Quality of Residential Flat Development	Not applicable	Not applicable

Detached Dual Occupancy in Rural Areas Planning Proposal and SEPP and Section 117 Directions Compliance Tables

Attachment 1

State Environmental Planning Policy	Requirements	Compliance
SEPP No 70 – Affordable Housing (Revised Schemes)	Not applicable	Not applicable
SEPP No. 71 – Coastal Protection	Not applicable	Not applicable
SEPP (Affordable Rental Housing) 2009	Not applicable	Not applicable
SEPP (Building Sustainability Index: BASIX) 2004	Not applicable	Not applicable
SEPP (Exempt and Complying Development Codes) 2008	Not applicable	Not applicable
SEPP (Housing for Seniors or People with a Disability) 2004	Not applicable	Not applicable
SEPP (Infrastructure) 2007	Not applicable	Not applicable
SEPP (Major Development) 2005	Not applicable	Not applicable
SEPP (Mining, petroleum Production and Extractive Industries) 2007	Not applicable	Not applicable
SEPP (Rural Lands) 2008	Consistency with part 7 Rural Planning Principles: (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas, (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State, (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development, (d) in planning for rural lands, to balance the social, economic and environmental interests of the community, (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land, (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities, (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing, (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.	Consistent with the principles, notably providing opportunities for settlement that contributes to the social and economic welfare of rural communities.
SEPP (SEPP 53 Transitional Provisions) 2011	Not applicable	Not applicable

**Detached Dual Occupancy in Rural Areas Planning Proposal and SEPP and
Section 117 Directions Compliance Tables**

Attachment 1

State Environmental Planning Policy	Requirements	Compliance
SEPP (State and Regional Development) 2011	Not applicable	Not applicable
SEPP (Temporary Structures) 2007	Not applicable	Not applicable
SEPP (Urban Renewal) 2010	Not applicable	Not applicable

Table No. 2 Section 117 Ministerial Directions compliance table

Ministerial Directions	Requirements	Compliance
1. Employment and Resources		
1.1 Business and Industrial Zones	Not applicable	Not applicable
1.2 Rural Zones	This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). What a council must do if this direction applies (4) A draft LEP shall: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	Not applicable. The planning proposal is not rezoning rural land, nor is it increasing the permissible <i>density of land</i>. Dual occupancy (attached) is currently permitted, along with rural workers' dwellings. This proposal is to permit dual occupancy (detached), which simply allows the dwelling to be further away, and to prohibit rural workers' dwellings.
1.3 Mining Petroleum Production and Extractive Industries	Not applicable	Not applicable
1.4 Oyster Aquaculture	Not applicable	Not applicable
1.5 Rural Lands	(3) This direction applies when: (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone. A planning proposal to which clause (a) applies must be consistent with the Rural Planning Principles listed in <i>SEPP (Rural Lands) 2008</i>.	Consistent with the Rural Planning Principles in <i>SEPP (Rural Lands) 2008</i> as outlined in Table 1.
2. Environment and Heritage		
2.1 Environment Protection Zones	Must not reduce protection standards for environmental protection zones.	Not applicable.
2.2 Coastal Protection	Not applicable	Not applicable
2.3 Heritage Conservation	Planning proposal must incorporate provisions for conservation of European and Aboriginal heritage items or places.	Not applicable
2.4 Recreation Vehicle Areas	Not applicable	Not applicable
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	This direction applies when a relevant planning authority prepares a planning proposal that will affect land within: (a) an existing or proposed residential zone	Not applicable.

Ministerial Directions	Requirements	Compliance
	(including the alteration of any existing residential zone boundary), (b) any other zone in which significant residential development is permitted or proposed to be permitted.	
3.2 Caravan Parks and Manufactured Home Estates	This direction applies when a relevant planning authority prepares a planning proposal.	Not applicable
3.3 Home Occupations	This direction applies when a relevant planning authority prepares a planning proposal.	Not applicable
3.4 Integrating Land Use and Transport	Not applicable	Not applicable
3.5 Development Near Licensed Aerodromes	Not applicable	Not applicable
4. Hazard and Risk		
4.1 Acid Sulfate Soils	This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps. (6) A council shall not prepare a draft LEP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the council has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.	Consistent. The planning proposal will not necessarily lead to intensification of land uses proposed on land identified on the Acid Sulfate Soils Planning Maps. Permitting dual occupancy (detached) in the RU1 zone with consent will allow the impacts of any such development on Acid Sulfate Soils to be determined at the time of the application.
4.2 Mine Subsidence and Unstable Land	• Applies to mine subsidence areas • Applies to areas identified as unstable	Consistent. • The land is not within a mine subsidence area. • The proposal does not provide for intensification of land uses in any unstable land.
4.3 Flood Prone Land	A draft LEP shall not contain provisions that apply to the flood planning areas which: (a) permit development in floodway areas, (b) permit development that will result in significant flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.	Consistent.

4.4 Planning for Bushfire Protection	A planning proposal in bush fire prone land: • Is to be referred to the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination prior to community consultation. • Have regard to Planning for Bush Fire Protection 2006. • Restrict inappropriate development from hazardous areas. • Ensure bush fire hazard reduction is not prohibited within the APZ.	Consistent. • Many parts of the Lismore LGA affected by this planning proposal are mapped as bushfire prone land. • This direction requires Council to consult with the Commissioner of the NSW RFS following receipt of a gateway determination and prior to undertaking community consultation under section 57 of the EP&A Act, and take into account any comments so made.
5. Regional Planning		
5.1 Implementation of Regional Strategies	The planning proposal must be consistent with the Far North Coast Regional Strategy.	Consistent. The proposal specifically responds to the actions below: • <i>Councils will plan for a range of housing types of appropriate densities, location and suitability that are capable of adapting and responding to the ageing of the population.</i> • <i>Local environmental plans will:</i> ➢ <i>include minimum subdivision standards for rural and environment protection zones;</i> ➢ <i>include provisions to limit dwellings in the rural and environmental zones;</i> ➢ <i>not include provisions to permit concessional allotments.</i> The planning proposal includes criteria to limit the location and impact of dual occupancy (detached).
5.2 Sydney Drinking Water Catchments	Not applicable	Not applicable
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	• The planning proposal must not rezone land mapped as State or regionally significant farmland under the Northern Rivers Farmland Protection Project.	Not applicable
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable	Not applicable
5.8 Second Sydney Airport: Badgerys Creek	Not applicable	Not applicable

6. Local Plan Making		
6.1 Approval and Referral Requirements	- A planning proposal should not contain provisions requiring concurrence, consultation or referral of a Minister or public authority without approval from the relevant Minister or public authority; and the Director General of DP&I. - Not identify development as designated development unless justified.	Consistent - The planning proposal does not introduce concurrence, consultation or referral requirements. - Not designated development.
6.2 Reserving Land for Public Purposes	A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without approval of the relevant public authority and the Director General of DP&I.	Not applicable
6.3 Site Specific Provisions	A planning proposal to allow a particular land use (residential development) must rezone the site to an existing zone already applying to the LEP that allows the land use, without additional development standards to those already in use in that zone.	Not applicable
7. Metropolitan Planning		
7.1 Implementation of the Metropolitan Strategy	Not applicable	Not applicable

Lismore City Council

Planning Proposal - Detached Dual Occupancy in Zone RU1

ATTACHMENT 1 - INFORMATION CHECKLIST

► STEP 1: REQUIRED FOR ALL PROPOSALS

(under s55(a) - (e) of the EP&A Act)

- Objectives and intended outcome
- Mapping (including current and proposed zones)
- Community consultation (agencies to be consulted)
- Explanation of provisions
- ~~Justification and process for implementation~~ (including compliance assessment against relevant section 117 direction/s)

► STEP 2: MATTERS - CONSIDERED ON A CASE BY CASE BASIS

(Depending on complexity of planning proposal and nature of issues)

PLANNING MATTERS OR ISSUES	To be considered	N/A	PLANNING MATTERS OR ISSUES	To be considered	N/A
Strategic Planning Context			Resources (including drinking water, minerals, oysters, agricultural lands, fisheries, mining)	☐	☒
Demonstrated consistency with relevant Regional Strategy	☒	☐	Sea level rise	☐	☒
Demonstrated consistency with relevant Sub-Regional strategy	☐	☒	Urban Design Considerations		
Demonstrated consistency with or support for the outcomes and actions of relevant DG endorsed local strategy	☐	☒	Existing site plan (buildings vegetation, roads, etc)	☐	☒
Demonstrated consistency with Threshold Sustainability Criteria	☐	☒	Building mass/block diagram study (changes in building height and FSR)	☐	☒
Site Description/Context			Lighting impact	☐	☒
Aerial photographs	☐	☒	Development yield analysis (potential yield of lots, houses, employment generation)	☐	☒
Site photos/photomontage	☐	☒	Economic Considerations		
Traffic and Transport Considerations			Economic impact assessment	☐	☒
Local traffic and transport	☐	☒	Retail centres hierarchy	☐	☒
TMAP	☐	☒	Employment land	☐	☒
Public transport	☐	☒	Social and Cultural Considerations		
Cycle and pedestrian movement	☐	☒	Heritage impact	☐	☒
Environmental Considerations			Aboriginal archaeology	☐	☒
Bushfire hazard	☒	☐	Open space management	☐	☒
Acid Sulphate Soil	☐	☒	European archaeology	☐	☒
Noise impact	☐	☒	Social & cultural impacts	☐	☒
Flora and/or fauna	☐	☒	Stakeholder engagement	☐	☒
Soil stability, erosion, sediment, landslip assessment, and subsidence	☐	☒	Infrastructure Considerations		
Water quality	☐	☒	Infrastructure servicing and potential funding arrangements	☐	☒
Stormwater management	☐	☒	Miscellaneous/Additional Considerations		
Flooding	☐	☒	List any additional studies		
Land/site contamination (SEPP55)	☐	☒			