

Kyogle LEP 2012 – Detached Dual Occupancy and Secondary Dwelling Provisions

Proposal Title : **Kyogle LEP 2012 – Detached Dual Occupancy and Secondary Dwelling Provisions**

Proposal Summary : **The proposal seeks to amend the Kyogle Local Environmental Plan (LEP) 2012 to:**

- 1. Permit 'detached dual occupancies' with consent in the RU1, RU2, RU4 and R5 zones;**
- 2. Permit 'secondary dwellings' with consent in the RU1, RU2, RU4, R1 and R5 zones; and**
- 3. Permit the total floor area of secondary dwellings to be up to 60% of the total floor area of the principal dwelling.**

PP Number : **PP_2014_KYOGL_001_00**

Dop File No :

14/04282

Proposal Details

Date Planning
Proposal Received : **06-Mar-2014**

LGA covered : **Kyogle**

Region : **Northern**

RPA : **Kyogle Council**

State Electorate : **LISMORE**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **All land zoned for rural and residential purposes**

DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Far North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with :	Yes		
If No, comment :	Planning and Infrastructure's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge.		
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :	The Northern Region has not met with any lobbyists in relation to this proposal, nor has the Northern Region been advised of any meeting between other P&I officers and lobbyists concerning the proposal.		

Supporting notes

Internal Supporting Notes : The Kyogle LEP 2012 currently allows attached dual occupancies and rural workers' dwellings in the rural zones. It is therefore unlikely that permitting secondary dwellings or detached dual occupancies in rural areas will have a significant impact on rural dwelling numbers beyond that currently permissible in the LEP.

It is the agency's position that the provision of detached dual occupancies and secondary dwellings in rural and rural residential areas is a matter of local significance.

External Supporting Notes :

Adequacy Assessment

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

Is a statement of the objectives provided? Yes

Comment : The objectives and intended outcomes of the proposal are provided and adequately expressed. The proposal seeks to amend the provisions of Kyogle LEP 2012 as they apply to secondary dwellings and detached dual occupancies.

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

Is an explanation of provisions provided? Yes

Comment : The planning proposal provides a clear explanation of the provisions to achieve the objectives and intended outcomes. The proposed amendments/provisions to be included in the LEP can be summarised as:

1. Remove 'dual occupancies (attached)' from the land use tables of the RU1, RU2 and RU4 zones;

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2. List 'dual occupancies' as permissible with consent in the land use tables of the RU1, RU2, RU4 and R5 zones;
3. List 'secondary dwellings' as permissible with consent in the land use tables of the RU1, RU2, RU4, R1 & R5 zones;
4. Amend Clause 4.2(A) to remove dual occupancies (attached) and replace with the group term 'dual occupancies'; and
5. Amend Clause 5.4(9) to increase the permitted total floor area of secondary dwellings from 43% to 60% of the total floor area of the principal dwelling.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

3.1 Residential Zones

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

6.1 Approval and Referral Requirements

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

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

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP (Rural Lands) 2008

SEPP (Affordable Rental Housing) 2009

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

In addition to the s117 Directions nominated by the RPA, the following Directions also apply:

2.1 Environmental Protection Zones

2.3 Heritage Conservation

2.4 Recreation Vehicle Areas

3.2 Caravan Parks and Manufactured Home Estates

3.3 Home Occupations

3.4 Integrating Land Use and Transport

6.2 Reserving Land for Public Purposes

6.3 Site Specific Provisions

An assessment of the applicable directions and SEPPs is provided within the 'Assessment' section of this planning team report.

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

If No, explain :

See the 'Assessment' section of this planning team report

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

None of the proposed amendments require modification to any map sheet under Kyogle LEP 2012.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council has indicated a 28 day public exhibition/community consultation period. The proposal will be notified in the local newspaper, in Council's newsletter and on Council's website. This is considered appropriate.

Additional Director General's requirements

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

If Yes, reasons :

Overall adequacy of the proposal

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

If No, comment :

The planning proposal generally satisfies the adequacy criteria by:

- 1. Providing appropriate objectives and intended outcomes;**
- 2. Providing a suitable explanation of the provisions proposed to achieve the outcomes;**
- 3. Providing an adequate justification for the proposal;**
- 4. Outlining a proposed community consultation program including public exhibition;**
- 5. Providing a project timeline which suggests completion within 8 months; and**
- 6. Providing an evaluation for the delegation of plan making functions.**

DELEGATION AUTHORISATION

Kyogle Council has formally accepted plan-making delegations for planning proposals and has requested delegation for this proposal. The Gateway should consider delegating the plan making functions to Council for this proposal.

PROJECT TIMELINE

Council's timeline anticipates the planning proposal will be submitted for legal drafting in October 2014 (approximately 8 months). In addition to finalising the plan, Council has indicated that a Development Control Plan (DCP) amendment will be prepared to provide guidelines for detached dual occupancies and secondary dwellings in rural areas. It is recommended that a 9 month timeframe should be sufficient to complete the plan, and any associated DCP amendment. This does not prevent Council from finalising the plan in a shorter timeframe or prior to the commencement of the DCP.

It is noted that the timeline indicates that the proposal will be submitted to the agency for finalisation, rather than being finalised under Council's delegation. This should be updated prior to exhibition.

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Kyogle LEP 2012 commenced in February 2013. This planning proposal seeks amendment to the Kyogle LEP 2012.

Assessment Criteria

Need for planning
proposal :

DETACHED DUAL OCCUPANCIES & SECONDARY DWELLINGS IN RURAL AREAS

Council has indicated that there is a need to provide alternative affordable housing options in the rural areas. Detached dual occupancies and/or secondary dwellings will also assist landowners looking at farm succession planning by allowing retiring parents and working families to continue to reside on the land, but with a level of separation.

Detached dual occupancies and secondary dwellings are currently prohibited in the rural zones under the Kyogle LEP 2012. Council is therefore seeking to amend the LEP to permit these land uses in the RU1, RU2 and RU4 zones with development consent.

A secondary dwelling is defined under the SI LEP as a self-contained dwelling that is established in conjunction with a principal dwelling. A dual occupancy is defined as two dwellings on one lot of land. Permitting both options in rural areas will promote greater

flexible development and home ownership outcomes in rural areas.

DUAL OCCUPANCIES IN RURAL RESIDENTIAL AREAS

Dual occupancies are permitted in the R1 and R3 zones under the Kyogle LEP 2012 but prohibited in the R5 zone.

Council seeks to permit dual occupancies (both attached and detached) in the R5 zone to ensure a consistent planning approach is applied across all of the rural and residential zones in the LEP.

Dual occupancies in rural residential areas would increase housing opportunity and promote efficient use of existing services and facilities.

SECONDARY DWELLINGS IN THE R1 & R5 ZONES

Council seeks to list secondary dwellings in the R1 and R5 land use zone tables. This is to ensure affordable rental housing opportunities are provided in the residential and rural residential areas of the Kyogle LGA.

Council is aware that secondary dwellings are already permissible in the R1 and R5 zones under State Environmental Planning Policy (Affordable Rental Housing) 2009. Council officers have indicated that this was proposed to ensure secondary dwellings remain permissible under the LEP should there ever be an amendment to the Affordable Rental Housing SEPP.

Whilst the proposal is not inconsistent with the SEPP, the SEPP prevails and also provides provisions for secondary dwellings as complying development in the R1 and R5 zones. Listing 'secondary dwellings' in the R1 and R5 land use tables under the LEP would therefore have no effect. This is a matter to be considered at legal drafting stage and should not impact the Gateway.

ADDITIONAL FLOOR AREA FOR SECONDARY DWELLINGS

Council has indicated that the current 43% floor area limit for secondary dwellings is impractical considering the existing and anticipated future housing stock within the Kyogle LGA. The proposal seeks to increase this maximum total floor area for secondary dwellings to 60% of the principal dwelling size, to provide greater opportunity for desirable affordable housing options. It is noted that floor areas up to 50% of the principal dwelling's size have been applied to other SI LEPs in the Northern Region.

In accordance with Clause 22(2)(b) of the Affordable Rental Housing SEPP the maximum floor area of a secondary dwelling in a residential zone is to be 60m² or the maximum floor area specified under any other applicable environmental planning instrument. Clause 22(4) (b) also stipulates that car parking is not required onsite for secondary dwellings in addition to what has been provided for the principal dwelling.

This entails secondary dwellings could be established in residential areas of the Kyogle LGA that have a floor area of up to 60% of the principal dwelling's floor area and no additional car parking provision. Council officers are aware of these provisions and consider that there will not be any detrimental impact on amenity, traffic and access within residential areas of the LGA.

It is considered that the proposed amendments to the Kyogle LEP as discussed above are the best means of enabling the objectives of the planning proposal.

Consistency with strategic planning framework :

FAR NORTH COAST REGIONAL STRATEGY (FNCRS)

The FNCRS was released in 2007 and identifies the Government's key strategic directions for the Far North Coast.

The proposal is considered to be consistent with the actions outlined under the strategy given that:

- It will promote housing choice, location and affordability; and
- There will be no net increase in dwellings permissible on rural land, given that attached dual occupancies and rural workers' dwellings are already permissible.

KYOGLE LOCAL GROWTH MANAGEMENT STRATEGY

The Kyogle Local Growth Management Strategy 2010 outlines an urban and employment land release program for Kyogle Shire until 2031. It was endorsed by the Director General on 22 June 2010.

A key action under the Strategy is to review local planning controls to encourage more affordable housing outcomes. As discussed above, Council is seeking to permit detached dual occupancies and secondary dwellings in the rural zones to promote affordable housing opportunity and lifestyle choice. This is considered a local matter and not inconsistent with Council's approved Strategy.

STATE ENVIRONMENTAL PLANNING POLICIES

SEPP Rural Lands

The proposal will contribute to the social and economic welfare of rural communities, through increased housing opportunity and affordability and without increasing dwelling permissibility beyond that already allowed under the LEP. The potential to impact on agricultural land and activities however would be addressed through the development application process.

Council has indicated that development guidelines will be prepared through a DCP amendment, to assist in the planning and delivery of dual occupancies and secondary dwellings in rural areas. These guidelines would need to be addressed under a development application and would relate to matters such as land use conflict separation, agricultural and site suitability.

It is noted that clause 6.4 Essential Services of the Kyogle LEP 2012 provides that development consent will not be granted unless it can be demonstrated that a proposed development can be appropriately serviced.

These guidelines and provisions will assist in minimising/managing any potential impact on rural lands and activities.

The proposal is not inconsistent with the Rural Planning Principles under the SEPP.

SEPP (Affordable Rental Housing) 2009

The SEPP provides a consistent planning approach for secondary dwellings throughout the State. The SEPP permits secondary dwellings as affordable housing options in residential zones only.

Permitting secondary dwellings in rural zones is a local matter and not inconsistent with the SEPP. As discussed above, Council has indicated that a DCP will be prepared to guide development outcomes for secondary dwellings in rural areas.

The proposed inclusion of secondary dwellings in the R1 and R5 Land Use Tables of the Kyogle LEP 2012 is not inconsistent with the SEPP, however the provision would have no effect given that the SEPP prevails. This is a matter to be addressed at legal drafting stage.

The proposal is consistent with the provisions of all other applicable SEPPs.

SECTION 117 DIRECTIONS

4.1 Acid Sulfate Soils

The proposal will enable additional development on land which may contain acid sulfate soils. The proposal is inconsistent with this direction as it proposes an intensification of land uses on land identified as containing acid sulfate soils and is not supported by a study assessing the appropriateness of the land. Development of a detached dual occupancy or secondary dwelling is unlikely to have any significant impact on acid sulfate soils. Any development would be subject to Council's acid sulfate provisions under the LEP and any potential impact would be addressed at development application stage. The proposal's inconsistency with this direction can be justified as of minor significance.

4.4 Planning for Bushfire Protection

This direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a Gateway determination has been issued. Until this consultation has occurred the consistency of the proposal with the direction remains unresolved.

The proposal is consistent with all other relevant Section 117 Directions.

Environmental social
economic impacts :

The proposal will have a net community benefit through increased housing opportunity and affordability, particularly for rural workers, their families and the aging population.

Any potential direct impacts on the natural and built environment will be considered through the development application process. The provisions under the Kyogle LEP and DCP will guide development outcomes to minimise potential impacts.

Assessment Process

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

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

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

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

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

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons :

Documents

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Document File Name	DocumentType Name	Is Public
Cover letter.pdf	Proposal Covering Letter	Yes
Planning Proposal.pdf	Proposal	Yes
Attachment_1_Information_checklist_LEP amend 3.doc	Proposal	Yes
Attachment_4_Evaluation_criteria_delegation_LEP amend 3.doc	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 3.1 Residential Zones
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
- 6.1 Approval and Referral Requirements

Additional Information :

The planning proposal should proceed as a "routine" planning proposal and an authorisation to exercise plan making delegations should be issued to Council.

The Director-General's delegate should agree that inconsistency with s117 Direction 4.1 Acid Sulfate Soils is of minor significance and that consistency with Direction 4.4 Planning for Bushfire Protection remains unresolved until consultation with the NSW Rural Fire Service has occurred (as recommended below).

The planning proposal should proceed subject to the following conditions:

1. Prior to undertaking exhibition, the Project Timeline under Part 6 of the planning proposal is to be updated to indicate that the matter will be finalised under Council's delegation.
2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013).
3. Consultation is required with the NSW Rural Fire Service under section 56(2)(d) of the EP&A Act to comply with the requirements of S117 Direction 4.4 Planning for Bushfire Protection. The NSW Rural Fire Service is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge the relevant planning authority from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission).
5. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

Supporting Reasons :

The reasons for the above recommendations for the planning proposal are as follows:

1. Permitting detached dual occupancies and secondary dwellings in rural and rural residential areas is a matter of local significance.
2. The proposal is otherwise consistent with all the relevant local and regional planning

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strategies, contributing to housing choice and affordability throughout the Kyogle LGA.

3. The inconsistency with s117 Direction 4.1 Acid Sulfate Soils can be justified as of minor significance.

4. The recommended conditions to the Gateway are required to provide adequate consultation, accountability and progression.

Signature: _____



Printed Name: _____

JIM CLARK

Date: _____

10 March 2014

