

DIRECTOR ENVIRONMENT & PLANNING'S REPORT

**ITEM 9.2 SF1541 031111 PLANNING PROPOSAL RURAL TOURIST
ACCOMMODATION AND SECONDARY DWELLINGS**

AUTHOR/ENQUIRIES: Grant Nelson, Strategic Planner

SUMMARY:

The purpose of this report is to obtain Council's support for the preparation of planning proposals to:

- a ensure appropriate tourism facilities are a permissible land use on Rural Zoned Land;
b ensure secondary dwellings are permissible to 50% of the size of the Primary Dwelling;
c permit secondary dwellings to be approved in Rural Zones with the consent of Council;
d to provide Council with advice in regards to eco-tourist facilities.

NOTE: This matter requires a “Planning Decision” referred to in Section 375A of the Local Government Act 1993 requiring the General Manager to record the names of each Councillor supporting and opposing the decision

Recommendation:

- 1 That Council resolve to amend the Nambucca LEP 2010 to:
 - a Allow *'Tourist and Visitor Accommodation'* as permissible with consent in the RU1 Primary Production, RU2 Rural Landscape and R5 Large Lot Residential Zones but prohibit the land uses *'backpackers accommodation'*, *'hotel and motel accommodation'* and *'serviced apartment'*.
 - b Limit the size of secondary dwellings to 50% of the size of the Primary Dwelling.
 - c To allow secondary dwellings as a use that is permitted with consent within the RU1 Primary Production and RU2 Rural Landscape Zones.
- 2 That, pursuant to Clause 55 of the Environmental Planning and Assessment Act 1979, Council staff prepare planning proposals that give effect to the above proposed amendments in accordance with Clause 56 of the Act, the Planning Proposals be forwarded to the Minister for Gateway Determination.
- 3 That in the event that the Department of Planning and Infrastructure require minor changes or modifications to the above resolutions, the General Manager be authorised to concur with the required changes provided Council's intent in the above resolutions are achieved.

OPTIONS:

That Council not proceed with one or all of the proposed amendments.

DISCUSSION:

Tourist and Visitor Accommodation in Rural Zones

ITEM 9.2 PLANNING PROPOSAL RURAL TOURIST ACCOMMODATION AND SECONDARY DWELLINGS

The Nambucca LEP 1995 allowed a '*Rural Tourist Facility*' to be undertaken on Rural Land. Under this definition Council could accept applications for detached tourist facilities such as tourist cabins.

The definitions which most closely achieve the intent of a rural tourist facility under the Standard Instrument LEP template were '*farm stay accommodation*' and '*bed and breakfast accommodation*'. Both these land uses were incorporated into the Nambucca LEP 2010 as permissible uses in the rural zones to capture activities previously permissible as a rural tourist facility.

An amendment to the Standard Instrument Order on 13 July 2011 varied the definition of Bed and Breakfast Accommodation within the Nambucca LEP 2010. This recent change to the definition of Bed and Breakfast Accommodation has resulted in the Nambucca LEP 2010, not permitting activities such as tourist cabins in rural zoned land unless it is related to primary production.

Tourism in the Rural areas of the shire has the potential to create a positive contribution to the local economy. One of the potential risks of allowing this type of development is the mis-use of tourist accommodation as dwellings, particularly where a dwelling entitlement is not available.

Proposed Amendment

It is proposed to prepare a Planning Proposal to permit tourism facilities in rural zones as previously permissible in the Nambucca LEP 1995. To achieve this in the following is proposed:

- 1 Council allow '*Tourist and Visitor Accommodation*' as permissible with consent in the RU1, RU2, R5 Zones but prohibit the land uses '*backpackers accommodation*', '*hotel and motel accommodation*' and '*serviced apartment*'. By preparing the land use tables in this way all tourist accommodation except those prohibited will be permissible uses. This is a similar approach used by other Councils including Bellingen Council.

Eco-tourist Facility

On the 18 March 2010 Council resolved the following:

That Council defer the inclusion of ecotourism as a permissible land use with consent in zones RU1, RU2, R5, SP3, RE1 RE2 and E3 until a definition is provided.

The '*eco-tourist facility*' definition was introduced into the standard instrument in July 2011 and has the following meaning.

eco-tourist facility means a building or place that:

- a. provides temporary or short-term accommodation to visitors on a commercial basis; and
- b. is located in or adjacent to an area with special ecological or cultural features; and
- c. is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

If this definition is introduced as permissible with consent in any zone then it is compulsory to introduce the following clause that would apply to any proposal for an eco-tourist facility.

5.13 Eco-tourist facilities [compulsory if eco-tourist facilities permitted with consent]

1. The objectives of this clause are as follows:

ITEM 9.2 PLANNING PROPOSAL RURAL TOURIST ACCOMMODATION AND SECONDARY DWELLINGS

- a. to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out,
 - b. to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site.
2. This clause applies if development for the purposes of an eco-tourist facility is permitted with development consent under this Plan.
3. The consent authority must not grant consent under this Plan to carry out development for the purposes of an eco-tourist facility unless the consent authority is satisfied that:
- a. there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and
 - b. the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and
 - c. the development will enhance an appreciation of the environmental and cultural values of the site or area, and
 - d. the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and indigenous flora and fauna will be minimal, and
 - e. the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and
 - f. waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and
 - g. the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours materials and landscaping with local indigenous flora, and
 - h. any infrastructure services to the site will be provided without significant modification to the environment, and
 - i. any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and
 - j. the development will not adversely affect the agricultural productivity of adjoining land, and
 - k. the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:
 - i measures to remove any threat of serious or irreversible environmental damage,
 - ii the maintenance (or regeneration where necessary) of habitats,
 - iii efficient and minimal energy and water use and waste output,
 - iv mechanisms for monitoring and reviewing the effect of the development on the natural environment,
 - v maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.

Proposed Amendment

Despite the previous resolution of Council it is not recommended that Council introduce the "eco-tourist facility" land use within any zone for the following reasons:

- The clause that accompanies the definition contains subjective or ambiguous terminology that could create issues/complications within the development assessment process;
- The Tourist and Visitor Accommodation amendment proposed within this report would allow this type of development to occur, making any Eco-tourist Facility use redundant within the RU1, RU2 and R5 Zones;
- Should Council allow Eco-Tourist Facility Developments in Environmental Zones those zones

ITEM 9.2 PLANNING PROPOSAL RURAL TOURIST ACCOMMODATION AND SECONDARY DWELLINGS

would be subject to additional development potential not presently available. This is because at present the only type of accommodation available in the Environmental Zones is Bed and Breakfast Accommodation.

Secondary Dwellings

Secondary Dwellings were introduced into the NSW Planning System as a way of promoting alternative forms of affordable housing (Granny Flats). To achieve this, secondary dwelling provisions were written into the SEPP Affordable Rental Housing and the Standard Instrument Local Environmental Plan.

When initially made the Nambucca LEP 2010 contained provisions which allowed secondary dwellings to be constructed to 50% of the size of the primary dwelling.

Recent amendments to the Standard Instrument Order included grammatical corrections to clause 5.4 (9) Secondary Dwellings. Despite recommendations made to the Department of Planning and Infrastructure Northern Office the final plan as made on the 13 July 2011 has resulted in secondary dwelling being permissible to 100% of the size of the primary dwelling as shown below:

(9) Secondary dwellings

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

- (a) 60 square metres;
- (b) 100% of the total floor area of the principal dwelling.

This most recent amendment allows secondary dwellings to be the same size as a primary dwelling and therefore a person may make an application for a dual occupancy type development as a secondary dwelling. This has the following implications:

- The objectives of the secondary dwelling provisions to provide alternative forms of affordable housing would not be achieved. That the intent of the provisions to provide granny flats would become redundant.
- In R5 Large Lot Residential areas a person may undertake a detached dual occupancy type development which was not previously permissible.
- A person may undertake a dual occupancy type development within the R1, R2 R3, R4 zones as Complying Development under the Affordable Rental Housing SEPP.
- A person may undertake a dual occupancy type development which is not consistent with the minimum Lot Size Clause for Dual Occupancies (presently 600m²).
- These changes would also make it difficult for Council to consider other policies which may encourage affordable housing types in the Shire. For example Council could consider a reduced section 94 contribution rate for secondary dwellings, but if the secondary dwelling is the same size as a primary dwelling contribution reductions would be meaningless.

Proposed Amendment

To achieve the intent of the secondary dwelling provisions, (to allow granny flat type developments) and to provide an alternative low cost accommodation within the Shire. It is recommended that clause 5.4(9) be amended to:

(9) Secondary dwellings

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

- (a) 60 square metres,
- (b) 50% of the total floor area of the principal dwelling.

ITEM 9.2 PLANNING PROPOSAL RURAL TOURIST ACCOMMODATION AND SECONDARY DWELLINGS

Secondary Dwellings in Rural Zones

In preparing the Nambucca LEP 2010, Council resolved to allow secondary dwellings in Rural Areas. Prior to exhibition of the Draft Nambucca LEP 2010 the Department of Planning requested Council make the following change:

'secondary dwellings are to be listed as prohibited development in the land use table for zones RU1 Primary Production, RU2 Rural Landscape and E3 Environmental Management'

The Departments justification to prohibit secondary dwellings in rural areas was to ensure consistency with the Mid North Coast Regional Strategy and the North Coast Regional Environmental Plan.

To progress the Nambucca LEP 2010 in a timely manner Council agreed to this change. Now that the Nambucca LEP 2010 has been made, further justification for secondary dwellings in rural areas is provided.

State-wide Application

Of the twenty seven (27) LEP's made under the standard instrument provisions that contain rural zones, sixteen (16) or 59% allow Secondary dwellings in rural zones. A number of Draft LEP's also allow secondary dwellings in Rural Zones including Gosford City Council Draft LEP and the Hills Shire LEP. The following table shows the LEP's that allow secondary dwellings.

Local Environment Plan	Permissible with Consent Secondary Dwellings	
	RU1	RU2
Albury LEP 2010	yes	yes
Camden LEP 2010	yes	yes
Coolamon LEP 2011	yes	
Goulburn Mulwaree LEP 2009	yes	yes
Gundagai LEP 2011	yes	
Harden LEP 2011	yes	
Muswellbrook LEP 2009	yes	
Penrith LEP 2010	yes	yes
Tumbarumba LEP 2010	yes	
Upper Lachlan LEP 2010	yes	yes
Urana LEP 2010	yes	
Wagga Wagga LEP 2010	yes	yes
Wingecarribee LEP 2010	yes	yes
Wollondilly LEP 2011	yes	yes
Wollongong LEP 2009		yes
Wollongong (west Dapto) LEP 2010		yes

In addition, the recent state government review of SEPP Affordable Rental Housing considered the permissibility of Secondary Dwellings in Rural Zones. The review concluded that although secondary dwellings should not be made permissible in rural zones through a state provision within the SEPP, individual Local Government Areas may consider permissibility where the individual Council considers it is warranted.

Regional Provisions

The reasons given by the DoPI to justify requiring secondary dwellings to be prohibited in rural zones included references to the North Coast Regional Environmental Plan and Mid North Coast Regional Strategy.

It is noted that when the Nambucca LEP 2010 was made the North Coast REP ceased to apply to the

ITEM 9.2 PLANNING PROPOSAL RURAL TOURIST ACCOMMODATION AND SECONDARY DWELLINGS

Nambucca LGA, therefore its provisions are no longer applicable to LEP Amendments in Nambucca.

The Mid North Coast Regional Strategy continues to apply to the Nambucca LGA and it states the following in relation to rural dwellings:

'Local Environmental Plans will include provisions to limit dwellings in rural and environmental zones.'

It is noted that this requirement is also an action in the Illawarra Regional Strategy and Sydney-Canberra Regional Strategy and the Department appears to be inconsistent in the enforcement of this requirement because the following LEP's have been approved by the Minister with land use tables which permit secondary dwellings within the rural zones:

- Wollongong LEP 2009
- Wollongong (west Dapto) 2010
- Wingericribee LEP 2010
- Goulburn Mulwarree LEP 2009
- Upper Lachlan LEP 2010

Further, the Nambucca LEP 2010 limits dwellings in rural zones to Dwelling Houses; Dual Occupancies (attached) and Rural Workers Dwellings. Permitting secondary dwellings restricted to 60sqm or 50% of the size of the primary dwelling is only considered a minor addition to those dwellings already permissible.

Advantages and disadvantages of secondary dwellings in rural areas

The advantages and disadvantages of allowing secondary dwellings in Rural zones are listed below.

Disadvantages	Benefits
May create minor dispersed rural settlement. The impact on rural settlement patterns is expected to be minor as the majority of secondary dwellings would be of a size that limits occupancy to 1 or 2 persons.	Likely to encourage legitimate occupation of granny flats in rural areas and decrease the number of illegal occupations of rural structures.
Increasing loads on existing effluent disposal systems or requiring multiple systems to manage waste. This issue would require individual merit assessment with development applications.	Council will gain contributions from structures which may otherwise be occupied illegally without Council knowledge.
Over time Council receive enquiries from persons who would like to subdivide secondary dwellings onto its own torrens title. The LEP 2010 and SEPP (Rural Lands) contain adequate provisions to address this.	With one of the coasts fastest growing aging populations it will provide affordable alternative accommodation for ageing rural property owners who need assistance to manage properties, but wish to retain rural lifestyle.
	Secondary dwellings provide space for additional family members or provide additional low cost accommodation for other persons.
	Provides an opportunity to supplement income by renting out the second dwelling.
	The provision of secondary dwellings as an additional form of residential accommodation within a single title may assist in preventing widespread and unnecessary subdivision on larger allotments.

In conclusion it is expected that the impact of a secondary dwelling in a rural areas could be adequately managed through the development application process and given the proposed size restrictions on secondary dwellings, it is expected that this option would be used by landowners wishing to accommodate family members such as grandparents or children who are yet to leave home, or those looking at farm succession planning which would cater for the retiring parents/family to continue to reside on the land.

ITEM 9.2 PLANNING PROPOSAL RURAL TOURIST ACCOMMODATION AND SECONDARY DWELLINGS

Proposed Amendment

It is proposed to amend Zone RU1 Primary Production and RU2 Rural Landscape to allow secondary dwellings as a use that is permitted with consent.

CONSULTATION:

- Director of Environment and Planning

SUSTAINABILITY ASSESSMENT:**Environment**

Environmental impacts of any developments proposed as result of these amendments will be subject to an appropriate environmental assessment. Should a proposed development appear to result in an unacceptable level of environmental impact applicants would be requested to address the issues or the application could be refused.

Social

It is expected the modifications proposed in this report will result in positive social outcomes for local communities

Economic

The amendments proposed through this amendment will result in a greater level of affordable housing being available in the Shire and provide opportunities for landholders to gain additional income from their properties.

Risk

There is some risk that persons developing secondary dwellings in rural areas may wish to pursue subsequent subdivision of the land. However the Nambucca LEP 2010 and the SEPP Rural Lands both contain provisions that would adequately control subdivision if it is inappropriate.

FINANCIAL IMPLICATIONS:**Direct and indirect impact on current and future budgets**

The planning proposal for these amendments will be prepared in house. Fees for advertising and notification will be sourced from the Environment and Planning advertising budget.

Source of fund and any variance to working funds

Nil.

ATTACHMENTS:

There are no attachments for this report.

TO: Executive Assistant (Lorraine Hemsworth)

Subject: Planning Proposal Rural Tourist Accommodation and Secondary Dwellings
Target Date: 17/11/2011
Notes:
Trim Reference SF1541 (27475/2011)

3212/11 **RESOLVED:** (Court/Finlayson)

- 1 That Council resolve to amend the Nambucca LEP 2010 to:
 - a Allow '*Tourist and Visitor Accommodation*' as permissible with consent in the RU1 Primary Production, RU2 Rural Landscape and R5 Large Lot Residential Zones but prohibit the land uses '*backpackers accommodation*', '*hotel and motel accommodation*' and '*serviced apartment*'.
 - b Limit the size of secondary dwellings to 50% of the size of the Primary Dwelling.
 - c To allow secondary dwellings as a use that is permitted with consent within the RU1 Primary Production and RU2 Rural Landscape Zones.
- 2 That, pursuant to Clause 55 of the Environmental Planning and Assessment Act 1979, Council staff prepare planning proposals that give effect to the above proposed amendments in accordance with Clause 56 of the Act, the Planning Proposals be forwarded to the Minister for Gateway Determination.
- 3 That in the event that the Department of Planning and Infrastructure require minor changes or modifications to the above resolutions, the General Manager be authorised to concur with the required changes provided Council's intent in the above resolutions are achieved.

For the Motion: Councillors Court, Ballangarry, Flack, Smyth, Finlayson, Ainsworth,
Moran, South and Hoban. (Total: (9))
Against the Motion: (Total: NIL)

Open Item in Minutes

This action sheet has been automatically produced by the Minute Secretary using **InfoCouncil**, the agenda and minutes database.

Please forward updated action sheet to the Governance Unit (by email or hard copy post) once completed.

ACTION TAKEN BY OFFICER

ONGOING / COMPLETED

Completion date: _____

(Please update once item is actually completed)

Details: