

REPORTS FROM THE ENVIRONMENT, DEVELOPMENT & INFRASTRUCTURE COMMITTEE



REPORT TO COMMITTEE

Department:	Infrastructure & Regulation
Submitted by:	Manager Town Planning & Regulation
Reference:	2.16.03.09
Subject:	Planning Proposal Boundary Adjustment Clause and Rural Detached Dual Occupancy Dwellings – Division Decision

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK

Objective:	To have the community satisfied with land use control.
Strategy:	Consult with the public on proposed amendments to planning instruments.
Action:	Monitor and review Council's Local Environmental Plan and other strategic and supporting planning documents.

SUMMARY:

The purpose of this report is to recommend that Council seek a Gateway Determination from NSW Planning and Environment (P&E) requesting to place the draft Uralla Local Environmental Plan (Uralla LEP) 2012 Amendment No 4 – **Boundary Adjustments and Detached Dual Occupancy Dwellings for Certain Rural and Environmental Zoned Land** Planning Proposal on public exhibition.

There are two matters pertaining to the Planning Proposal:

1. **Boundary Adjustments**

To include the 'standard' LEP rural and environmental boundary adjustment clause in the Uralla LEP 2012. The boundary adjustment clause provides flexibility for boundary adjustment subdivisions. The proposed clause replaces the variation provisions previously found in the repealed State Environmental Planning Policy (SEPP) 1 Variations to Development Standards

2. **Detached Dual Occupancy Dwellings**

To expand permissible uses within rural and environmental zones to include detached dual occupancies with certain restrictions. The intended outcome is to permit detached dual occupancies within the RU1, RU2, E3 and E4 Zones while ensuring that they remain in close proximity to the primary dwelling, share the same access and remain on the same title.

OFFICER'S RECOMMENDATION:

That the Committee recommends to Council that:

- (1) the Planning Proposal for Boundary Adjustments and Detached Dual Occupancy Dwellings for Certain Rural and Environmental Zoned Land be forwarded to NSW Planning and Environment for a Gateway Determination,

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- (2) the General Manager be given delegated authority to make any minor alterations requested by NSW Planning and Environment; and
- (3) the Planning Proposal is advertised as per the provisions of Section 57 of the *Environmental Planning & Assessment Act, 1979* once a Gateway Determination has been issued.

COMMITTEE'S RECOMMENDATION:

That the Committee recommends to Council that:

- (1) the Planning Proposal for Boundary Adjustments and Detached Dual Occupancy Dwellings for Certain Rural and Environmental Zoned Land be forwarded to NSW Planning and Environment for a Gateway Determination,
- (2) the General Manager be given delegated authority to make any minor alterations requested by NSW Planning and Environment; and
- (3) the Planning Proposal is advertised as per the provisions of Section 57 of the *Environmental Planning & Assessment Act, 1979* once a Gateway Determination has been issued.

BACKGROUND:

Boundary Adjustment Subdivisions

As local Councils produced their (standard instrument) Local Environmental Plans (LEPs), the new LEPs repealed the SEPP 1 Variations to Development Standards for that area. Clause 4.6 of the Standard Instrument LEP replaced the functions of the repealed SEPP, and this clause allows for variations to development standards such as lot size, height and floor space ratio.

One of the functions lacking in Clause 4.6 is the ability to make boundary adjustments for rural and environmental zoned land that is already below the minimum lot size.

Many other regional Councils, including Inverell, Tamworth, Armidale, Moree, Nambucca, and Coffs Harbour have amended their LEPs to include the 'new' boundary adjustment clause or local versions of that clause.

Clause 4.1E from the Armidale Dumaresq Local Environmental Plan 2012 has been reproduced and adapted to suit the zone structure for Uralla as shown in the report below.

Detached Dual Occupancy Dwellings

Certain rural detached dual occupancy dwellings were previously permissible with consent subject to justification under the former Uralla LEP 1988. As Councils made their new (stand instrument) LEPs, they were required to include Dual Occupancies (attached) only in their rural zones.

The need for detached dual occupancy dwellings in rural areas has been identified through the operation of the current ULEP since it came into force in 2012. It is reasonable to allow a degree of separation between rural dwellings, particularly where a dual occupancy is occupied by older members of a farming family who want to remain on the land, but not live in a household directly adjoining that of other family members.

REPORT:

The subject Planning Proposal seeks to amend the Uralla LEP 2012 to include appropriate LEP provisions to enable rural detached dual occupancies and boundary adjustment subdivisions of

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'undersized' rural lots within rural and environmental zoned land. The boundary adjustment clause will also operate in R5 Large Lot Residential zoned land.

A review of surrounding Councils shows that there is a genuine and justifiable need for detached rural dual occupancy dwellings and flexibility when dealing with rural boundary adjustment subdivisions.

Traditional reasons against the use of detached dual occupancies in rural areas have been:

- Raising expectations of future subdivision to separate rural dwellings;
- Impacts from additional road access driveways;
- Loss of agricultural land; and
- Increase in value of agricultural land as a result of built improvements.

These issues will be managed by proposed DCP controls in the ULEP, including:

- Consolidation of separate land parcels so that the primary dwelling and the detached dual occupancy are located within a single lot;
- Access to the primary dwelling and the detached dual occupancy dwelling are to be via a single (existing) access driveway and single point of access location of a public road;
- Justification for the separation distance between the proposed detached dual and the primary dwelling.

The mechanism for amending the LEP and enabling detached dual occupancies is as follows:

- Removing "Dual occupancies (attached)" from the Land Use Table for RU1, RU2 and E3 zoned land as a use that is permitted with consent ; and
- Including "Dual occupancies" in the Land Use Table for RU1, RU2, E3 and E4 zoned land as a use that is permitted with consent.

Boundary adjustment subdivisions resulting in lots below the minimum rural lot size were formerly assessed and determined pursuant to a SEPP 1 variation to Cl.12A of the Uralla LEP 1988. SEPP 1 variations were removed with the implementation of the Standard Instrument LEP. Council's intention in preparing the ULEP 2012 was to complete a best fit transfer of the old LEP into the new format. The proposed provision complies with Council's intent.

Rural boundary adjustments are often necessary for efficient farm management purposes or to facilitate estate planning. The ability for rural land owners to be able to undertake routine boundary adjustments is considered to be a valid and sustainable approach to land management. It allows property owners flexibility when it comes to management of their farms.

The subject Planning Proposal provides a logical additional clause to the Uralla LEP 2012 that has been "tested" in other regional local government areas and addresses a "gap" in the standard instrument LEP template.

The proposed boundary adjustment LEP Provision is:

4.2C Exceptions to minimum subdivision lot size for boundary adjustments

- 1) *The objective of this clause is to permit the boundary between 2 or more lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.*
- 2) *This clause applies to land in the following zones:*
 - a) *Zone RU1 Primary Production,*

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- b) *Zone RU2 Rural Landscape,*
 - c) *Zone R5 Large Lot Residential,*
 - d) *Zone E3 Environmental Management,*
 - e) *Zone E4 Environmental Living.*
- 3) *Despite clause 4.1(3), development consent may be granted to the subdivision of 2 or more adjoining lots, being land to which this clause applies, if the consent authority is satisfied that the subdivision:*
- a) *will not result in an increase in the number of lots, and*
 - b) *will not result in an increase in the number of dwellings on, or dwellings that may be erected on, any of the lots, and*
 - c) *will not adversely impact on the long-term agricultural production potential or environmental values of the lots and the surrounding locality.*
- 4) *In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:*
- a) *the existing uses and approved uses of other land in the vicinity of the subdivision,*
 - b) *whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,*
 - c) *whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),*
 - d) *whether or not the subdivision is likely to be incompatible with a use of land in any adjoining zone,*
 - e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),*
 - f) *whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,*
 - g) *whether or not the subdivision is likely to have an adverse impact on the environmental values or agricultural viability of the land.*
- 5) *This clause does not apply in relation to a subdivision under the Community Land Development Act 1989, the Strata Schemes (Freehold Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986.*

Explanation of each subclause:

1. Explains the objectives of the provisions.
2. Defines which zones to which the proposed provisions apply.
3. Indicates that despite minimum lot size provisions contained in the plan, subdivision of undersized allotments may occur where Council is satisfied that no additional dwelling entitlement would be created and the potential for land use conflicts are not increased.
4. Council must also be satisfied that E3 and E2 zoned land will not be detrimentally impacted by the adjustment.

It is requested that Council resolves to forward the Planning Proposal to NSW Planning and Environment for a Gateway determination and approval to place the Planning Proposal and draft LEP amendment on Public Exhibition.

KEY ISSUES:

- The Planning Proposal involves the inclusion of an additional boundary adjustment clause (provision) in the Uralla Local Environmental Plan 2012.
- The new boundary adjustment provision will enable Council to determine boundary adjustment subdivisions that would previously have required a SEPP 1 variation under the former ULEP 1988.

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- The proposed amendment will enable Dual Occupancies (detached) in the RU1, RU2, E3 and E4 zones.
- The Planning Proposal does not involve any mapping amendments to the Uralla LEP.
- The draft LEP amendment has been drafted from similar LEP provisions already made in other regional Councils' LEPs.

CONCLUSION:

It is recommended that Council seek a Gateway Determination from NSW Planning and Environment (P&E) to place the Planning Proposal on public exhibition. The Planning Proposal is 'low impact,' and it would be expected the gateway Determination will require the Planning proposal to be exhibited for 14 days.

COUNCIL IMPLICATIONS:

1. **Community Engagement/ Communication (per engagement strategy)**
The Planning Proposal will be placed on Public Exhibition as per the Gateway determination.
2. **Policy and Regulation**
Environmental Planning & Assessment Act, 1979
Environmental Planning & Assessment Regulations, 2000
3. **Financial (LTFP)**
Nil
4. **Asset Management (AMS)**
Nil
5. **Workforce (WMS)**
Nil
6. **Legal and Risk Management**
Nil
7. **Performance Measures**
Nil
8. **Project Management**
Nil

Elizabeth Cumming
Manager Town Planning & Regulation

Prepared by staff member:	Manager Town Planning & Regulation
TRIM Reference:	U12/6915
Approved/Reviewed by Manager:	Robert Bell
Department:	Director Infrastructure & Regulation
Attachments:	K. Planning Proposal - Boundary Adjustments and Detached Dual Occupancy Dwellings for Certain Rural and Environmental Zoned Land

Item 7
REF NO: 2.16.03.07
Draft Drought Management Plan
20.3/15 MOVED (Cr Field / Cr Crouch)

That:

Council adopt the draft Drought Management Plan and place on the Council website and advertise in Council's newsletter for public comment for 28 days.

CARRIED

Item 8
REF NO: 2.16.03.08
Planning Proposal: Uralla Flood Planning Map – Division Decision
21.03/15 MOVED (Cr Ward / Cr M Dusting)

That:

1. the Planning Proposal to seek inclusion of the flood planning areas as per the Rocky and Uralla Creeks Study be forwarded to NSW Planning and Environment for a Gateway Determination;
2. the General Manager be given delegated authority to make any minor alterations requested by NSW Planning and Environment; and
3. the Planning Proposal be advertised as per the provisions of Section 57 of the *Environmental Planning & Assessment Act, 1979* once a Gateway Determination has been issued.

For: Crs Pearce, Crouch, K Dusting, M Dusting, Field, Geldof, Strutt, Ward

Against: Nil

Absent: Cr Cooper

CARRIED

Item 9
REF NO: 2.16.03.09
Planning Proposal Boundary Adjustment Clause and Rural Detached Dual Occupancy Dwellings – Division Decision

22.03/15 MOVED (Cr Crouch / Cr Field)

That:

1. the Planning Proposal for Boundary Adjustments and Detached Dual Occupancy Dwellings for Certain Rural and Environmental Zoned Land be forwarded to NSW Planning and Environment for a Gateway Determination,
2. the General Manager be given delegated authority to make any minor alterations requested by NSW Planning and Environment; and
3. the Planning Proposal is advertised as per the provisions of Section 57 of the *Environmental Planning & Assessment Act, 1979* once a Gateway Determination has been issued.

For: Crs Pearce, Crouch, K Dusting, M Dusting, Field, Geldof, Strutt, Ward