

Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning Secondary Dwellings.

Proposal Title :	Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning Secondary Dwellings.		
Proposal Summary :	The planning proposal seeks to; 1. Amend clause 5.4(9) of the Nambucca LEP 2010 to limit the size of secondary dwellings to 50% of the total floor area of the principal dwelling, or 60m² whichever is the greater. 2. List "Secondary dwellings" as permissible with consent in zones RU1 Primary Production and RU2 Rural Landscape in the Nambucca LEP 2010.		
PP Number :	PP_2012_NAMBU_001_00	Dop File No :	12/01101

Proposal Details

Date Planning Proposal Received :	06-Jan-2012	LGA covered :	Nambucca
Region :	Northern	RPA :	Nambucca Shire Council
State Electorate :	OXLEY	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :			
Suburb :		City :	Postcode :
Land Parcel :	The planning proposal applies to various land parcels where secondary dwellings are permissible and parcels that are in zones RU1 and RU2.		

DoP Planning Officer Contact Details

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Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning Secondary Dwellings.

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Mid North Coast Regional Strategy	Consistent with Strategy :	No
MDP Number :	0	Date of Release :	
Area of Release (Ha) :	0.00	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 :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

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

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

Comment : **The Statement of objectives adequately describes the intention of the planning proposal which is to amend the provisions of Nambucca LEP 2010 as they apply to secondary dwellings.**

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

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

Comment : **The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. Planning proposal intends to;**

- 1. Amend clause 5.4(9) (b) to limit the size of secondary dwellings to 50% of the total floor area of the principal dwelling.**
- 2. List "Secondary dwellings" as permissible with consent in zones RU1 Primary Production and RU2 Rural Landscape in the Nambucca LEP 2010**

Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning Secondary Dwellings.

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
1.4 Oyster Aquaculture
1.5 Rural Lands
2.2 Coastal Protection
2.3 Heritage Conservation
3.1 Residential Zones
3.4 Integrating Land Use and Transport
4.1 Acid Sulfate Soils
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
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 14—Coastal Wetlands
SEPP No 15—Rural Landsharing Communities
SEPP No 26—Littoral Rainforests
SEPP No 44—Koala Habitat Protection
SEPP No 55—Remediation of Land
SEPP No 71—Coastal Protection
SEPP (Rural Lands) 2008
SEPP (Affordable Rental Housing) 2009**

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

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

See the assessment section of this report. The second component of this planning proposal relating to permitting secondary dwellings in rural zones exhibits several inconsistencies with SEPPs and S117 directions.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

The proposed amendments to the Nambucca LEP 2010 are policy changes that do not require changes to any maps.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The RPA considers that the proposal is a low impact proposal and that a community consultation period of 14 days is adequate.

The Northern Region agrees that the first component of the planning proposal, relating to the size of secondary dwellings, is a low impact proposal and a 14 day consultation period is appropriate.

The Northern Region does not agree that the second component of the planning proposal, which proposes to permit secondary dwellings in rural zones, constitutes a low impact planning proposal because it has the potential to alter the pattern of development in rural zones and is not consistent with the strategic planning framework. If the second component is allowed to proceed then a 28 day consultation period is

Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning Secondary Dwellings.

recommended.

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 satisfies the adequacy criteria by;

1. Providing appropriate objectives and intended outcomes.
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.
3. Providing an adequate justification for the proposal.
4. Outlining a proposed community consultation program.

Proposal Assessment

Principal LEP:

Due Date : July 2010

Comments in relation to Principal LEP :

The Nambucca LEP was made in July 2010. This planning proposal seeks an amendment to the Nambucca LEP 2010.

Assessment Criteria

Need for planning proposal :

Size of Secondary Dwellings.

Secondary dwellings are currently permitted with consent in zones R1, R2, R3, R4 and R5 by the SEPP (Affordable Rental Housing) 2009 and in zones RU5 Village and B4 Mixed Use by the Nambucca LEP 2010.

The proposal to amend the provisions for calculation of the size of secondary dwellings is not the subject of a specific strategic study or report. The need for this component of the planning proposal has arisen due to the drafting changes required by the Standard Instrument (LEPs) Amendment Order in February 2011 (the SI Amendment). Prior to the SI Amendment, clause 5.4(9)(b) of the Nambucca LEP limited the size of secondary dwellings to 50% of the combined total size of the floor area of the principal dwelling as well as the secondary dwelling (this circular calculation was unworkable). The SI Amendment changed the method of calculation for the size of the secondary dwellings to be a percentage of the floor area of the principal dwelling only.

In order to maintain the status quo when the method for calculating the size of secondary dwellings changed, it was necessary to increase the permissible size for secondary dwellings to 100% of the floor area of the principal dwelling. It was necessary to retain the status quo because the SEPP which made the consequential amendments to the Nambucca LEP did not undergo a period of community consultation.

It is appropriate to reduce the size of the secondary dwellings to 50% of the floor area of the principal dwelling to enable secondary dwellings to constitute an alternative and affordable housing option. The amendment will reflect Council's original intention for secondary dwellings.

Limiting the size of secondary dwellings as proposed will have a net community benefit as it will provide for an alternative and sustainable means of providing affordable housing in the Nambucca Shire.

Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning Secondary Dwellings.

An amendment to clause 5.4(9)(b) of the Nambucca LEP is the appropriate means of achieving the objective of the planning proposal. This component of the planning proposal is supported.

Secondary Dwellings in Rural Zones.

The proposal to permit secondary dwellings with consent in zones RU1 and RU2 is not the subject of a specific study or report. The RPA has referenced reports which highlight the need for alternative affordable housing solutions in regional areas. However the reports do not specifically identify permitting secondary dwellings in rural zones as the appropriate solution to this issue.

The RPA has listed the advantages of permitting secondary dwellings in rural zones and concludes that a net community benefit will result from providing another form of low cost accommodation for residents in the shire. The advantages identified by the RPA are as follows;

1. Provision of an affordable alternative accommodation option for ageing rural property owners who require assistance to manage rural properties.
2. Provision of an affordable retirement solution for ageing rural property owners which will enable them to age in place.
3. Facilitate generational farm transition, allowing the elderly property owners to occupy the secondary dwelling while the children occupy the principal dwelling.
4. Provision of low cost accommodation for other family members.
5. Provision of low cost accommodation for younger people employed in the aged services industry.
6. Provision of a means for rural land owners to supplement their farm income with rental income from the secondary dwelling.
7. Provision of an opportunity for seasonal accommodation for farm workers.
8. Reduction in the unnecessary subdivision of larger allotments because of the ability to create additional residential accommodation on a single lot.
9. Encourage the legitimate use of secondary dwellings as granny flats in rural areas and decrease the number of illegal occupations of rural structures which presently require a large proportion of Council's resources to regulate.
10. Provision of contributions to Council for additional residential accommodation which is not currently forthcoming from illegally occupied structures.

The Northern Region does not dispute the need for alternative affordable housing, and that this can be provided by secondary dwellings. However, it is not considered appropriate for secondary dwellings to be permissible in rural zones. As a condition of the section 65 certificate for the Nambucca LEP 2010 in 2009, the RPA was required to prohibit secondary dwellings in RU1 and RU2 zones. The Northern Region has maintained that secondary dwellings are unsuitable in rural zones for the following reasons;

1. Secondary dwellings in rural zones are contrary to the Mid North Coast Regional Strategy (page 20) which provides that LEPs shall include provisions to limit dwellings in rural and environmental zones.
2. Secondary dwellings in rural zones cannot be justified on the basis of affordable housing, given the transport costs of living out of town. Rents for secondary dwellings will follow the market and as such will not always result in low rents, particularly in high growth areas such as the north coast. While the option may appear affordable for the individual, the community cost in servicing such dwellings (roads, garbage, school buses) is significant.
3. Allowing secondary dwellings in rural zones would potentially create new rural residential patterns which could, cumulatively, result in undesirable social and environmental impacts, land use conflict, an unreasonable demand for services and changes to the rural character of locations.

**Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning
Secondary Dwellings.**

4. Secondary dwellings in rural zones have the potential to require additional clearing of native vegetation for access roads, asset protection zones and effluent disposal areas because there is no requirement for secondary dwellings to be located in the vicinity of the principal dwelling on the lot.
5. It is preferable to utilise “rural workers dwelling” rather than “secondary dwellings” to accommodate legitimate rural workers since the “rural workers dwelling” definition requires a connection with the agricultural use of land and therefore is less likely to be exploited. Similarly “dual occupancy (attached)” can be used to provide for affordable housing for family members and farm succession accommodation.
6. Secondary dwellings can lead to the over capitalisation of rural land making it more expensive for future farmers to buy rural land for the sole purpose of an agricultural pursuit.

The RPA has identified 16 standard LEPs which permit secondary dwellings in rural zones, however none of these are in the northern region and all are either in urban fringe areas or inland areas with little growth pressure in rural zones.

The Northern Region office has consistently declined proposals for secondary dwellings (or detached dual occupancies) in rural areas since 1988 in accordance with the provisions of the North Coast REP.

It is considered that permitting secondary dwellings with consent in rural zones is not an appropriate means of providing for affordable housing in the Northern Region. The high levels of growth and the environmental constraints of the northern region do not make the permissibility of secondary dwellings in rural zones an appropriate solution to affordable housing. Additionally, alternative solutions to farm succession and rural workers accommodation exist in the form of dual occupancies (attached) and rural workers dwellings which are subject to tighter controls and have a lesser adverse impact on the natural and social environment.

Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning Secondary Dwellings.

Consistency with strategic planning framework :

Size of Secondary Dwellings.

The proposed amendment to the Nambucca LEP for the calculation of the size of secondary dwelling is not inconsistent with the Mid North Coast Regional Strategy and is consistent with the RPA's strategies and structure plan.

This component of the planning proposal is not inconsistent with any state environmental planning policies.

S117 Directions.

The planning proposal identifies S117 direction, 3.1 Residential Zones as being applicable to this component of the proposal and an inconsistency with direction 3.1 exists.

Direction 3.1 Residential Zones provides that a planning proposal must not contain provisions which will reduce the permissible residential density of land. This component of the planning proposal seeks to reduce the permissible size of secondary dwellings from 100% to 50% of the total floor area of the principal dwelling.

The direction provides that a planning proposal may be inconsistent with the terms of the direction if it is of minor significance. In this instance the inconsistency is considered to be of minor significance because the amendment will not reduce the permissibility of secondary dwellings in residential zones, it will only limit the size of the secondary dwelling. The limitation of the size of the secondary dwelling is consistent with the objective of the direction which is to encourage a variety and choice of housing types. If the size of secondary dwellings is not limited then the option for smaller and more affordable dwellings will be less likely to exist.

This component of the planning proposal is otherwise consistent with the remaining S117 directions.

Secondary Dwellings in Rural Zones

The proposed amendment to the Nambucca LEP 2010 to permit secondary dwellings in RU1 and RU2 zones is inconsistent with the provisions of the Mid North Coast Regional Strategy. The strategy provides that LEPs shall include provisions to limit dwellings in rural and environmental zones. Permitting secondary dwellings in RU1 and RU2 zones will enable the proliferation of dwellings in rural zones.

Consistency with SEPPs.

SEPP (Rural Lands).

The RPA concludes that the proposal to permit secondary dwellings in rural zones is not inconsistent with the rural planning principles of the SEPP. The Northern Region disagrees with this conclusion for the following reasons;

1. Permitting secondary dwellings in rural zones has the potential to occupy land suitable for agricultural purposes preventing the use of this land for potential productive and sustainable economic activities arising from changing agricultural production processes and trends in the future.
2. The proposal to permit secondary dwellings in rural zones does not recognise the importance of the rural land uses to the State, instead encouraging residential land use in rural zones.
3. Permitting secondary dwellings on rural lands as a form of affordable housing is not in the interests of the community as affordable housing should be located in urban centres where employment and services are readily available.
4. The proposal is likely to have an adverse impact on native vegetation if secondary dwellings are erected on vegetated rural land. Extensive clearing will be required for asset protection zones, access tracks, effluent disposal areas and ancillary development.
5. The proposal is contrary to planning for rural lifestyle, settlement and housing which should be undertaken in rural residential zoned areas or rural villages. The proposal will enable a degree of ad hoc isolated residential development in rural zones which is not in the best interests of the social welfare of rural communities.

6. The proposal will result in additional dwellings in isolated rural locations which will create an unreasonable demand for infrastructure and services.
7. The proposal is inconsistent with the Mid North Coast Regional Strategy which seeks to limit dwellings in rural areas.

SEPP (Affordable Rental Housing) 2009

The SEPP (Affordable Rental Housing) 2009 provides for a consistent approach to the provision of secondary dwellings as affordable housing throughout the State. The SEPP permits secondary dwellings as affordable housing in residential zones only. The proposal to permit secondary dwellings in rural zones is inconsistent with the intention of the SEPP.

S117 Directions.

The planning proposal identifies the following S117 directions as being applicable to this component of the proposal 1.2 Rural Zones, 1.5 Rural Lands, 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 6.1 Approval and Referral Requirements. The planning proposal identifies an inconsistency with direction 1.2. This is discussed below.

The Northern Region considers the following 117 Directions are applicable to the proposal, 1.2 Rural Zones, 1.5 Rural Lands, 2.2 Coastal Protection, 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, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, 6.3 Site Specific Provisions.

Of the above s117 Directions the proposal is inconsistent with Directions 1.2, 1.5, 4.1, 4.4, and 5.1.

Direction 1.2 Rural Zones is relevant to the proposal to permit secondary dwellings in rural zones. The Direction states that a planning proposal shall not contain provisions which will increase the permissible density of land within a rural zone. The planning proposal aims to enable secondary dwellings in rural zones with development consent.

The direction provides that a planning proposal may be inconsistent with the direction if the inconsistency is justified by a strategy, a study, or is of minor significance. The potential increased density that would result from the proposal has not been justified by a strategy and is inconsistent with the Mid North Coast Regional Strategy. The potential increased density is not considered to be minor and has the potential to cause land use conflict and erode the suitability of rural land for agricultural uses. It is considered that the inconsistency has not been adequately justified.

Direction 1.5 Rural Lands is relevant to the proposal to permit secondary dwellings in rural zones. The direction states that a planning proposal shall be consistent with the Rural Planning Principles of the SEPP (Rural Lands) 2008.

As discussed previously in the report the proposal is inconsistent with the rural planning principles. This inconsistency has not been justified by a strategy which has been approved by the Director General and is not considered to be of minor significance.

Direction 4.1 Acid Sulfate Soils is relevant to the proposal to permit secondary dwellings in rural zones. The direction states that a planning proposal shall not propose intensification of land uses on land identified as containing acid sulfate soils unless a study assessing the appropriateness of the land has been completed. The proposal will enable secondary dwellings on land in rural zones, some of which contain acid sulfate soils. The inconsistency is considered to be of minor significance. Development for a secondary dwelling is unlikely to have any significant impact on acid sulfate soils and any impact would be addressed in the development application process and subject to the provisions in acid sulfate soils clause of the Nambucca LEP.

Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning Secondary Dwellings.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal to permit secondary dwellings in rural zones. The direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a gateway determination has been issued. Until this consultation has occurred the consistency of the proposal with the direction remains unresolved.

Direction 5.1 Implementation of Regional Strategies is relevant to the proposal to permit secondary dwellings in rural zones. The direction states that proposal must be consistent with the regional strategy. The proposal to permit secondary dwellings in rural zones is inconsistent with the Mid North Coast Regional Strategy for the reasons discussed previously in this report.

The direction provides that a planning proposal may be inconsistent with the direction if the inconsistency is of minor significance or the proposal achieves the overall intent of the strategy. It is considered that the inconsistency is neither minor nor does it achieve the overall intent of the Strategy's action to limit dwellings in rural zones. The proposal is therefore considered to be inconsistent with the direction and the inconsistency has not been adequately justified.

The planning proposal is otherwise consistent with S117 directions.

Environmental social
economic impacts :

The planning proposal will not have any direct adverse impact on critical habitat or threatened species, populations or ecological communities, or their habitats. Similarly the planning proposal will not have any direct adverse effect on the natural, built or socio-economic environment.

The second component of the planning proposal, the permissibility of secondary dwellings in the RU1 and RU2 zones, has the potential to have indirect effects on the natural and socioeconomic environments as previously discussed in the assessment section of this report. While these matters can be addressed to some extent by the development assessment process, the maintenance of a policy position which prohibits secondary dwellings in rural zones is a more effective measure to prevent these adverse impacts.

The planning proposal has given consideration to social and economic impacts of the proposed amendment to the Nambucca LEP 2010. While the RPA suggests that the social and economic impacts will be largely positive the Northern region does not agree with this assessment.

Assessment Process

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

Timeframe to make LEP : **6 Month** Delegation : **DDG**

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

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

(2)(a) Should the matter proceed ? **No**

If no, provide reasons : **The first component of the planning proposal relating to the size of Secondary Dwellings should proceed.**

Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning Secondary Dwellings.

The second component of the planning proposal relating to Secondary Dwellings in Rural Zones should not proceed for the following reasons;

1. The proposal is inconsistent with the Rural Planning Principles of SEPP (Rural Lands) 2008.
2. The proposal is inconsistent with the Mid North Coast Regional Strategy.
3. The proposal is inconsistent with S117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.1 Acid Sulfate Soils, and 5.1 Implementation of Regional Strategies and the inconsistencies have not been justified.

Resubmission - s56(2)(b) : No

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Council letter Nambucca LEP Amendment No 8.pdf	Proposal Covering Letter	Yes
Planning Proposal Nambucca LEP Amendment No 8.pdf	Proposal	Yes
Council report Nambucca LEP Amendment No 8.pdf	Determination Document	Yes

Planning Team Recommendation

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

- S.117 directions:
- 1.2 Rural Zones
 - 1.4 Oyster Aquaculture
 - 1.5 Rural Lands
 - 2.2 Coastal Protection
 - 2.3 Heritage Conservation
 - 3.1 Residential Zones
 - 3.4 Integrating Land Use and Transport
 - 4.1 Acid Sulfate Soils
 - 4.3 Flood Prone Land
 - 4.4 Planning for Bushfire Protection
 - 5.1 Implementation of Regional Strategies
 - 6.1 Approval and Referral Requirements

Additional Information : **It is recommended that;**

1. The first component of the planning proposal, relating to the limit on the size of secondary dwellings, proceed as a 'routine' planning proposal.
2. The second component of the planning proposal, to permit secondary dwellings in rural zones, should not proceed.
3. The planning proposal is to be completed within 6 months.
4. That a community consultation period of 14 days is necessary for the first component of the planning proposal.

**Nambucca LEP 2010 Draft Amendment No 8 – Changes to provisions concerning
Secondary Dwellings.**

5. That the RPA consult with the Commissioner of the NSW Rural Fire Services in accordance with the requirements of S117 Direction 4.4 Planning for Bushfire Protection.

6. It is recommended that a delegate of the Director General agree that the inconsistency of that component of the planning proposal relating to the size of secondary dwellings with S117 Direction 3.1 is justified in accordance with the provisions of the direction.

Supporting Reasons : The reasons for the recommendation are as follows;

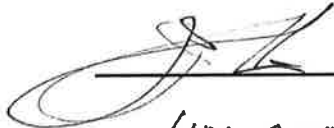
Size of Secondary Dwellings.

1. The proposed reduction in the size of secondary dwellings will contribute to providing variety and choice of housing in the Nambucca Shire.
2. The proposed amendment reflects Council's original intention for the size of secondary dwellings prior to the SI Amendment.
3. The proposed reduction in the size of secondary dwellings reflects the intention of the standard instrument provisions for secondary dwellings as being subordinate to and smaller than the principal dwelling.

Secondary Dwellings in Rural Zones.

1. The proposal is inconsistent with the Rural Planning Principles of SEPP (Rural Lands) 2008.
2. The proposal is inconsistent with the Mid North Coast Regional Strategy.
3. The proposal is inconsistent with S117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.1 Acid Sulfate Soils, and 5.1 Implementation of Regional Strategies and ythe inconsistencies have not been justified.

Signature:



Printed Name:

JIM CLARK

Date:

10 January 2012

